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SC24-1088

# In the Supreme Court of Florida

STATE OF FLORIDA,
*Petitioner,*

*v.*

BRYAN ALLEN REPPLE,
*Respondent.*

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

## REPLY BRIEF

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## INTRODUCTION

Municipal police officers' statutory authority to exercise the full police power of the State in enforcing law and order in their jurisdictions necessarily includes actions taken incidental to that law-enforcement activity—even if they occur in another jurisdiction. Rather than address that point, Repple spends most of his answer brief shadowboxing with arguments the State has not made. He argues for 20 pages that the Court cannot create an exception to allow police to exercise extraterritorial authority without statutory authorization. But he never engages with the State's argument that the breath-test request in this case *did* fall within the officer's statutory authority, nor does he refute that municipal officers' broad authority to enforce law and order in their jurisdictions includes the authority to perform incidental functions in other jurisdictions. And he never disputes that requesting a breath test at the county facility is a lawful incident to a DUI arrest.

As to the State's alternative contention that the exclusionary rule does not even apply to evidence obtained outside an officer's jurisdiction without statutory authorization, Repple first incorrectly claims that the State did not present this argument below. He then

hardly defends the Sixth District's conclusion that *any* evidence obtained outside an officer's jurisdiction without statutory authorization must be suppressed. Instead, he principally argues only that breath-test results must be suppressed in such circumstances because the exclusionary rule stems from the implied-consent statute. But he points to nothing in the text of the statute that provides for such a remedy. This Court has made clear that it will not direct the exclusion of evidence based on a statutory violation when "the plain language of [the statute] does not expressly provide for exclusion of evidence as a remedy." *Jenkins v. State*, 978 So.2d 116, 130 (Fla. 2008).

## ARGUMENT

### I. Requesting a breath test at the county breath-test facility falls within Maitland officers' statutory authority.

As explained in the State's initial brief, the broad authorization for police officers to exercise the full police power of the State to enforce the law in their jurisdictions necessarily includes some incidental exercises of that authority outside their jurisdictions. Init. Br. 8–14. Rather than rebut that argument, Repple does not even contend with it. He disputes neither that requesting a breath test at a

county facility is simply an incident of a DUI arrest nor that officers' statutory authority to enforce the law in their jurisdictions encompasses such incidental acts. Instead, he devotes pages to arguing that courts cannot adopt a "court-created exception to the 'color of office doctrine.'" Ans. Br. 8–28.

That argument misses the mark. The State is not asking for a "court-created exception." No judicial invention is required to recognize that an officer has statutory authority to request a breath test at the county facility incident to a DUI arrest in his jurisdiction.[1] Since Maitland's original charter was enacted, Maitland police have had the authority to "'exercise full police powers' 'for the preservation and enforcement of law and order within [the] City.'" Init. Br. 8–9 (citing Ch.

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[1] Although the Fifth District in *State v. Torres* referred to officers' authority to request a breath test at the county facility, along with other statutory authorizations to exercise official authority outside one's jurisdiction, as an "exception" to the general rule that officers may not exercise authority outside their jurisdictions, 350 So. 3d 421, 423–24 & n.4 (Fla. 5th DCA 2022), it did not claim that it was "judge-made." Rather, the court made clear that because requesting an extraterritorial breath test "was directly related to the arrest . . . within [the officer's] jurisdiction" and because the defendant remained in the officer's "lawful custody," the request was part of the officer's "legitimate law enforcement duties." *Id.* at 426. In other words, the court concluded, as the State argues here, that requesting the breath test was part and parcel of the officer's statutory authority to enforce DUI laws in his jurisdiction.

59-1475, §§ 34(15), 50, Laws of Fla.). Although that authority certainly does not include the exercise of police power to enforce law and order in other cities, it does include actions taken in another jurisdiction if those actions are necessary incidents to enforcing law and order in Maitland. And the implied-consent statute is clear that breath tests are "incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe" that the defendant committed a DUI. § 316.1932(1)(a)1.a., Fla. Stat. Were it otherwise, police would have to release their detainees any time a post-arrest transport incidentally required leaving the city limits. Such a result would undermine the power the Legislature conferred upon municipal officers to preserve law and order in their jurisdictions.

## II. The exclusionary rule does not apply to evidence secured outside an officer's jurisdiction.

Even if the officer lacked the authority to request the breath test, Repple was not entitled to suppression of the breath-test results proving that he was impaired.

### A. The exclusionary-rule argument was preserved.

Repple claims that the State's argument that exclusion is an improper remedy for extraterritorial exercises of power was not "presented to the lower Court." Ans. Br. 29. That is wrong. In its initial brief below, the State argued that even if the Maitland officer erred in requesting a breath test outside his jurisdiction, that error was "merely technical and *should not warrant suppression*." R.25 (emphasis added); *see also* R.105 (arguing in its supplemental brief that the "State did not locate any Florida statutes that expressly acknowledge the under color of office doctrine *as an exclusionary rule*" (emphasis added)). In support of that argument, the State cited *State v. Pearson*, 507 S.E.2d 301 (N.C. Ct. App. 1998), and explained that the court in that case held that the exclusionary rule does not apply because "[i]t is not fundamentally unfair nor prejudicial to a defendant that evidence is obtained by police officers outside of their territorial jurisdiction." R.25. The issue was thus plainly "presented to the lower court." *Tillman v. State*, 471 So. 2d 32, 35 (Fla. 1985).[2]

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[2] The State devoted more attention in its brief to the merits because, at the time, the appeal was pending in the Fifth District where there was binding authority in the State's favor on the merits. But an issue need only be "presented to the lower court" to be preserved.

