

No. A25-0131

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**OFFICE OF
APPELLATE COURTS**

**STATE OF MINNESOTA
IN SUPREME COURT**

State of Minnesota,
Respondent,

v.

Michelle Lee Weisen,
Appellant.

**BRIEF OF AMICI CURIAE MINNESOTA ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS AND AMERICAN CIVIL
LIBERTIES UNION OF MINNESOTA**

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INTEREST OF AMICI CURIAE¹

The Minnesota Chapter of the National Association of Criminal Defense Lawyers (“MACDL”) is the preeminent organization in the United States advancing the mission of the nation’s criminal defense lawyers to ensure justice and due process for persons accused of crime or other misconduct. MACDL is a non-profit, state-wide organization of defense lawyers seeking to uphold Constitutional rights and ensure justice for all, particularly from unchecked power of the government against the rights of individuals. MACDL’s interest in the case is public in nature.

The ACLU of Minnesota (“ACLU-MN”) is a private, nonprofit, nonpartisan organization supported by approximately 39,000 individual supporters in the State of Minnesota. Its purpose is to protect the rights and liberties guaranteed to all Minnesotans by the United States and Minnesota Constitutions and laws. ACLU-MN has a longstanding interest in preserving and extending strong constitutional protections for all Minnesotans. The interest of ACLU-MN in this case is therefore public.

¹ Under Rule of Civil Appellate Procedure 129.03, amici state that no counsel for a party authored the brief in whole or in part and no other person or entity, other than the amici curiae, their members, or their counsel, made a monetary contribution to the preparation or submission of the brief.

INTRODUCTION

Consent requires choice. An individual cannot meaningfully consent to a warrantless search if they are given no choice other than to agree. Nor can a suspect's confession be considered voluntary if they are given no choice other than to volunteer a confession. For a decision to mean something, "yes" and "no" must be equally valid options.

Trickery and deception, just as much as threats and intimidation, can undermine the ability to say "no." For decades, this Court has "caution[ed] police that they proceed on thin ice and at their own risk when they use deception." *State v. Thaggard*, 527 N.W. 2d 804, 810 (Minn. 1995). It has made abundantly clear that, at a minimum, police may not deceive people regarding their legal rights or the legal implications of consent or confession. *Id.* Under a straightforward application of that rule, the evidence extracted from appellant Michelle Weisen—namely, drugs found on her person, and her confession that a search would reveal those drugs—should have been suppressed. That is because law enforcement extracted that evidence "us[ing] deception." *Id.* They deceived Ms. Weisen into believing that law enforcement would search her and find any drugs she might possess, regardless of whether she consented to the search or confessed to having drugs. That deception meant that "no" was not an option for Ms. Weisen. And it negates both her consent to

the search and the voluntariness of her confession. The court of appeals' contrary holding should be reversed.

But this Court should not stop there. The deceptive law enforcement tactics deployed in this case, as well as the court of appeals' erroneous conclusion that those tactics yielded valid consent and a voluntary confession, demonstrate that this Court's past pronouncements have not sufficiently limited improper law enforcement deception. Minnesota courts have spent decades grappling with law enforcement efforts to lie, trick, and deceive Minnesotans into consent or confessions. What is more, recent social science research demonstrates that such trickery creates profound risks of both coercion and producing false confessions.

It is therefore time for this Court to go further. Because it has an independent obligation to protect Minnesotans' constitutional rights to be free from unreasonable searches and compelled self-incrimination, *see e.g., State v. Fuller*, 374 N.W.2d 722, 726 (Minn. 1985), the Court should hold, as a matter of Minnesota constitutional law, that law enforcement may not use trickery or deception to seek consent or extract confessions. Alternatively, the Court should exercise its supervisory power to preclude such behavior.

ARGUMENT

I. Under this Court’s existing case law, as well as the U.S. Supreme Court’s, law enforcement cannot deceive a suspect about the legal implications of their decision.

Both the Minnesota and U.S. Constitutions contain strong presumptions against warrantless searches. *See, e.g., State v. Diede*, 795 N.W.2d 836, 846 (Minn. 2011); *Collins v. Virginia*, 584 U.S. 586, 593 (2018). Under binding case law interpreting both Constitutions, the police tactics in this case came nowhere close to overcoming those presumptions.² The police tactics also failed to conform to this Court’s precedents precluding certain types of trickery to induce confessions. *See, e.g., Thaggard*, 527 N.W.2d at 809–10.

a. Law Enforcement’s Deception Coerced Ms. Weisen into Consenting to a Search.

