

A24-0271

STATE OF MINNESOTA
IN SUPREME COURT

State of Minnesota,

Respondent,

vs.

Nicholas Norton Engel,

Appellant.

RESPONDENT'S BRIEF

CLIMATE DEFENSE PROJECT

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LEGAL ISSUE

Does the exclusionary rule apply to crimes committed in response to an illegal arrest?

The district court ruled that the officer had reasonable articulable suspicion for the stop, so it did not address the exclusionary rule. Addendum (“Add.”) at 9–10. The court of appeals held that the officer did not have reasonable articulable suspicion, but that under this Court’s binding precedent, the exclusionary rule does not apply to evidence of appellant’s “prolonged and repeated flight” in response to the unlawful stop. Add.24–30.

State v. Combs, 398 N.W.2d 563 (Minn. 1987)

City of St. Louis Park v. Berg, 433 N.W.2d 87 (Minn. 1988)

STATEMENT OF THE CASE

An officer began to follow appellant Nicholas Norton Engel’s van, which did not have a license plate. The officer saw “a sign of some sort in the back window,” but he “could not tell if the sign was a temporary tag.” The officer tried to stop appellant to investigate a possible license-plate violation, but appellant chose to flee for miles.

The Pennington County Attorney’s Office charged appellant with fleeing a peace officer in a motor vehicle. Appellant moved to suppress the evidence of him fleeing, arguing that the stop was unlawful. The Honorable Tamara L. Yon ruled that the officer had reasonable articulable suspicion of a license-plate violation. A jury then found appellant guilty of fleeing. Judge Yon stayed imposition of a sentence and placed him on unsupervised probation for two years.

The court of appeals unanimously held that the stop was unlawful. But by a 2–1 majority, it held that the exclusionary rule did not apply under this Court’s precedent. This Court granted review on only one of appellant’s issues: whether the exclusionary rule applies to crimes committed in response to an unlawful stop.

STATEMENT OF FACTS

Shortly after midnight on September 30, 2021, a police officer saw a woman standing outside a gas station in Thief River Falls. T.5–6, 56¹; Omnibus Ex.1, Incident Report. She was wearing scrubs and hospital socks without shoes. T.6. The officer was concerned about her, given her appearance and location at that time of night. *Id.* He asked her if she was okay, and she said, “Yes, I’m waiting.” *Id.*

The officer entered the gas station to purchase some items. *Id.* at 22. He then saw the woman with appellant at the register. *Id.* Appellant and the woman exited the store and left in a van driven by appellant. *Id.* at 5, 23, 26. The officer purchased his items, got into his squad car, and followed the van. *Id.* at 6, 26, 28.

Based on the time of night, and his observations at the gas station, the officer wanted to investigate further by running the license plate of the van. *Id.* at 6, 33–34. But the van did not have a license plate. *Id.* at 7, 34. The officer “notice[d] a sign of some sort in the back window,” but he “could not tell if the sign was a temporary tag” because he could not see it. *Id.* at 7, 34–35, 40–41.

Appellant turned south on Highway 32, which is a rural two-lane highway with shoulders on both sides. *Id.* at 7, 13; Omnibus Ex. 1, Dash Camera at 01:00–01:35. As appellant approached a hospital on the left, he turned on his left signal. *Id.* at 01:20–01:30. The officer then initiated a traffic stop by turning on his emergency lights. *Id.* at 01:30–01:40. Appellant initially moved into the left turn lane toward the hospital, but then he

¹ “T.” refers to the omnibus hearing transcript, Doc.50.

turned on his right signal and moved back into the southbound lane of Highway 32. *Id.* at 01:40–01:55. He then turned on his emergency flashers and continued driving. *Id.* at 01:55–02:05.

