[J-82 A-1999]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 153 M.D. Appeal Docket 1998
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court entered April 1, 1998, at No. 558
	:	Harrisburg, 1997, affirming the Judgment
v.	:	of Sentence of the Court of Common
	:	Pleas of Adams County, Criminal Division,
	:	entered May 23, 1997, at No. CC-816-96.
DAVID R. SHAW,	:	
	:	
Appellant	:	
	:	SUBMITTED: October 20, 1999

DISSENTING OPINION

MR. JUSTICE CASTILLE **DECIDED: April 16, 2001**

The majority would hold that Article I, § 8 of the Pennsylvania Constitution commands, where Fourth Amendment jurisprudence does not, that the results of a medical purposes blood alcohol content (BAC) test performed by a hospital on a Pennsylvania driver, who by operation of law is deemed to have impliedly consented to have his blood tested if there is probable cause to believe that he was driving while impaired, cannot simply be requested by police unless or until they first secure a search warrant. In my view, such a warrantless police request is just as reasonable, and hence as constitutionally permissible, under Article I, § 8 as it is under the Fourth Amendment. Furthermore, in light of the legislative implied consent scheme, I fail to see how impaired drivers could be said to have a reasonable expectation of privacy in their BAC test results. Because I cannot

accept the majority's unsupported state constitutional conclusion to the contrary, I respectfully dissent.

Six years ago, this Court unanimously held that, in light of the implied consent provisions in Title 75, the Fourth Amendment did not require police to secure a warrant in these same circumstances. Commonwealth v. Reidel, 539 Pa. 172, 179, 184-85, 651 A.2d 135, 139, 142 (1994).[1] Although the constitutional challenge raised in Reidel sounded under the Fourth Amendment alone, this Court's approval of warrantless police requests for medical purposes BAC test results was not based upon any existing United States Supreme Court case on the same matter. Indeed, to this day, that Court has not addressed this particular issue. Nor was the result in Reidel commanded by any unique aspect of the Fourth Amendment that distinguishes it from Article I, § 8.

Instead, the Reidel Court simply acknowledged and applied certain bedrock principles of search and seizure jurisprudence: i.e., that searches without a warrant are generally unreasonable, but exceptions to the warrant requirement exist, including actual and implied consent, where warrantless searches have been deemed reasonable. 539 Pa. at 178-79, 651 A.2d at 139. This Court's construction of Article I, § 8 is **identical** in this particular instance, i.e., we recognize a preference for warrants, while also recognizing the reasonableness of warrantless searches in some circumstances, including consent cases. Commonwealth v. Cleckley, 558 Pa. 517, 520-21, 738 A.2d 427, 429 (1999); Commonwealth v. Cass, 551 Pa. 25, 53-54, 709 A.2d 250, 364 (1998) (plurality opinion); Commonwealth v. Williams, 547 Pa. 577, 585-86, 692 A.2d 1031, 1034-35 (1997); Commonwealth v. Kohl, 532 Pa. 152, 166-67, 615 A.2d 308, 315 (1992). Indeed, as with

[1] Justice Zappala filed a concurring opinion, joined by then-Justice, now Chief Justice, Flaherty and Justice Cappy, agreeing with the majority opinion's Fourth Amendment analysis, but *sua sponte* raising and then addressing an issue not presented in the case. Specifically, without benefit of adversarial presentation on the matter, the concurrence stated that, **if** a state constitutional claim had been presented, it would have ruled that the warrantless police request violated Article I, § 8.

so much other Article I, § 8 search and seizure jurisprudence, this Court's approach to warrantless searches has largely followed the analytical construct articulated and developed in Fourth Amendment cases.

The Reidel Court merely held that the implied consent provision of the Motor Vehicle Code, 75 Pa.C.S. §1547(a), and its emergency room counterpart, id. § 3755(a), justified warrantless requests by police for the analysis results of BAC tests of blood drawn for medical treatment purposes. The Court concluded that those provisions comprised a "statutory scheme that implies the consent" of a driver to undergo chemical blood testing when "reasonable grounds," which the Court equated with "probable cause," existed to believe that the driver had operated his vehicle while under the influence of alcohol or a controlled substance. 539 Pa. at 179-80, 651 A.2d at 139-40.[2] Under this scheme, the "litmus test" was probable cause, and the Reidel Court could not "discern any reason for requiring a police officer to obtain a search warrant in these circumstances." Id. at 182, 651 A.2d at 140.