Consent is a valid but highly circumscribed exception to the warrant requirement of the Minnesota and U.S. Constitutions. Under this exception, law enforcement need not obtain a warrant to search the person or property of an individual who voluntarily consents to the search. *Diede*, 795 N.W.2d at 846. But because “individuals have a liberty interest, constitutionally protected, against unreasonable prying into their personal affairs an individual has a right to say no” when an officer asks to search them. *State v.*

² Minnesota’s Constitution contains stronger protections against warrantless searches than the U.S. Constitution, *see, e.g., State v. Contreras-Sanchez*, 33 N.W.3d 700, 710 (Minn. 2026), providing a straightforward way to resolve this case under state law.

Dezso, 512 N.W.2d 877, 880 (Minn. 1994). “Consent must be received, not extracted.” *Id.* The constitution does not tolerate a law enforcement officer manufacturing consent by, for example, threatening someone into saying “yes.”

Nor does the Constitution tolerate deceiving someone into thinking they need to say “yes.” An individual must be able to consent “freely and voluntarily.” *Diede*, 795 N.W. at 846. For that to happen, a suspect must not only have a right to say “no”; they must *believe* that they have that right. “[M]ere acquiescence to a show of force is not enough to establish consent.” *Id.* at 847. Neither is “mere acquiescence to a claim of lawful authority.” *Id.* at 846 (citation omitted). It is not sufficient, and thus not legally valid consent, for a suspect to “agree” to a search simply because they were given no other option.

Here, law enforcement’s lie ran roughshod over those principles, depriving Ms. Weisen of the ability to choose. Police deceived her into believing that the choice she faced was not between being searched or not being searched, but instead between two types of searches: a physical search at the scene of the traffic stop or a body-scan search at a jail. Initially, an officer arguably left open the possibility that he was merely “ask[ing]” Ms. Weisen if she would “be willing” to submit one of these two searches. *State v. Weisen*, No. A25-0131, 2026 WL 81544, at *2 (Minn. Ct. App. Jan. 12, 2026). But after Ms. Weisen refused that choice “several times,” *id.*, the law enforcement team changed course. An officer told Ms. Weisen that she had better “be open and

honest”—that is, that she had better confess—because “if you have something on your person . . . the body scanner’s gonna catch [it]” at the jail. *Id.* The officer repeatedly portrayed the body scan as inevitable—i.e., that it “will catch anything,” “[a]nywhere,” “whatever.” *Id.* It was only then, after law enforcement indicated that she would be searched at a jail with or without her consent, that Ms. Weisen said “[h]e gave it to me,” and, at the urging of an officer, retrieved methamphetamine from her pants pocket. *Id.*

Law enforcement’s “heads I win, tails you lose” approach would understandably lead someone to believe that their consent is purely academic because a police search is inevitable. As the police framed the situation for her, Ms. Weisen had no means to avoid a police search altogether. And because Ms. Weisen had repeatedly refused a search and denied possessing drugs *until* the police adopted that framing, the record conclusively establishes that law enforcement deception yielded Ms. Weisen’s supposed consent. At that point, the “consent” was “mere submission to legal authority,” which is insufficient for purposes of the federal and state constitutions. *State v. High*, 176 N.W.2d 637, 639 (Minn. 1970); *see also Diede*, 795 N.W.2d at 848 (“The court in *High* was discussing an arrest, but the reasoning applies equally to seizures short of arrest.”). The deception deprived Ms. Weisen of her “right to say no.” *Dezso*, 512 N.W.2d at 880.

This case closely parallels *Bumper v. North Carolina*, 391 U.S. 543 (1968), where officers falsely announced they had a search warrant for a residence, prompting the homeowner to “consent” to a search. *Id.* at 546. Interpreting the Fourth Amendment to the U.S. Constitution, the U.S. Supreme Court held “that there can be no consent” where “that ‘consent’ has been given only after the official conducting the search has asserted that he possesses a warrant.” *Id.* at 548. The Court explained “[w]hen a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search.” *Id.* at 550. Here, like in *Bumper*, law enforcement claimed authority to search Ms. Weisen. And here, like in *Bumper*, that lie announced that Ms. Weisen had no right to resist the search. In both cases, “[t]he situation is instinct with coercion,” but “[w]here there is coercion there cannot be consent.” *Id.* at 550. As a matter of Fourth Amendment law, *Bumper* straightforwardly precludes the type of deception police used here.