The officer activated his siren briefly. *Id.* at 02:05–02:20. Appellant did not pull over. *Id.* The officer hit the siren again at length. *Id.* at 02:20–03:05. Appellant did not pull over. *Id.* The officer notified dispatch that appellant was not stopping. *Id.* at 03:05–03:12; T.8. The officer then hit the siren and pulled up alongside appellant. Dash Camera at 03:12–03:35. Appellant pointed down the road. *Id.*; T.8, 50. The officer verbally ordered appellant to pull over. Dash Camera at 03:12–03:35. Appellant responded that he was “going to.” *Id.* The officer moved back behind appellant with lights and siren activated. *Id.* at 03:35–03:50. Appellant did not pull over. *Id.*

The officer again pulled up alongside appellant and verbally ordered him to “pull over right now.” *Id.* at 03:50–04:12. Appellant responded that he would pull over down the road. *Id.*; T.51. The officer told him, “No, right now.” Dash Camera at 03:50–04:12. The officer moved back behind appellant, but he did not pull over. *Id.* at 04:07–04:30.

The officer pulled in front of appellant and slowed to a crawl. *Id.* at 04:30–05:00. When appellant slowed down too, the officer turned his squad car around to face appellant’s van. *Id.* at 05:00–05:06. He then got out of his squad car, walked toward appellant’s van, and ordered him to stop his vehicle. *Id.* at 05:06–05:18; T.8–9, 52–53. Although appellant slowed down, he never fully stopped. *Id.* Instead, he pointed and said he would stop down the road. *Id.* The officer told appellant, “No,” but appellant drove past him and then accelerated away. *Id.*

The officer continued following appellant with lights and siren activated. Dash Camera at 05:18–06:38. As appellant approached the remnants of the Red Lake Treaty Camp² on the left side of the highway, he switched from his emergency flashers to his left turn signal. *Id.* at 06:38–07:00; T.54. As appellant reached the camp, an unmarked squad without lights or siren passed appellant and the pursuing officer on the left. Dash Camera 07:00–07:05; Trial Tr. at 254, 258. Appellant crossed the lane for oncoming traffic and began driving the wrong way in the opposite shoulder. Dash Camera at 07:05–07:35. The pursuing officer followed appellant. *Id.* The unmarked squad turned around and drove at appellant. *Id.* at 07:35–07:42. Appellant turned around and drove the opposite direction in the ditch followed closely by the pursuing officer. *Id.* at 07:35–07:45.

A second marked squad arrived with lights and siren activated and blocked appellant's path. *Id.* at 07:45–08:03. Appellant drove around it. *Id.* at 08:03–08:09. Two more marked squads arrived with lights activated, and together the four squads boxed in appellant. *Id.* at 07:54–08:13. At this point, appellant stopped the van. *Id.*

The Pennington County Attorney's Office charged appellant with one count of fleeing in the motor vehicle. Minn. Stat. § 609.487, subd. 3; Doc.1. Appellant moved to suppress the evidence of him fleeing. Doc.51 at 10–14. He argued that the officer lacked reasonable articulable suspicion of criminal activity when he initiated the traffic stop, so

² The Red Lake Treaty Camp was a place where people had gathered to protest the construction of the Line 3 pipeline, but there was only about six people still there, including appellant and his passenger. Trial Tr. at 310–11, 323–24, 339–40, 350.

all the evidence of appellant's conduct after that point is inadmissible fruit of the poisonous tree. *Id.*

The district court denied the motion. Add.3. It noted that “[t]he reasonable suspicion standard is not high,” and it is “based on the facts known to [the officer] at the initiation of the traffic stop.” *Id.* at 10. Here, “the facts available to [the officer] *at the time he initiated a traffic stop* of [appellant's] van were that a driver was operating a vehicle which did not have license plates and there was some type of sign which the officer could not clearly read in a back window of the vehicle.” *Id.* The officer therefore “possessed a particularized, objected reason for attempting to stop” appellant's van to investigate a possible traffic violation. *Id.* at 9–10.

