No. _____

IN THE

# Supreme Court of the United States

ROBERT LEE CRIDER, JR.,
*Petitioner*

v.

THE STATE OF TEXAS,
*Respondent*

On Petition For Writ of Certiorari
To The Court of Criminal Appeals of Texas

## PETITION FOR WRIT OF CERTIORARI

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## I. Question Presented

The United States Supreme Court has held that the compelled extraction of blood from a person's body is a Fourth Amendment search. The Court has also held that the government's chemical analysis of blood extracted from a person's body is a Fourth Amendment search.

This case presents the question of whether a Fourth Amendment violation occurs when the government extracts a blood sample by compelled intrusion into a person's body and then chemically analyzes that blood sample for alcohol based upon a warrant authorizing only the extraction of blood, but that does not authorize the chemical analysis of the seized blood.

## II. List of Proceedings

- *State v. Crider*, No. B18-073, 198th Judicial District Court, Kerr County, Texas. Judgment entered September 12, 2018.

- *Crider v. State*, No. 04-18-00856-CR, Fourth Court of Appeals, San Antonio, Texas. Judgment entered September 4, 2019.

- *Crider v. State*, No. PD-1070-19, Texas Court of Criminal Appeals. Judgment entered September 16, 2020.

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## V. Petition for Writ of Certiorari

Robert Crider, Jr., an inmate currently incarcerated in the McConnell Unit of the Texas Department of Criminal Justice, Institutional Division, in Beeville, Texas, by and through M. Patrick Maguire, respectfully petitions this Court for a writ of certiorari to review the judgment of the Texas Court of Criminal Appeals.

## VI. Opinions Below

The judgment and opinion of the Texas Court of Criminal Appeals is reported as *Crider v. State*, 607 S.W.3d 305 (Tex. Crim. App. 2020). The opinion of the Texas Court of Criminal Appeals is incorporated into the Appendix herein.

## VII. Jurisdiction

Mr. Crider invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the Texas Court of Criminal

Appeals' judgment. Judgment was entered September 16, 2020.

## VIII. Constitutional Provisions Involved

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## IX. Statement of the Case

In *Skinner v. Ry. Labor Execs. Ass'n*, this Court held that a compelled intrusion into the body for blood to be analyzed for alcohol content is deemed a search within the meaning of the Federal Constitution's Fourth Amendment, because this physical intrusion, penetrating beneath the skin, infringes an expectation of privacy that society is prepared to recognize as reasonable. This Court also held that the ensuing chemical analysis of the blood sample to obtain physiological data is a further invasion of the privacy

interests of the person whose blood is being analyzed. 489 U.S. 602, 615 (1989).

This case presents the question of whether a Fourth Amendment violation has occurred when the government extracts a blood sample by compelled intrusion into a person's body and then chemically analyzes that blood sample for alcohol based upon a warrant authorizing only the extraction of blood, but that does not authorize the chemical analysis of the blood.

### 1. The arrest and the search warrant

On October 3, 2017, following a citizen's 911 report describing Crider's erratic driving as well as the location where he eventually parked, a Kerrville police officer found Crider sitting alone in his vehicle where he had been reported to be. The officer noticed that Crider exhibited a strong odor of alcohol, glassy and bloodshot eyes, an unsteady gait, and slow, slurred speech. When Crider was unable to submit to field sobriety testing because of recent

injuries, the officer conducted a horizontal gaze nystagmus test to look for signs of intoxication. The officer then arrested Crider and obtained a search warrant authorizing the extraction of Crider's blood. The warrant did not authorize the testing of Crider's blood. Chemical testing of the blood sample showed that Crider's blood alcohol concentration was .19. The legal limit in Texas is .08.

Crider filed a motion to suppress the results of the blood analysis. Crider argued that the blood test results were inadmissible because the search warrant only authorized officers to obtain a blood sample, and did not authorize an analysis of the blood for alcohol. The trial court denied Crider's motion to suppress.

### 2. Intermediate appeal

On appeal, Crider argued that the trial court abused its discretion in denying Crider's motion to suppress because the State failed to obtain a search warrant that authorized both the drawing and testing of a blood sample taken from

Crider. This argument is based upon authority derived from this Court's holding in *Skinner v. Ry. Labor Execs. Ass'n*, which recognizes that when the drawing of a defendant's blood is instigated by the government, a subsequent analysis of the blood by government agents also constitutes an invasion of a societally recognized expectation of privacy. *Skinner v. Ry. Labor Execs. Ass'n*, 489 U.S. 602, 615 (1989).