The Minnesota Constitution operates even more forcefully to prohibit the police deception at issue here, because its protections against warrantless search exceed those of the Fourth Amendment. This Court has “repeatedly held, ‘without a doubt[,] that Article I, Section 10 of the Minnesota Constitution provides greater protection against suspicionless law enforcement conduct than the Fourth Amendment to the United States

Constitution.” *Contreras-Sanchez*, 33 N.W.3d at 710 (quoting *State v. Leonard*, 943 N.W.2d 149, 156 (Minn. 2020) (alteration in original)); see also *State v. Carter*, 697 N.W.2d 199 (Minn. 2005); *Ascher v. Comm’r of Pub. Safety*, 519 N.W.2d 183 (Minn. 1994). Consequently, even if there were any marginal factual differences between *Bumper* and this case, the robust protections of Article I, Section 10, would overcome them.

b. Law Enforcement’s Deception Coerced Ms. Weisen’s Confession.

Absent police coercion, neither the search of Ms. Weisen nor her confession would have occurred. Because the coercive search-and-seizure tactics yielded the confession, the confession should be suppressed as a product of an unconstitutional search, no matter whether the police *separately* violated Ms. Weisen’s constitutional rights in obtaining her confession. *Cf. Leonard*, 943 N.W.2d at 162 (mandating suppression of evidence as “fruit of the poisonous tree”).

But police did violate her rights in obtaining her confession. By misrepresenting Ms. Weisen’s legal rights, the deception that unconstitutionally coerced her agreement to a search, in violation of her search-and-seizure rights, also unconstitutionally induced her confession, in violation of her due process rights. Both the U.S. and Minnesota Constitutions’ due process clauses protect individuals from being coerced into confessing to

crimes. *See, e.g., State v. Nelson*, 886 N.W.2d 505, 509 (Minn. 2016). To be induced in a constitutionally permissible manner, a confession must be “a voluntary product of free and unconstrained will.” *State v. Garner*, 294 N.W.2d 725, 727 (Minn. 1980). In assessing whether a confession is in fact voluntary, this Court has explained that “[c]oercion does not necessarily involve physical violence or threats,” but can include “trickery.” *Nelson*, 886 N.W.2d at 509 (citation omitted).

In this case, Ms. Weisen’s confession was coerced through impermissible trickery. The same lie that compelled Ms. Weisen to agree to a search—that she would be searched under any circumstances—led her to confess. Once the officers deceptively made Ms. Weisen believe a search was unavoidable, she understood that discovery of drugs was certain. Against that backdrop, she simultaneously agreed to a search and confessed. But that confession is not the “voluntary product of free and unconstrained will.” *Garner*, 294 N.W.2d at 727. Just as law enforcement’s trickery led Ms. Weisen to believe that there was no legal way to resist a search—a “situation . . . instinct with coercion,” *Bumper*, 391 U.S. at 550—it created a fabricated inevitability that coerced her confession by deceiving her about her legal rights.

Under this Court’s precedents there is, at minimum, a bar on extracting confessions through these types of lies regarding legal rights and consequences. In *State v. Thaggard*, even as this Court declined to impose an

outright ban on trickery and deception, it deemed it “clear that there is an absolute prohibition upon any trickery which misleads the suspect as to the existence or dimensions of any of the applicable rights or as to whether the waiver really is a waiver of those rights.” 527 N.W.2d at 809–10 (citation omitted). *Thaggard* followed a series of cases in which this Court had decried deception, especially regarding the legal consequences of a decision. In *State v. Garner*, for example, this Court noted it was “truly dismayed” by the conduct of an interrogating officer who “freely admitted that he intentionally lied to the defendant” about charges he could face. 294 N.W.2d 725, 727 (Minn. 1980). As the Court explained, these tactics, among others used in the interrogation, were “designed to extort confessions from defendants rather than seek the truth.” *Id.*