In this regard, the Reidel Court employed a balancing test, contrasting the limited "search" of the hospital's records occasioned by a request for the BAC test results, which involves "only a minimal intrusion into [the driver's] privacy;" with the substantial physical intrusion occasioned by the "initial taking," i.e., the actual blood sample withdrawal itself.

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[2] Section 1547 provides that any person who drives, operates or is in actual physical control of a motor vehicle in this Commonwealth "shall be deemed to have given consent to one or more chemical tests of breath, blood or urine for the purposes of determining the alcoholic content of blood or the presence of a controlled substance if a police officer has reasonable grounds to believe" that the person was under the influence of alcohol and/or a controlled substance. 75 Pa.C.S. § 1547(a). A driver who refuses the BAC test faces an automatic one-year suspension of driving privileges. Id. § 1547(b). The emergency room provision similarly states that, if there is probable cause to believe that a person driving, operating or in actual physical control of a motor vehicle involved in an accident, who requires medical treatment in a hospital emergency room, violated the DUI laws, "the emergency room physician or his designee shall promptly take blood samples" and have the samples tested. 75 Pa.C.S. § 3755(a). Those test results must be released, upon request, to the person tested, his attorney, his physician, or government officials or agencies. Id.

Id. at 182, 651 A.2d at 140-41, quoting Commonwealth v. Hipp, 551 A.2d 1086, 1092 (Pa. Super. 1988). In addition, the Reidel Court specifically rejected the very argument now resurrected and deemed per se dispositive by today's majority, that since "there was no danger that [the driver's] blood alcohol content would evanesce because it was preserved by the medical purposes blood test" therefore the warrantless request for the results by police was unreasonable:

> [C]ontrary to appellant's insistence, the implied consent scheme adopted by our legislature is designed to do more than just preserve evanescent evidence. As stated above, the scheme is designed to facilitate prosecution of chemically impaired drivers.

539 Pa. at 182-83, 651 A.2d at 141. See Kohl, supra, 532 Pa. at 168, 615 A.2d at 316. (Commonwealth has "a compelling interest in protecting its citizens from the dangers posed by drunk drivers"). Because the initial taking of blood was lawful and the minimal intrusion occasioned by the later warrantless request comported with the purpose of the implied consent scheme, the request for the BAC results was found to be reasonable. Hence, the Reidel Court rejected the Fourth Amendment claim.

Jurisprudentially, one would expect the majority's state constitutional analysis to begin with a discussion of Reidel's rationale, since it is the case most relevant to the equivalent state constitutional issue now presented to this Court for the first time. But the majority baldly rejects Reidel as a matter of state constitutional jurisprudence without so much as acknowledging its reasoning, much less explaining why that reasoning, unanimously deemed sound under the Fourth Amendment, is somehow at odds with Article I, § 8. The practical effect of the majority's inability to articulate exactly how Reidel's balanced constitutional analysis is mistaken is to mandate a far more intrusive medical procedure grounded solely in the majority's highly idiosyncratic view of the state constitution.

The right of privacy protected by the Fourth Amendment exclusionary rule and, much more recently, by the state exclusionary equivalent, Article I, § 8, has been most simply and eloquently expressed in the notion that, at least as against the government, there is a "right to be let alone -- the most comprehensive of rights and the right most valued by civilized men." Olmstead v. United States, 277 U.S. 438, 478, 48 S.Ct. 564, 572 (1928) (Brandeis, J., dissenting). But, under the majority's state constitutional pronouncement here, citizens will face more intrusive, not less intrusive, conduct by the government. Since police will no longer be able to obtain the results of any medical purposes BAC test without a warrant, and since police will rarely know for certain whether the hospital's withdrawal of blood from a suspected drunken driver was for medical purposes rather than pursuant to the requirements of §3755, the most practical course for investigating officials will be to **always** order an additional, "legal purposes" blood withdrawal and test -- even if police know, or reasonably can assume, that one blood sample has already been withdrawn by the hospital. Such a police request is constitutionally permissible under the implied consent provisions. See Kohl, supra, 532 Pa. at 166, 615 A.2d at 315. The majority seems to agree with this very proposition in footnote 2 of its opinion. Thus, under the majority's view of what the right of "privacy" requires of police, suspected drunken drivers can revel in their court-ordered freedom to have a blood sample withdrawn by a hypodermic needle **twice**: once if needed for medical treatment purposes and once, just in case, for legal investigative purposes. The thoroughly inebriated driver here,[3] who was stuck with a needle just once, no doubt will be happy with the windfall of escaping his just punishment, since the police could not foresee this holding, particularly in light of the clear language of Reidel. But it is doubtful that future impaired drivers, who will have blood withdrawn twice, and will receive no such windfall, will feel

