No. 25-

In the

Supreme Court of the United States

MINNESOTA,

Petitioner,

v.

SENECA WARRIOR STEEPROCK,

Respondent.

On Petition for a Writ of Certiorari to the
To The Supreme Court of Minnesota

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Nix v. Williams*, 467 U.S. 431 (1984), this Court established the inevitable-discovery doctrine as an exception to the exclusionary rule. Under that doctrine, the exclusionary rule does not apply if the prosecution can establish that evidence unlawfully seized would have inevitably been discovered by lawful means. Since *Nix*, the lower courts have deeply divided over what "inevitably" means in this context. The question presented is:

Does the inevitable-discovery doctrine require proof that law enforcement was actively pursuing a warrant or an alternative line of investigation at the time of the challenged conduct, or does the doctrine apply when objective, demonstrated historical facts establish that the evidence would have been lawfully obtained through ordinary and predictable procedures?

PARTIES TO THE PROCEEDING

Petitioner State of Minnesota was the plaintiff in the trial court, respondent in the Minnesota Court of Appeals, and appellant/cross-respondent in the Minnesota Supreme Court.

Respondent Seneca Warrior Steeprock was the defendant in the trial court, appellant in the Minnesota Court of Appeals, and respondent/cross-appellant in the Minnesota Supreme Court.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

State of Minnesota v. Seneca Warrior Steeprock, Case No. 69DU-CR-21-26, District Court of St. Louis County, Minnesota, order granting motion to compel DNA under Rule 9.02 issued October 14, 2021.

State of Minnesota v. Seneca Warrior Steeprock, Case No. A23-0875, Court of Appeals of Minnesota, opinion reversing conviction and remanding issued July 29, 2024.

State of Minnesota v. Seneca Warrior Steeprock, Case No. A23-0875, Supreme Court of Minnesota, opinion affirming the decision of the court of appeals became final on December 18, 2025, when the judgment issued. *See* Minn. R. App. P. 136.02.

There are no other directly related proceedings within the meaning of this Court's Rule 14.1(b)(iii).

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INTRODUCTION

Few constitutional doctrines carry consequences as significant as the Fourth Amendment's exclusionary rule. The inevitable-discovery doctrine—an exception intended to limit those consequences—has produced a deep and acknowledged division among state and federal courts in its application. This case presents an ideal opportunity to resolve that conflict.

In *Nix v. Williams*, this Court first recognized the inevitable-discovery doctrine as an exception to the exclusionary rule, holding that if the prosecution can establish that evidence unlawfully seized would have been discovered by lawful means, the exclusionary rule does not apply and the evidence is still admissible. 467 U.S. 431, 444 (1984). The inevitable-discovery doctrine reflects a deliberate balance. The exclusionary rule exists to deter unlawful police conduct, but it does not require courts to put the government in a worse position than it would have occupied absent the error. *Id*. at 443.

Yet in the four decades since *Nix*, courts have diverged sharply on what "inevitable" means. Some courts apply the doctrine as *Nix* described it, asking whether established historical facts demonstrate that lawful discovery would have occurred in the ordinary course. Others, including the Minnesota Supreme Court, impose a far more rigid requirement: the government must show that it was already actively pursuing a warrant or other lawful investigation at the time of the challenged conduct—*i.e.*, the "active pursuit" rule.

The significance of this split is substantial. In some jurisdictions, evidence is admitted because lawful discovery would have occurred as a matter of demonstrated fact; in others, the same evidence is suppressed because officers were not actively pursuing a warrant at the time of the challenged search. The scope of Fourth Amendment protection, and the admissibility of critical evidence, thus turns not on constitutional principle, but on geography.

This case exemplifies when the inevitable-discovery doctrine should apply. The State had probable cause to obtain a search warrant to procure Respondent Seneca Steeprock's DNA. The State had, in fact, secured a warrant for that very evidence earlier in the investigation. But the State agreed not to rely on that first DNA sample in response to a co-defendant's warrant challenge (a challenge that would not have precluded a second warrant). The State then relied on a state rule that permitted it to obtain a DNA sample through a discovery mechanism requiring notice, a showing that the evidence would materially aid in determining guilt, and judicial approval. In other words, the State selected one court-supervised path over another to obtain the second sample. The Minnesota Supreme Court held that the court-created-and-supervised path the State used violated the Fourth Amendment. It then held that it had to exclude the DNA evidence, rejecting application of the inevitable-discovery doctrine even though the State could have obtained the same crucial DNA evidence through a search warrant.

This outcome cannot be reconciled with *Nix* and the principles underlying the exclusionary rule. The inevitable-discovery doctrine asks an objective question:

what would have happened, not merely what had already begun. By converting that practical, fact-based inquiry into a rigid sequencing requirement, the decision below deepens an acknowledged conflict among courts and produces precisely the kind of geographic inconsistency this Court has long sought to avoid.

This case presents a clean vehicle for resolving the question, as the decision below makes clear that the court's approach to inevitable discovery dictated the suppression of evidence and the vacatur of Steeprock's attempted-murder and unlawful-firearm-possession convictions.

The petition should be granted.

OPINIONS BELOW

The Minnesota Supreme Court's opinion (App.3a-50a) is reported at 28 N.W.3d 417. The Minnesota Court of Appeals' opinion (App.51a-93a) is reported at 10 N.W.3d 683.

JURISDICTION

The Supreme Court of Minnesota issued its opinion on December 3, 2025, and entered judgment on December 17, 2025 (App.1a-2a). On March 17, 2026, Justice Kavanaugh granted the State's application for an extension of the time to file a petition for writ of certiorari until April 16, 2026. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides, in relevant part:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]

STATEMENT OF THE CASE

This case involves the attempted first-degree murder and unlawful-firearm-possession convictions of Respondent Seneca Steeprock. The victim was shot 15 times and suffered life-threatening injuries. App.5a-6a. The police investigation identified Steeprock and A.C. as suspects; they were using a car associated with the victim that was observed leaving the scene of the shooting. App.5a. Police staked out the car, and two days after the shooting they saw Steeprock and A.C. walking toward it. *Id.*

As officers approached, Steeprock ran. *Id.* A.C., who did not run, was arrested. App.6a. She had a handgun in her purse and forensic testing revealed that the gun had fired seven of the fifteen cartridge casings collected after the shooting. *Id.*

Officers chased Steeprock down a hill, eventually catching him lying in the snow with his left hand in a snowbank. App.5a. Steeprock was arrested. *Id.* Investigators initially found no evidence in the area where he was found. *Id.* A second search with a K9 trained to detect firearms, however, uncovered a gun in a snowbank

right where Steeprock was apprehended. App.6a. Forensic testing later determined that this gun fired eight of the fifteen cartridge casings found at the shooting scene. *Id*. Investigators swabbed the gun; later analysis showed the presence of DNA evidence. *Id*.

The State charged both Steeprock and A.C. with the attempted murder. App.6a-7a.

As part of the State's continuing investigation, officers applied for a search warrant to obtain buccal swabs from Steeprock and A.C. for DNA testing. App.6a. A district court judge signed the search warrant. *Id*. A.C. challenged the validity of the search warrant under *Franks v. Delaware*, 438 U.S. 154 (1978) (allowing challenge to truthfulness of statements in warrant application). App.7a. Rather than engage in the exercise of litigating a potential *Franks* issue, the State stipulated that it would not use any evidence obtained under the challenged search warrant—including Steeprock's buccal sample. *Id*.

The State, however, neither abandoned its pursuit of DNA evidence nor conceded any constitutional defect. Instead, the State pursued a second buccal sample from Steeprock through an alternative, then-authorized mechanism: Minnesota Rule of Criminal Procedure 9.02, subdivision 2(1)(f), which allows a court to issue a nontestimonial identification order ("NTO") to obtain identification evidence (*e.g.*, fingerprints, saliva, hair, handwriting samples) after a defendant has been charged. App.7a. An NTO requires a motion, notice to defense, and the State's demonstration that the evidence sought would "materially aid in determining whether the defendant committed the offense charged." App.8a. The district

court signed the order, authorizing the collection of Steeprock's DNA sample. *Id.*

The DNA sample linked Steeprock to the gun found in the snowbank. *Id.* A jury found him guilty of both attempted first-degree premeditated murder and unlawful possession of a firearm. Steeprock appealed. App.10a.

The Minnesota Court of Appeals reversed Steeprock's convictions, holding that the collection of a buccal swab for Steeprock's DNA pursuant to the NTO was an unreasonable search that violated his constitutional rights because the State did not obtain a search warrant. App.70a-71a. The Court of Appeals also rejected the application of the inevitable-discovery doctrine, concluding that the State did not meet its burden to show that Steeprock's DNA "inevitably would have been discovered by lawful means." App.75a (quotation omitted).

The Minnesota Supreme Court affirmed. First, it held that the collection of Steeprock's DNA based on the NTO was an unreasonable search that violated his constitutional rights. App.23a. The court reasoned that no exception to the warrant requirement applied, and that the Rule 9.02 standard (discovery "will materially aid in determining whether the defendant committed the offense charged") differed from the showing necessary to obtain a search warrant ("that contraband or evidence of a crime will be found in a particular place"). App.21a-22a.

Second, the Minnesota Supreme Court then overruled its own precedent and held, over a dissent, that the

exclusionary rule applied and that the inevitable-discovery doctrine was inapplicable. App.26a-32a.

The majority relied on various cases—including *Nix*—and concluded that the inevitable-discovery doctrine did not apply because there were "no historical facts showing that the State did anything to secure a search warrant after it agreed not to rely on the evidence it obtained pursuant to the earlier search warrant[.]" App.31a. The majority rejected the State's arguments that the State could have and would have obtained a search warrant had it not instead sought the DNA sample under Minnesota Rule of Criminal Procedure 9.02. App.32a.

Justice McKeig dissented on the inevitable-discovery ruling. App.42a-49a. She took issue with the majority's conclusion that it was "'speculation,' and 'not a historical fact,' '[t]hat the State arguably *could have* obtained a second search warrant if it had made any effort to apply for one[.]'" App.44a (emphasis in original). On the contrary, the "'demonstrated historical facts capable of ready verification' . . . firmly establishes that the State had ample grounds to obtain a search warrant for a buccal swab from Steeprock for comparison with DNA found on the handgun in the snowbank." App.45a.

The dissent explained that "investigators *had* previously applied for a search warrant under predictable police discovery procedures to obtain buccal swabs from Steeprock for DNA testing, and a district court signed the search warrant." App.44a. The dissent thus distinguished this case from one "where the process of obtaining a search warrant had barely begun or the likelihood of officers presenting an application for a

warrant was entirely speculative." App.44a-45a. Thus, the dissent continued, "[w]hile the court concludes that the State '*could have* obtained a second search warrant,' I conclude that the State *would have* obtained a second search warrant." App.45a (emphasis in original).

The dissent observed that the majority's inevitable-discovery decision conflicted not only with its reasoning in prior cases, but also *Nix*, and would result in a retrial with the exact same DNA evidence in this and every other case where a judge issued a Rule 9.02 order for DNA evidence. App.46a-48a.

REASONS FOR GRANTING THE WRIT

The decision below adopted a rigid and formalistic approach to the inevitable-discovery doctrine. Rather than asking whether objective, demonstrated historical facts show that lawful discovery would have occurred, the Minnesota Supreme Court effectively required proof that the State was already pursuing a second warrant at the relevant moment. In doing so, it deepened a division among state and federal courts over whether the inevitable-discovery doctrine is a flexible doctrine grounded in objective inevitability, or an inflexible one dependent on contemporaneous warrant-seeking efforts. The time is ripe to resolve that conflict.

The active pursuit rule applied by the Minnesota Supreme Court and several other courts conflicts with *Nix* and the purpose of the exclusionary rule. *Nix* sought to cabin the exclusionary rule to situations when "the prosecution is . . . put in a *better* position than it would have been in if no illegality had transpired." 467 U.S. at

443 (emphasis added). The active pursuit rule undermines that objective by applying the exclusionary rule outside those situations.

This Court has not meaningfully addressed the inevitable-discovery doctrine since *Nix*. This 40-plus-year silence has left widely varying thresholds of "inevitability," and state and federal courts have disagreed over how to implement the doctrine, which has significantly impeded uniformity in the administration of justice. *See, e.g.*, *United States v. Baez*, 983 F.3d 1029, 1038-39 (8th Cir. 2020) (acknowledging uncertainty in caselaw, even within same circuit, regarding the application of the inevitable-discovery doctrine). This case is a perfect vehicle through which to bring needed uniformity.

I. The Minnesota Supreme Court's Decision Deepens a Conflict Over Whether the Inevitable-Discovery Doctrine Requires Active Pursuit.

Nix established inevitable discovery as an exception to the exclusionary rule. This Court held that the government must establish, by a preponderance of the evidence, that discovery was inevitable, but did not spell out any further how lower courts should operationalize the test. Courts across the country have since struggled to apply that standard, leading to inconsistent application.

Courts tend to fall into one of two groups: (1) a minority that requires law enforcement to be actively pursuing a warrant or alternative line of investigation at the time of the warrantless search; and (2) a majority that adopts a more flexible approach, treating such pursuit as a relevant—but not dispositive—factor in the application

of the doctrine. The decision below adopted the minority approach. That choice was outcome-determinative: Steeprock's DNA sample would not have been excluded in jurisdictions applying the majority rule.

A. A minority of jurisdictions require active pursuit of a warrant or alternative line of investigation.

Multiple federal circuits and state supreme courts (including the Minnesota Supreme Court) have interpreted *Nix* narrowly and only apply the inevitable-discovery doctrine if there are other lawful investigatory paths already underway. Under this interpretation, the state must prove that it was lawfully pursuing a warrant or some other separate or parallel means of obtaining the evidence when the constitutional violation occurred. *See, e.g.*, *United States v. Jackson*, 596 F.3d 236, 241 (5th Cir. 2010); *United States v. Villarreal*, 161 F.4th 364, 368 (5th Cir. 2025); *United States v. Quinney*, 583 F.3d 891, 894-95 (6th Cir. 2009); *United States v. Conner*, 127 F.3d 663, 667 (8th Cir. 1997); *United States v. Pruneda*, 518 F.3d 597, 604 (8th Cir. 2008); *United States v. Eng*, 971 F.2d 854, 859 (2d Cir. 1992); *Rodriguez v. State*, 187 So. 3d 841, 849 (Fla. 2015); *Teal v. State*, 647 S.E.2d. 15, 21-22 (Ga. 2007); *State v. Barnes*, 259 N.E.3d 1176, 1186 (Ohio Ct. App. 3d 2024).

The primary rationale given for imposing the active pursuit requirement is that, without it, the inevitable-discovery doctrine would encourage law enforcement to engage in illegal conduct, remove any real consequences imposed by the exclusionary rule, and significantly diminish an individual's Fourth Amendment rights. *See*,

e.g., *Teal*, 647 S.E.2d at 21 (noting that the active pursuit rule is a judicial effort to prevent the inevitable-discovery doctrine from "emasculating" the search warrant requirement under the Fourth Amendment).

Courts in this group generally look to see whether law enforcement actually obtained a search warrant in some other investigation or were otherwise in active pursuit of one before conducting the warrantless search. *See*, *e.g.*, *Quinney*, 583 F.3d at 894-95 (requiring warrant issued before search); *Pruneda*, 518 F.3d at 604 (requiring active pursuit of warrant); *Teal*, 647 S.E.2d at 21-22 (requiring active pursuit of warrant before warrantless search). If law enforcement was not in active pursuit, then these courts hold that the inevitable-discovery doctrine does not apply.