At trial, appellant admitted that: he saw the officer in the gas station, he saw the officer follow them, he saw the emergency lights behind him immediately, he heard the officer's verbal commands to stop, he had opportunities to stop, and he intentionally kept driving because he wanted to stop at the Treaty Camp. Trial Tr. at 344–52, 356–60. He argued that because he intended to stop eventually at the Treaty Camp, he did not intend to elude the officer at any point during the encounter. *See* Minn. Stat. § 609.487, subd. 1 (requiring an “intent to attempt to elude a peace officer”); Trial Tr. at 432–33. The jury found appellant guilty of fleeing. Doc.90.

The court of appeals affirmed. Add.18. It rejected appellant's intent argument because “the only reasonable inference” from the circumstances proved is that he refused to stop “because he had the specific intent to flee.” *Id.* at 32–33. As for the suppression issue, it unanimously held that the officer did not have reasonable articulable suspicion of

a traffic violation. *Id.* at 24. By a 2–1 majority, it then held that the evidence of appellant’s “prolonged and repeated flight” in response to the unlawful stop was still admissible because (1) “the State . . . did not seek to exploit the illegal conduct of the police officer in order to gain an advantage,” (2) the State did not provoke appellant into committing a new crime; and (3) “[r]uling in [appellant’s] favor would run contrary to other precedent from the Minnesota Supreme Court that holds individuals are not allowed to resort to self-help to resolve a dispute concerning an unlawful search or seizure.” *Id.* at 26–30. The dissent concluded “the benefits of deterring unlawful police conduct outweigh the costs of excluding evidence of [petitioner’s] nonviolent flight.” *Id.* at 53.

This Court denied appellant’s request to review the criminality of his conduct. It only granted review of whether evidence of a crime committed in response to an illegal arrest should be suppressed as fruit of the prior illegality.

ARGUMENT

I. THIS COURT HAS ALREADY REJECTED APPELLANT’S ARGUMENT.

Nearly 40 years ago, this Court unanimously held that the exclusionary rule does not apply to evidence of criminal flight in response to an unlawful stop. *State v. Combs*, 398 N.W.2d 563, 565 n.2 (Minn. 1987). In that case, the prosecution argued that officers had validly stopped Combs’s vehicle based on suspicion of an open-bottle violation. *Id.* at 564. When one of the officers approached the passenger window, the passenger rolled up the window and told Combs to start driving. *Id.* The officer’s arm got pinned in the window, so the officer broke it. *Id.* During the ensuing car chase, the passenger threw the alcohol

container out of Combs's car. *Id.* When the officers apprehended Combs and her passenger, they both resisted arrest and assaulted the officers. *Id.*

The prosecution charged Combs with an open-bottle violation, fleeing an officer, and assault. *Id.* It charged the passenger with an open-bottle violation, obstructing legal process, littering, and assault. *Id.* The district court ruled that there was no basis for the stop and suppressed all the evidence. *Id.* The court of appeals agreed that the stop was illegal, but it held that only the open-bottle and littering evidence should be suppressed. *State v. Combs*, 394 N.W.2d 567, 569 (Minn. App. 1986). The evidence of Combs's flight and the other crimes committed after the stop were not suppressed because "the exclusionary rule does not require that evidence of crimes committed in response to an illegal stop be suppressed." *Id.* at 569–70.

This Court held that the stop was lawful and reinstated the open-bottle and littering charges. *Combs*, 398 N.W.2d at 565–66. It added that even if the stop was illegal, the exclusionary rule would not apply to the evidence of Combs's flight or any of the other crimes committed after the stop. *Id.* at 565 n.2.

In a subsequent case, this Court reiterated that "[i]t is well settled that even when police conduct an illegal arrest or search, evidence of a crime committed in response is not suppressed as a fruit of the prior illegality." *City of St. Louis Park v. Berg*, 433 N.W.2d 87, 90 (Minn. 1988) (quoting *Combs*, 394 N.W.2d at 569 (Minn. App. 1986) and citing its approval on this point in *Combs*, 398 N.W.2d at 565 n.2 (Minn. 1987)). This Court did not make an exception for non-violent crimes. To the contrary, this Court said the poisonous

fruit doctrine is “inapposite, particularly when its effect is to give the defendant license to resist, no matter how violently, with impunity.” *Id.* at 91.