[3] Appellant's BAC was .267%.

much consolation in learning that the redundant withdrawal of their blood is the embodiment of the majority's curious view of what it means to have an **enhanced** right to be "let alone." The majority's anachronistic approach, which apparently assumes that a suppression ruling in favor of a criminal defendant is always the best way to protect the general right to privacy, has led it to lose sight of the broader, actual constitutional value at issue here.

In addition to simply ignoring the constitutionally balanced reasoning in Reidel, the majority opinion here lacks any analysis under Commonwealth v. Edmunds, 526 Pa. 374, 586 A.2d 887 (1991). Under this Court's jurisprudence established by Edmunds, it is "essential" that a court undertaking an independent analysis of Article I, § 8 consider "at least" four specific areas: the text of the Pennsylvania constitutional provision; the history of the provision, including Pennsylvania case law; related case law from other states; and policy considerations unique to Pennsylvania. Id. at 390-91, 586 A.2d at 895. If a government practice that this Court unanimously and recently concluded was permissible under the Fourth Amendment truly offended Article I, § 8 it should not be difficult to articulate why that is so pursuant to Edmunds. But the majority is deafeningly silent on this "essential" point.

The absence of an Edmunds analysis perhaps results from the fact that the majority merely tracks the Reidel concurring opinion, which itself failed to engage in an Edmunds analysis. But the Reidel concurrence itself is a dubious source of state constitutional reasoning, not just because it lacks an Edmunds analysis, but also because of the procedural posture of that case. No Article I, § 8 question was presented in Reidel. The concurrence's prejudgment of the state constitutional question was offered entirely gratuitously, without the benefit of a case or controversy, much less an adversarial presentation addressing the Edmunds factors. Our system of jurisprudence, of course, proceeds upon the time-proven assumption that adversarial presentation in actual cases

and controversies, rather than visceral reactions to academic questions discovered by the Court itself, produces the best and wisest decision-making. This is why we take pains to avoid, where possible, unripe questions, moot questions, advisory opinions, and dicta. Because the Reidel concurrence proceeded without the benefit of adversarial presentation or a case or controversy, it is, as a jurisprudential matter, inherently suspect at best, if not presumptively erroneous. The further lack of analysis by today's majority certainly does nothing to improve this glaring omission.

The Reidel concurrence's prejudgment of the issue has spawned a secondary evil that has infected this case as well. Although this case presents the actual case or controversy involving Article I, § 8 that was missing in Reidel, we still lack the benefit of an Edmunds analysis from appellant because, predictably enough, he simply relies upon the Reidel concurrence's prejudgment. In short, we are left with a situation where the majority would announce and establish a state constitutional proposition, distinct and different from this Court's recent, unanimous Fourth Amendment jurisprudence on the very same question, without this Court ever having analyzed it with regard to any remotely plausible basis for such a distinction, and without the majority ever bothering to explain on its own how it is they arrived at their remarkable, contrary conclusion. Such has become the state of affairs that passes for this Court's unique -- and it is certainly that if nothing else -- Article I, § 8 jurisprudence.

I am particularly wary of novel expansions of Article I, § 8 that are unaccompanied by an Edmunds analysis. A novel and unexplained holding under Article I, § 8 is a practice that permits a jurisprudence of contrariness or, even worse, arbitrariness. Such an unexplained holding is at least as likely to be a mere expression of a Court majority's personal disagreement with contrary Fourth Amendment jurisprudence, dressed in state constitutional garb in order to avoid correction by the United States Supreme Court, as it is to be an affirmative expression of what the state provision uniquely means and

embraces. By previously requiring that novel state constitutional claims be considered in light of our actual experience with Article I, § 8 and with the experience of this Court and other courts with similar search and seizure questions, and with policy concerns "unique" to our jurisprudence, the Edmunds construct at least provides some semblance of a principled constitutional analysis of a particular issue. The inability to even begin to defend a novel holding pursuant to Edmunds, on the other hand, betrays a total disregard for the experience of other courts as well as for this Court's own considered experience and, in my view, raises a presumption that the state constitutional holding is erroneous.