On September 4, 2019, the Fourth Court of Appeals issued an unpublished opinion affirming the trial court's judgment.

### 3. Texas Court of Criminal Appeals

Crider filed a petition for discretionary review in the Texas Court of Criminal Appeals. The Court of Criminal Appeals granted Crider's petition but ultimately affirmed the judgments of the intermediate court of appeals and the trial court.

The Court of Criminal Appeals recognized that the chemical testing of blood constitutes a separate and discrete

invasion of privacy for Fourth Amendment purposes from the physical extraction of blood. *Crider v. State*, 607 S.W.3d 305, 306 (Tex. Crim. App. 2020). The Court went on to hold that because the State obtained the blood sample by way of a magistrate's determination that probable cause existed to justify its seizure, and this determination was sufficient to justify the chemical testing of the blood even if the warrant itself did not expressly authorize the chemical testing on its face.

## X. Reasons for Granting the Writ

### A. This Court has long recognized that the government's analysis of blood is a discrete Fourth Amendment search separate and distinct from the initial extraction of the blood. The Court should take this opportunity to clarify that the government's chemical analysis of blood is a violation of the Fourth Amendment's prohibitions against unreasonable searches and seizures unless the face of the warrant expressly authorizes the analysis.

The 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." *Skinner v. Ry. Labor Execs. Ass'n*, 489 U.S. 602 (1989) (quoting *Schmerber v. California*, 384 U.S.757, 767-68 (1966)).

*Skinner* concerned the Federal Railroad Safety Act (FRSA) of 1970, which "authorize[d] the Secretary of Transportation to prescribe, as necessary, appropriate rules, regulations, orders, and standards for all areas of railroad safety." *Id.* at 606. Pursuant to the statute, the Federal Railroad Administration promulgated regulations that

mandated the blood and urine analysis of railroad employees involved in certain accidents. *Id.* The issue presented was "whether these regulations violate[d] the Fourth Amendment." *Id.*

The *Skinner* Court noted the following:

> We have long recognized that a "compelled intrusio[n] 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 a further invasion of the tested employee's privacy interests." *Id.* at 616.

The goal of a blood search warrant is not the blood; it is the information contained within the blood. The *Skinner* Court recognized this fact and held that the collection and subsequent analysis of blood must be deemed Fourth Amendment searches.

*The Blood Warrant*

The search warrant signed by the judge in this case does not authorize the testing of Crider's blood for alcohol. *Crider v. State*, 607 S.W.3d 305, 306 (Tex. Crim. App. 2020). The Fourth Amendment is clear that each discrete search—the drawing of blood and the subsequent testing of the blood—requires a warrant supported by probable cause.[1]

The Fourth Amendment prohibits the issuance of general warrants allowing officials to burrow through a person's possessions looking for any evidence of a crime. *Andresen v. Maryland*, 427 U.S. 463, 480 (1976). A warrant must particularly describe the place to be searched and the person or things to be seized. *Id.*

In other words, the scope of the search is limited by the four corners of the search warrant. The search warrant

[1] A warrant authorizing a blood draw and an analysis of the blood must be obtained because the blood draw and the analysis each constitute a "search" under the Fourth Amendment. However, there is no reason why both of these elements could not be incorporated into a single warrant based upon a single probable cause affidavit.

signed by the magistrate in this case states that probable cause is established "for issuance of this warrant for seizure of blood from the person of Robert Lee Crider, Jr. and to carry the said person to a physician, registered nurse, or medical laboratory technician skilled in the taking of blood from the human body and the said physician, registered nurse, or medical laboratory technician shall take sample of the blood (sic) from the person of the said Robert Lee Crider, Jr. in the presence of a law enforcement officer and deliver the said samples to the said law enforcement officer." RR 13, *Defendant's Exhibit 1* (emphasis added). The four corners of the warrant do not authorize the officer to have the blood analyzed to determine Crider's blood alcohol concentration.

### *The Analysis of Crider's Blood Constituted a Warrantless Search*

Because the blood draw and the analysis were both instigated by the government, there are two discrete searches at issue. The warrant in this case only focused on the first search—the blood draw. There is no mention made

in either the probable cause affidavit, or in the warrant, regarding the subsequent analysis of the blood. The analysis was, therefore, a warrantless search.