B. Most jurisdictions adopt a more flexible inevitable-discovery approach.

In contrast, most federal courts and numerous state supreme courts have interpreted *Nix* more broadly, rejecting the requirement of a preexisting alternative path. These courts have held that the analysis should "focus on the questions of independence and inevitability[,] and remain flexible enough to handle the many different fact patterns which will be presented." *United States v. Silvestri*, 787 F.2d 736, 746 (1st Cir. 1986); *see also United States v. D'Andrea* 648 F.3d 1, 12 (1st Cir. 2011) (stating that there is no "independent line of investigation" requirement in the First Circuit); *United States v. Vasquez De Reyes*, 149 F.3d 192, 195 (3d Cir. 1998) ("It is the government's burden to show that the evidence at issue would have been acquired through lawful means, a burden that can be met

if the government establishes that the police, following routine procedures, would inevitably have uncovered the evidence."); *United States v. Tejada*, 524 F.3d 809, 813 (7th Cir. 2008) (holding that an "attractive middle ground is to require the government, if it wants to use the doctrine of inevitable discovery to excuse its failure to have obtained a search warrant, to prove that a warrant would certainly, and not merely probably, have been issued had it been applied for"); *United States v. Boatwright*, 822 F.2d 862, 864 (9th Cir. 1997) ("[T]he inevitable discovery doctrine will permit introduction of the evidence, whether or not two independent investigations were in progress."); *United States v. Larsen*, 127 F.3d 984, 987 (10th Cir. 1997) ("Neither the majority opinion in *Nix* nor our cases limit the inevitable discovery exception to lines of investigation that were already underway. They require only that the investigation that inevitably would have led to the evidence be independent of the constitutional violation."); *see also State v. Topanotes*, 76 P.3d 1159, 1163-64 (Utah 2003); *State v. Davolt*, 207 84 P.3d 456, 469 (Ariz. 2004); *Garnett v. State*, 308 A.3d 625, 649 (Del. 2023); *State v. Jackson*, 369 Wis.2d 673, 882 N.W.2d 422, 439 (2016); *State v. St. Yves*, 751 A.2d 108, 1023 (Me. 2000); *Oken v. State*, 327 Md. 628, 612 A.2d 258, 271 (1992); *State v. Garner*, 331 N.C. 491, 417 S.E.2d 502, 507-08 (1992).

Most courts following the majority approach, therefore, hold that a separate, untainted investigation is not a per se requirement, provided the prosecution can prove that the evidence would have been inevitably discovered by establishing historical facts independent of the illegal search. For example, the Ninth Circuit disavowed a strict interpretation of *Nix*, noting that some cases demonstrate inevitability in such a compelling way

"that operation of the exclusionary rule is a mechanical and entirely unrealistic bar, preventing the trier of fact from learning what would have come to light in any case." *Boatwright*, 822 F.2d at 864.

Courts that reject the minority approach do not require active pursuit. Instead, they treat it as one factor among several in assessing inevitability. For example, in *United States v. Christy*, the Tenth Circuit upheld inevitable discovery despite the officers' failure to seek a warrant. 739 F.3d 534, 541-44 (10th Cir. 2014). The court emphasized the strong showing of probable cause based on evidence obtained before the search and the absence of any evidence that police "jumped the gun" out of doubt about their ability to obtain a warrant. *Id.* Even though officers unlawfully entered the defendant's home based on a mistaken belief that the victim was in danger, the court held that the doctrine applied and admitted the evidence. *Id.* at 543-44.

The Tenth Circuit reached the same result in *United States v. Cunningham*, 413 F.3d 1199, 1201-02 (10th Cir. 2005). There, officers had sufficient information to support a warrant but did not pursue one, instead coercing consent and relying in part on evidence from the unlawful search to obtain a warrant. *Id.* The circuit court focused on the officers' strong pre-search probable cause and their preliminary steps toward obtaining a warrant, including drafting an affidavit, even though they were not actively pursuing one. *Id.*

This case would have come out differently under the more flexible and pragmatic majority approach. As in *Christy* and *Cunningham*, officers had strong probable

cause before the unlawful search: they identified Steeprock as a suspect through witness accounts, recorded jail calls, and other evidence, and they had probable cause to arrest him. When officers approached, Steeprock fled, and police recovered a firearm used in the shooting near the site of his apprehension.

Further, there is no indication that officers acted out of doubt about their ability to obtain a warrant. To the contrary, the State *did* obtain a warrant for Steeprock's DNA and abandoned only that particular DNA sample after Steeprock's accomplice challenged the warrant. Because DNA evidence was central to the case, the State once again sought judicial authorization for a DNA sample, this time through an established, post-arrest procedure. As the dissent explained, it was not speculative to conclude that the State would have obtained a valid warrant—"it was inevitable that the State would have pursued a search warrant to obtain Steeprock's DNA because the DNA evidence was crucial[.]" App.48a. Under the majority approach the inevitable-discovery doctrine would apply here given these facts.

* * *

Ultimately, courts have adopted two fundamentally different approaches to inevitable discovery in the warrant context. This divide has produced materially different outcomes in similar cases, resulting in disparate application of the inevitable-discovery doctrine as an exception to the exclusionary rule.

II. Courts, Like the Minnesota Supreme Court, that Impose an Active-Pursuit Requirement Conflict with *Nix* and the Purpose of the Exclusionary Rule

The Minnesota Supreme Court held that the State could not establish inevitable discovery because "no historical facts" showed that officers did anything to secure a second search warrant after the State agreed to not use evidence obtained from the initial, challenged warrant. App.31a. It dismissed as speculative the conclusion that the State would have obtained a warrant had it not proceeded under Minnesota's post-arrest discovery procedures. *Id.* That reasoning effectively converts *Nix's* requirement of "demonstrated historical facts" into a categorical contemporaneous-efforts rule. But *Nix* imposed no such requirement, and grafting one onto the doctrine would undermine its very purpose, which is to cabin the exclusionary rule to times when "the prosecution is . . . put in a *better* position than it would have been in if no illegality had transpired." *Nix*, 467 U.S. at 443 (emphasis added).

Nix articulated a straightforward standard: "[i]f the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means . . . then the deterrence rationale has so little basis that the evidence should be received." *Id.* at 444. The inquiry turns on objective inevitability grounded in reality—not on formalistic proof that the government was already pursuing the identical lawful path at the same time. Put differently, the question is not limited to what steps officers had already taken, but if the facts, viewed objectively, establish that

the information would inevitably have been discovered through lawful means.

The decision below departs from that framework and distorts the balance underlying the exclusionary rule. Generally, the rationale for the exclusionary rule is to exclude evidence unlawfully seized so that the prosecution is not put in a better position than it would have been if no illegality had occurred. *Id.* at 443. The inevitable-discovery doctrine preserves that balance by admitting evidence that would have been lawfully obtained in any event. By conditioning admissibility on the contemporaneous pursuit of a warrant, the court below substitutes a rigid timing requirement for the doctrine's practical, fact-based inquiry.

Nix itself confirms the error. In that case, this Court held that the disputed evidence (a body) would have inevitably been discovered by a search party that was searching the area when the constitutional violation occurred. *Id.* at 449-50. The Court admitted the evidence based on reasonable, fact-based inferences about what would have occurred, even though officers could not establish with certainty that the body would in fact have been discovered. *Id.* Although a volunteer search party was methodically searching the general area, police called off the search after the defendant led them to the location of the body. *Id.* The Court nevertheless concluded that discovery was inevitable, not because the government proved that the searchers would have uncovered the body as a matter of certainty, but because the surrounding facts supported a reasonable inference that they would have done so in the ordinary course. *Id.* That is the critical point: *Nix* permits courts to draw common-sense

inferences from established facts to determine what would inevitably have happened.

Properly applied, *Nix* compels the same inevitable-discovery conclusion here. Investigators had already established probable cause and secured a warrant for Steeprock's DNA. When the State agreed not to rely on that sample, it did not abandon its pursuit of that evidence. Rather, the State pursued another court-authorized path to obtain it. Although that path was later rejected by the Minnesota Supreme Court, that court did not dispute that the State could have lawfully sought and obtained a search warrant to collect the very same DNA sample. These facts establish far more than a hypothetical possibility of lawful discovery. They show that investigators possessed both the means and the incentive to obtain a valid warrant for Steeprock's DNA. Under *Nix*, that is sufficient.

The Minnesota Supreme Court nonetheless focused narrowly on the absence of steps to obtain a second warrant and required proof that the State "did anything" to secure one. App.31a. That de facto active pursuit requirement imposes a burden far beyond *Nix* and places dispositive weight on investigative timing rather than inevitability. In doing so, it puts the prosecution in a worse position because of prior error—the precise result the doctrine forbids. *Nix*, 467 U.S. at 443-44.

Nothing in *Nix* precludes courts from evaluating whether existing, lawfully obtained evidence would have supported a warrant. To the contrary, that inquiry is inherent in the doctrine's retrospective, fact-based analysis and is routinely undertaken by courts applying the majority approach. The contemporaneous pursuit of

a warrant may strengthen a showing of inevitability, but it is not a prerequisite.

That conclusion is reinforced by this Court's broader exclusionary-rule jurisprudence. The exclusionary rule is a "last resort," not a reflexive remedy. *Herring v. United States*, 555 U.S. 135, 141 (2009); *Hudson v. Michigan*, 547 U.S. 586, 590-91 (2006). The rule does not confer a personal constitutional right, nor does it exist to redress the injury caused by a violation. *Davis v. United States*, 564 U.S. 229, 236-37 (2011). Instead, its sole purpose is to deter future Fourth Amendment violations, a purpose that must be weighed against the substantial social costs of exclusion. *Id.*

As *Davis* observed, "there was a time when our exclusionary-rule cases were not nearly so discriminating in their approach to the doctrine." *Id.* at 237. The active-pursuit requirement emerged during that period, when several decisions suggested that the exclusionary rule was a "self-executing mandate implicit in the Fourth Amendment itself." *Id.* at 237. Unsurprisingly, many cases applying an active-pursuit requirement proceed on the premise that exclusion follows automatically, without assessing whether suppression would meaningfully deter future Fourth Amendment violations. Here they would not: the exclusionary rule should not have been applied to suppress Steeprock's DNA sample.

III. This Case is an Ideal Vehicle to Resolve a Question of Exceptional Importance.

The decision below squarely presents a recurring and consequential Fourth Amendment question on which

lower courts are divided: whether the inevitable-discovery doctrine turns on objective historical facts demonstrating that lawful discovery would have occurred or instead requires a contemporaneous active pursuit of a warrant or an alternative line of investigation at the time of the challenged conduct.

That conflict carries substantial, real-world consequences. The inflexible, active pursuit requirement disregards the practical realities of policing, where officers act without the benefit of hindsight and often rely in good faith on warrant exceptions or, as here, a judicially approved process. It effectively demands that law enforcement anticipate future legal challenges and pursue redundant warrants as a precaution. At the same time, it creates unequal Fourth Amendment protections across jurisdictions—granting defendants in some courts broader remedies than others based solely on geography. The division is entrenched, frequently outcome-determinative, and in clear need of this Court's guidance.

This Court's review is warranted to resolve the division, reaffirm that inevitable discovery is a pragmatic doctrine grounded in demonstrated facts, and restore uniformity to the Fourth Amendment. This case presents an ideal vehicle. The facts are undisputed, this legal issue was fully litigated below, and the decision below rests squarely on the questions presented.

CONCLUSION

The petition for writ of certiorari should be granted.

Dated: April 16, 2026

Respectfully submitted,

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APPENDIX

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APPENDIX A — JUDGMENT OF THE STATE OF MINNESOTA SUPREME COURT, FILED DECEMBER 18, 2025

STATE OF MINNESOTA
SUPREME COURT

Appellate Court # A23-0875
Trial Court # 69DU-CR-21-26

STATE OF MINNESOTA,

Appellant/Cross-Respondent,

vs.

SENECA WARRIOR STEEPROCK,

Respondent/Cross-Appellant.

December 18, 2025

JUDGMENT

Pursuant to a decision of the Minnesota Supreme Court duly made and entered, it is determined and adjudged that the decision of the St. Louis County District Court, Duluth Office herein appealed from be and the same hereby is reversed and remanded. Judgment is entered accordingly.

Dated and signed: December 18, 2025

FOR THE COURT

Attest: Christa Rutherford-Block
Clerk of the Appellate Courts

By: /s/ Christa Rutherford-Block
Clerk of the Appellate Courts

STATE OF MINNESOTA
SUPREME COURT

TRANSCRIPT OF JUDGMENT

I, Christa Rutherford-Block, Clerk of the Appellate Courts, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my signature at the Minnesota Judicial Center,

In the City of St. Paul *December 18, 2025*
Dated

Attest: Christa Rutherford-Block
Clerk of the Appellate Courts

By: /s/ Christa Rutherford-Block
Clerk of the Appellate Courts

APPENDIX B — OPINION OF THE SUPREME COURT OF MINNESOTA, FILED DECEMBER 3, 2025

SUPREME COURT OF MINNESOTA

A23-0875

STATE OF MINNESOTA,

Appellant/Cross-Respondent,

v.

SENECA WARRIOR STEEPROCK,

Respondent/Cross-Appellant.

Filed: December 3, 2025

OPINION

McKeig, J., filed opinion concurring in part and dissenting in part, which Moore, III, J., joined.

GAÏTAS, Justice.

Respondent/cross-appellant Seneca Warrior Steeprock was charged with attempted first-degree premeditated murder and unlawful possession of a firearm following a shooting in Duluth. Before trial, the district court ordered Steeprock to submit to a buccal swab—a swabbing of the inside of the cheek—for DNA testing

pursuant to Minnesota Rule of Criminal Procedure 9.02, subdivision 2 (1)(f). Relying solely on the district court's order, investigators collected a buccal swab from Steeprock, who was in jail. At trial, appellant/cross-respondent State of Minnesota presented DNA evidence from the buccal swab that connected Steeprock to the shooting, as well as recorded phone calls and texts of Steeprock's alleged accomplice that implicated Steeprock in the crime. Steeprock was convicted and sentenced to prison. The court of appeals reversed, determining that the warrantless buccal swab violated Steeprock's constitutional rights and required a new trial, but that Steeprock was not entitled to an accomplice-corroboration jury instruction. The State petitioned for review, arguing that the warrantless buccal swab was lawful because it was taken pursuant to a court order. Steeprock conditionally cross-petitioned for review, contending, in part, that the district court erroneously denied his request for an accomplice-corroboration jury instruction. We granted both petitions.

We conclude that the warrantless buccal swab was an unconstitutional search, that no exception to the exclusionary rule applies, and that the erroneous admission of the DNA evidence obtained from the buccal swab at Steeprock's trial was not harmless beyond a reasonable doubt. In addition, we conclude that Steeprock was not entitled to an accomplice-corroboration jury instruction because the statements of his alleged accomplice were not made under oath. We therefore affirm the decision of the court of appeals.

FACTS

On a December afternoon in 2020, C.J. was shot multiple times in a Duluth apartment. Although C.J. survived, he sustained significant injuries and lost nearly half of his blood. C.J. told investigators that he did not remember who shot him. The apartment resident did not see who shot C.J., but she told investigators that two or three people had entered her apartment before the shooting, that one person sounded like a male and another sounded like a female, and that there were two different guns.

Investigators learned that C.J. had been in Duluth visiting his cousin T.J. On the day before the shooting, C.J. spent time with T.J.'s friend, A.C. Investigators discovered that C.J. had a pre-existing conflict with A.C.'s brother, M.C.

Following the shooting, investigators located C.J.'s car parked outside the Gateway Towers apartment building. Steeprock and A.C., who were suspects in the shooting, exited the apartment building and approached the car. When Steeprock saw the investigators, he ran. A police sergeant chased Steeprock until Steeprock stopped at the bottom of a snowy hill, lay down on the ground, and spread his arms out to his sides. Investigators arrested Steeprock. When he was arrested, Steeprock did not possess a gun. Investigators searched the area but did not find a gun.

Another investigator arrested A.C. in the Gateway Towers parking lot. Officers searched her purse and discovered a handgun inside.

Investigators collected DNA from the gun inside A.C.'s purse. Subsequent analysis revealed that the gun contained a mixture of DNA that was consistent with the DNA of at least three individuals, including A.C. Forensic testing showed that the gun in A.C.'s purse fired seven of fifteen cartridge casings collected from the Duluth apartment after the shooting.

Investigators again searched the location where Steeprock had been apprehended. This time, with the assistance of a dog, investigators found a handgun buried in a snowbank. They later determined that this second gun fired eight of the fifteen cartridge casings found at the shooting scene. Investigators also swabbed the gun, and a later analysis of the sample revealed the presence of DNA evidence.

As part of the investigation, investigators applied for a search warrant to obtain, among other things, buccal swabs[1] from Steeprock and A.C. for DNA testing. A district court judge signed the search warrant.

Based on the investigation, the State charged Steeprock with attempted first-degree premeditated murder under an aiding and abetting theory of liability.

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1. A buccal swab is a method of DNA collection that "involves gently swab[bing] the inside of the cheek [with a sterile cotton swab]." *State v. Johnson*, 813 N.W.2d 1, 5 (Minn. 2012) (alteration in original) (citation omitted) (internal quotation marks omitted).