Nothing in the majority opinion rebuts that presumption here. Rather than employ Edmunds, or account for Reidel, the majority simply notes that Article I, § 8 has a "separate and distinct" identity from the Fourth Amendment. The majority then declares that the "protection" of Article I, § 8 extends to medical records of patients, which, the majority apparently concludes, would include BAC test results. But, as this Court has repeatedly recognized, such general observations about Article I, § 8 command no particular result. See Commonwealth v. Glass, 754 A.2d 655, 660 (Pa. 2000) (fact that this Court has accorded greater protections under Article I, § 8 in some circumstances, "does not command a reflexive finding in favor of any new right or interpretation;" "we should apply the prevailing standard 'where our own independent state analysis does not suggest a distinct standard'"), quoting Cleckley, supra, 558 Pa. at 525, 738 A.2d at 431. The majority opinion's naked conclusion says nothing about why the balancing approach in Reidel, which recognized the preference for warrants but weighed against that preference the same circumstances implicated by the probable cause-based police request here, must be ignored under the state constitution. Nor does the majority's unexceptional proposition explain why its warrant requirement should be deemed a more reasonable practice, much less a practice compelled by the unique nature, history, and policy associated with Article I, § 8.

In determining the scope of protection afforded under Article I, § 8 this Court employs the very same "reasonable expectation of privacy" test that the United States Supreme Court employs to determine the Fourth Amendment's sweep. "That test requires a person to (1) have established a subjective expectation of privacy and (2) have demonstrated that the expectation is one that society is prepared to recognize as reasonable and legitimate." Commonwealth v. Gordon, 546 Pa. 65, 71, 683 A.2d 253, 256 (1996). See also Commonwealth v. Peterson, 535 Pa. 492, 636 A.2d 615 (1993); Commonwealth v. Blystone, 519 Pa. 450, 463-64, 549 A.2d 81, 87 (1988), aff'd, Blystone v. Pennsylvania, 494 U.S. 299, 110 S.Ct. 1078 (1990). With respect to the particular issue here, the Reidel Court specifically held that a defendant has "a reasonable expectation of privacy in his medical records" under the Fourth Amendment. There is nothing in the Article I, § 8 jurisprudence, much less in the majority opinion, to suggest that Article I, § 8 affords a different or broader privacy protection in the context of medical records beyond that recognized under the Fourth Amendment in Reidel.

The majority supports its declaration that the distinct Pennsylvania right of privacy under Article I, § 8 applies to medical records by citations to two cases, tellingly with no accompanying legal analysis: In re June 1979 Investigating Grand Jury, 490 Pa. 143, 415 A.2d 73 (1980), and Denoncourt v. Commonwealth of Pennsylvania, State Ethics Commission, 504 Pa. 191, 470 A.2d 945 (1983). The second case, Denoncourt, is a plurality opinion and therefore lacks precedential value. The first case, In re June 1979, never so much as cited Article I, § 8. Instead, that case spoke of an apparently coextensive state and federal "privacy interest" patients have in their medical records. Citing cases including Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705 (1973), and Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678 (1965), the Court noted that, although the "sources and limits" of the federal privacy right "may be disputed," there could be "no doubt" that the federal constitution "guarantees a right to privacy." 490 Pa. at 150-51, 415 A.2d at

77. The equivalent Pennsylvania guarantee was found not in Article I, § 8 but in Article I, § 1, which provides, in pertinent part, that "All men … have certain inherent and indefeasible rights, among which are those … of acquiring, possessing, and protecting property and reputation…." 490 Pa. at 151, 415 A.2d at 77. Notably, the Court cited as "an additional and major constitutionally protected privacy interest … the right of the individual to be free of unreasonable government surveillance and intrusion," an interest that "finds its protection in the Fourth Amendment." Id. at 151 n.9, 415 A.2d at 77 n.9. But the Court still did not cite Article I, § 8 much less suggest that it was the source of a different or greater state privacy right in medical records. Finally, it is also significant that the Court **approved** of the warrantless procedure at issue there -- i.e., a grand jury subpoena of the medical records -- noting that it constituted "a limited invasion of privacy" which was "justified under the circumstances." Id. at 152 & n.11, 415 A.2d at 78 & n.11.