This well-settled Minnesota law aligns with federal law in the Eighth Circuit. In *United States v. Sledge*, the defendant tried to run away from police officers. 460 F.3d 963, 967 (8th Cir. 2006). The Eighth Circuit noted that “[t]he mere act of running away from law enforcement officers” was a crime under Nebraska law. *Id.* And “[w]hen a defendant commits a new and distinct crime during an unlawful detention, the Fourth Amendment’s exclusionary rule does not bar evidence of the new crime.” *Id.* at 965.

Like the defendants in *Combs* and *Sledge*, appellant chose to commit a crime by fleeing police officers after a seizure.³ In fact, both appellant and Combs were charged with the same offense. *Compare* Doc.1 with *Combs*, 394 N.W.2d at 568. This Court should reiterate once again that this new crime is not protected by the exclusionary rule. *See also State v. Hoagland*, 270 N.W.2d 778, 780 (Minn. 1978) (“Legal safeguards are available to our citizens to protect them from unlawful search and seizure,” and “[a] darkened field in rural [Minnesota] does not appear to be the proper site to present such legal arguments.”).

³ The jury found appellant guilty of fleeing, the court of appeals affirmed the conviction, and this Court declined to review the criminality of appellant’s conduct. It is therefore indisputable that appellant committed a felony-level crime, and the precise line where a delayed stop turns into criminal flight is not before this Court. In any event, the record reflects that appellant could have stopped at the well-lit area by the hospital with a witness in his van who had a cell phone, rather than trying to drive several miles to the Treaty Camp. Dash Camera 01:14–02:15; T.41; Trial Tr. at 349, 367–68.

II. THIS COURT HAS ALREADY PROVIDED A SUITABLE EXCEPTION TO PROTECT AGAINST GOVERNMENT ABUSE, WHICH DOES NOT APPLY HERE.

Contrary to the briefs supporting appellant, the well-settled doctrine set out in *Combs* and its progeny is not absolute. It does not apply when “the state is seeking to exploit the illegality of its agents to gain some advantage.” *Berg*, 433 N.W.2d at 90. For example, the exclusionary rule would still apply if an unlawful arrest led to the “seizure of other evidence relating to the offense for which arrested or for some other offense.” *Id.* It also would still apply if law enforcement deliberately provoked the defendant into committing a new crime. *Id.*

But this exploitation exception does not apply here. The officer did not seize any evidence from appellant, and the State did not use the illegal stop to charge appellant for any preexisting crimes. The State only charged appellant with the crime he chose to commit after the officer initiated the stop.

The officer also did not deliberately provoke appellant into fleeing. All he did was drive behind appellant and turn on his lights, which is how every vehicle stop begins. And the only purpose of the stop was to investigate a potential license-plate violation—which, as discussed further below, had been authorized under these circumstances by the Eighth Circuit and the Minnesota Court of Appeals. Deliberate provocation should be reserved for extreme misconduct, not a traffic stop supported by persuasive authority.⁴

⁴ Appellant’s reliance on *State v. Kutchara*, 350 N.W.2d 924 (Minn. 1984) is misplaced. *Kutchara* does not authorize flight from an unlawful traffic stop. *Kutchara* discusses permissible responses to an officer’s “unjustified bodily attack.” *Id.* at 927. In that extreme context, this Court said a person could resist the officer or flee. *Id.* Nothing even remotely close to that happened here.

III. EVEN IF THIS COURT REVISITS THE EXCLUSIONARY RULE’S APPLICATION TO CRIMES COMMITTED AFTER AN UNLAWFUL SEIZURE, IT SHOULD NOT REVERSE APPELLANT’S CONVICTION.

This Court typically weighs four factors to decide whether evidence is fruit of the poisonous tree: (1) the purpose and flagrancy of the police misconduct; (2) intervening circumstances; (3) whether law enforcement would have obtained the evidence without the illegal conduct; and (4) the temporal proximity between the illegal conduct and resulting evidence. *State v. Leonard*, 943 N.W.2d 149, 161 (Minn. 2020). Even if this Court overrules or modifies *Combs*, appellant is still not entitled to relief under these factors.