Minn. Stat. § 609.17, subd. 1; Minn. Stat. § 609.185(a) (1); Minn. Stat. § 609.05, subd. 1.[2] Additionally, the State charged him with unlawful possession of a firearm. Minn. Stat. § 624.713, subd. 1 (2). Steeprock pleaded not guilty to the charges and requested a jury trial.

The State also charged A.C. with shooting C.J. A.C. then challenged the validity of the search warrant under *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978) (establishing a test through which a defendant may seek to invalidate a warrant by challenging the truthfulness of factual statements in the warrant application). After A.C.'s challenge, the State, in Steeprock's case, stipulated that it would not use any evidence obtained pursuant to the challenged search warrant—including Steeprock's buccal sample.

The State did not seek a new search warrant to obtain Steeprock's DNA for comparison with DNA found on the handgun from the snowbank. Instead, relying on Minnesota Rule of Criminal Procedure 9.02, subdivision 2 (1)(f), the State moved the district court to order Steeprock to produce a "saliva sample."[3] That rule allows a district

2. The State later abandoned the aiding and abetting theory and prosecuted Steeprock as a principal offender.

3. Minnesota Rule of Criminal Procedure 9.02, subdivision 2 (1)(f), expressly authorizes the ordering of *saliva samples*, but does not expressly reference buccal swabs—though the rule's language indicates that the list of bodily materials that the court may order a defendant to provide is non-exhaustive. Minn. R. Crim. P. 9.02, subd. 2 (1)(f) ("[T]he court before trial may, subject to constitutional limitations, order a defendant to: . . . (f) Permit the taking of blood, hair, saliva, urine, *or samples of other*

court to order, "subject to constitutional limitations," enumerated pretrial "discovery procedures" when the prosecution shows that the procedures "will materially aid in determining whether the defendant committed the offense charged." Minn. R. Crim. P. 9.02, subd. 2 (1)(f). Over Steeprock's constitutional objection, the district court granted the State's motion and ordered Steeprock to provide a DNA sample. Investigators took a sample of Steeprock's DNA via buccal swab while he was in custody in Douglas County.

Using the buccal swab collected pursuant to the district court's order, investigators compared Steeprock's DNA to the DNA found on the gun retrieved from the snowbank. Investigators determined that the gun contained a mixture of DNA from at least four individuals. One of the DNA profiles in the mixture was consistent with Steeprock's DNA.

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bodily materials that do not involve unreasonable intrusion . . . ." (emphasis added)).

Here, the State moved the district court to order Steeprock to submit a *saliva sample* for comparative DNA analysis under Rule 9.02, subdivision 2 (1)(f). The district court ordered Steeprock to "provide a DNA sample" to the State, not specifying whether he was required do so via buccal swab or saliva sample. Instead of taking a saliva sample, as is explicitly authorized in Rule 9.02, law enforcement obtained Steeprock's DNA by taking a buccal swab.

The court of appeals decision refers to Steeprock's DNA sample as having been collected by a "saliva sample." *State v. Steeprock*, 10 N.W.3d 683, 688 (Minn. App. 2024). Because the record shows that his DNA was collected via a buccal swab, we use the term "buccal swab" throughout this opinion to refer to the DNA collection process.

At Steeprock's jury trial, the State argued to the jury that Steeprock was one of two assailants who shot C.J. The State relied, in part, on DNA evidence. A forensic scientist testified that DNA found on the gun from the snowbank matched a "known DNA or reference sample[ ]" from Steeprock.

The State also relied on A.C.'s phone calls and text messages from jail. Over Steeprock's objection, the district court allowed the State to admit into evidence four recordings of jail phone calls between A.C. and her brother, M.C. It also permitted the State to introduce six text messages that A.C. sent and received while in jail. In these phone calls and messages, A.C. discussed her plan to shoot someone and the shooting itself, and she referenced Steeprock. The district court determined that these communications were admissible under the statement-against-interest exception to the hearsay rule. *See* Minn. R. Evid. 804(b)(3) (providing that a hearsay statement is admissible if, at the time it was made, the statement was "so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability . . . that a reasonable person in the declarant's position would not have made the statement unless believing it to be true").

Steeprock asked the district court to instruct the jury on the statutory requirement for corroboration of accomplice testimony, arguing that A.C.'s phone calls and texts were the equivalent of accomplice testimony.[4]

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4. *See* Minn. Stat. § 634.04 (providing that "[a] conviction cannot be had upon the testimony of an accomplice, unless it

The district court denied Steeprock's motion, determining that A.C.'s out-of-court statements did not constitute "testimony."

The jury found Steeprock guilty of both attempted first-degree premeditated murder and unlawful possession of a firearm. After entering convictions for both offenses, the district court sentenced Steeprock to concurrent prison terms of 240 months for attempted first-degree murder and 60 months for unlawful possession of a firearm.

Steeprock appealed to the court of appeals. Before the court of appeals, he challenged the constitutionality of the warrantless DNA sample taken pursuant to the district court's order, the district court's denial of his request for an accomplice-corroboration jury instruction, and the district court's admission of A.C.'s out-of-court statements under the statement-against-interest exception to the hearsay rule.[5] *State v. Steeprock*, 10 N.W.3d 683, 691 (Minn. App. 2024).

In a unanimous decision, the court of appeals reversed Steeprock's convictions and remanded for a new trial. It concluded that the State obtained Steeprock's DNA

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is corroborated by such other evidence as tends to convict the defendant of the commission of the offense").

5. Steeprock also moved to strike parts of the State's supplemental response brief before the court of appeals, but that is not relevant to this appeal. *State v. Steeprock*, 10 N.W.3d 683, 705–06 (Minn. App. 2024).

during an unconstitutional warrantless search, that no exception to the exclusionary rule applied, and that the DNA evidence erroneously admitted at trial was not harmless beyond a reasonable doubt. *Id.* at 706. Although the constitutional violation required a new trial, the court of appeals also considered Steeprock's argument regarding the requested accomplice-corroboration jury instruction, noting that the issue was likely to recur during any new trial. *Id.* at 701. The court of appeals determined that the district court did not err in declining to give an accomplice-corroboration jury instruction because A.C.'s phone calls and texts were not "testimony." *Id.* at 704. Finally, the court of appeals declined to address the merits of Steeprock's hearsay argument. *Id.* at 704–05.

The State petitioned for review of the court of appeals' decision regarding the constitutionality of the district court's order for Steeprock's DNA. Steeprock filed a conditional cross-petition, seeking review of the two additional issues raised before the court of appeals. We granted both petitions.

ANALYSIS

I.

We first consider whether the district court's discovery order requiring Steeprock to provide a DNA sample resulted in an unconstitutional search that necessitates reversal of Steeprock's convictions and remand for a new trial. The State argues that collecting a buccal swab from Steeprock was a limited intrusion that did not require a

search warrant and could be authorized instead by a court order under the Minnesota Rules of Criminal Procedure. Moreover, the State contends, even if the buccal swab was an unconstitutional search, the suppression of the resulting DNA evidence is unnecessary because exceptions to the exclusionary rule apply. Finally, the State maintains that even if the district court erroneously admitted the DNA evidence at Steeprock's trial, the error was harmless beyond a reasonable doubt. The State urges us to reverse the court of appeals' decision, which concluded that the buccal swab was an unconstitutional search and that the admission of the resulting DNA evidence prejudiced the outcome of Steeprock's trial. We address the constitutionality of the district court's order here in Part I and address the State's arguments that an exception to the exclusionary rule applies and that any error was harmless in Part II.

In considering the court of appeals' decision, several fundamental constitutional principles guide our analysis. Both the Fourth Amendment to the United States Constitution and Article 1, Section 10 of the Minnesota Constitution prohibit "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. The prevailing purpose of these provisions "is to protect personal privacy and dignity against unwarranted intrusion by the State." *Schmerber v. California*, 384 U.S. 757, 767, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966).

Constitutional protections extend to intrusions into the body. *Id.* Indeed, "a compelled physical intrusion" into a person's body to collect evidence for a criminal

prosecution "implicates an individual's most personal and deep-rooted expectations of privacy." *Missouri v. McNeely*, 569 U.S. 141, 148, 133 S.Ct. 1552, 185 L.Ed.2d 696 (2013) (citation omitted) (internal quotation marks omitted).

"The touchstone of our analysis under the Fourth Amendment is always the reasonableness in all circumstances of the particular governmental invasion of a citizen's personal security." *State v. Bartylla*, 755 N.W.2d 8, 15 (Minn. 2008) (quoting *Pennsylvania v. Mimms*, 434 U.S. 106, 108–09, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977)). Generally, "the reasonableness of a search depends on governmental compliance with the Warrant Clause, which requires authorities to demonstrate probable cause to a neutral magistrate and thereby convince [the magistrate] to provide formal authorization to proceed with a search by issuance of a particularized warrant." *Id.* "A search is presumptively unreasonable unless it is conducted under a valid warrant or a specific exception to the warrant requirement applies." *State v. McNeilly*, 6 N.W.3d 161, 175 (Minn. 2024). We review the constitutionality of a search or seizure de novo. *Id.*

With these principles in mind, we turn to the question of whether investigators conducted a warrantless search by collecting a buccal swab from Steeprock.

A.

In considering whether there was an unreasonable search, the threshold question is whether there was a

search. "A search occurs when the government intrudes upon a 'reasonable expectation of privacy' to gain information." *State v. Westrom*, 6 N.W.3d 145, 153 (Minn. 2024) (quoting *Katz v. United States*, 389 U.S. 347, 360, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) (Harlan, J., concurring)); *see also State v. Leonard*, 943 N.W.2d 149, 156 (Minn. 2020) (stating that under the Minnesota Constitution, "a search occurs when law enforcement intrudes upon an individual's subjective expectation of privacy that society is prepared to recognize as reasonable").

The State conceded in its briefing and during oral argument that investigators conducted a search when they performed a buccal swab to collect Steeprock's DNA. Indeed, whether a buccal swab for DNA analysis constitutes a search is a settled question. In *Maryland v. King*, the United States Supreme Court held that "using a buccal swab on the inner tissues of a person's cheek in order to obtain DNA samples is a search." 569 U.S. 435, 446, 133 S.Ct. 1958, 186 L.Ed.2d 1 (2013). We therefore agree with the parties that investigators conducted a search when they took a buccal swab from Steeprock to collect his DNA.

B.

Because we have concluded that the collection of Steeprock's DNA was a search, we next consider whether the search was reasonable under the United States and Minnesota Constitutions. "Generally, a search conducted without a warrant is per se unreasonable." *State v. Rohde*, 852 N.W.2d 260, 263 (Minn. 2014) (citation

omitted) (internal quotation marks omitted). However, a warrantless search may be reasonable, and thus constitutional, if it falls within an exception to the warrant requirement. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008); *Coolidge v. New Hampshire*, 403 U.S. 443, 454–55, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). The State bears the burden of establishing that an exception to the search warrant requirement applies. *State v. Licari*, 659 N.W.2d 243, 250 (Minn. 2003).

Here, it is undisputed that the State did not obtain a search warrant before collecting Steeprock's DNA; the district court's discovery order, which authorized the buccal swab, was not a search warrant. Thus, as a general matter, the buccal swab was an unconstitutional search unless a specific exception to the warrant requirement applies. *See McNeilly*, 6 N.W.3d at 175.

The State seemingly asks us to recognize an exception to the search warrant requirement for "limited" investigatory searches or seizures that occur after a person is charged with a crime.[6] As support for this proposition, the State cites to other jurisdictions that allow for the collection of some types of identification evidence pursuant to court-issued discovery orders.[7]

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6. When asked to clarify at oral argument, the State explained that it is seeking an exception to the warrant requirement. But the State's brief did not explicitly ask us to adopt a new exception.

7. The State cites two federal cases for the proposition that the Fourth Amendment allows certain "limited" searches based on less than probable cause. *See United States v. Brignoni-Ponce*,

See, e.g., *People v. Madson*, 638 P.2d 18, 31–33 (Colo. 1981) (handwriting exemplar); *Bousman v. Iowa Dist. Ct.*, 630 N.W.2d 789, 798 (Iowa 2001) (saliva sample); *In re Nontestimonial Identification Ord. Directed to R.H.*, 171 Vt. 227, 762 A.2d 1239, 1246 (2000) (saliva sample); *State v. Rodriguez*, 186 Ariz. 240, 921 P.2d 643, 650–51 (1996) (palm print); *State v. Hall*, 93 N.J. 552, 461 A.2d 1155, 1161 (1983) (appearance in a lineup). And the State points out that Rule 9.02, subdivision 2 (1)(f), of the Minnesota Rules of Criminal Procedure—the rule that the district court relied on to order the buccal swab at issue here—already authorizes a warrantless search for DNA evidence when a defendant has been charged with a crime and the district court determines that the evidence would "materially aid in determining whether the defendant committed the offense charged." Minn. R. Crim. P. 9.02, subd. 2 (1)(f). That rule provides, in relevant part,

> [o]n the prosecutor's motion, with notice to the defense and a showing that one or more of the discovery procedures below will materially aid in determining whether the defendant committed the offense charged, the court before trial may, subject to constitutional limitations, order a defendant to:
>
> . . . .

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422 U.S. 873, 881–84, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975); *Davis v. Mississippi*, 394 U.S. 721, 724–27, 89 S.Ct. 1394, 22 L.Ed.2d 676 (1969). Neither of these cases adopted a "limited search" exception to the warrant requirement, however.

> (f) Permit the taking of blood, hair, saliva, urine, or samples of other bodily materials that do not involve unreasonable intrusion, but the court must not permit a blood sample to be taken except on a showing of probable cause to believe that the test will aid in establishing the defendant's guilt . . . .

Id.

Steeprock disagrees that the cases from other jurisdictions or Rule 9.02, subdivision 2 (1)(f), support an exception to the warrant requirement. He emphasizes that the challenged conduct—collecting a buccal swab from him for DNA testing—was more intrusive than the activity addressed by some of the State's cited case law. Steeprock also notes that the few decisions from other jurisdictions that have allowed warrantless searches of a person's mouth are inconsistent with established Minnesota law. *See Ord. Directed to R.H.*, 762 A.2d at 1244–7 (upholding a warrantless, court-ordered saliva collection, in part, because of the court's view of its level of intrusiveness and stating that "by talking and yawning, we frequently expose the interior of our mouth to public view."); *Bousman*, 630 N.W.2d at 798 (upholding a statute authorizing court-ordered "investigatory detentions to obtain identifying information from a suspect based on less than probable cause," in part, because saliva sampling does not "involve[ ] a significant intrusion into a person's bodily security"). He points out that we held in *State v. Hardy* that a police officer's request for a suspect to open his mouth so that the officer could check for drugs was

sufficiently intrusive that it constituted an unreasonable search for which probable cause was required. 577 N.W.2d 212, 216 (Minn. 1998).

Steeprock also observes that Rule 9.02, subdivision 2 (1)(f), requires a district court to defer to constitutional requirements. The rule states that any court order for identification evidence is "subject to constitutional limitations." Minn. R. Crim. P. 9.02, subd. 2 (1)(f).

We reject the State's apparent invitation to recognize an exception to the warrant requirement for investigatory buccal swabs once an individual has been charged with a criminal offense. In so doing, we accept that a buccal swab is a relatively unintrusive method of collecting evidence from a person's body. *See King*, 569 U.S. at 446, 133 S.Ct. 1958 (characterizing a buccal swab as a "negligible" physical intrusion that is "far more gentle" than a blood draw). We also note that in *King*, the United States Supreme Court upheld the constitutionality of a warrantless buccal swab performed as a routine booking procedure to identify arrestees in jail pursuant to a Maryland statute, comparing an individual's DNA profile to a fingerprint and observing that DNA is "another metric of identification used to connect the arrestee with his or her public persona." 569 U.S. at 451, 133 S.Ct. 1958. And we acknowledge that Rule 9.02, subdivision 2 (1)(f), of our criminal procedure rules authorizes a district court to order a charged defendant to provide "saliva" if it "will materially aid in determining whether the defendant committed the offense charged," so long as the order is "subject to constitutional limitations." For four reasons, however, we disagree with the State that there is—or

should be—an exception to the constitutional warrant requirement for investigatory buccal swabs of charged defendants.