*Crider's Motion to Suppress*

In his motion to suppress, Crider argued that the search warrant to draw Crider's blood was deficient because the officer who sought the search warrant only requested a blood sample and did not request to analyze the blood to determine the alcohol concentration within the blood. CR, 51. The officer never requested, nor did the warrant authorize, a subsequent analysis of the blood sample to determine the blood alcohol concentration. CR, 51. Crider's motion to suppress argued that "[t]he affidavit in this matter only describes 'human blood' as the evidence to be searched for and does not describe the true evidence sought. The officer was not seeking human blood . . . The evidence sought was the alcohol particles within the blood. The officer never

described this evidence within the affidavit for search warrant for mere evidence . . ." CR, 51.

### *No Exceptions to the Warrant Requirement were Urged by the State*

In the case of a warrantless search, the State has the burden of proof to show that a search was justified under one of the exceptions to the warrant requirement or show that Crider voluntarily consented to such search by clear and convincing evidence. The State did not raise any warrant exceptions in response to Crider's motion to suppress.

### *Opinion of the Texas Court of Criminal Appeals*

The Texas Court of Criminal Appeals reiterated "that the chemical testing of blood constitutes a separate and discrete invasion of privacy for Fourth Amendment purposes from the physical extraction of that blood." *Crider*, 607 S.W.3d at 306.

The Court of Criminal Appeals, however, reasoned that because the initial extraction of blood is supported by a finding of probable cause, that finding is sufficient to justify

the chemical testing of the blood even if the warrant itself did not expressly authorize the chemical testing on its face. *Crider*, 607 S.W.3d at 308. The core rationale of the Court of Criminal Appeals' opinion is encapsulated below:

> "[N]o indiscriminate 'rummaging' through the content of Appellant's blood was authorized here; nor does the record suggest that any occurred. On the basis of the warrant issued in this case, the State was not authorized to analyze Appellant's blood for, say, genetic information, or for any other biological information not supported by the same probable cause that justified the extraction of his blood sample in the first place." *Id.* at 308.

The Court of Criminal Appeals stated that its ruling is not tantamount to an unconstitutional endorsement of general search warrants. *Id.*

The Court's opinion, however, is not reconcilable with the Fourth Amendment's mandate that any search be justified by a valid search warrant or a valid warrant exception.

To accept the Court of Criminal Appeals' rationale, we must assume that the government will not seek any

information from a blood sample other than what is "implied" by the search warrant. This raises two troubling questions. In such a case, who decides what is "implied" in the search warrant? Also, who decides what is "reasonable"? The answer is simple – the government decides these questions. This cuts to the heart of why general search warrants are prohibited by the Fourth Amendment.

It goes without saying that our constitution is predicated upon the idea that government should not be allowed to police itself. Our constitution and the judiciary are the "guardrails" framing the boundaries of permissible conduct by the government. This is manifested by the Fourth Amendment's requirement for clear, specific, search warrants outlining what the government may seize; and in the case of blood or biological evidence, what information the State may retrieve from the blood or biological evidence.

The concerns inherent in leaving a warrant open-ended when it comes to testing of blood or biological evidence are summed up in the following passages:

"'[C]hemical analysis of urine, like that of blood, can reveal a host of private medical facts about an [individual], including whether he or she is epileptic, pregnant, or diabetic'—facts that may be extraneous to any criminal investigative aims." *Skinner v. Ry. Labor Execs. Ass'n*, 489 U.S. 602, 617 (1989). "[A] person has no reason to know much of the information that will be revealed when [a biological sample containing DNA] is analyzed. [She] has little to no discretion over what information is stored in her body and likely has not . . . evaluated that information herself." Andrei Nedelcu, *Blood and Privacy: Towards a "Testing-As-Search" Paradigm Under the Fourth Amendment*, 39 SEATTLE U. L. REV. 195, 210 (2015).

Blood is simply a repository for a myriad of potentially incriminating evidence and other private facts that a person

may not wish to disclose. An approach that fails to recognize this by requiring an express authorization for testing on the face of the warrant itself suffers from a fatal constitutional infirmity.

If there is no mention of testing in the warrant, the issue of what can be done with a blood sample is left to the discretion of the person reading the warrant. Such an approach turns on its head the notion that law enforcement should not be in the position to police itself. Once a biological sample is in the possession of law enforcement, unless there is an explicit directive from a magistrate limiting what law enforcement may do with that sample, law enforcement may do with the sample whatever law enforcement wants to do with it.

This approach also highlights the serious concerns over general search warrants, particularly in light of the fact that "[a]s technology advances, more meaningful information will be extractable from . . . genetic material . . .