A. The Police Misconduct Here Was Not Flagrant.

1. A stop is flagrant misconduct only if it was clearly unlawful.

The dissent below and appellant mistakenly equate an illegal traffic stop with flagrant misconduct. Add.48; App.Br.22. If that were true, then the flagrancy factor would be meaningless because every constitutional violation would be considered flagrant. *See, e.g., Utah v. Strieff*, 579 U.S. 232, 242–43 (2016) (rejecting argument that “conflates the standard for an illegal stop with the standard for flagrancy” because “more severe police misconduct is required than the mere absence of proper cause for the seizure”); *see also State v. Lindquist*, 869 N.W.2d 863, 872 (Minn. 2015) (noting that “determining whether a constitutional *violation* occurred” and “the appropriate *remedy*” are “separate, analytically distinct issue[s]”) (quotation omitted).

A constitutional violation is only flagrant when it was clearly unlawful. *See, e.g., State v. Weekes*, 250 N.W.2d 590, 594 (Minn. 1977) (“Assuming the sheriff’s utmost good faith . . . it is nevertheless *clear* that defendant was taken into custody and confined without

a warrant and without probable cause”) (emphasis added); *State v. McDonald-Richards*, 840 N.W.2d 9, 17 (Minn. 2013) (citing the “clear” language in *Weekes* and stating that “[w]hen police arrest someone without probable cause and fail to articulate any other lawful basis for their conduct, the police violation . . . is flagrant.”); *see also Herring v. United States*, 555 U.S. 135, 143 (2009) (“[T]he abuses that gave rise to the exclusionary rule featured intentional conduct that was patently unconstitutional.”); *id.* at 144 (“To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system.”).

As discussed below, the officer here articulated a lawful basis for his conduct that was supported by persuasive authority at that time. The district court agreed that the officer had a lawful basis for the stop, and the court of appeals disagreed. As this Court recognized in a similar context, “[J]udges may disagree about the existence of probable cause,” so “it is difficult to fault an officer in close cases for not realizing that his investigation has not yet yielded probable cause.” *Lindquist*, 869 N.W.2d at 870 (quotation omitted).

2. This stop was not clearly unlawful at the time.

A limited investigatory seizure is justified when an officer has articulated a reasonable suspicion of criminal activity. *State v. Flowers*, 734 N.W.2d 239, 252 (Minn. 2007). The reasonable-suspicion requirement is not high. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). Even an insignificant violation of a traffic law provides a basis for an investigatory stop. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

To satisfy the reasonable-suspicion standard, the officer must point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant a minimal, temporary seizure. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). The possibility that the facts may also have innocent explanations “does not negate the reasonableness of [the officer’s] inference” of criminality. *State v. Taylor*, 965 N.W.2d 747, 756 (Minn. 2021). Indeed, a reasonable, articulable suspicion can be based exclusively on facts that are consistent with law-abiding behavior. *State v. Martinson*, 581 N.W.2d 846, 852 (Minn. 1998); *State v. Johnson*, 444 N.W.2d 824, 826–27 (Minn. 1989).

The suspected offense in this case is a violation of Minnesota’s license-plate requirements. Minnesota generally requires vehicles to display a rear license plate or a temporary permit. Minn. Stat. §§ 168.092, 169.79. A Minnesota temporary permit “must be . . . affixed to the rear of the vehicle *where a license plate would normally be affixed.*” Minn. Stat. § 168.092, subd. 1 (emphasis added). The officer testified at the omnibus hearing that appellant’s van did not have a rear license plate. T.7, 34. The officer saw “a sign of some sort in the back window,” but he “could not tell if the sign was a temporary tag or not.” *Id.* at 7, 34–35, 40. He initiated the stop based on the lack of visible registration on the rear of appellant’s van. *Id.* at 11.⁵ Although the “sign of some sort” turned out to be a valid temporary vehicle registration from the State of Wisconsin, the officer did not know