First, the law recognizes a distinction between a routine booking procedure, such as the one upheld in *King*, and a search to discover evidence of wrongdoing, such as the one at issue here. "When law enforcement seeks to conduct a search *to uncover evidence of criminal wrongdoing*, reasonableness typically requires law enforcement to obtain a judicial warrant . . . ." *State v. Thompson*, 886 N.W.2d 224, 228 (Minn. 2016) (emphasis added); *see also Riley v. California*, 573 U.S. 373, 382, 134 S.Ct. 2473, 189 L.Ed.2d 430 (2014) ("[W]here a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, . . . reasonableness generally requires the obtaining of a judicial warrant." (citation omitted) (internal quotation marks omitted)); *McNeely*, 569 U.S. at 148, 133 S.Ct. 1552 (considering the government's purpose "*for use as evidence in a criminal investigation*" in determining the reasonableness of taking a warrantless blood sample from a suspected drunk driver (emphasis added)); *King*, 569 U.S. at 469, 133 S.Ct. 1958 (Scalia, J., dissenting) (stating that whether a search's "principal end is ordinary crime-solving" is central to determining its constitutionality); *cf. King*, 569 U.S. at 449–56, 65, 133 S.Ct. 1958 (observing that, under the authorizing statute, "[n]o purpose other than identification is permissible").

Second, although the immediate physical intrusion of a buccal swab may be minimal, "[f]orensic DNA technology

has come a long way since *King*." *State v. Carbo*, 6 N.W.3d 114, 128 (Minn. 2024) (Procaccini, J., concurring). Law enforcement can retain DNA evidence, which can provide highly sensitive genetic information, including ancestry, disease carrier status, and physical traits. *Birchfield v. North Dakota*, 579 U.S. 438, 462–63, 136 S.Ct. 2160, 195 L.Ed.2d 560 (2016) (stating that buccal swab DNA samples "put into the possession of law enforcement authorities a sample from which a wealth of additional, highly personal information could potentially be obtained"); *Carbo*, 6 N.W.3d 114, 128–29 (Procaccini, J., concurring). Accordingly, a buccal swab obtained for DNA testing may result in a greater intrusion than the physical collection procedure itself.

Third, we are not persuaded by the case law that the State offers in support of its proposed exception. The State offers no federal precedent to support its argument. And the case law from other states is unavailing for the reasons Steeprock sets forth.

Finally, although Rule 9.02, subdivision 2 (1)(f), authorizes a district court to order a charged defendant to provide "saliva" if it "will materially aid in determining whether the defendant committed the offense charged," the rule, by its plain terms, is "subject to constitutional limitations." Accordingly, the rule itself does not dispense with constitutional requirements, including the requirement for a search warrant to conduct a search.

When a warrantless search does not fall within an established exception to the constitutional requirement

for a search warrant, it is per se unreasonable. *State v. Hummel*, 483 N.W.2d 68, 72 (Minn. 1992). Here, the State fails to meet its burden to show that an established exception to the warrant requirement justified the warrantless buccal swab. Thus, we conclude that it was an unreasonable search.

This, however, does not end our analysis because the State, as an alternative argument, suggests that the district court's order authorizing the search under Rule 9.02, subdivision 2 (1)(f), was functionally equivalent to a search warrant. We next address that argument.

C.

The State contends that the district court, by authorizing the search under Rule 9.02, subdivision 2 (1)(f), "made what was essentially the equivalent of a probable-cause determination." The State notes that there must be probable cause to charge a defendant with a crime before a district court can order the defendant to produce saliva under Rule 9.02, subdivision 2 (1)(f). And it argues that the requirement in the rule that evidence "will materially aid" a prosecution is "as strong" as the constitutional requirement for probable cause.

We also reject this argument. The standard for probable cause to search is distinct from the standard for probable cause to charge. *Compare State v. Lopez*, 778 N.W.2d 700, 703 (Minn. 2010) (stating that probable cause to charge an individual with a crime requires "facts . . . showing a reasonable probability that *the person committed the*

crime" (emphasis added)), *with State v. Wiggins*, 4 N.W.3d 138, 145 (Minn. 2024) (stating that probable cause to search "requires a fair probability that *contraband or evidence of a crime will be found in a particular place*" (emphasis added) (citation omitted) (internal quotation marks omitted)). Moreover, the "materially aid" standard is different than the probable-cause-to-search standard. While the probable-cause-to-search standard requires a sufficient showing "*that* contraband or evidence of a crime will be found in a particular place," the "materially aid" standard only requires a sufficient showing that the discovery will aid in determining "*whether* the defendant committed the offense charged." *Compare* Minn. R. Crim. P. 9.02, subd. 2 (1) (requiring a determination that the ordered discovery procedure "will materially aid in determining *whether the defendant committed the offense charged*" (emphasis added)), *with Wiggins*, 4 N.W.3d at 145 (stating that probable cause to search "requires a fair probability *that contraband or evidence of a crime will be found in a particular place*" (emphasis added) (citation omitted) (internal quotation marks omitted)). The State thus fails to offer a convincing argument as to how these standards are equivalent.

Further, under both the United States and Minnesota Constitutions, an affiant seeking a search warrant must provide information establishing probable cause under "[o]ath or affirmation." U.S. Const., amend. IV; Minn. Const., art. I, § 10. Here, the request for an order compelling a buccal swab under Rule 9.02, subdivision 2 (1)(f), was supported only by the prosecutor's unsworn statements. Even if we assumed the standards were

equivalent, the State failed to comply with a requirement for a search warrant.

At oral argument, the attorney representing the State advised that district courts commonly authorize buccal swabs of charged defendants under Rule 9.02, subdivision 2 (1)(f). We emphasize that discovery orders issued under Rule 9.02, subdivision 2 (1)(f), must comply with constitutional requirements and the rule does not provide an exception to the requirement for a warrant. Because a buccal swab is a search, the government may perform a buccal swab only pursuant to a valid search warrant or a recognized exception to the warrant requirement.

Here, there was no warrant authorizing the buccal swab, and no exception to the warrant requirement applied. Thus, the buccal swab was an unreasonable search that violated Steeprock's rights under the United States and Minnesota Constitutions.

II.

Because we conclude that the collection of Steeprock's DNA was an unreasonable search, we next consider whether the DNA evidence should have been suppressed under the exclusionary rule.

When the government obtains evidence in violation of the constitutional protection against unreasonable searches and seizures, the exclusionary rule generally prohibits using the evidence in a criminal proceeding against the individual whose rights were violated.

United States v. Calandra, 414 U.S. 338, 347, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974); *State v. Horst*, 880 N.W.2d 24, 36 (Minn. 2016). The exclusionary rule is a judicially created remedy that prohibits using "evidence obtained in violation of the Fourth Amendment . . . in a criminal proceeding against the victim of the illegal search and seizure." *Calandra*, 414 U.S. at 347, 94 S.Ct. 613; *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961) (extending the exclusionary rule to apply to the states). The purpose of the exclusionary rule under the United States Constitution is to deter unlawful police conduct. *Stone v. Powell*, 428 U.S. 465, 486, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976). We have acknowledged additional purposes for the exclusionary rule under the Minnesota Constitution, including preserving judicial integrity and deterring unlawful government conduct more generally. *State v. Malecha*, 3 N.W.3d 566, 572, 577 n.4, 578 (Minn. 2024).

Suppression of evidence is not required when an exception to the exclusionary rule applies, however. *See State v. Lindquist*, 869 N.W.2d 863, 868–69 (Minn. 2015). Because the exclusionary rule is a remedy and is thus "analytically distinct . . . from whether a constitutional violation occurred," the rule does not "require automatic suppression of evidence obtained by unlawful means." *Lindquist*, 869 N.W.2d at 872 (citation omitted) (internal quotation marks omitted). We have declined to apply the exclusionary rule to address violations of Article 1, Section 10 of the Minnesota Constitution when applying the rule would not serve its underlying remedial objectives. *Id.* at 870–71. Thus, we have recognized several exceptions to

the exclusionary rule, including the inevitable discovery exception, *Licari*, 659 N.W.2d at 254; a limited good-faith exception, *Lindquist*, 869 N.W.2d at 876; and the independent source doctrine, *State v. Hodges*, 287 N.W.2d 413, 415–16 (Minn. 1979).

The State argues that two of those exceptions apply here: the inevitable discovery exception and the good-faith exception. We consider each of these exceptions in turn.

A.

The inevitable discovery exception to the exclusionary rule provides that “[i]f the [S]tate can establish by a preponderance of the evidence that the fruits of a challenged search ‘ultimately or inevitably would have been discovered by lawful means,’ then the seized evidence is admissible even if the search violated the warrant requirement.” *Licari*, 659 N.W.2d at 254 (quoting *Nix v. Williams*, 467 U.S. 431, 444, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984)). Under this exception, the State may not rely on “speculative elements” but instead must “focus[ ] on demonstrated historical facts capable of ready verification or impeachment.” *Id.* (quoting *Nix*, 467 U.S. at 444–45 n.5, 104 S.Ct. 2501); *see also Nix*, 467 U.S. at 435–36, 444, 104 S.Ct. 2501 (applying the inevitable discovery exception where the historical facts showed that, despite the constitutional violation, law enforcement would have inevitably discovered the evidence). Importantly, “[t]he State may not show inevitable discovery by claiming that if it had not searched illegally, it would have done so legally.” *State v. Diede*, 795 N.W.2d 836, 849 (Minn. 2011).

The State bears the burden to show inevitable discovery. *See id.* at 850.

The State argues that Steeprock's DNA evidence was properly admitted under the inevitable discovery exception because DNA "is identity evidence that can—and if necessary would—be obtained lawfully with a search warrant instead of a Rule 9.02 order." In other words, the State seems to argue that because DNA evidence never changes, it can always be inevitably discovered by lawful means. For this proposition, the State relies primarily on our decision in *In re Welfare of J.W.K.*, 583 N.W.2d 752 (Minn. 1998).

In *J.W.K.*, we applied the inevitable discovery exception to the exclusionary rule to reverse the suppression of a juvenile's DNA. *Id.* at 757. The juvenile consented to a blood draw for DNA comparison to evidence obtained at the scene of a crime. *Id.* at 753–54. Although the juvenile was ruled out as a suspect, investigators retained the juvenile's blood sample. *Id.* at 754. Later, and without the juvenile's consent, investigators compared DNA obtained from the blood sample to DNA collected from the scene of a separate crime, and they determined that there was a match. *Id.* Based on the confirmatory DNA evidence, the juvenile confessed to the separate crime. *Id.*

The district court determined that investigators did not have consent to retain the juvenile's DNA evidence and suppressed both the DNA evidence and the juvenile's resulting confession. *Id.* at 754. The court of appeals affirmed. *Id.* at 753. We reversed, however, reasoning that,

if investigators "had not submitted the sample in question for DNA profiling in connection with the other offense, . . . they presumably would have tried to obtain . . . permission" to do so. *Id.* at 757. And, we noted, if investigators had sought and obtained consent, the original blood-sample DNA evidence would have connected the juvenile to the separate crime because "unlike alcohol in the blood, . . . the DNA profile present in one's blood stays the same from day to day." *Id.* Moreover, we reasoned that, if the juvenile had refused to consent to DNA testing, "the police presumably would have sought and obtained a warrant authorizing either the taking of a new sample or the submission of the previously-obtained sample . . . for DNA profiling." *Id.* We observed that the record contained sufficient facts to establish probable cause to search. *Id.*[8]

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8. The State also cites *State v. Eppler*, 362 N.W.2d 315 (Minn. 1985), which we relied on in *J.W.K.* In *Eppler*, the defendant voluntarily reported to the police station, accompanied by her attorney, upon learning that she was a suspect in several thefts. 362 N.W.2d at 316. The defendant allowed a police officer to take her photo for the purpose of eyewitness identification. *Id.* But the defendant's consent was conditioned on her attorney being able to view the photo and being present when it was shown to the eyewitnesses. *Id.* The police officer then showed the eyewitnesses the defendant's photo without the attorney present, and the eyewitnesses identified the defendant as the perpetrator. *Id.*

The defendant moved to suppress the eyewitness identification, arguing that "the officer broke the agreement to let [the] defendant's attorney preview the photographic display and be present when the pictures were shown to the witnesses." *Id.* at 317. The district court denied the motion, and the defendant was ultimately convicted. *Id.* at 316. We affirmed the district court's decision to admit the eyewitness identification into evidence. *Id.*

A review of our case law reveals that we have moved away from the rationale that we relied on in *J.W.K.*—if investigators would have conducted a lawful search, they would have inevitably discovered the evidence unlawfully found during an unconstitutional search. As noted above, in *State v. Diede*, we explicitly rebuffed that rationale. 795 N.W.2d at 849. There, investigators conducted an unlawful search of the defendant's cigarette package and found methamphetamine. *Id.* at 846. Before this court, the State argued that "if the police had not illegally searched [the defendant's] cigarette package, they *could have* arrested her and found the contents of the package." *Id.* at 849 (emphasis added). Rejecting the State's argument, we stated that "[t]he State may not show inevitable discovery by claiming that if it had not searched illegally, it would have done so legally." *Id.* We reasoned that the inevitable discovery exception would swallow Fourth Amendment protections if law enforcement only had to identify a lawful means it could have—but did not—pursue. *Id.*

Diede is consistent with United States Supreme Court jurisprudence, including *Nix*—the principal United States Supreme Court decision concerning the inevitable

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Initially, we observed that the officer did not need the defendant's consent to a photograph because the officer had probable cause to arrest the defendant. *Id.* at 317. Thus, the officer could have arrested the defendant "and taken pictures of her immediately." *Id.* Then, citing *Nix*, we stated that "it appears inevitable that the police would have obtained a picture of [the defendant] through independent means, would have shown that picture to the eyewitnesses, and would have obtained the eyewitness identification evidence." *Id.*

discovery exception. 467 U.S. at 444, 104 S.Ct. 2501. Under *Nix*, unlawfully obtained evidence is admissible under the inevitable discovery exception only if the evidence "ultimately or inevitably would have been discovered by lawful means." *Id.* The inquiry of whether evidence would have been inevitably discovered *cannot* "involve[ ] . . . speculative elements," but instead must only rely "on demonstrated historical facts capable of ready verification or impeachment." *Id.* at 444 n.5, 104 S.Ct. 2501. The analysis in *Diede* adheres to the rule articulated in *Nix*. *See Diede*, 795 N.W.2d at 849 ("The essence of the State's argument is that if the police had not illegally searched Diede's cigarette package, they could have arrested her and found the contents of the package. . . . The State showed no reason . . . why it would inevitably have discovered the methamphetamine.").

However, the analysis in *J.W.K.* does not adhere to the rule articulated in *Nix*. Speculation was central to this court's reasoning in *J.W.K.*:

> *If* the police in this case had not submitted the sample in question for DNA profiling in connection with the other offense, . . . they *presumably* would have tried to obtain . . . permission . . . . *If* they had obtained his permission, *presumably* they would have sent the previously-obtained sample to the BCA for DNA profiling, which would have connected the boy to the crime in question.
>
> . . .

> *If*, on the other hand, the boy and his mother had refused permission . . ., the police *presumably* would have sought and obtained a warrant . . . .

J.W.K., 583 N.W.2d at 757 (emphasis added).

We are "extremely reluctant to overrule [our] precedent." *County of Hennepin v. Hollydale Land LLC*, 17 N.W.3d 457, 461 (Minn. 2025). But "we will not adhere to our former decisions if they are clearly and manifestly erroneous." *State v. Noor*, 964 N.W.2d 424, 435 (Minn. 2021) (citation omitted) (internal quotation marks omitted). *J.W.K.* is clearly in conflict with the inevitable discovery rule articulated in *Nix* and reiterated in *Diede*: "The State may not show inevitable discovery by claiming that if it had not searched illegally, it would have done so legally." *Diede*, 795 N.W.2d at 849. Accordingly, we overrule our decision in *J.W.K.*[9]

The dissent argues that applying the inevitable discovery exception here would be consistent with *Nix* because "[t]he record in this case—the 'demonstrated historical facts capable of ready verification'—firmly

9. Although we do not overrule *Eppler* in its entirety, given our decision today, to the extent that decision purportedly relies on the inevitable discovery exception, it is no longer good law. Specifically, the speculative statement that "it appears inevitable that the police would have obtained a picture of [the defendant] through independent means, would have shown that picture to the eyewitnesses, and would have obtained the eyewitness identification evidence," *Eppler*, 362 N.W.2d at 317, is an incorrect application of the inevitable discovery exception.

establishes that the State had ample grounds to obtain a search warrant for a buccal swab from Steeprock for comparison with DNA found on the handgun from the snowbank." The dissent observes that the State previously applied for a search warrant for DNA, "and a district court judge signed the search warrant." Thus, the dissent notes, "like *J.W.K.*, the discovery of Steeprock's DNA was inevitable in this case and the evidence was properly admissible at trial."