This Court’s jurisprudence on promise-induced confessions confirms that officers may not deceive a suspect regarding the legal implications of their decision. Over six decades ago, this Court explained that officers “went too far” in misrepresenting to a suspect that “he might be treated as a juvenile offender” if he confessed. *State v. Biron*, 123 N.W.2d 392, 399 (Minn. 1963). The Court held that this deceptive promise of special treatment upon (and only upon) a confession “assume[d] the character of an assurance or promise of special treatment” that rendered the confession involuntary.” *Id.* (citation omitted). Subsequent cases have drawn a dividing line: “Investigators may

‘inform a defendant of the possible charges or evidence marshalled against the defendant,’ . . . but ‘police invite suppression of [a] statement when they use promises, express or implied, in seeking to persuade a suspect to confess to a crime.’” *State v. Ezeka*, 946 N.W.2d 393, 405 (Minn. 2020) (first quoting *State v. Pilcher*, 472 N.W.2d 327, 334 (Minn. 1991), then quoting *Thaggard*, 527 N.W.2d at 811). Under this standard, the Court has “distinguish[ed] between [officer] comments identifying the potential sentences imposed for different [charges] and express promises that a defendant will be charged with a lesser offense in exchange for his confession.” *State v. Clark*, 738 N.W.2d 316, 335 (Minn. 2007) (citing *State v. Slowinski*, 450 N.W.2d 107, 112 (Minn. 1990)); see also *Thaggard*, 527 N.W.2d at 805, 811–12 (“key” fact against suppression of statement was “that there [wa]s no indication that defendant was led to believe that he would not be prosecuted for the rape if he confessed”). But even where the Court has concluded that law enforcement did not cross the line by making explicit promises, it has admonished law enforcement for toeing that line. See, e.g., *Clark*, 738 N.W.2d at 335; *State v. Riley*, 568 N.W.2d 518, 526 (Minn. 1997); *Thaggard*, 527 N.W.2d at 811.

The throughline of these cases is that confessions are involuntary if induced by lies, trickery, or deception about the legal consequences of that confession. That makes sense: the crux of a truly voluntary confession is that it is the “product of free and unconstrained will.” *Garner*, 294 N.W.2d at 727.

But when officers use their authority to lie to a suspect about their legal rights or the legal implications of their decision—whether in the form of a promise of special treatment, the threat of additional charges, or, as in Ms. Weisen’s case, a lie that leads the suspect to believe they have no legal choice but to confess—they necessarily constrain the suspect’s will.

Under this Court’s existing precedent, the type of trickery that led to Ms. Weisen’s confession—an outright misstatement about her legal rights—renders her confession involuntary.

II. This Court can and should preclude broader categories of deception.

As set forth above, existing precedent suffices to demonstrate both that Ms. Weisen’s consent to search was unconstitutionally induced by law enforcement’s suggestion that she “had no right to resist the search,” *Bumper*, 391 U.S. at 550, and that her confession was unconstitutionally induced by “trickery which [mislead her] as to the existence or dimensions of [her] applicable rights,” *Thaggard*, 527 N.W.2d at 810.

But the Court can and should go further. Thirty years ago, the Court announced it was “not prepared *at this time*” to ban deception outright. *Id.* (emphasis added). The time has come. To guard Minnesotans’ rights to be free from unlawful search and coerced confessions, the Court should prohibit a

broad range of police deception, exercising either its obligation to independently interpret Minnesota's Constitution or its supervisory power.

a. This Court can construe the Minnesota Constitution to bar a broader range of police deceptions.

In the past, this Court has declined to interpret the Minnesota Constitution to categorically ban trickery or deception by law enforcement officers. Instead, in the voluntary confession context, the Court has factored the behavior into a totality-of-circumstances assessment to determine whether the deception, combined with other factors, overbore the defendant's will at the time they confessed. *Thaggard*, 527 N.W.2d at 810; *see also State v. Harris*, 590 N.W.2d 90, 102 (Minn. 1999) (applying totality-of-circumstances approach to determining whether consent to search was voluntary).