[T]he only practical limit on information that can be extracted from biological samples are currently available analysis techniques and our knowledge of what genetic variations mean." Andrei Nedelcu, *Blood and Privacy: Towards a "Testing-As-Search" Paradigm Under the Fourth Amendment*, 39 SEATTLE U. L. REV. 195, 210 (2015).

The underlying constitutional principles at work are not in dispute. The United States Supreme Court and the Texas Court of Criminal Appeals both hold that the government's testing of blood constitutes a search under the Fourth Amendment.

The Court of Criminal Appeals, however, holds that a warrant explicitly authorizing the government's analysis of the blood is unnecessary so long as a warrant authorizing the extraction of the blood was obtained. This holding cannot be reconciled with the principle that all searches under the Fourth Amendment must be justified by a search warrant issued by a neutral magistrate or by the existence

of a recognized exception to the warrant requirement. It is up to this Court to vindicate this principle by holding that all such searches must be supported by a search warrant.

The remedy for this issue is not some herculean task that will complicate matters and hinder law enforcement. To the contrary, the solution could not be simpler. In the same warrant authorizing the taking of a blood sample, the addition of one sentence authorizing law enforcement to test the blood for alcohol or other intoxicants solves the problem. Such a warrant vindicates this Court's holding in *Skinner* that the government's testing of blood is a search under the Fourth Amendment. It also places limits on what may be done with such a sample. If it's not stated in the warrant, the government cannot do it.

Stated another way, this solution gives clear guidance to the government that any information gleaned from the government's testing of a biological sample must be expressly authorized in a search warrant supported by

probable cause. By implication, this also dictates that any other testing or analysis of a biological sample by the government would need to be authorized in a search warrant.

The alternative is that a judicially-created warrant exception is carved out, unique to blood warrants, providing that a blood search warrant does not need to specify that the government may test blood because testing is "implied" in the warrant. Such a judicially-created warrant exception would be an anomaly in Fourth Amendment jurisprudence and amount to the tacit endorsement of general search warrants in this context.

Under such precedent, the question of what else is "implied" in such warrants is left to the imagination of the government. If the government seizes blood and decides to enter the defendant's DNA into computer databases it may do so assuming it has a good reason; the government may test for specific genetic traits, or anything else for that

matter if the government can make some "reasonableness" argument. In such a case, the warrant is a "floor" for what the government may do, it is not a "ceiling" setting limits for what the government may not do.

## XI. Conclusion

For the foregoing reasons, Mr. Crider respectfully requests that this Court issue a writ of certiorari to review the judgment of the Texas Court of Criminal Appeals.

DATED this 10th day of December, 2020.

Respectfully submitted,

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## XII. Appendix

- Texas Court of Criminal Appeals' opinion of September 16, 2020


# IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-1070-19

ROBERT LEE CRIDER, JR., Appellant
v.

THE STATE OF TEXAS

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ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW FROM THE FOURTH COURT OF APPEALS KERR COUNTY

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YEARY, J., delivered the opinion of the Court in which KELLER, P.J., and KEASLER, HERVEY, RICHARDSON, NEWELL, KEEL, and SLAUGHTER, JJ., joined.

NEWELL, J., filed a concurring opinion in which

HERVEY, RICHARDSON, and SLAUGHTER, JJ., joined. WALKER, J., filed a dissenting opinion.

## O P I N I O N

A sample of Appellant's blood was lawfully extracted pursuant to a search warrant which alleged probable cause to believe he had been driving while intoxicated. The warrant, however, did not also expressly authorize the chemical testing of the extracted blood to determine his blood-alcohol concentration. This petition for discretionary review calls upon us now to examine whether introduction of evidence of the result of the chemical testing at Appellant's trial, in the absence of any explicit authorization for such testing in the search warrant (or in a separate search warrant), violated his Fourth Amendment rights. We hold that it did not, and we therefore affirm the judgment of the court of appeals.

## I. Background

Following a citizen's 9-1-1 report describing Appellant's erratic driving as well as the location where he eventually parked, a Kerrville police officer found Appellant sitting alone in his vehicle exactly where he had been reported to be. The officer noticed that Appellant exhibited a strong odor of alcohol, glassy and bloodshot eyes, an unsteady gait, and slow, slurry speech. When Appellant would not submit to field sobriety testing because of claims of recent injuries, the officer conducted a horizontal gaze nystagmus test to look for signs of intoxication. Appellant exhibited all six signs of intoxication that are revealed through that test. The officer then arrested Appellant and sought a search warrant for extraction of his blood, which was granted. But the search warrant did not explicitly authorize the chemical testing of Appellant's blood. Chemical testing of the blood sample was nevertheless conducted, and it

revealed an alcohol-concentration level of .19.