Similarly, when Reidel spoke of a "substantial privacy interest" in medical records, 539 Pa. at 178, 651 A.2d at 138, that Fourth Amendment analysis never endorsed the notion that the right was different or greater under the Pennsylvania Constitution. To the contrary, the Reidel majority cited federal and state cases interchangeably, which again suggests that the right is coextensive and not enhanced. More importantly, immediately after noting that both the Third Circuit and the courts of the Commonwealth recognized the right, Reidel emphasized that "this privacy right is not inviolate," citing as an example the warrantless procedure approved in the In re June 1979 case. 539 Pa. at 178, 651 A.2d at 138. In short, the In re June 1979 case does not remotely suggest that there is a different and greater state constitutional right to privacy in medical records in the situation sub judice.

Nor can I discern anything in this Court's twenty year-old Article I, § 8 jurisprudence[4] that would support a departure from Reidel's Fourth Amendment analysis. The leading cases attempting to articulate in principled fashion the manner in which Article I, § 8 provides for different and greater privacy rights explain the divergence as arising from a perception that the exclusionary rule has come to serve a different purpose under the Pennsylvania Constitution than under the Fourth Amendment. As most succinctly stated in Williams, supra: "Article I, Section 8 often provides greater protection since the core of its exclusionary rule is grounded in the protection of privacy while the federal exclusionary rule is grounded in deterring police misconduct." 547 Pa. at 591, 692 A.2d at 1038. See also Glass, supra, 754 A.2d at 662 n.11; Edmunds, supra, 526 Pa. at 396, 586 A.2d at 898.

This exclusionary rule-based divergence traced in the Edmunds line makes the majority's conclusion here even more indefensible. The Reidel Court did not approve of the warrantless police request for the medical purposes BAC test results there because disapproval would not serve the deterrence rationale of the exclusionary rule. Instead, it approved the practice because, on balance, it was a reasonable accommodation in light of the implied consent licensing provisions which were "designed to facilitate prosecution of chemically impaired drivers," and in light of the limited intrusion the request for test results occasioned. Those factors -- the existence and purpose of the legislation, the limited nature of the intrusion, and the reasonableness of the practice -- are no less crucial

[4] Although this Court had earlier recognized that the state constitution was a **potential** source for greater or different rights in search and seizure cases, the first time we actually departed from a United States Supreme Court precedent on Article I, § 8 grounds was in Commonwealth v. DeJohn, 486 Pa. 32, 403 A.2d 1283 (1979), cert. denied, 444 U.S. 1032 (1980) (rejecting United States v. Miller, 425 U.S. 435 (1976)). Prior to that, Article I, § 8, when cited, was treated as coterminous with the Fourth Amendment. E.g., Commonwealth v. White, 459 Pa. 84, 89-90, 327 A.2d 40, 42 (1974); Commonwealth v. Platou, 455 Pa. 258, 259 n. 2, 312 A.2d 29, 31 n.2 (1973), cert. denied, 417 U.S. 976 (1974). Notably, the Court in DeJohn, unlike the majority here, explained at length the reasons for departing from the federal precedent, including a discussion of case law from other jurisdictions and the views of commentators.

factors under any state constitutional analysis. The Edmunds line, including its articulation of the reason for Article I, § 8's divergence from the Fourth Amendment, certainly cannot justify the majority's unexplained departure from Reidel.

The majority's rejection of Reidel further contradicts actual Article I, § 8 jurisprudence because it simply ignores the fact that the "distinct" right to privacy applicable in Pennsylvania only for the past twenty years has never been the absolute that the majority apparently believes it to be. The majority concludes that, since the BAC test here was not performed pursuant to police request or pursuant to the emergency room statute, it automatically follows that the results could not lawfully be requested absent exigent circumstances or a warrant. But Article I, § 8's right to privacy "'is not an unqualified one; it must be balanced against weighty competing private and state interests.'" Cass, supra, 551 Pa. at 53-54, 709 A.2d at 364, quoting Stenger v. Lehigh Valley Hosp. Center, 530 Pa. 426, 434, 609 A.2d 796, 800 (1992). Accord Williams, supra.