Indeed, Repple responded to the State's exclusionary-rule argument in his answer brief below. *See* R.59–60 (arguing that the State's argument was "contrary to binding authority in the State of Florida"). Additionally, the Sixth District ruled on the issue, although it held incorrectly that the appropriate "remedy" for evidence obtained without statutory authorization is "suppression of the evidence seized." R.147–48. The issue is thus properly before this Court.[3]

### B. Exclusion is neither authorized by statute nor necessary to protect criminal defendants' rights.

Repple does not dispute that no statutory or constitutional text requires the suppression of evidence under these circumstances. Nor

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*Tillman*, 471 So. 2d at 35. It need not be the party's primary argument.

[3] True, the State did not raise the applicability of the exclusionary rule in the trial court. But doing so would have been futile because the trial court would have been bound to reject the argument by existing district-court precedent. *E.g.*, *Knight v. State*, 154 So. 3d 1157, 1160 (Fla. 1st DCA 2014) (holding that evidence obtained outside an officer's jurisdiction without statutory authorization "must be suppressed"); *see Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992) ("[I]n the absence of interdistrict conflict, district court decisions bind all Florida trial courts."). It is well-established in Florida that a party need not engage in the "useless act" of raising an issue in a court bound to reject it to preserve the issue for further review. *Harvey v. State*, 848 So. 2d 1060, 1063 (Fla. 2003). The State raised the exclusionary-rule issue at the first opportunity it had for the issue to be considered—in the Fifth District.

does he dispute that limits on extraterritorial exercises of authority exist to respect the autonomy of other jurisdictions and have nothing to do with the rights or interests of criminal defendants, making the exclusionary rule a poor fit. Instead, he argues principally that requesting a breath test at a facility outside the officer's jurisdiction violates the implied-consent statute, and that prior cases have applied the exclusionary rule to violations of that statute.[4] Ans. Br. 29–33.

But "[t]his Court will not manufacture a suppression remedy when 'the plain language of [the statute] does not expressly provide for exclusion of evidence as a remedy.'" Init. Br. 15 (quoting *Jenkins*, 978 So. 2d at 130). Repple does not and cannot dispute that the plain language of the implied-consent statute does not expressly provide for suppression as a remedy in these circumstances. § 316.1932(1)(a)1.a., Fla. Stat. In contrast, the implied-consent statute contains several provisions expressly addressing the

[4] Repple incorrectly claims that this is the ground on which the Sixth District held that suppression was the appropriate remedy. Ans. Br. 33. The Sixth District's opinion was clear that it believed the color-of-office doctrine to be the source of the exclusionary rule here, not the implied-consent statute. R.147–48.

admissibility of test results in other circumstances, *see id.* § 316.1932(1)(f)1., 2.a., 3, including by excluding the results of tests done to detect the presence of any controlled substance "in a criminal prosecution for the possession of a controlled substance," *id.* § 316.1932(2). The Legislature thus clearly knew how to specify when test results should be excluded, yet did not provide suppression as a remedy when the officer requesting a breath test is outside his jurisdiction.[5]

None of the cases Repple relies on held that the implied-consent statute requires suppression when the requesting officer is outside his jurisdiction. Those cases themselves recognize that the exclusionary rule does not apply to "*all* evidence obtained contrary to the implied consent law," but only to "evidence obtained in a manner that" undermines the "scientific reliability of the tests." *Robertson v. State*, 604 So. 2d 783, 789 n.5 (Fla. 1992); *see also State v. Donaldson*, 579

[5] In any event, Repple is wrong that the implied-consent statute incorporates the color-of-office doctrine. The statute requires only that the request for a breath test be made by a "law enforcement officer who has reasonable cause to believe" that the defendant committed DUI. It was. Repple's argument is premised on a fiction that a police officer who violates the color-of-office doctrine is not actually a police officer. Ans. Br. 30.

So. 2d 728, 729 (Fla. 1991) ("Minor deviations in compliance" do not warrant suppression if "the machine itself remained accurate."). Repple does not and cannot contend that his breath-test results are unreliable merely because the officer who requested the test was employed by the City of Maitland rather than Orlando or Orange County.

On top of that, Repple offers little to defend the Sixth District's holding that any evidence obtained outside an officer's jurisdiction without statutory authorization must be suppressed. All he says is that the exclusionary rule must apply because such extraterritorial exercises of official authority are "prohibited by law." Ans. Br. 33. He does not dispute that no statutory or constitutional provision provides for suppression as a remedy. He does not dispute that the Court should not create its own remedy. And he does not dispute that even if the Court could create an exclusion remedy, it would be a poor fit here given the exclusionary rule's significant costs and the little interest criminal defendants have in ensuring that police officers respect the jurisdiction of other agencies. The bottom line is that Repple's incriminating breath-test results should not be suppressed simply because the officer who requested the test was employed outside of Orlando.

## CONCLUSION

The Court should quash the Sixth District's decision either because the Maitland officer acted within his statutory authority or because the exclusionary would not apply even if he had not.

Dated: June 10, 2025

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I certify that this brief was prepared in 14-point Bookman Old Style font, in compliance with Florida Rule of Appellate Procedure 9.045(b)(a)(2) and contains 1,994 words, as required by Florida Rule of Appellate Procedure 9.210(a)(2)(A).

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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished via the e-Filing Portal on this **tenth** day of June 2025, to:

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