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SC24-1088

In the Supreme Court of Florida

STATE OF FLORIDA,
Petitioner,

v.

BRYAN ALLEN REPPLE,
Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM THE
SIXTH DISTRICT COURT OF APPEAL
DCA NO. 6D23-1448

PETITIONER'S BRIEF ON JURISDICTION

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STATEMENT OF THE ISSUES

This Court and the United States Supreme Court have explained that the exclusionary rule, which sometimes requires the suppression of evidence obtained in violation of the Fourth Amendment, "is 'a judicially created remedy designed to safeguard Fourth Amendment rights.'" *Savage v. State*, 588 So. 2d 975, 978 (Fla. 1991) (quoting *United States v. Calandra*, 414 U.S. 338, 348 (1974)). This Court has also held that police officers lack authority to obtain evidence "under color of office" outside their jurisdictions unless authorized by statute. *Phoenix v. State*, 455 So. 2d 1024, 1025 (Fla. 1984). The issues here are:

1. Whether officers exceed their authority by transporting a validly arrested suspect outside of their jurisdiction and obtaining evidence from the suspect while the suspect remains in the officers' custody; and

2. Whether the exclusionary rule extends to require the suppression of evidence obtained extraterritorially in excess of a police officer's statutory authority.

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STATEMENT OF THE CASE AND FACTS

Respondent Bryan Allen Repple was stopped for speeding by a Maitland Police Department officer in Maitland, Orange County, Florida. App'x 3. During the stop, the officer smelled alcohol, observed that Respondent's eyes were "glassy and bloodshot," and noticed that Respondent was slurring his speech. *Id.* Another Maitland officer began a DUI investigation. *Id.* Respondent consented to undergo three field sobriety tests, which yielded further signs of impairment. *Id.* The officers arrested Respondent for DUI. *Id.*

The officers then transported Respondent just outside of Maitland to a breath-testing facility operated by the Orange County Sheriff's Office. *Id.* The facility was staffed by a single civilian employee. *Id.* One of the Maitland officers escorted Respondent to the testing room, read him the implied-consent warning under Section 316.1932, Florida Statutes, and requested Respondent's consent to submit to a breath test. App'x 3–4. Respondent obliged. App'x 4. The breath test revealed an alcohol content higher than the lawful limit, and the State charged Respondent with DUI. *Id.*

Respondent asked the trial court to suppress the results of the breath test on the ground that the Maitland police officer lacked authority to read the implied-consent warning and request Respondent's consent to submit to a breath test outside of Maitland. *Id.* The trial court granted the motion, and the State appealed.

The Sixth District affirmed. App'x 21. It began by explaining that police officers generally lack authority to use their "official power" in other jurisdictions. App'x 9. And relying on two other district court cases, the court concluded that any evidence unlawfully obtained through an officer's extraterritorial exercise of official power must be suppressed. App'x 9–10.

Turning to the specifics of this case, the Sixth District determined that reading the implied-consent warning under Section 316.1932 and requesting Respondent's consent to submit to a breath test constituted exercises of official power. App'x 10. In deciding whether Maitland officers had authority to take those actions at a breath-testing facility outside of Maitland, the court observed that the Florida Constitution provides that the scope of municipal power shall be governed by the Legislature. App'x 11 (citing Art. VIII, § 2(c),

Fla. Const.). After reviewing the statutes that created the City of Maitland and other statutes governing the extraterritorial exercise of police authority, the court concluded that the Maitland officers lacked authority to request breath tests at a facility outside of Maitland. App'x 10–13. The court rejected the State's argument that when police officers validly arrest a suspect for a crime committed in their jurisdiction, the officers may continue the investigation outside of their jurisdiction. App'x 16–20. And it concluded that the exclusionary rule applied to remedy the violation. App'x 9–10.

Because the Fifth District reached the opposite result on virtually identical facts in *State v. Torres*, 350 So. 3d 421 (Fla. 5th DCA 2022), the Sixth District certified conflict. App'x 14, 20–21.

ARGUMENT

The Court Should Resolve the Certified Conflict.

The Sixth District certified a conflict on an issue implicating the ability of police officers to effectively enforce DUI laws in their jurisdictions. And in holding that the exclusionary rule requires the suppression of any breath-test result obtained outside the requesting officer's jurisdiction, the Sixth District improperly extended an already-

dubious, judge-made remedy and hamstrung local police in their efforts to enforce DUI laws. The Court should review this case.

A. The Court has jurisdiction because the Sixth District certified conflict with the Fifth District's decision in *Torres*.

In the decision below, the Sixth District "certif[ied] conflict with the Fifth District's decision in *Torres*." App'x 20. This Court therefore has discretionary jurisdiction. *See* Art. V, § 3(b)(4), Fla. Const. (authorizing the Court to review a decision of a district court "that is certified by it to be in direct conflict with a decision of another district court of appeal").