There is now, however, good reason for this Court to depart from that approach and construe the Minnesota Constitution to preclude any type of lying and deception to extract confessions or consent from suspects. Even as it has applied a totality-of-circumstances approach, this Court has expressed serious trepidation about law enforcement deception. *See, e.g., Clark*, 738 N.W.2d at 335 (declining to suppress statement while noting that law enforcement's misleading comments were "troubling in some respects"); *Riley*, 568 N.W.2d at 526 (expressing that Court was "troubled by [officer's] conduct" in repeatedly lying to defendant); *Thaggard*, 527 N.W.2d at 811 (cautioning

police about deception). By applying an exclusionary rule to evidence garnered through such tactics, the Court could deter the coercive deception that has repeatedly given it pause. *See State v. Malecha*, 3 N.W.3d 566, 577 (Minn. 2024) (“The ‘central purpose’ of Minnesota’s exclusionary rule is to deter police misconduct.”).

Moreover, a substantial and growing amount of social science indicates that deception is coercive, whether or not it “misleads the suspect as to the existence or dimension of” her rights. *Thaggard*, 527 N.W.2d at 810. For example, presenting false evidence during interrogation often persuades an innocent person to confess. More than a century of research demonstrates that “misinformation renders people vulnerable to manipulation.” M.S. Kassin et al., *Police-Induced Confessions, 2.0: Risk Factors and Recommendations*, 49 Law & Hum. Behav. 7, 10, 16 (2025). Psychologists explain that the presentation of false evidence or data can “substantially alter subjects’ visual judgments, beliefs, emotional states, self-assessments, memories for observed and experienced events, and even certain medical outcomes, as seen in the classic placebo effect.” *Id.* In other words, false information in an interrogation setting can be so coercive that it changes a person’s memory. It is unclear why law enforcement officers, trial judges, and appellate courts should be tasked with ascertaining whether deception by the police did or did not vitiate the suspect’s understanding of a legal right. Coercion can exist in either case.

The rate of false confessions isn't marginal. In one study, people who were interrogated about whether they had caused a computer to crash by researchers using the confrontational Reid method falsely confessed a quarter of the time. Dylan J. French, *The Cutting Edge of Confession Evidence: Redefining Coercion and Reforming Police Interrogation Techniques in the American Criminal Justice System*, 97 Tex. L. Rev. 1031, 1043 (2019). Once the researchers presented evidence of a false but incriminating witness statement, that rate doubled. *Id.* And once the researchers told the participants that their keystrokes had been recorded on a server, the rate of false confession tripled. *Id.*

Rates of false confession in the real world are comparable to those in the lab. Several projects that track cases of exoneration or actual innocence demonstrate the inherent coercive nature of current law enforcement techniques—particularly the presentation of false evidence or other deceptive techniques. The Innocence Project found that “false confessions . . . had contributed to nearly 30% of DNA exonerations in the United States.” Kassirer at 3. And the National Registry of Exonerations (NRE) reports that 13% of those wrongfully convicted had confessed. See The National Registry of Exonerations, Explore Exonerations (Map) (2026), <https://exonerationregistry.org/Exonerations-in-the-United-States->

Map#crimeState/.³ The true rate of false confessions may be even higher as these databases do not capture the numerous people who falsely confess whose innocence was established before trial; those who pleaded guilty and thus forestalled critical scrutiny of their cases; those who have served their time and moved on; those who confessed in military and loss-prevention settings; and those who remain incarcerated or who have not been legally exonerated (e.g., Brendan Dassey of “Making a Murderer” fame). Kassin at 3.

This high rate of false confessions is not just a policy problem. It is a constitutional problem because it is indicative of coercion. *Cf. Smith v. United States*, 348 U.S. 147, 152–53 (1954) (explaining the “general rule that an accused may not be convicted on his own uncorroborated confession” because “[c]onfessions may be unreliable because they are coerced or induced”)⁴; *Miranda v. Arizona*, 384 U.S. 436, 455 n.24 (1966) (suggesting false confessions were evidence of coercion). It strains credulity that hundreds of individuals

³ Despite the common perception that the more serious a crime, the less likely someone would be to falsely confess, the percentage of false confessions in both datasets is higher (61% and 23%, respectively) within the subsample of homicide cases. Kassin at 3.

⁴ Minnesota’s rule against conviction based on uncorroborated confessions is stronger than the federal rule, *see State v. Holl*, 966 N.W.2d 803, 805 (Minn. 2021), indicating an even greater skepticism of the possibility of false confessions.

confess to crimes they did not commit without having their will overborn by coercive police tactics.