We reject this rationale as contrary to *Nix*. In *Nix*, the Supreme Court focused on historical facts regarding what the police were doing at the time of the illegal search and whether this additional investigation would have led to the discovery of the evidence through lawful means. 467 U.S. at 447–50, 104 S.Ct. 2501. The historical facts in *Nix* showed that, while some police officers improperly interrogated the defendant regarding the location of a missing child's body, another officer simultaneously led a large-scale search in the area where the body was found. *Id.* at 449–50, 104 S.Ct. 2501. Here, on the other hand, there are no historical facts showing that the State did anything to secure a search warrant after it agreed not to rely on the evidence it obtained pursuant to the earlier search warrant that was constitutionally challenged. That the State arguably *could have* obtained a second search warrant if it had made any effort to apply for one is not a historical fact. It is speculation. Thus, *Nix* does not support the dissent's reasoning.

On the other hand, our decision in *Diede* reflects the inevitable discovery rule as articulated in *Nix*. Applying

Diede here, we conclude that the State cannot satisfy its burden of showing that Steeprock's DNA evidence would have been inevitably discovered. The sole argument that the State advances to support inevitable discovery is that it could have applied for a search warrant to obtain Steeprock's DNA but did not. Because the exception does not apply under these circumstances, the State's argument fails. *See Diede*, 795 N.W.2d at 849.

B.

The good-faith exception to the exclusionary rule allows for the admission of illegally obtained evidence when investigators acted based on an objectively reasonable belief that their actions were lawful. *United States v. Leon*, 468 U.S. 897, 913, 918–19, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). We have held that the good-faith exception applies to "only one limited circumstance" under the Minnesota Constitution: when "law enforcement officers obtain evidence in reasonable reliance on binding appellate precedent that specifically authorizes the police conduct at issue." *Malecha*, 3 N.W.3d at 574 (citing *Lindquist*, 869 N.W.2d at 876). And we have declined to extend the exception to scenarios in which officers rely "in good faith on the basis of a neutral magistrate's authorization." *Garza v. State*, 632 N.W.2d 633, 639–40 (Minn. 2001).

The State urges us to apply the good-faith exception to the exclusionary rule here, arguing that Rule 9.02, subdivision 2 (1)(f), is equivalent to binding appellate precedent because it is a rule of this court. *See* Minn. R. Crim. P. 9.02.

The State did not raise the good-faith exception before the district court. Generally, when a party fails to raise an argument below, it is forfeited on appeal. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Nonetheless, the court of appeals considered the State's good-faith exception claim and concluded that it did not apply in Steeprock's case. *Steeprock*, 10 N.W.3d at 699. Because the court of appeals considered the exception's applicability, we elect to consider it here. *See State v. Grunig*, 660 N.W.2d 134, 137 (Minn. 2003) (providing that a respondent can defend an underlying decision on alternative grounds "when there are sufficient facts in the record for the appellate court to consider the alternative theories, there is legal support for the arguments, and the alternative grounds would not expand the relief previously granted").

Even assuming without deciding that Rule 9.02, subdivision 2 (1)(f), is equivalent to "binding appellate precedent," the rule does not specifically authorize warrantless collection of DNA via buccal swab. The rule expressly states that all discovery orders are "subject to constitutional limitations." Minn. R. Crim. P. 9.02, subd. 2 (1)(f) ("On the prosecutor's motion, . . . the court before trial may, *subject to constitutional limitations*, order a defendant to . . . [p]ermit the taking of blood, hair, saliva, urine, or samples of other bodily materials that do not involve unreasonable intrusion . . . ." (emphasis added)). We therefore conclude that the good-faith exception to the exclusionary rule does not apply to the circumstances of this case.

In sum, because neither the inevitable discovery nor the good-faith exceptions to the exclusionary rule apply,

the exclusionary rule required suppression of Steeprock's DNA. Thus, the DNA evidence should not have been admitted during Steeprock's trial.

Because the evidence was admitted at trial, we next consider the implication of this error.

C.

The admission of the DNA evidence at Steeprock's trial implicated his right under the federal and state constitutions to be free of unreasonable searches and seizures. When an error implicates a constitutional right, we must determine whether the error was harmless beyond a reasonable doubt. *McNeilly*, 6 N.W.3d at 189. When an error was *not* harmless beyond a reasonable doubt, a new trial is required. *State v. Lee*, 929 N.W.2d 432, 440 (Minn. 2019). The State bears the burden to show that an error was harmless beyond a reasonable doubt. *State v. Johnson*, 915 N.W.2d 740, 745 (Minn. 2018).

An error is harmless beyond a reasonable doubt if the jury's verdict was "surely unattributable to the error." *Id.* (citation omitted) (internal quotation marks omitted). Stated differently, we must determine "whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction." *State v. Juarez*, 572 N.W.2d 286, 291 (Minn. 1997) (citation omitted) (internal quotation marks omitted). In cases involving the "erroneous admission of evidence, we consider the manner in which the evidence was presented, whether it was highly persuasive, whether it was used in closing argument, . . .

whether it was effectively countered by the defendant," and "the strength of the evidence of guilt" when deciding if the error was harmless beyond a reasonable doubt. *State v. Sanders*, 775 N.W.2d 883, 888 (Minn. 2009) (citation omitted) (internal quotation marks omitted).

The court of appeals concluded that the district court's erroneous admission of Steeprock's DNA evidence was not harmless beyond a reasonable doubt, reasoning that the DNA evidence was "persuasive and central" because the State presented no other evidence or testimony connecting Steeprock to the scene of the shooting. *Steeprock*, 10 N.W.3d at 700. The court of appeals also noted that the State referenced the DNA evidence numerous times throughout closing arguments. *Id.*

We agree. The DNA evidence was a substantial component of the State's case. It was also highly damaging to the defense. The DNA evidence was strong evidence that Steeprock handled the gun that shot C.J. Not surprisingly, the prosecutor capitalized on the evidence. The prosecutor referenced the DNA evidence numerous times during closing argument. Steeprock attempted to counter the DNA evidence in his closing argument, highlighting that the gun contained a mixture of DNA from four or more individuals and that it was unclear where on the gun Steeprock's DNA was found. But on rebuttal, the prosecutor again emphasized the significance of the DNA evidence.

Because the DNA evidence was potent evidence of Steeprock's guilt and the State took full advantage of

this during closing argument, we cannot conclude that the erroneous admission of the DNA evidence was harmless beyond a reasonable doubt. We therefore affirm the decision of the court of appeals reversing Steeprock's convictions and remanding for a new trial.

III.

Because it is an issue that is likely to recur on remand, we next consider whether the district court abused its discretion when it denied Steeprock's motion to instruct the jury on the statutory requirement for corroboration of accomplice testimony. Steeprock argues that accomplice testimony includes out-of-court accusations introduced as substantive evidence against a defendant. According to Steeprock, the statements that A.C. made during her phone calls and in her texts were the equivalent of accomplice testimony. Given the amount and significance of this evidence, Steeprock contends that the district court's failure to instruct the jury on the need for corroboration significantly impacted the verdict in his case.

Under Minnesota Statutes section 634.04, a defendant cannot be convicted of a crime based on uncorroborated accomplice testimony.[10] Minn. Stat. § 634.04 ("A conviction cannot be had upon the testimony of an accomplice,

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10. An accomplice is someone who "could have been indicted and convicted of the same crime for which the defendant is charged." *State v. Cox*, 820 N.W.2d 540, 548 (Minn. 2012) (citation omitted) (internal quotation marks omitted). A.C. was charged with attempted first-degree premeditated murder for shooting C.J.

unless it is corroborated by such other evidence as tends to convict the defendant of the commission of the offense . . . ."). Based on this statutory requirement, we have repeatedly held that district courts have a duty to instruct juries that accomplice testimony must be corroborated by independent evidence. *State v. Davenport*, 947 N.W.2d 251, 260 (Minn. 2020); *State v. Strommen*, 648 N.W.2d 681, 689 (Minn. 2002).[11]

The district court denied Steeprock's motion for an accomplice-corroboration instruction, determining that A.C.'s out-of-court statements were not "testimony" because they were not "given in court under oath." The court of appeals affirmed the district court's denial of the instruction based on this same reasoning. *Steeprock*, 10 N.W.3d at 704.

Before this court, Steeprock argues that the word "testimony" as used in section 634.04 is ambiguous because it has both common and technical meanings. He urges us to interpret the word to include out-of-court accusations made by an accomplice that are offered as substantive evidence against a defendant. The State responds that "testimony" is an unambiguous, technical legal term that applies only to statements made under oath.

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11. The model jury instructions include an instruction about corroboration of accomplice testimony. *See* 10 Minn. Dist. Judges Ass'n, *Minnesota Practice—Jury Instruction Guides, Criminal*, CRIMJIG 3.18 (6th ed. Supp. 2022–2023) ("You cannot find the defendant guilty of a crime on the basis of the testimony of an accomplice unless that testimony is corroborated by other evidence that tends to convict the defendant of the crime. 'To corroborate' means to support or confirm." (footnote omitted)).

We have never addressed whether the requirement for corroboration of accomplice testimony applies to an accomplice's out-of-court statements. However, we have addressed the need for corroboration of an accomplice's testimony in proceedings other than a defendant's trial. In *State v. Davenport*, we concluded that an accomplice's guilty-plea testimony, which was later admitted at the defendant's trial, was testimony. 947 N.W.2d at 262. We relied, in part, on the fact that the accomplice "gave his plea hearing testimony under oath during a court proceeding." *Id.*

To address Steeprock's argument, we must interpret the word "testimony" as used in section 634.04. We review questions of statutory interpretation de novo. *State v. Latino*, 15 N.W.3d 654, 658 (Minn. 2025). "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16; *see also Latino*, 15 N.W.3d at 658 (same). First, we "determine whether the language, on its face, is ambiguous." *State v. Robinson*, 921 N.W.2d 755, 758 (Minn. 2019). "Statutory language is ambiguous only if, as applied to the facts of the particular case, it is susceptible to more than one reasonable interpretation." *Latino*, 15 N.W.3d at 659 (citation omitted) (internal quotation marks omitted). If we determine that the statutory text is ambiguous, we may apply the canons of construction to ascertain the intent of the Legislature and resolve the ambiguity. *Id.* at 660; *see* Minn. Stat. § 645.16. But "[i]f a statute is unambiguous, we apply the statute's plain meaning." *State v. Powers*, 962 N.W.2d 853, 858 (Minn. 2021).

Section 634.04 does not define "testimony." *See* Minn. Stat. § 634.04. When a statute does not define a term or phrase, we may look to dictionary definitions to determine the plain meaning. *See Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016). While we "generally interpret statutory words according to their common meaning, . . . technical words and phrases . . . are construed according to [their] special meaning." *State v. Rick*, 835 N.W.2d 478, 484 (Minn. 2013) (alteration in original) (citation omitted) (internal quotation marks omitted), *abrogated on other grounds by*, *State v. Thonesavanh*, 904 N.W.2d 432 (Minn. 2017); Minn. Stat. § 645.08(1) ("[T]echnical words and phrases . . . are construed according to [their] special meaning or their definition . . . ."). "A word has a special meaning if courts have ascribed a well-established and long-accepted meaning to [it]." *Cox v. Mid-Minn. Mut. Ins. Co.*, 909 N.W.2d 540, 543 (Minn. 2018) (alteration in original) (citation omitted) (internal quotation marks omitted). "Whether a word should be ascribed a technical or special meaning depends in part upon the context in which the word appears." *Rick*, 835 N.W.2d at 484.

The context in which "testimony" appears is Minnesota Statutes chapter 634, which governs evidence and witnesses in legal proceedings. *See* Minn. Stat. ch. 634 (titled "Evidence; Witnesses"). Given that context, we determine that it is a technical legal term. Because it is a technical legal term that is used in a legal sense, we consider the definition provided by a legal dictionary. *See Rick*, 835 N.W.2d at 484. Black's Law Dictionary defines "testimony" as "[e]vidence that a competent witness

under oath or affirmation gives at trial or in an affidavit or deposition." *Testimony*, *Black's Law Dictionary* (12th ed. 2024). On the basis of this definition, we conclude that "testimony" as it appears in Minnesota Statutes section 634.04 is unambiguous and refers only to statements made under oath.

Because "testimony" in section 634.04 refers only to statements made under oath, Steeprock was not entitled to an accomplice-corroboration jury instruction regarding the statements that A.C. made during her phone calls and in her texts. We therefore conclude that the district court did not abuse its discretion when it denied Steeprock's request for such an instruction.[12]

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12. Finally, Steeprock argues that the district court abused its discretion when it admitted specific out-of-court statements made by A.C. under the statement-against-interest exception to the hearsay rule. He argues that the erroneously admitted statements prejudiced the outcome of his trial.

The court of appeals declined to address the merits of this argument because it had already awarded Steeprock a new trial based on the unconstitutional search. *Steeprock*, 10 N.W.3d at 705. We likewise do not reach this issue for the same reason. But we reiterate the court of appeals' guidance to the district court on remand. Courts must "construe the term 'statement' narrowly and allow *only those statements that directly inculpate the declarant* and not admit a larger narrative that merely contains some inculpating statements," *State v. Tovar*, 605 N.W.2d 717, 723 (Minn. 2000) (emphasis added), especially when the declarant implicates someone else. *Williamson v. United States*, 512 U.S. 594, 601, 114 S.Ct. 2431, 129 L.Ed.2d 476 (1994); *see also State v. Morales*, 788 N.W.2d 737, 764 (Minn. 2010) (calling for careful scrutiny of statements that incriminate another).

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

Concurring in part, dissenting in part, McKeig, Moore, III, JJ.

CONCURRENCE & DISSENT

McKEIG, Justice (concurring in part and dissenting in part).

The inevitable discovery doctrine is a well-established, longstanding exception to the general rule that evidence obtained in violation of the Fourth Amendment must be suppressed. *Nix v. Williams*, 467 U.S. 431, 447–48, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984) (adopting the inevitable discovery exception). This exception allows evidence to be admitted at trial—even when it was discovered in an unlawful search—if the evidence would have inevitably been discovered by lawful means. *State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003); *State v. Harris*, 590 N.W.2d 90, 105 (Minn. 1999). Here, had the evidence in this case—a DNA profile from Steeprock—not been obtained through a Rule 9.02 order, it certainly would have inevitably been discovered through lawful means: a search warrant for a buccal swab. Because the inevitable discovery exception properly applies to this evidence, I respectfully dissent from parts I and II of the court's opinion.

To admit evidence under the inevitable discovery exception, the State must "establish by a preponderance of the evidence that the fruits of a challenged search 'ultimately or inevitably would have been discovered by lawful means.'" *Licari*, 659 N.W.2d at 254 (quoting *Nix*, 467 U.S. at 444, 104 S.Ct. 2501). Rather than speculating

on what the State might have done, the inevitable discovery exception "focuses on demonstrated historical facts capable of ready verification or impeachment." *Id.* (quoting *Nix*, 467 U.S. at 444 n.5, 104 S.Ct. 2501). The rationale behind the inevitable discovery doctrine is that the prosecution should not be put in a worse position by excluding the illegally obtained evidence because police officers would have otherwise obtained the evidence legally. *In re Welfare of J.W.K.*, 583 N.W.2d 752, 756 (Minn. 1998) (citing *Nix*, 467 U.S. at 443–44, 104 S.Ct. 2501).