Appellant did not contest the validity of the search warrant insofar as it authorized the extraction of his blood. *See Crider v. State*, No. 04-18-00856-CR, 2019 WL 4178633, at *1 (Tex. App.—San Antonio Sept. 4, 2019) (mem. op., not designate for publication) ("Crider does not challenge the existence of probable cause to support the blood draw warrant."). He did challenge, in a motion to suppress evidence, however, the introduction of evidence of the results of chemical testing for his blood-alcohol concentration. The trial court denied his motion to suppress, and on appeal Appellant argued that the introduction of his blood-alcohol concentration test result was error under this Court's recent opinion in *State v. Martinez*, 570 S.W.3d 278 (Tex. Crim. App. 2019).

In *Martinez*, this Court recently reiterated what it had held in previous opinions: that the chemical testing of blood constitutes a separate and discrete invasion of privacy for Fourth Amendment purposes from the physical extraction of that blood. *Id.* at 290; *see also State v. Huse*, 491 S.W.3d 833, 840 (Tex. Crim. App. 2016) ("[W]hen the State itself extracts blood from a DWI suspect, and when it is the State that conducts the subsequent blood alcohol analysis, two discrete 'searches' have occurred for Fourth Amendment purposes."); *State v. Hardy*, 963 S.W.2d 516, 523 (Tex. Crim. App. 1997) ("Where the drawing of blood is instigated by the government, a subsequent analysis of the blood by government agents also constitutes an invasion of a societally recognized expectation of privacy.") (citing *Skinner v. Ry. Labor Exec.'s Ass'n.*, 489 U.S. 602, 616 (1989)).

Appellant argued that this necessarily means that he may insist that, before that chemical testing may occur,

the State must obtain a warrant expressly authorizing that test, or else identify an exception to the Fourth Amendment's ordinary preferences for search warrants. *Crider*, 2019 WL 4178633, at *2. While acknowledging our holding that blood testing involves a discrete invasion of privacy under the Fourth Amendment, the San Antonio court of appeals held that this did not require a separate and express authorization of chemical testing in a search warrant that already authorizes extraction of blood for that purpose. *See id.* ("[W]e reasonably can assume that where the police seek and obtain a blood draw warrant in search of evidence of intoxication, the blood drawn pursuant to the warrant will be tested and analyzed for that purpose.").

Other courts of appeals in Texas have reached similar conclusions. *See Hyland v. State*, 595 S.W.3d 256, 261 (Tex. App.—Corpus Christi–Edinburg 2019, no. pet.) (op. on remand) ("[U]nlike in *Martinez*, the search here

was not warrantless."); *State v. Staton*, ___S.W.3d_, 2020 WL 1503125, at *3 (Tex. App.—Dallas Mar. 3, 2020, no pet. h.) ("[C]ommon sense dictates that blood drawn for a specific purpose will be analyzed for that purpose and no other.") (quoting *Martinez*, 570 S.W.3d at 290); *Jacobson v. State*, _____S.W.3d_, 2020 WL 1949622, at *5 (Tex. App.—Fort Worth Apr. 23, 2020) ("[T]he Fourth Amendment does not require the State to obtain a second warrant to test a blood sample that was seized based on probable cause that a person was driving while intoxicated."). And we do too.

## II. Analysis

"[T]he ultimate touchstone of the Fourth Amendment is reasonableness." *Riley v. California*, 573 U.S. 373, 381–82 (2014) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)). A neutral magistrate who has approved a search warrant for the extraction of a blood sample, based upon a showing of probable cause to believe

that a suspect has committed the offense of driving while intoxicated, has necessarily also made a finding of probable cause that justifies chemical testing of that same blood. Indeed, that is the purpose of the blood extraction. This means that the constitutional objective of the warrant requirement has been met: the interposition of a neutral magistrate's judgment between the police and the citizen to justify an intrusion by the State upon the citizen's legitimate expectation of privacy. *See State v. Villarreal*, 475 S.W.3d 784, 795–96 (Tex. Crim. App. 2014) (op. on orig. subm.) (citing *Johnson v. United States*, 333 U.S. 10, 13–14 (1948), for the proposition that the purpose of the Fourth Amendment's warrant requirement is to provide a neutral arbiter between the police and citizens to determine whether probable cause exists to justify a police intrusion). Whether we say the warrant that justifies extraction of the blood also, by necessary implication, justifies chemical testing,[1] or we simply acknowledge that

a magistrate's finding of probable cause to extract the blood for chemical testing necessarily constitutes a finding of probable cause also to conduct the chemical test for intoxicants, is of no moment. However we choose to characterize it, the chemical testing of the blood, based upon a warrant that justifies the extraction of blood for that very purpose, is a reasonable search for Fourth Amendment purposes.