This Court has repeatedly explained that it is “independently responsible for safeguarding the rights of [Minnesota’s] citizens.” *Fuller*, 374 N.W.2d at 726 (quoting *O’Connor v. Johnson*, 287 N.W.2d 400, 405 (Minn. 1979)). Pursuant to that obligation, it has interpreted provisions of the state Constitution—including the protection against warrantless searches, *see supra* at 4 (discussing Article I, Section 10 jurisprudence)⁵—as more protective than their federal counterparts. Although this Court has not previously read the right against self-incrimination in Minnesota’s Constitution to be categorically broader than its federal counterpart, *see State v. Murphy*, 380 N.W.2d 766, 770 (Minn. 1986), it is free to do so in crafting a remedy for the specific problem of deceptive police practices. *Cf. State v. Malecha*, 3 N.W.3d 566, 574 (Minn. 2024) (explaining the Court’s assessment of whether state and federal constitutional remedies diverge is distinct from whether state and federal constitutional rights do). Many of the existing practices surrounding interrogations are, of course, constitutionally required prophylactic measures to vindicate federal constitutional rights, rather than inherent rights in and of themselves. *See*

⁵ The more expansive nature of Article I, Section 10’s prohibition on warrantless searches provides a straightforward basis for the Court to prohibit any trickery or deception to seek consent for a search. *See supra* Part I.

Ezeka, 946 N.W.2d at 422 (Anderson, J., concurring in part and dissenting in part) (noting *Miranda* is a “constitutionally founded prophylactic”). In this context, then, the Court can prohibit officers from any form of deception to better guard Minnesotans’ due process rights against coerced confessions—even without breaking new ground by interpreting those rights to be broader than their federal counterparts. That step would be consistent with the Court’s “responsibility to act” as “the *first* line of defense for individual liberties.” *State v. Randolph*, 800 N.W.2d 150, 159 (Minn. 2011) (citation omitted) (emphasis added).

b. In the alternative, this Court should use its supervisory powers to prohibit law enforcement trickery and deception.

If this Court is not ready to constitutionalize a prohibition on trickery and deception, it should use its supervisory powers to preclude this coercive behavior. This Court’s supervisory power over legal processes is substantial and broad. “The judicial power of the state is vested in [this Court].” Article VI, Section 1. Pursuant to that role, this Court has “supervisory power to insure the fair administration of justice.” *State v. Scales*, 518 N.W.2d 587, 592 (Minn. 1994).

This Court has frequently invoked its supervisory powers to create procedural and evidentiary rules to protect constitutional rights. *See, e.g., State v. Lefthand*, 488 N.W.2d 799, 801 (Minn. 1992) (exercising supervisory

power because “[a]s the highest court of this state, we are independently responsible for safeguarding the rights of our citizens.”). In *State v. Scales*, for example, the Court held that custodial interrogations must be electronically recorded to protect the due process rights of suspects, even if the due process clause did not itself require recording. 518 N.W.2d at 592. Similarly, in *State v. Borst*, the Court used its supervisory powers to require counsel be provided to any defendant facing certain types of misdemeanor charges. 154 N.W.2d 888, 894 (Minn. 1967). *Borst* was decided only a few years after *Gideon v. Wainwright*, 372 U.S. 335 (1963), and this Court explicitly declined to hold that either the federal or state constitutions required counsel be provided in misdemeanor cases. *Borst*, 154 N.W.2d at 894. Nevertheless, pursuant to its supervisory powers, the Court established a rule to protect the rights of defendants. *Id.*; see also *Cox v. Slama*, 355 N.W.2d 401, 403 (Minn. 1984) (“We do not deem it necessary to decide whether a non-custodial parent is entitled to counsel on constitutional grounds. Pursuant to our supervisory powers to ensure the fair administration of justice, we hold that counsel must be appointed for indigent defendants facing civil contempt for failure to pay child support.”); *Hepfel v. Bashaw*, 279 N.W.2d 342, 348 (Minn. 1979) (“We . . . hold, pursuant to our supervisory power to ensure the fair administration of justice, that in paternity adjudications counsel must be provided indigent defendants where the complainant is represented by the county attorney. We hold that

counsel is required, not because we are constitutionally compelled to do so, but because . . . there is no better method available to us to protect the important interests involved.”).