In *J.W.K.*, we applied the inevitable discovery exception to allow admission of DNA evidence at trial obtained from the defendant's blood sample that was tested without his consent or a warrant. *Id.* at 757. Police officers initially suspected the defendant was involved in a destruction of property incident and obtained consent to draw his blood to test it against DNA evidence found at the scene. *Id.* at 753–54. Officers did not end up testing the defendant's blood in connection with the property destruction case but kept the sample. *Id.* at 754. After learning that the defendant was a suspect in an unrelated burglary, officers had the defendant's blood sample tested against DNA evidence found at the burglary scene instead. *Id.* Officers did not obtain a warrant or consent to test the sample in connection with the burglary. *See id.* The defendant's DNA matched DNA evidence from the burglary scene and, after officers confronted him with this information, the defendant confessed. *Id.* We held that the inevitable discovery exception allowed admission of the DNA evidence at the defendant's trial. *Id.* at 757. Considering the purposes of the exclusionary rule and the inevitable

discovery exception, we reasoned that, had the officers not submitted the blood sample for testing in connection with the burglary, they presumably would have either obtained permission of the defendant or obtained a warrant given that there was probable cause. *Id.*

The same rationale applies here with even greater force: Had the officers not obtained Steeprock's DNA through the Rule 9.02 order, the State would have undoubtedly obtained his DNA through a search warrant for a buccal swab. At the time of the State's Rule 9.02 motion, the record indicates the State had ample probable cause to obtain a search warrant. The court argues that there "are no historical facts showing that the State did anything to secure a search warrant after it agreed not to rely on the evidence it obtained pursuant to the earlier search warrant that was constitutionally challenged."[1] The court concludes that it is "speculation," and "not a historical fact," "[t]hat the State arguably *could have* obtained a second search warrant if it had made any effort to apply for one."

But—as the court notes—as part of the investigation, investigators *had* previously applied for a search warrant under predictable police investigatory procedures to obtain buccal swabs from Steeprock for DNA testing, and a district court judge signed the search warrant. This is not a case where the process of obtaining a search warrant had barely begun or the likelihood of officers presenting an

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1. The earlier search warrant was only challenged; no determination of its constitutionality was made.

application for a warrant was entirely speculative. While the court concludes that the State "*could have* obtained a second search warrant," I conclude that the State *would have* obtained a second search warrant.

The record in this case—the "demonstrated historical facts capable of ready verification"—firmly establishes that the State had ample grounds to obtain a search warrant for a buccal swab from Steeprock for comparison with DNA found on the handgun from the snowbank. The facts alleged in the complaint established that the victim was shot eight or nine times, likely by two different firearms. The complaint established that Steeprock was present at the scene of the murder and that a firearm was found in the snow where Steeprock was apprehended. The State's Rule 9.02 motion stated that forensic testing showed that the firearm found near Steeprock when he was arrested fired eight of the discharged cartridge casings found at the scene. Finally, the State's motion indicated that DNA had been recovered from this firearm. As such, like *J.W.K.*, the discovery of Steeprock's DNA was inevitable in this case and the evidence was properly admissible at trial. Indeed, the facts of this case demonstrating that the evidence would have been inevitably discovered by lawful means are far more compelling than those in *J.W.K.*, where we applied the inevitable discovery doctrine. Here, I would conclude the State indisputably met its burden to establish by a preponderance of the evidence that Steeprock's DNA would have inevitably been discovered by lawful means.

Rather than follow the principles we announced in *J.W.K.*, the court overrules the case to fit with its view of

the inevitable discovery exception. "Under the principle of *stare decisis*, we are reluctant to overrule our precedent unless there is a *compelling reason* to do so." *State v. Buchan*, 993 N.W.2d 614, 622 (Minn. 2023) (emphasis added) (citing *Wheeler v. State*, 909 N.W.2d 558, 565 (Minn. 2018)). I find no compelling reason to overrule our precedent in *J.W.K.*[2] Even more concerning, the court also overrules our decision in *State v. Eppler*, 362 N.W.2d 315 (Minn. 1985), which we relied on in *J.W.K.*, to the extent that case discusses the inevitable discovery exception. Both *J.W.K.* and *Eppler* rely on longstanding precedent from the U.S. Supreme Court on the inevitable discovery exception. *Nix*, 467 U.S. at 448–49, 104 S.Ct. 2501; *J.W.K.*, 583 N.W.2d at 756 (discussing *Nix*); *Eppler*, 362 N.W.2d at 317 (discussing *Nix*); *see also Licari*, 659 N.W.2d at 254–56 (remanding to the district court for further findings on inevitable discovery based on *Nix*); *Harris*, 590 N.W.2d at 105 (citing *J.W.K.* and *Nix* in applying the inevitable discovery exception). The court ignores both our own reasoning in prior cases and longstanding precedent from the U.S. Supreme Court in holding that the inevitable discovery exception does not apply in this case.

Instead, the court relies on *State v. Diede*, 795 N.W.2d 836 (Minn. 2011), to hold that the inevitable discovery exception does not apply. In *Diede*, we concluded that the inevitable discovery exception did not apply to the facts

2. Even if the court believes that the reasoning in *J.W.K.* was speculative—contrary to *Nix*—no such concern is present here. The facts supporting the conclusion that the discovery of the DNA evidence was inevitable are not speculative but rather supported by the record in this case.

of that case. *Id.* at 849–50. A detective was conducting surveillance on an individual (Hanson) when they observed Hanson and Diede driving in a gray Chevrolet truck. *Id.* at 840–41. The officer followed the truck and discovered the license plate was registered to a red Mazda truck, not a gray Chevrolet. *Id.* at 841. When the truck stopped at Diede and Hanson's shared trailer home, the detective saw Hanson open the passenger door and appear to toss something into the back of the truck. *Id.* The detective arrested Hanson and began to question Diede. *Id.* Eventually a special agent who later arrived on the scene asked Diede to empty her pockets, and police found methamphetamine in her possession. *Id.* at 841–42. The district court concluded that police had reasonable articulable suspicion to seize Diede largely based on Hanson's behavior and events that occurred after the initial seizure. *Id.* at 843. We held that the district court erred in determining that police had reasonable articulable suspicion that Diede was engaged in drug-related activity at the time she was seized because there was no objective basis for such suspicion. *Id.* at 844. We further held that the inevitable discovery exception did not apply because "[t]he State showed no reason . . . why it would inevitably have discovered the methamphetamine." *Id.* at 849.

The facts of *Diede* are entirely distinguishable from the present case. Had police not illegally seized Diede, the State did not show a basis for officers to otherwise lawfully search her and, as a result, discover the methamphetamine. As such, we did not reject or narrow the inevitable discovery doctrine in *Diede* but merely

concluded that the State "did not meet its burden" to show by a preponderance of the evidence that it would have inevitably discovered the evidence through lawful means. *Id.* at 850. By contrast, here, the State would have certainly obtained a warrant for Steeprock's DNA had it not obtained the DNA through the Rule 9.02 order. As described above, the State had ample probable cause to obtain a search warrant. And, as the court notes in its harmless error analysis, Steeprock's DNA was a crucial part of the State's case as the only direct evidence connecting Steeprock to the crime. It is not "speculation" to say that the State would have obtained a warrant; rather, it is inevitable that the State would have pursued a search warrant to obtain Steeprock's DNA because the DNA evidence was crucial in the case against Steeprock.

The court's reasoning suggests that *J.W.K.* and *Diede* are in conflict with one another, when in reality both cases can, as they have for decades, exist simultaneously in our jurisprudence. They are easily distinguishable on their facts. Because I would not overrule *J.W.K.* and the facts presented here are analogous—and even *more* compelling—to the facts of *J.W.K.*, I would affirm the admission of the DNA evidence at Steeprock's trial based on the inevitable discovery exception. I agree with the State that justice is not served by reversing Steeprock's conviction, requiring officers to obtain a search warrant and new DNA testing, and proceeding with a new trial using precisely the same DNA evidence that the State used in the first trial.

I am also concerned about what overruling *J.W.K.* will mean for subsequent cases relying on the inevitable discovery exception. For example, the court of appeals recently upheld the admission of DNA evidence in another Rule 9.02 case based on the inevitable discovery exception where the district court explicitly told the parties that it would have granted a warrant on the same facts as the Rule 9.02 order. *See State v. Babineaux*, No. A24-1073, 2025 WL 1793655, at *3–5 (Minn. App. June 30, 2025). But, under the court's opinion, even this explicit statement from the district court would likely not be enough to apply the inevitable discovery exception. Under the extraordinarily high standard for the inevitable discovery doctrine adopted by the court today, I cannot see how the State would ever be able to meet its burden to show by a preponderance of the evidence that illegally-obtained DNA evidence—which, like here, is often critical to the State's case—would have been inevitably discovered through lawful means.

Because I would reverse the decision of the court of appeals and hold that the inevitable discovery doctrine applies, I would affirm Steeprock's conviction for both attempted first-degree premeditated murder and unlawful possession of a firearm. I therefore respectfully dissent as to parts I and II of the court's opinion.

MOORE, III, Justice (concurring in part and dissenting in part).

I join the opinion of Justice McKeig concurring in part and dissenting in part.

APPENDIX C — OPINION OF THE COURT OF APPEALS OF MINNESOTA, FILED JULY 29, 2024

COURT OF APPEALS OF MINNESOTA

A23-0875

STATE OF MINNESOTA,

Respondent,

v.

SENECA WARRIOR STEEPROCK,

Appellant.

Filed July 29, 2024

OPINION

St. Louis County District Court, File No. 69-DU-CR-21-26

Considered and decided by Connolly, Presiding Judge; Bratvold, Judge; and Jesson, Judge.*

BRATVOLD, Judge

Appellant Seneca Warrior Steeprock appeals from the final judgments of conviction for attempted first-degree murder and unlawful possession of a firearm.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Steeprock challenges his convictions on three grounds. First, Steeprock argues that his constitutional rights were violated when respondent State of Minnesota took a saliva sample from him pursuant to a discovery order issued under Minn. R. Crim. P. 9.02, subd. 2 (1)(f), because no valid search warrant authorized the search. Second, Steeprock argues that the district court abused its discretion by refusing to instruct the jury that accomplice testimony requires corroboration. And third, Steeprock argues that the district court abused its discretion by admitting hearsay evidence under the exception allowing statements against a declarant's penal interest. Steeprock also moves to strike parts of the state's supplemental response brief.

Our analysis of the saliva-sample issue yields four conclusions. First, the state conducted a search when it obtained a sample of Steeprock's saliva after securing a court order under rule 9.02, subdivision 2 (1)(f), for the express purpose of determining whether Steeprock's DNA matched DNA found on a weapon used in the crime charged. Second, the state violated Steeprock's constitutional rights by taking the saliva sample under rule 9.02, subdivision 2 (1)(f), without a valid search warrant. Third, the exclusionary rule applies to the unconstitutional search and the fruits of the search; thus, the state's DNA evidence against Steeprock must be suppressed. Fourth, the constitutional error in admitting the DNA evidence at Steeprock's jury trial was not harmless beyond a reasonable doubt. We therefore reverse Steeprock's convictions and remand for a new trial.

Because the issue is likely to recur on remand, we also determine that the district court did not abuse its discretion when it refused Steeprock's request to instruct the jury that accomplice testimony requires corroboration, as Minn. Stat. § 634.04 provides. When understood in context, "testimony" as used in section 634.04 is a technical term that refers to an accomplice's statements under oath, and Steeprock's accomplice did not testify. We decline to decide whether the district court abused its discretion by admitting the hearsay statements of Steeprock's accomplice. Finally, we deny Steeprock's motion to strike dxparts of the state's supplemental response brief.

FACTS

The state charged Steeprock with attempted first-degree murder under Minn. Stat. §§ 609.185(a)(1), .17(1) (2020) and unlawful possession of a firearm under Minn. Stat. § 624.713, subd. 1 (2) (2020).[1] The following summarizes the evidence received during the jury trial.

On December 27, 2020, the victim, C.J., drove a silver Honda sedan to Duluth to visit his cousin. C.J.'s cousin was acquainted with A.C. A.C.'s brother (brother) and C.J. did not "get along"; there was "beef between the two of them." During C.J.'s visit to Duluth, brother was detained in the Beltrami County Jail.

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1. The state's complaint charged Steeprock with aiding and abetting attempted first-degree murder, but the state abandoned the aiding-and-abetting theory during trial.

On December 28, C.J.'s cousin asked C.J. to "give [A.C.] a ride." C.J. agreed, and he and his cousin "picked [A.C.] up" from a pharmacy in the Honda sedan. A.C. wanted them "to hang out." C.J.'s cousin "went back home." C.J. said he would "hang out with" A.C.

On December 29 at 12:46 p.m., A.C. messaged C.J. via social media asking where he was. C.J. did not respond.

Around 1:00 p.m., A.C. called brother at the county jail (first jail call). The phone call was recorded. Brother asked if A.C. had to "feed that n-gga last night?" A.C. replied that she was going to "go see that n-gga today" but that he was not "messag[ing her] back or anything." Brother said, "Just leave it alone." A.C. said she knew "two spots he could be in." Brother said, "Wherever you're f--king going man, I'm pretty sure there's too much f--king cameras around there." A.C. replied, "I'm familiar with Duluth . . . I'm good, bro, don't worry."

On the afternoon of December 29, C.J. was at T.H.'s apartment. Although T.H. had never met C.J. before that day, C.J. "asked if he could sleep in . . . or sit and chill in the extra [bed]room." T.H. agreed. The apartment had a screen door off the porch that led into the extra bedroom.

While C.J. was in the extra bedroom, T.H. was in another room and heard him "talking to a female on the phone." A call log from C.J.'s phone showed that he called A.C. at 1:54 p.m. About 45 minutes to an hour later, T.H. was cleaning "in the front room by [her]self" and "heard the screen door" open and "creak." Based on "how long the

screen door" creaked, T.H. believed "two to three people" had entered her apartment. T.H. heard "popping noises," and C.J. yelled, "Call an ambulance."

T.H. did not see who shot C.J., and C.J. testified that he did not remember who shot him. As a result of the shooting, C.J. suffered injuries to his rectum, bladder, and penis, among other places, and a bullet was found in his pelvic bones. Law enforcement later found 15 cartridge cases in the bedroom where C.J. was shot.

At 7:30 p.m. on the day of the shooting, A.C. called brother (second jail call). A.C. said that she "handled business." A.C. asked, "[Y]ou know who it is?" Brother responded, "Bam . . . replacing the 'C.'"[2] A.C. said, "[Y]es, bam, bam, that n-gga bam bam." A.C. said, "Let me tell you, bro. Got one up the ass."

Sometime during the call, A.C. told someone in the background to "shut the f--k up, man." Brother asked, "Who the hell is that?" and A.C. responded, "This is Sen." Later, A.C. said, "It was a two-way split by the way. . . . Help, you know what I mean?" Brother said, "Whoever helped you . . . let them know . . . I got them." A voice then said, "What up, man," and brother responded, "Hey, I got you . . . if you ever come to the joint, bro. I got your back, all right? . . . Since you helped my sister, I got you."

The day after the shooting, on December 30, A.C. called brother a third time (third jail call) and said, "I just

2. C.J.'s first name is Cameron.

don't want no loose ends . . . I'm talking about with Seneca . . . I feel like he just knows way too much." Brother said, "I don't even know who the f--k that b-tch is." A.C. said, "It's a n-gga I was f--king with. You know the dude that you talked to on the phone a couple times in the background?" A.C. said, "I don't know if this n-gga's f--king going to try to do something . . . because he f--king pulled out a little gun on me." Brother asked, "Did you give him that thing?" and A.C. replied, "No, he's not no lame ass n-gga. He's got his own sh-t." Brother said, "Why the f--k you even f--king with that n-gga in the first place?" And A.C. said, "Because he's a f--king shooter, that's why."

On December 31, law enforcement located a silver Honda sedan in a parking lot outside the Gateway Towers apartment building. Believing that it was the Honda sedan that C.J. drove to Duluth, they conducted surveillance. Law enforcement observed "two individuals" walk towards the Honda sedan and saw "the female go to the driver's side door and the male to the passenger side door." Law enforcement identified the male as Steeprock and the female as A.C.

Law enforcement arrested A.C. and searched her purse, where they found "a handgun." The gun was later identified as a Walther pistol, which had a "major female DNA profile" matching A.C. The Minnesota Bureau of Criminal Apprehension (BCA) determined that the Walther pistol had fired seven of the 15 cartridge cases found in the bedroom where C.J. was shot.

When Steeprock saw law enforcement, he "started to run." One of the officers chased Steeprock on foot, yelling

at Steeprock to “get down on his knees” and “show [the officer] his hands.” Steeprock ran across the street behind Gateway Towers and down a hill with “a lot of snow.” He stopped at the bottom of the hill, “went down to the ground and put his hands out to the sides.” Two officers arrested Steeprock. Other law-enforcement officers, accompanied by a trained canine, searched “the path” that Steeprock had run but did not locate “any other evidence or firearms that may have been involved in [the] case.”