Though not additionally required for this Court's jurisdiction, the decision below also expressly and directly conflicts with *Torres* as well as *Goodman v. State*, 399 So. 2d 1120 (Fla. 4th DCA 1981), and *Parker v. State*, 362 So. 2d 1033 (Fla. 1st DCA 1978). *See* Art. V, § 3(b)(3), Fla. Const. In those cases, the district courts held that police officers have authority to continue an investigation outside of their jurisdictions when the crime under investigation occurred in their jurisdictions. *Torres*, 350 So. 3d at 426; *Goodman*, 399 So. 2d at 1121; *Parker*, 362 So. 2d at 1033–34. And the Fifth District in *Torres* did so on facts virtually identical to those here.

In *Torres*, a Winter Park police officer stopped a driver for traffic infractions in Winter Park city limits. 350 So. 3d at 422. During the stop, the defendant exhibited signs of intoxication. *Id.* The officer conducted field sobriety tests and arrested the defendant for DUI. *Id.* at 423. The officer then transported the defendant to a breath-test facility operated by the Orange County Sheriff's Office in Orlando. *Id.* Invoking the implied-consent statute, the officer asked the defendant to consent to a breath test, which he did. *Id.*

After the defendant in *Torres* was charged with DUI, the trial court suppressed his breath-test results on the same ground urged by Respondent here: that the Winter Park officer lacked authority to request a breath test under the implied-consent statute at a facility outside of Winter Park. *Id.* at 422. The Fifth District reversed, holding that police have authority to request breath tests under the implied-consent statute outside their jurisdictions when the DUI arrest occurred in their jurisdiction. *Id.* at 426.

On the same facts, the Sixth District has now reached the opposite result. Maitland police arrested Respondent for DUI in Maitland. App'x 3. They then transported him to an Orange County Sheriff's Office breath-test facility outside of Maitland and requested his

consent to a breath test under the implied-consent statute. App'x 3–4. The Sixth District held that the officers lacked authority to request a breath test at a facility outside Maitland, even though the DUI occurred in Maitland. App'x 14–15. And this conclusion, the court determined, required suppression of the test results. App'x 9–10.

In sum, police officers in the Fifth District may request breath tests from suspects they arrest for DUI in their jurisdictions even if the breath-test facility is in another jurisdiction. But if a police officer in the Sixth District does so, the results will be suppressed.

B. The Sixth District's decision is wrong.

The Sixth District erred on two critical fronts. It erroneously concluded that police officers lose their authority to investigate suspects in their custody for crimes committed in their jurisdictions simply by transporting the suspect out of their jurisdiction. App'x 14–15. And it compounded that error by deciding incorrectly that the exclusionary rule applies to a claim that police officers exceeded their authority by obtaining evidence outside their jurisdiction. App'x 9–10.

1. The Sixth District erred in determining that the Maitland officers lacked authority to request a breath test from a suspect they arrested in Maitland simply because the breath-test facility was in a neighboring city. As the Sixth District acknowledged, the statute creating the City of Maitland vested it with the authority to "maintain a department of police" to "exercise full police powers" "for the preservation and enforcement of law and order within said City." App'x 11 (quoting Ch. 59-1475, §§ 34(15), 50, Laws of Fla.). That is precisely what the officers did here. They arrested Respondent for driving under the influence *in Maitland*. Conducting a breath test is a crucial incident to a DUI arrest. *See* § 316.1932(1)(a)1.a., Fla. Stat. (breath tests under implied-consent statute are "incidental to a lawful arrest"); *State v. Hoch*, 500 So. 2d 597, 603 (Fla. 3d DCA 1986) (noting that breath tests are simply "part of the booking procedure when a defendant is arrested for DUI"). Thus, when Maitland officers transported Respondent to an Orange County breath-test facility, it was incidental to the DUI arrest performed in Maitland. Doing so was thus encompassed by the officers' authority to "exercise full police powers" for the enforcement of the law in Maitland. Ch. 59-1475, § 34(15), Laws of Fla.

Indeed, enforcing the law in one city frequently requires transporting arrestees to and through neighboring jurisdictions. For instance, not every city has a jail, and officers must transport arrestees from their jurisdiction to county jails in other cities and book them there. That is part of the officers' "exercise of full police powers" to enforce the law in their jurisdiction. Officers could not effectively enforce the law in their jurisdictions if they had to "relinquish lawful custody of their prisoner at the town line." *Torres*, 350 So. 3d at 426 (quoting *State ex rel. Town of Portsmouth v. Hagan*, 819 A.2d 1256, 1261 (R.I. 2003)). Contrary to the Sixth District's view, recognizing the authority of police to exercise investigatory authority in other jurisdictions when necessary to investigate crimes committed in their own is not a "court-created 'exception'" to limits on extraterritorial authority. App'x 16. It merely recognizes officers' statutory authority to exercise all police power necessary to enforce the law in their jurisdiction.

2. Independent of whether officers may request breath tests outside their jurisdiction, the Sixth District also erred in concluding that the exclusionary rule applies to this type of claim. The State argued below that a violation of the rules governing extraterritorial police

conduct does "not warrant suppression" because it results in no "substantial violation of defendant's rights." DCA Init. Br. 11. Thus, an allegation that police exceeded their authority by obtaining evidence outside of their jurisdiction cannot serve as the basis for a suppression motion. But the Sixth District cursorily rejected that argument, citing other district court opinions holding that the evidence must be suppressed. App'x 9–10. That was error.