⁵ For purposes of the United States Constitution, appellant was not seized at this point because he fled. *California v. Hodari*, 499 U.S. 621 (1991). He therefore rightly concedes that his Fourth Amendment rights were not violated. App.Br.18 n.6. But for purposes of the Minnesota Constitution, appellant was seized when the officer activated his emergency lights. *In re E.D.J.*, 502 N.W.2d 779 (Minn. 1993).

that at the time of the seizure. *Id.* at 38–41. And even if the officer had known it was a temporary tag, it still was in the wrong location for a Minnesota vehicle.⁶

This was not a purposeful or flagrant violation of Minnesota Constitution. At the time, the Minnesota Court of Appeals had concluded in a non-precedential opinion that a stop under these circumstances is valid. *See State v. Schull*, No. A09-1940, 2010 WL 3306892, at *4 (Minn. App. Aug. 24, 2010) (holding that an officer “possessed a particularized, objective reason for stopping Schull’s vehicle” where “Schull was driving with a valid temporary vehicle-registration sticker,” but the officer “was unable to see [it] in Schull’s window.”).

The Eighth Circuit has also found stops like this to be valid. In *United States v. Givens*, the officer “could only see what appeared to be a temporary paper registration card in the rear window, but did not know whether the paper was in fact a registration card.” 763 F.3d 987, 990 (8th Cir. 2014). The court noted that “[i]t is not uncommon for officers to stop vehicles due to the lack of an apparent temporary registration tag, and such stops are generally upheld as supported by reasonable suspicion.” *Id.* (collecting cases). The court then found that the officer reasonably suspected a traffic violation. *Id.* at 991; *see also United States v. Moua*, 145 F.4th 929, 934 (8th Cir. 2025) (“With no registration in the license plate bracket and unable to see a temporary registration tag in the rear window

⁶ Appellant submitted evidence that the rear window is a proper location for temporary tags in Wisconsin. Doc.51 Ex. 6; Add.2. But the officer did not know Wisconsin law, T.37–38, and he should not be forced to assume under these circumstances that “a sign of some sort” in the window is a valid out-of-state temporary tag. It is much more reasonable to suspect that a vehicle in Thief River Falls is subject to Minnesota’s temporary registration laws.

until approaching the vehicle, Deputy Hansen reasonably believed that a [Minnesota] law had been violated at the time of the stop.”); *United States v. Mendoza*, 691 F.3d 954, 959–60 (8th Cir. 2012) (stop valid where the officer could see a piece of paper in the window but did not know it was a legitimate temporary registration tag); *United States v. Sanchez*, 572 F.3d 475, 476 (8th Cir. 2009) (same).

The Eighth Circuit has clearly distinguished between an officer “who observed a valid temporary tag but simply could not read” it from an officer who “could not determine whether the paper affixed to the rear window of [the] vehicle was in fact a temporary registration card.” *Givens*, 763 F.3d at 991. An officer cannot stop a vehicle simply because they cannot read a temporary tag. *See, e.g., United States v. McLemore*, 887 F.3d 861, 866 (8th Cir. 2018) (stop invalid because officer “knew the piece of paper taped to the rear window was a temporary Iowa registration plate,” she just could not read it); *Clinton v. Garrett*, 49 F.4th 1132, 1142 (8th Cir. 2022) (stop invalid where officers saw what looked like a paper registration card next to dealer plates, but they could not read it).

But when the officer is unable to determine whether the paper in the window is a temporary tag, the stop is valid in the Eighth Circuit. *See, e.g., Givens*, 763 F.3d at 990–91; *Mendoza*, 691 F.3d at 956; *Sanchez*, 572 F.3d at 476. That is what happened here. The officer saw “a sign of some sort in the back window,” but he “could not tell if the sign was a temporary tag or not.” T.7, 34–35, 40.