On January 1, 2021, A.C. sent the following text message from jail: “Dude is in here telling the cops it was all on me! He took off running ‘n was able to dump his gun.” A.C. also texted, “Sin took off running n was able to dump his taco so I think he blamin’ me.”

On January 2, A.C. called a friend from jail (fourth jail call) and said, “He f--king lucky as hell too because he took off running and he had his thing on him, and I think he f--king threw that b-tch when he was running.” A.C. told her friend, “I need you to f--king go walk around there and find that n-gga’s thing.” At trial, an investigator testified that “thing is another term for handgun.”

That same day, a law-enforcement canine that “specialized” in “looking for firearms” was transported to Duluth to assist “in looking for a possible firearm.” Accompanied by the canine, officers searched the Gateway Towers parking lot, the street behind it, and the hill down which Steeprock ran. In a snowbank by the hill, near where Steeprock was arrested, the canine alerted an officer to a firearm buried in the snow.

Following the arrests of A.C. and Steeprock, the district court issued a warrant permitting the state (a) to search the silver Honda and a Gateway Towers apartment that A.C. and Steeprock had "recently left" before their arrest and (b) to obtain a "DNA Buccal Swab" from Steeprock and A.C. Pursuant to the warrant, the state obtained Steeprock's saliva sample. Much later, as explained below, the state moved for a discovery order under Minn. R. Crim. P. 9.02, subd. 2 (1)(f), to obtain another saliva sample from Steeprock. At the same time, the state submitted a letter to the district court stipulating not to use the evidence obtained from the search warrant. The district court granted the state's rule 9.02 discovery motion over Steeprock's objection and the state obtained a second saliva sample from Steeprock.

The BCA performed a forensic analysis of the firearm removed from the snowbank. The firearm—a Taurus pistol—had "a major male DNA profile that matche[d] Seneca Steeprock." The BCA also determined that the Taurus fired eight of the 15 cartridge cases found in the bedroom where C.J. was shot.

The state called 24 witnesses to testify. A.C. did not testify, but the district court received into evidence, over Steeprock's objection, the recordings of A.C.'s four jail calls and her text messages as described above. Steeprock did not testify at trial or call any witnesses. The jury found Steeprock guilty of attempted first-degree murder and unlawful possession of a firearm. The district court sentenced Steeprock to concurrent prison sentences of 240 months and 60 months, respectively.

Steeprock appeals.

ISSUES

I. Were Steeprock's constitutional rights violated when the state took a second saliva sample pursuant to a discovery order under rule 9.02, subdivision 2 (1)(f)?

II. Did the district court abuse its discretion by refusing to instruct the jury that accomplice testimony requires corroboration?

III. Did the district court abuse its discretion by admitting A.C.'s hearsay statements as against her penal interest?

IV. Should this court grant Steeprock's motion to strike parts of the state's supplemental response brief?

ANALYSIS

I. Steeprock's constitutional rights were violated when the state took a second saliva sample pursuant to a discovery order under rule 9.02, subdivision 2 (1)(f), because the state did not have a valid search warrant.

Steeprock argues that the "district court violated [his] constitutional rights when it ordered him to permit the taking of a saliva sample" under rule 9.02, subdivision 2 (1)(f), "without issuing a probable-cause based search warrant." The state argues that, while "[t]here is no precedential caselaw in Minnesota deciding the constitutionality of a search or seizure" under rule 9.02,

subdivision 2 (1)(f), "the United States Supreme Court has long recognized that certain limited seizures and searches may be conducted without a probable-cause-to-search finding."

Some additional background helps our review of this issue. As mentioned above, two days after C.J. was shot, the district court granted the state's application for a search warrant permitting the state to obtain a "DNA Buccal Swab" from Steeprock, among other things. The warrant was executed, and the state obtained the buccal swab.

During pretrial proceedings in Steeprock's case, the state moved the district court for an order "requiring [Steeprock] to permit the taking of saliva" under rule 9.02, subdivision 2 (1)(f), "for the purposes of comparative DNA analysis." The state argued that Steeprock's DNA sample would "materially aid in determining whether [Steeprock] committed the offense as charged." The state's motion outlined alleged facts and did not include affidavits or statements under oath or refer to the earlier search warrant.

On the same day that it filed the rule 9.02 motion, the state filed a letter with the district court stating that A.C. had challenged the search warrant in her case and that, as a result, the state agreed not to use the evidence obtained from the warrant "in the prosecution of the matter."[3] The state's letter added that it was "making the

3. The record briefly indicates that A.C. challenged the search warrant under *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674,

same stipulation" in Steeprock's case. Steeprock opposed the state's request for a second saliva sample, arguing that the state "failed to follow appropriate constitutional limitations" under rule 9.02, which "should not be used as a work around for defective search warrants as proposed by the State in this case." Steeprock urged that to allow the state to obtain "his DNA without a search warrant would be prejudicial error."

After a hearing, the district court decided to "grant to the State's motion" and issued an order directing Steeprock to provide a saliva sample under rule 9.02, subdivision 2 (1)(f). The district court concluded that "obtaining a DNA sample will materially aid in determining whether Defendant Steeprock possessed the gun and committed the charged offense." The district court also determined that "the evidence that State stipulated that it would not use was one buccal swab of Steeprock's DNA." The district court's order did not discuss whether a search warrant was required for the second saliva sample or determine that probable cause supported a warrant.

With this background in mind, we consider the following: whether a search occurred and a valid search warrant was required, whether Steeprock's DNA evidence should be suppressed, and whether reversal is necessary.

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57 L.Ed.2d 667 (1978). *See State v. Andersen*, 784 N.W.2d 320, 327 (Minn. 2010) (stating that a *Franks* challenge requires the defendant to show that a search-warrant application "includes intentional or reckless misrepresentations of fact material to the findings of probable cause").

A. When the state obtained Steeprock's saliva sample pursuant to a discovery order under rule 9.02, subdivision 2 (1)(f), it conducted a search under the Fourth Amendment.

Steeprock argues that when the state took Steeprock's second saliva sample "for comparative DNA analysis," it was "a search." The state concedes that a search occurred. The district court's discovery order did not explicitly discuss this question but stated that "a court can order a defendant to provide a DNA sample" and cited Minn. R. Crim. P. 9.02, subd. 2 (1), which provides:

> On the prosecutor's motion, with notice to the defense and a showing that one or more of the discovery procedures described below will materially aid in determining whether the defendant committed the offense charged, the court before trial may, subject to constitutional limitations, order a defendant to: . . .
>
> (f) Permit the taking of blood, hair, saliva, urine, or samples of other bodily materials that do not involve unreasonable intrusion, but the court must not permit a blood sample to be taken except on a showing of probable cause to believe that the test will aid in establishing the defendant's guilt[.]

Caselaw from the United States Supreme Court and the Minnesota appellate courts has considered whether taking biological samples from a defendant is a search. In

Maryland v. King, the United States Supreme Court held that "using a buccal swab on the inner tissues of a person's cheek in order to obtain DNA samples is a search."[4] 569 U.S. 435, 446, 133 S.Ct. 1958, 186 L.Ed.2d 1 (2013) (holding that a state law requiring arrestees to provide a buccal swab is "a reasonable search that can be considered part of a routine booking procedure"). The Minnesota Supreme Court has analyzed the postconviction collection of a defendant's biological specimens for DNA analysis based on a court's sentencing order as a search under the Fourth Amendment. *State v. Bartylla*, 755 N.W.2d 8, 14 (Minn. 2008) (upholding the constitutionality of Minn. Stat. § 609.117 (2002)).[5] This court has also ruled that "taking and analyzing biological specimens . . . is a

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4. A buccal swab "involves wiping a small piece of filter paper or a cotton swab similar to a Q-tip against the inside cheek of an individual's mouth to collect some skin cells." *Maryland v. King*, 569 U.S. 435, 444, 133 S.Ct. 1958, 186 L.Ed.2d 1 (2013).

5. Two recent Minnesota Supreme Court cases have recognized circumstances in which obtaining a defendant's DNA was not a search. These cases are readily distinguishable. In *State v. Carbo*, the supreme court held that "a Fourth Amendment search did not occur" when police performed "a genetic analysis" of the semen Carbo "left behind at the crime scene." 6 N.W.3d 114, 122 (Minn. 2024). In *State v. Westrom*, the supreme court determined that the police's DNA analysis of a napkin Westrom used and discarded "was not a search." 6 N.W.3d 145, 154 (Minn. 2024). The supreme court explained that "the police had lawfully acquired possession of the napkin" by taking it out of a trash can at a hockey game and "did not extract from it information beyond the equivalent of a genetic 'fingerprint.'" *Id.* at 151-52, 154. These cases involved DNA evidence that the defendant abandoned and therefore do not guide our analysis here.

search under the Fourth Amendment." *In re Welfare of C.T.L.*, 722 N.W.2d 484, 488 (Minn. App. 2006) (holding that a state law violated the constitutional search-warrant requirement by authorizing a district court to order a juvenile to provide a biological specimen after a probable-cause determination on the charge).

The legislature and the Minnesota Supreme Court have agreed in the driving-while-impaired context that the taking of some biological specimens is a search requiring a warrant. For example, in the driving-while-impaired context, blood and urine tests "may be conducted only pursuant to a search warrant . . . or a judicially recognized exception to the search warrant requirement." Minn. Stat. § 169A.51, subd. 3 (2020); *see also State v. Thompson*, 886 N.W.2d 224, 233 (Minn. 2016) (concluding that "conducting a blood or urine test without a warrant violates the Fourth Amendment"); *State v. Trahan*, 886 N.W.2d 216, 221 (Minn. 2016) (holding "that the Fourth Amendment prohibits convicting Trahan for refusing the blood test requested of him absent the existence of a warrant or exigent circumstances").

We therefore conclude that a search occurred when the state obtained Steeprock's saliva sample pursuant to a court order under rule 9.02, subdivision 2 (1)(f).

B. The warrantless search of Steeprock's saliva violated his constitutional rights.

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures and require that search warrants be issued only "upon probable

cause, supported by oath or affirmation." U.S. Const. amend. IV; Minn. Const. art. I, § 10. Whether a search was unreasonable is a legal question that appellate courts review de novo. *State v. Eichers*, 853 N.W.2d 114, 124 (Minn. 2014).

We begin by noting that the discovery rule that the state used to obtain Steeprock's saliva sample incorporates constitutional requirements. Minnesota Rule of Criminal Procedure 9.02, subdivision 2 (1), provides that the discovery procedures outlined in the rule are "subject to constitutional limitations." The rule does not specify what these constitutional limitations are, and neither this court nor the supreme court has addressed this issue.

"A search is presumptively unreasonable unless it is conducted under a valid warrant or a specific exception to the warrant requirement applies." *State v. McNeilly*, 6 N.W.3d 161, 175 (Minn. 2024). A warrant "must be supported by probable cause." *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001) (first citing U.S. Const. amend. IV; and then citing Minn. Const. art. I, § 10). "Probable cause exists when there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Onyelobi v. State*, 932 N.W.2d 272, 281 (Minn. 2019) (quotation omitted). Whether probable cause existed to support a warrantless search is a question of law that we review de novo. *Rochefort*, 631 N.W.2d at 805.

In his initial brief to this court, Steeprock argues that the district court erred by ordering him to provide a saliva sample under rule 9.02, subdivision 2 (1)(f), without a valid search warrant. Steeprock argues that rule 9.02,

subdivision 2 (1)(f), "authorizes an unconstitutional warrantless search on less than probable cause" and that the rule's "materially aid" standard fails to satisfy the probable-cause requirement for a search. Minn. R. Crim. P. 9.02, subd. 2 (1)(f). But Steeprock also contends that rule 9.02, subdivision 2 (1), explicitly incorporates constitutional requirements and urges us to conclude that the constitutions require that a search warrant be issued before a court may order a defendant to provide a saliva sample under the rule. The state appears to argue that rule 9.02, subdivision 2 (1)(f), is an exception to the warrant requirement.

While neither party cited the United States Supreme Court opinion in *King*, we turn to it for guidance because it considered the constitutionality of Maryland's law requiring the collection of DNA via a buccal swab of "an individual who is charged with . . . a crime of violence."[6] 569 U.S. at 443-44, 133 S.Ct. 1958. The Supreme Court, as noted above, held that the taking of saliva was a search and then assessed whether the search was reasonable under the Fourth Amendment. *Id.* at 446, 133 S.Ct. 1958. The Court reasoned that Maryland had a "significant state interest[ ] in identifying [the defendant] not only so that the proper name can be attached to his charges but also so that the criminal justice system can make informed decisions concerning pretrial custody." *Id.* at

6. Maryland's DNA-collection law also provided that the DNA sample should not be placed in a database before the defendant's arraignment and that, if the district court determined that the charges against the defendant were not supported by probable cause, then the DNA sample must be destroyed. *King*, 569 U.S. at 443, 133 S.Ct. 1958.

465, 133 S.Ct. 1958. The Supreme Court determined that, in comparison to the government's "significant" interest in identifying arrestees, "the intrusion of a cheek swab to obtain a DNA sample is a minimal one."[7] *Id.* at 461, 133 S.Ct. 1958. Accordingly, the Supreme Court upheld Maryland's DNA-collection law as a reasonable search and reversed the lower court ruling that had set aside King's conviction as based on an unconstitutional search.[8] *King*, 569 U.S. at 441, 133 S.Ct. 1958.

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7. The Supreme Court compared Maryland's DNA-collection law to "the familiar practice of fingerprinting arrestees," which "courts had no trouble determining . . . was a natural part of the administrative steps incident to arrest." *Id.* at 458, 133 S.Ct. 1958 (quotation omitted). The Supreme Court concluded that, "[w]hen officers make an arrest supported by probable cause to hold for a serious offense and bring the suspect to the station to be detained in custody," using a buccal swab to obtain the arrestee's DNA is, "like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the Fourth Amendment." *Id.* at 465-66, 133 S.Ct. 1958.

8. Seven years before the Supreme Court's decision in *King,* this court considered the constitutionality of Minn. Stat. § 299C.105 (Supp. 2005), which required "law-enforcement personnel to take biological specimens from juveniles and adults who have had a probable-cause determination on a charged offense but who have not been convicted." *C.T.L.*, 722 N.W.2d at 486, 488. We held that, absent an exception to the warrant requirement, "before taking a biological specimen from a person for the purpose of DNA analysis, law-enforcement personnel must obtain a search warrant based on a neutral and detached magistrate's determination that there is a fair probability that taking the specimen will produce evidence of a crime." *Id.* at 485. We noted that "the privacy interest of a person who has been charged with a criminal offense, but who has not been convicted, is not outweighed by the state's interest in taking a biological specimen from the person for the purpose of DNA analysis." *Id.* at 492.

The Supreme Court in *King* did not directly address the argument that Steeprock makes here—that a search warrant is required before the state may take a saliva sample from a defendant when the state expressly requests the sample in order to compare the defendant's DNA with the DNA on a weapon involved in the crime charged. Both the Maryland DNA-collection law and Minn. R. Crim. P. 9.02, subd. 2 (1)(f), authorized the same physical intrusion—the taking of a saliva sample. But the state's purpose and use of the saliva sample in *King* differed greatly from the circumstances here. The Supreme Court emphasized that Maryland's DNA-collection law was limited to establishing an arrestee's identity for booking and pretrial custody.[9] *Id.* at 450, 453, 133 S.Ct. 1958 (explaining the state's interest in knowing "who has been arrested" and whether the arrestee poses a danger to the public).

Minnesota Rule of Criminal Procedure 9.02, subdivision 2 (1)(f), allows the state to obtain a court discovery order to take a saliva sample from a defendant if it "will materially aid in determining whether the defendant committed the offense charged." In Steeprock's case, the saliva sample was not used for identification like the buccal swab in *King*. Rather, the saliva sample taken from Steeprock was the basis for the state's forensic testimony that matched Steeprock's DNA to the DNA

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9. It is true that the DNA collected from King in 2009 matched DNA in a database that included DNA collected from a 2003 offense. *Id.* But law enforcement then "obtained a search warrant and took a second sample of DNA from King, which again matched the evidence from" the 2003 offense. *Id.*

retrieved from one of the guns used to shoot C.J. Because the state's express purpose for obtaining Steeprock's DNA was different, *King* is distinguishable.[10]

Driving-while-impaired caselaw instructs that the state's purpose for obtaining a biological sample is relevant in determining the reasonableness of a warrantless search. When considering whether constitutional search requirements apply to blood tests of drunk-driving suspects, the United States Supreme Court has stated that "a compelled physical intrusion beneath [a defendant's] skin and into his veins to obtain a sample of his blood *for use as evidence in a criminal investigation* . . . implicates an individual's most personal and deep-rooted expectations of privacy." *Missouri v. McNeely*, 569 U.S. 141, 148, 165, 133 S.Ct. 1552, 185 L.Ed.2d 696 (2013) (emphasis added) (quotation omitted).