The exclusionary rule is a "judicially created remedy," *Savage v. State*, 588 So. 2d 975, 978 (Fla. 1991) (quoting *United States v. Calandra*, 414 U.S. 338, 348 (1974)), born of "judicial decisional policy." *State v. Dodd*, 419 So. 2d 333, 335 (Fla. 1982). It does not stem from the Constitution. *Davis v. United States*, 564 U.S. 229, 236 (2011). And while states must sometimes apply the exclusionary rule to evidence obtained in violation of the Fourth Amendment, they are under no obligation to apply it to evidence obtained in violation of *state* law. *Virginia v. Moore*, 553 U.S. 164, 174 (2008). Indeed, the rule "generates substantial social costs"—"setting the guilty free and the dangerous at large." *Hudson v. Michigan*, 547 U.S. 586, 591 (2006). With-

out a textual basis for doing so, courts therefore should not "reflexive[ly]" suppress evidence simply because officers violated some law in obtaining it. *Davis*, 564 U.S. at 238.

Yet that is precisely what the Sixth District did. It applied the exclusionary rule to suppress the results of a breath test simply because it concluded that the officer lacked statutory authority to request the test at a facility in a neighboring city. The court cited nothing in the Florida Constitution or any statute that purports to require the suppression of evidence under such circumstances. That is especially notable because the Florida Constitution expressly requires the suppression of evidence in other contexts, but not for extraterritorially obtained evidence. *See* Art. I, § 12, Fla. Const. (requiring suppression to the extent the U.S. Supreme Court requires it for Fourth Amendment violations); *see also BellSouth Telecomms., Inc. v. Meeks*, 863 So. 2d 287, 291 (Fla. 2003) (When a provision appears "in one section" but not "in another," "courts will deem the difference intentional and will assign meaning to the omission.").

The exclusionary rule typically applies to evidence seized in violation of a defendant's Fourth Amendment rights. *See Calandra*, 414 U.S. at 348 ("[T]he [exclusionary] rule is a judicially created remedy

designed to safeguard Fourth Amendment rights . . . ."). In that circumstance there is at least some nexus between the violation of the defendant's rights and the remedy. Yet Respondent does not claim a violation of his Fourth Amendment rights—or of any individual right. He disputes neither that his arrest was supported by probable cause nor that he consented to a breath test. His sole claim is that the officer who asked him to consent to a breath test lacked authority to do so under Florida law. But an otherwise permissible search does not become a Fourth Amendment violation simply because a police officer conducted it without authority under state law; "it is not the province of the Fourth Amendment to enforce state law." *Moore*, 553 U.S. at 172, 178.

The authority of Maitland police to request breath tests outside of Maitland does not implicate any right of Respondent's at all. As the Sixth District noted, the extent of municipal officials' authority is simply a creature of statute. *See* App'x 11 (citing Art. VIII, § 2(c), Fla. Const.). The Legislature could just as easily authorize police officers to exercise police authority anywhere in Florida as it could limit their authority to their municipalities. In other words, the extraterritorial authority of police officers is simply a question of how the State has

decided to allocate its enforcement responsibilities among different actors, not a question of criminal defendants' rights. Respondent has no constitutional stake in whether the police officer requesting his breath test works for the City of Maitland or Orange County. So even when an officer encroaches upon another department's jurisdiction, there is no reason to apply "the potent remedies that federal courts have applied to Fourth Amendment violations" when the Legislature has not required it. *Moore*, 553 U.S. at 174.

Because the Legislature exercises plenary control over the extraterritorial authority of municipal officials, Art. VIII, § 2(c), Fla. Const., remedies for exceeding that authority should be dictated by the Legislature.[1]

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[1] This Court has in the past considered appeals of orders on motions to suppress premised on an officer's unlawful exercise of extraterritorial authority. *See Ramer v. State*, 530 So. 2d 915 (Fla. 1988); *Phoenix v. State*, 455 So. 2d 1024 (Fla. 1984). But in those cases, the issue before the Court was only whether the exercise of authority was lawful. The Court did not consider whether the exclusionary rule applied.

C. This case implicates vital interests in public safety and effective law enforcement.

Finally, these issues are important. The suppression of evidence in a criminal proceeding "exacts a heavy toll on both the judicial system and society at large" by requiring "courts to ignore reliable, trustworthy evidence bearing on guilt." *Davis*, 564 U.S. at 237. That is all the more true in DUI cases, where public safety is of paramount concern. *See Mitchell v. Wisconsin*, 588 U.S. 840, 851 (2019) (noting that DUI causes "more than one fatality per hour" in the United States). With the district courts now split, law enforcement officers lack clarity on the scope of their authority, impeding both ongoing prosecutions and public safety.

CONCLUSION

The Court should grant review.

Dated: July 24, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief was prepared in 14-point Bookman font, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2) and contains 2,489 words.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished via the e-Filing Portal on this 24th day of July 2024, to the following:

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