Based on the cases available to the officer at the time of this stop, his conduct was not flagrant. It was merely a close case where reasonable judges can (and did) disagree about whether this amounts to reasonable articulable suspicion of a traffic violation.⁷

B. Committing Any Crime in Response to an Unlawful Seizure is an Intervening Circumstance that Should Weigh Heavily Against Suppression.

As noted above, this Court has already recognized that new crimes are intervening circumstances that are hardly ever considered to be fruit of an unlawful stop. *See supra* at 7–8; *see also United States v. Bailey*, 691 F.2d 1009, 1016–17 (11th Cir. 1982) (“[I]f the defendant’s response is itself a new, distinct crime, then the police constitutionally may arrest the defendant for that crime.”); *United States v. Garcia*, 516 F.2d 318, 319 (9th Cir. 1975) (“[W]here the illegal conduct of the police is only a necessary condition leading up to the suspect’s [flight], no taint attaches to his conduct.”); *United States v. Boone*, 62 F.3d 323, 326 (10th Cir. 1995) (“Certainly, officer Barney’s initial illegal search did not cause the Defendants to flee at a high rate of speed or to throw bottles of PCP onto the highway.”).

None of the cases cited by appellant hold otherwise. They invariably involve flight from an unlawful stop that resulted in the seizure of evidence followed by charges based on the seized evidence. *See, e.g., State v. Hardy*, 577 N.W.2d 212, 214, 217 (Minn. 1998) (flight from an unlawful stop that resulted in seizure of cocaine followed by drug charges);

⁷ Appellant’s pretextual argument relies on inferential leaps that are simply too speculative and would require this Court to conclude that the officer committed perjury when he testified repeatedly that did not suspect “at all” that the vehicle occupants might be associated with the Red Lake Treaty Camp. App.Br.23–25; T.24–25, 27, 29, 63, 65, 70.

State v. Leonard, 943 N.W.2d. 149, 154, 162 (Minn. 2020) (flight from an unlawful search that resulted in seizure of checks followed by check-forgery charges); *State v. Bergerson*, 659 N.W.2d 791, 794, 798 (Minn. App. 2003) (flight from an unlawful stop that resulted in seizure of methamphetamine followed by drug charges). Appellant and his amici have not identified a single case involving the suppression of fleeing charges, let alone a jurisdiction that legalizes non-violent crimes in response to an unlawful stop.⁸

Appellant's other arguments are also unpersuasive. Because the defendants in these other cases did not face fleeing charges, appellant's assertion that he is more law-abiding than them misses the mark. All defendants who decide to flee from an unlawful stop are equally culpable of fleeing, and they are generally not protected by the exclusionary rule for that charge. In contrast, all defendants whose preexisting crimes are discovered through the exploitation of an unlawful stop are generally protected by the exclusionary rule. They get "more protection" because of the exploitation, which is not present when someone decides to commit a new crime.

Put differently, "the exclusionary rule is not an individual right." *Herring*, 555 U.S. at 141; *see also Lindquist*, 869 N.W.2d at 874 ("The exclusionary rule functions as a judicially created rule of evidence and does not present an affirmative or common-law right."). It is a balancing test between the "great cost on societal interests by the

⁸ Appellant also does not identify any meaningful distinction between Minnesota and the rest of the country that would justify it becoming an outlier. *Cf. Kahn v. Griffin*, 701 N.W.2d 815, 825 (Minn. 2005) (stating that this Court will not "cavalierly construe our state constitution more expansively than the United States Supreme Court has construed the federal constitution" unless language, concerns, or traditions unique to Minnesota exist).

proscription, in many cases, of concededly relevant and reliable evidence,” and “the deterrence of improper police action that the exclusionary rule promotes.” *State v. Wiberg*, 296 N.W.2d 388, 393 (Minn. 1980). In the cases cited by appellant, the exploitation of police misconduct to discover crimes tips the balance toward deterrence. In this case, the balance tips against suppression because rewarding appellant’s decision to engage in lawlessness would be too great a cost for society to pay.