A similar prophylactic rule is warranted here. In *Scales*, this Court exercised its supervisory powers in part because “law enforcement officials ha[d] ignored [its] warnings” in prior cases about “the failure of law enforcement officers to record custodial interrogations.” 518 N.W.2d at 591–92. Likewise, this Court in *State v. Lefthand* barred interrogations of those represented by counsel without presence of counsel, in part because the state had disregarded the Court’s previous “notice” and “reiterat[ion]” of its disapproval of the practice. 488 N.W.2d at 801.

The same thing has happened with trickery and deception. It has been more than thirty years since this Court in *Thaggard* “caution[ed] police that they proceed on thin ice and at their own risk when they use deception.” 527 N.W. 2d at 810. *Thaggard* was hardly the first case in which this Court has decried deception, especially regarding the legal consequences of a decision. Indeed, over six decades ago, in *Biron*, this Court explained that officers “went too far” in misrepresenting to suspect that “he might be treated as a juvenile offender” if he confessed. 123 N.W.2d at 399; *see also State v. Garner*, 294 N.W.2d 725, 727 (Minn. 1980) (Court was “truly dismayed . . . by the conduct of the interrogating officer,” who “freely admitted that he intentionally lied to

defendant”); *State v. Slowinski*, 450 N.W.2d 107, 112 (Minn. 1990) (officer statements implying that county attorney would follow their wishes “are not to be condoned”). And *Thaggard* wasn’t the last case in which this Court decried this type of behavior: time and again, police have forced the Court to grapple with trickery and deception in assessing whether waivers have been voluntary. *See, e.g., State v. Burrell*, 697 N.W.2d 579, 597 (Minn. 2005) (concluding *Miranda* waiver was involuntary, in part because of police “mischaracterizations”); *Riley*, 568 N.W.2d at 526 (affirming denial of suppression while noting Court was “troubled by [agent’s] conduct” in repeatedly lying to defendant); *Ezeka*, 946 N.W.2d at 411 (Anderson, J., concurring in part and dissenting in part) (noting it was “troubling” that investigators gave “false legal advice” to suspect). Lower courts have also had to contend with law enforcement lies. *See, e.g., In re Welfare of D.B.X.*, 638 N.W.2d 449, 456 (Minn. Ct. App. 2002) (concluding law enforcement deception rendered confession involuntary); *State v. Kirk*, No. A14-1951, 2015 WL 7356576, at *5 (Minn. Ct. App. Nov. 23, 2015) (declining to suppress confession despite “troubling” and “improper” comments from investigator).

Law enforcement has no good reason to continue to defy the Court’s admonition against lying to suspects. A growing consensus of law enforcement, psychologists, and other professionals agree that there are far better, science-based methods to obtain information during criminal investigations. Dylan J.

French, at 1035; *see also* Am. Psych. Ass’n, *Resolution on Interrogations of Criminal Suspects*, APA Council Pol’y Manual (Feb. 2022), <https://www.apa.org/about/policy/interrogations>. Indeed, the Federal Law Enforcement Training Center’s Behavioral Science Division, which trains more than 100 federal agencies and offers courses to state, local, tribal, and international agencies, has revised its basic training to focus on science-based practices that do not rely on deception. Kassin at 28. Police deception is not a necessary evil; it is a choice to prioritize extracting a confession or consent over building a case on reliable information. Here, like in *Scales* and *Lefthand*, the Court’s cautions and consternations have not sufficed to change police behavior even though better methods are available. Here, like in *Scales* and *Lefthand*, the Court would be justified in establishing a prophylactic rule to preserve due process rights.

CONCLUSION

At a minimum, this Court should apply its precedents to reverse the decision below and reiterate that law enforcement may not lie to a suspect about their legal rights or the legal implications of their decision to coerce a confession or consent for a search. But, even in other contexts, law enforcement’s use of trickery and deception raises serious questions about the voluntariness of confessions or consents for searches. In order to protect

Minnesotans' rights, this Court should use one of the several tools it has at its disposal to prohibit law enforcement from using such tactics.

Respectfully submitted,

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(**Motion for *pro hac vice* admission
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