Furthermore, in point of fact, this Court has specifically approved of a flexible, balancing approach under Article I, § 8, particularly in circumstances like this one, where the question involves the warrant requirement and diminished expectations of privacy. For example, in Williams, supra, this Court held that parolees had no greater protection from warrantless searches under Article I, § 8 than under the Fourth Amendment. In so holding, the Court noted, inter alia, the parolee's diminished expectation of privacy arising from his parole status and then balanced that diminished expectation against the "government interests involved in granting parole and supervising parolees." 574 Pa. at 585-86, 692 A.2d at 1035-36. Likewise, in Cass, supra, this Court balanced the limited expectation of privacy that public school students have while in the school environment against the interest of the school district in conducting general searches of student lockers in order to maintain a safe and secure environment for all students. The Court concluded that, given the special concerns attendant in the school environment, warrantless general searches,

which need only be based upon reasonable suspicion, were reasonable under Article I, § 8. Accord, Denoncourt, supra, 504 Pa. at 199, 470 A.2d at 948 (plurality opinion by Flaherty, J.) (in Pennsylvania privacy cases, "there is implicit a balancing of an individual's right to privacy against a countervailing state interest which may or may not justify, in the circumstances, an intrusion on privacy"); In re June 1979, supra, 490 Pa. at 152 n.11, 415 A.2d at 78 n.11 (limited invasion of privacy occasioned by grand jury subpoena for medical records justified "under the circumstances").

Thus, this Court's historical search warrant jurisprudence under Article I, § 8 is indistinguishable from the Fourth Amendment balancing analysis employed in Reidel, and stands in sharp contrast to the majority's unexplained contrary conclusion. As the Reidel Court noted, the intrusion involved in a simple oral request for BAC test results is minimal, i.e., it is "far less intrusive" than the actual withdrawal of blood and administration of a test which had already occurred. In addition, the existence of the implied consent scheme obviously diminishes any expectation of privacy a properly suspected drunken driver could have had in the BAC test results. Thus, even if a particular test was not administered for "legal purposes," the fact remains that the statute implies the consent of suspected impaired drivers to such testing, and that fact affects the driver's expectations. Given that reality, the distinction between blood withdrawn for "medical purposes" or blood withdrawn for "legal purposes" adds nothing to the reasonableness of a driver's expectation that his BAC test results would not be disclosed. Such a driver, who may have had no idea whether a blood sample was taken from him for either medical purposes or for legal purposes, can harbor no "legitimate" expectation that the results would not be disclosed to investigating officers acting with probable cause.

Furthermore, the request does not involve a general search through the driver's medical records, but is limited to disclosure of the BAC test results: it "does not grant police officers carte blanche to invade the privacy of an individual's medical records." Reidel, 539

Pa. at 182-83, 651 A.2d at 140-41. In addition, the request does not involve matters affecting confidential communications or the doctor/patient privilege. On the other hand, the government interest at issue, i.e., to preserve evanescent evidence and to "facilitate prosecution of chemically impaired drivers," and thereby protect the public, is a "compelling" and substantial one. Kohl, supra, 532 Pa. at 168, 615 A.2d at 316.

To the factors articulated by the Reidel Court, I would add the following points demonstrating the reasonableness of the warrantless request at issue here. As I have noted earlier, a simple request for the results of a medical purposes BAC test is far less intrusive than a request that a second blood sample be taken and tested -- a practice I believe plainly authorized by the implied consent scheme and, as a practical matter, required by the majority's approach. The decidedly lesser intrusion of a request for the results, which spares the driver multiple drawings of blood, unquestionably is reasonable. Finally, requiring a warrant in these circumstances would do little to further the driver's right of "privacy." The "search" at issue here involves a hospital's disclosure of a single item, the driver's BAC test results. It is not a search of the driver's home, person, or effects. In fact, the police here did not actually "search" the driver's medical records. Instead, it was the hospital that reviewed its file, upon police request, and then provided only the results of the BAC test and nothing further to the police officers. Thus, the officers had no access to other arguably confidential test results or physicians' notes. Neither the driver's person nor his possessions are the subject of the request; instead it is the BAC results in the possession of the hospital, a third party. In such an instance, whatever residual privacy interest the driver retains in the test results is more than adequately protected by the ability to later mount a court challenge for lack of probable cause if an arrest arises in a particular matter.

In summary, I see nothing in the text, case history, or policy concerns unique to Article I, § 8 that remotely justifies departing from this Court's balanced, Fourth Amendment

analysis in Reidel. Accordingly, I would hold that the approach under Article I, § 8 is controlled by Reidel. Under that analysis, the blood alcohol test results were properly admitted. Therefore, I respectfully dissent.

Mr. Justice Saylor joins this dissenting opinion.