Appellant also argues that there must be a remedy for a violation of the Minnesota Constitution. This Court already rejected this argument in *Lindquist*, 869 N.W.2d at 874–75. In any event, most constitutional violations can be remedied through 42 U.S.C. § 1983 because the United States Constitution and Minnesota Constitution overlap substantially. If appellant believes that there should be a similar state statute to address the small gap between the two Constitutions, he can bring his concerns to the Minnesota Legislature.

Appellant next asserts that fleeing was a foreseeable consequence of this traffic stop. Appellant’s position is unreasonable. An officer executing a simple traffic stop supported by persuasive authority from multiple courts has the right to expect that the driver will refrain from illegal activities. *See, e.g., State v. Weekes*, 268 N.W.2d 705, 710 (Minn. 1978) (“Law and order require the police as well as citizens to refrain from illegal activities.”); *Hoagland*, 270 N.W.2d at 780 (“Society . . . has an interest . . . in the orderly settlement of disputes between citizens and their government”) (quotation omitted); *Berg*, 433 N.W.2d at 91 (“The legality of an arrest is to be decided in a courtroom.”).

Finally, appellant’s proposed rule is vague and unworkable. It does not seem to have any limits on how far a person can flee, and it is vague about how fast someone can flee. It

also incentivizes criminal and unsafe behavior. Under appellant's rule, if a person feels they have been stopped unlawfully, they might as well try to get away because there will be no consequences if they get caught. To address this concern, appellant concedes that non-violent conduct that "presents a danger to the public" should not be covered. App.Br.33 n.10. But it is unclear what that means, which will generate more litigation over whether a defendant's self-help methods were dangerous. For example, appellant believes his conduct was not dangerous, but the officer testified that they were driving on "a well-traveled road" in the dark, and appellant drove the wrong way in the opposite shoulder. Appellant also left the road and drove in a ditch. The officer did not know where appellant was going or what he planned to do when he got there. Appellant was not intending to hurt the residents of the Treaty Camp, but all the officers knew was that appellant was driving toward a populated area. In such situations, officers will sometimes intervene with spike strips or a controlled crash. Fortunately, no one here got hurt, but that does not mean this situation was not dangerous.

The current rule, by contrast, is clear and easy to apply. Any crime committed in response to an unlawful stop is not protected by the exclusionary rule. Because appellant chose to commit a crime, he should face the consequences of his actions.

C. The Third and Fourth Factors Should Not Apply When the Intervening Circumstance and the Crime Charged are the Same.

The third factor examines whether law enforcement would have obtained the evidence without the illegal conduct, and the fourth factor examines the temporal proximity between the illegal conduct and resulting evidence. These factors make sense when an

unlawful stop results in the seizure of drugs, firearms, or other evidence of an offense like a license-plate violation.

But here, the officer did not seize any evidence. Appellant was only charged for his conduct after the unlawful stop. And the officer did not force appellant to commit a crime. Appellant had numerous opportunities to safely pull over, but he chose not to.⁹ His criminal behavior should not doubly weigh in his favor simply because he decided to act lawlessly immediately after the stop.

D. On Balance, the Exclusionary Rule Should Not Apply.

Because none of the factors favor appellant, the exclusionary rule should not apply. This outcome appropriately weighs the exclusionary rule's significant cost on society against the important goal of deterring police misconduct. Indeed, given the caselaw at the time of the stop, suppression would provide little, if any, deterrence. *See Davis v. United States*, 564 U.S. 229, 238 (2011) (“[T]he deterrence benefits of exclusion vary with the culpability of the law enforcement conduct at issue.”) (quotation omitted). This minimal benefit pales in comparison to the societal costs of allowing people to flee law enforcement with impunity, especially when the exploitation exception already sufficiently protects them from government abuse.

⁹ Appellant never explains why it was unsafe to pull over in the well-lit area by the hospital with a witness in his van who had a cell phone. Dash Camera 01:14–02:15; T.41; Trial Tr. at 349, 367–68.

CONCLUSION

The State requests that this Court affirm appellant's conviction.

Dated: October 6, 2025

Respectfully submitted,

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