As all the courts of appeals to have addressed the question so far have discerned, the facts of *Martinez* are distinguishable. *See Crider*, 2019 WL 4178633, at *6; *Hyland*, 595 S.W.3d at 260–61; *Staton*, 2020 WL 1503125, at *2–3; *Jacobson*, 2020 WL 1949622, at *5. There, it was not the State that extracted the blood in the first instance. Instead, the State obtained the already-extracted blood sample from a treating hospital and, without a magistrate's finding of probable cause, had that blood sample tested for intoxicants. *Martinez*, 570 S.W.3d at

281. Having previously acknowledged that a chemical test conducted at the behest of the State constitutes a discrete and separate invasion of a legitimate expectation of privacy, we held that the warrantless test was unconstitutional. *Id.* at 292.

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[1] *See Faulkner v. State*, 537 S.W.2d 742, 744 (Tex. Crim. App. 1976) ("[I]n interpreting affidavits *and search warrants*, magistrates and courts must do so in a common sense and realistic fashion and avoid hypertechnical analysis.") (emphasis added); *Long v. State*, 132 S.W.3d 443, 448 (Tex. Crim. App. 2004) ("[W]hen courts examine the description of the place to be searched to determine the warrant's scope, they follow a common sense and practical approach, not a 'Procrustean' or overly technical one."); *see also State v. Martines*, 355 P.3d 1111, 1115 (Wa. 2015) ("A warrant authorizing a blood draw necessarily authorizes blood testing, consistent with and confined to the finding of probable cause."); *State v. Frescoln*, 911 N.W.2d 450, 456 (Iowa Ct. App. 2017) ("Although the warrant does not explicitly state that the blood sample would be subject to chemical testing, the stated reason for obtaining the blood sample was its relevance to an [Operating While Intoxicated] investigation. The best practice is to state the purpose for requesting the sample in the warrant. However, a commonsense reading of the warrant implies the blood sample would be subjected to chemical testing.").

Here, the State obtained the blood sample by way of a magistrate's determination that probable cause existed to justify its seizure—for the explicit purpose of determining its evidentiary value to prove the offense of driving while intoxicated. That magistrate's determination was sufficient in this case to justify the chemical testing of the blood. And this is so, we hold, even if the warrant itself did not expressly authorize the chemical testing on its face.

This holding is not tantamount, as Appellant fears, to an unconstitutional endorsement of "general" search warrants. The Fourth Amendment prohibits the enforcement of warrants that are so lacking in specificity that the police may seemingly engage in "general, exploratory rummaging in a person's belongings." *Walthall v. State*, 594 S.W.2d 74, 78 (Tex. Crim. App. 1980) (citing *Andresen v. Maryland*, 427 U.S. 463, 480 (1976), quoting *Coolidge v. New Hampshire*, 403 U.S.

443, 467 (1971)). But no indiscriminate "rummaging" through the content of Appellant's blood was authorized here; nor does the record suggest that any occurred. On the basis of the warrant issued in this case, the State was not authorized to analyze Appellant's blood for, say, genetic information,[2] or for any other biological information not supported by the same probable cause that justified the extraction of his blood sample in the first place.

In his motion to suppress, Appellant sought only to exclude the evidence of his blood-alcohol concentration. Extraction of his blood for the purpose of testing his blood for *this* specific information was justified by the strong odor of alcohol the officer noticed

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[2] *See Birchfield v. North Dakota*, 136 S. Ct. 2160, 2178 (2016) ("[A] blood 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.").

when he first confronted Appellant and found him to exhibit characteristics of intoxication—a fact confirmed by the neutral magistrate in the warrant. The State does not contend that it should have been able to analyze the blood for any other purpose on authority of the warrant in this case. On the facts of this case, Appellant's concern about the lack of specificity in the warrant is unfounded.

We affirm the judgment of the court of appeals.

DELIVERED: September 16, 2020
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