We conclude that taking a defendant's saliva sample under rule 9.02, subdivision 2 (1)(f), to determine whether the defendant's DNA is on a weapon involved in the crime charged is similar to conducting blood and urine tests to obtain confirmatory evidence of driving while impaired. We also specifically reject the state's apparent argument that rule 9.02, subdivision 2 (1), provides an exception to the warrant requirement, because the language of the rule specifies that the discovery order is "subject to constitutional limitations." Both the federal and state

10. Also, in *King*, the state took a second DNA sample from King pursuant to a warrant. *Id.* at 441, 133 S.Ct. 1958. The state took a second saliva sample from Steeprock under rule 9.02 and without a valid search warrant.

constitutions therefore require that the state must obtain a valid search warrant based on probable cause before taking a defendant's saliva sample under rule 9.02, subdivision 2 (1).

The state did not apply for a search warrant when it moved under rule 9.02 for Steeprock's saliva sample. The state's brief to this court does not rely on the previously issued search warrant—which it stipulated that it would not use—to support the order directing Steeprock's saliva sample under rule 9.02. Rather, the state appears to argue that the district court effectively made a probable-cause determination when it found that obtaining a saliva sample from Steeprock "would show evidence of a crime." In Steeprock's reply brief, he disagrees, arguing that the district court did not make a finding of probable cause and instead used the "materially aid" standard from rule 9.02, subdivision 2 (1).

The record does not support the state's assertion that the district court made a probable-cause determination when granting the state's motion under rule 9.02, subdivision 2 (1)(f). The district court's order stated that it was granting the state's motion "[b]ecause obtaining a sample of Steeprock's DNA will materially aid in determining whether he committed the charged offense." The materially-aid determination is different from a determination of probable cause for a warrant, which requires a fair probability that evidence of a crime will be found in Steeprock's saliva sample.[11] Thus, because

11. Our analysis on this point is similar to our reasoning in *C.T.L.*, in which we concluded that "a determination of probable

the state took Steeprock's saliva sample under rule 9.02, subdivision 2 (1)(f), without obtaining a valid search warrant, we conclude that the state violated Steeprock's constitutional rights.

C. Steeprock's saliva sample obtained under rule 9.02, subdivision 2 (1)(f), without a warrant should have been suppressed.

Because the state violated Steeprock's constitutional rights when it obtained Steeprock's DNA under rule 9.02, subdivision 2 (1)(f), without a warrant, we consider whether this DNA evidence should be suppressed. *See State v. Malecha*, 3 N.W.3d 566, 571 (Minn. 2024) (considering whether to apply the exclusionary rule after determining an unconstitutional search occurred). The United States Constitution does not identify—nor does the Minnesota Constitution—"the remedy available in the event of an unreasonable search or seizure." *Id.* at 572. Accordingly, the United States Supreme Court created the exclusionary rule, "a prudential doctrine" designed "to compel respect for the constitutional guaranty" of freedom from unreasonable searches and seizures. *Davis v. United States*, 564 U.S. 229, 236, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011) (quotations omitted). The exclusionary rule allows for suppression of evidence obtained in violation of this constitutional guaranty. *Id.* But the Supreme Court has "rejected the argument that exclusion is a necessary consequence of a Fourth Amendment violation." *Herring*

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cause to support a criminal charge, even if it is made by a judge, is not sufficient to permit a biological specimen to be taken from the person charged without a warrant." 722 N.W.2d at 490.

v. United States, 555 U.S. 135, 141, 129 S.Ct. 695, 172 L.Ed.2d 496 (2009). The Supreme Court has stated that "the *sole* purpose of the exclusionary rule is to deter misconduct by law enforcement" and has "repeatedly rejected efforts to expand the focus of the exclusionary rule beyond deterrence of culpable police conduct." *Davis*, 564 U.S. at 246, 131 S.Ct. 2419.

The Minnesota Supreme Court has similarly stated that "the exclusionary rule in Minnesota, like the federal exclusionary rule, does not require automatic suppression of evidence obtained by unlawful means," and has "identified deterrence of police misconduct as the central purpose of the exclusionary rule." *State v. Lindquist*, 869 N.W.2d 863, 871-72 (Minn. 2015). But unlike the United States Supreme Court, which "has declined to consider any reason justifying exclusion beyond deterrence," the Minnesota Supreme Court "has never used such absolute language, instead emphasizing that deterrence is *a* purpose, but not the *only* purpose, of exclusion." *Malecha*, 3 N.W.3d at 577 n.4; *see, e.g.*, *State v. Lucas*, 372 N.W.2d 731, 737 (Minn. 1985) (declining to apply the exclusionary rule where suppression of the evidence would "not serve to deter misconduct by police officers" and admission of the evidence would "not compromise judicial integrity").

Recently, in *Malecha*, the Minnesota Supreme Court applied the exclusionary rule to evidence obtained when Malecha was illegally arrested under a quashed arrest warrant. 3 N.W.3d at 569. "Because of a clerical error by court administration, . . . the district court's order quashing the warrant was not transmitted to law enforcement" who arrested Malecha and discovered methamphetamine

during a search incident to arrest. *Id.* "[I]n addition to the central object of deterring unlawful *police* conduct," the supreme court recognized "other purposes" served by the exclusionary rule, "including the related goal of more generally deterring unlawful *government* conduct" such as negligent misconduct. *Id.* at 578. The supreme court determined that the exclusionary rule applied and reinstated the district court's order suppressing the methamphetamine and dismissing the charges. *Id.* at 579.

The state's brief to this court argues that the inevitable-discovery and good-faith exceptions to the exclusionary rule apply. We discuss these exceptions in turn.

1. Inevitable-Discovery Exception

Under the inevitable-discovery exception, "[i]f the state can establish by a preponderance of the evidence that the fruits of a challenged search ultimately or inevitably would have been discovered by lawful means, then the seized evidence is admissible even if the search violated the warrant requirement." *State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003) (quotation omitted). To meet its burden under the inevitable-discovery exception, the state's showing must "involve[ ] no speculative elements but focus[ ] on demonstrated historical facts capable of ready verification." *Nix v. Williams*, 467 U.S. 431, 444 n.5, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984).

Here, the district court's order granting the state's motion to obtain Steeprock's saliva sample under rule

9.02, subdivision 2 (1)(f), determined that the inevitable-discovery exception applied because "Steeprock's DNA profile is the same . . . as it was when the earlier buccal swab was collected as it was when Steeprock allegedly committed the offense." The state urges us to adopt the district court's analysis. Steeprock counters that "[n]othing in the inevitable-discovery doctrine allows the state to save an illegal search with a second illegal search."

While the record does not support Steeprock's claim that the previously issued search warrant was "illegal," we nonetheless conclude that the inevitable-discovery exception does not apply. As noted above, the inevitable-discovery exception applies to evidence that "inevitably would have been discovered by *lawful means*." *Licari*, 659 N.W.2d at 254 (emphasis added). The district court's determination that the state would have inevitably obtained Steeprock's DNA because DNA is unchanging does not address whether the state had lawful means to obtain the DNA—for example, whether the state had probable cause to secure a warrant for Steeprock's DNA.

The state argues that Steeprock's saliva sample "can be obtained lawfully with a search warrant instead of a rule 9.02 order" because there was "a fair probability" that the saliva sample "would contain evidence of [a] crime." We reject this argument for two reasons. First, we repeat our earlier observation that the state does not argue that probable cause supports the rule 9.02 order based on the warrant issued at the outset of this case. Also, the district court's rule 9.02 order did not determine that probable cause supported the taking of the saliva sample.

Second, the record does not support an appellate determination of probable cause.[12] As noted above, a valid warrant must be based "upon probable cause supported by oath or affirmation." U.S. Const. amend. IV; Minn. Const. art. I, § 10. The state's rule 9.02 motion merely summarized alleged facts without submitting any evidence, such as an affidavit. *See Nix*, 467 U.S. at 444 n.5, 104 S.Ct. 2501 (stating that application of the inevitable-discovery exception cannot be based on "speculative elements"); *State v. Dotson*, 900 N.W.2d 445, 453 (Minn. App. 2017) (declining to apply the inevitable-discovery doctrine based on "mere speculation" that law enforcement would have lawfully obtained the evidence).

On this record, the state has not met its burden to show that Steeprock's DNA "inevitably would have been discovered by lawful means." *Licari*, 659 N.W.2d at 254-55 (declining to apply the inevitable-discovery exception and remanding for factual findings because the district court did not consider "several factual issues crucial to inevitable discovery"); *see also State v. Diede*, 795 N.W.2d 836, 849 (Minn. 2011) (determining that the "facts of [the] case do not show that the police would inevitably have discovered" the illegally obtained evidence based on "probable cause to arrest" the defendant); *State v. Hatton*, 389 N.W.2d 229, 234 (Minn. App. 1986) (describing the inevitable-discovery exception as "narrow" and refusing

12. Because the record here does not support an appellate determination of probable cause, we reject the state's reliance on *In re Welfare of J.W.K.*, 583 N.W.2d 752, 757 (Minn. 1998) (determining that the record "was sufficient to establish probable cause to search" under the inevitable-discovery exception).

to apply it broadly because that "would render the Fourth Amendment protection meaningless"), *rev. denied* (Minn. Aug. 13, 1986). We therefore decline to apply the inevitable-discovery exception to the exclusionary rule.

2. Good-Faith Exception

The Minnesota Supreme Court has recognized the good-faith exception to the exclusionary rule in unconstitutional-search and -seizure cases "in only one limited circumstance." *Malecha*, 3 N.W.3d at 574. In *Lindquist*, law enforcement obtained a warrantless blood sample from Lindquist, who was the driver in an accident and failed field sobriety tests. 869 N.W.2d at 865. Lindquist appealed her conviction and argued that the blood sample should be excluded as a warrantless search; the state contended that the good-faith exception applied. *See id.* at 866.

In its opinion, the Minnesota Supreme Court recognized that two appellate decisions, "which were binding at the time of Lindquist's arrest," "justified a warrantless blood draw" based on the "natural dissipation of alcohol in the blood." *Id.* at 877-78 (quotation omitted). But, while Lindquist's direct appeal was pending, the United States Supreme Court "held that the rapid dissipation of alcohol in the body did not, by itself, establish that there were exigent circumstances justifying a warrantless blood draw from a suspected drunk driver." *Id.* at 866 (citing *McNeely*, 569 U.S. at 145, 133 S.Ct. 1552). The Minnesota Supreme Court determined that *McNeely* "overruled [its] precedent," but also declined to suppress

the evidence of Lindquist's blood draw, stating that "the exclusionary rule does not apply to violations of the Fourth Amendment to the U.S. Constitution, or Article I, Section 10, of the Minnesota Constitution when law enforcement acts in objectively reasonable reliance on binding appellate precedent." *Id.* at 866, 876. The supreme court noted that "the binding precedent must specifically authorize the behavior. Law enforcement cannot extend the law to areas in which no precedent exists or the law is unsettled." *Id.* at 876-77 (quotation omitted). Since *Lindquist*, the Minnesota Supreme Court has "declined to extend the good-faith exception." *Malecha*, 3 N.W.3d at 574.

Here, the state argues that the "good-faith exception applies because the district court and prosecutors reasonably relied on rule 9.02." We are not persuaded because the discovery procedures outlined in rule 9.02 are "subject to constitutional limitations." Minn. R. Crim. P. 9.02, subd. 2 (1). Also, neither the rule nor binding appellate precedent addresses these limitations, which distinguishes this case from the application of the good-faith exception in *Lindquist.* 869 N.W.2d at 876-77. Thus, the constitutional limitations in rule 9.02 are an unsettled area of law, and the good-faith exception, as recognized in Minnesota, does not apply.

In sum, the record and caselaw do not support the application of the above two exceptions to the exclusionary rule. Further, the Minnesota Supreme Court has applied the exclusionary rule to circumstances that would deter unlawful government conduct, not just unlawful *police* conduct. *Malecha*, 3 N.W.3d at 578. We therefore conclude

that the state's evidence that Steeprock's DNA matched the DNA on one of the guns used to shoot C.J. should have been suppressed because Steeprock's saliva sample was obtained without a valid search warrant.

D. The violation of Steeprock's constitutional rights was not harmless beyond a reasonable doubt.

Because we conclude that the state's DNA evidence should have been suppressed, we consider whether the admission of the DNA evidence during Steeprock's jury trial was prejudicial and requires reversal of Steeprock's convictions. "When determining whether a defendant was prejudiced by the admission of evidence that should have been excluded, [appellate courts] apply one of two different harmless-error tests." *McNeilly*, 6 N.W.3d at 189. "When the error does not implicate a constitutional right, a new trial is required only when" the wrongfully admitted evidence "substantially influenced the jury's verdict." *State v. Sanders*, 775 N.W.2d 883, 887 (Minn. 2009). "But when the error implicates a constitutional right, [appellate courts] employ a heightened standard and ask whether the error was harmless beyond a reasonable doubt." *McNeilly*, 6 N.W.3d at 189.

For an error to be harmless beyond a reasonable doubt, "the guilty verdict . . . must be surely unattributable to the error." *State v. Shoen*, 598 N.W.2d 370, 377 (Minn. 1999) (quotation omitted). "When determining whether a jury verdict was surely unattributable to an erroneous admission of evidence, [appellate courts] consider the

manner in which the evidence was presented, whether it was highly persuasive, whether it was used in closing argument, and whether it was effectively countered by the defendant." *Sanders*, 775 N.W.2d at 888 (quotation omitted). If the error implicating a constitutional right was not harmless beyond a reasonable doubt, then appellate courts "will award a new trial." *State v. Lee*, 929 N.W.2d 432, 440 (Minn. 2019) (quotation omitted).

Steeprock urges us to "reverse [his] convictions and remand for a new trial" because the DNA evidence was "highly persuasive" evidence of the "identity of the second shooter," the prosecuting attorney "repeatedly relied on the DNA evidence during closing and rebuttal arguments," and "Steeprock had no way to effectively counter the evidence." The state disagrees, arguing that the district court's error was harmless because "one of the guns used in the shooting was found right where [Steeprock] was apprehended" and A.C. "named [Steeprock] as her accomplice." We are not persuaded by the state's argument.

No witness testified about who shot C.J., and no evidence—apart from the DNA evidence—placed Steeprock at the crime scene. The DNA in Steeprock's saliva sample was compared to the DNA found on the Taurus pistol recovered near where Steeprock was arrested. Two forensic scientists from the BCA testified that the Taurus pistol fired eight of the 15 cartridge cases found in the bedroom where C.J. was shot and that the DNA on the Taurus pistol matched Steeprock's DNA in the saliva sample. The prosecuting attorney referred to

Steeprock's DNA on the pistol twice in the initial closing argument and twice during rebuttal argument.

Steeprock's attorney tried to counter the DNA evidence on cross-examination of the forensic scientists and in closing argument. Steeprock's attorney pointed out that the state's evidence did not show where Steeprock's DNA was found on the pistol and that forensic analysis showed that the swab taken from the pistol contained a mixture of DNA from three or more other individuals. But on rebuttal, the prosecuting attorney noted that Steeprock's theory of the case required the jury to believe that "many coincidences" made Steeprock "the victim of the most unfortunate set of circumstances."

In short, the DNA evidence was persuasive and central to the state's case against Steeprock. *See State v. Garland*, 942 N.W.2d 732, 741 (Minn. 2020) (stating that "DNA evidence may be strong and persuasive to a jury"). Thus, we cannot conclude that the jury's verdict was surely unattributable to the DNA evidence obtained based on the district court's rule 9.02 order for Steeprock's saliva sample. The error in admitting such evidence was not harmless beyond a reasonable doubt, and Steeprock is entitled to a new trial. *See Lee*, 929 N.W.2d at 440 ("When an error implicates a constitutional right, we will award a new trial unless the error is harmless beyond a reasonable doubt." (quotation omitted)); *State v. Weaver*, 733 N.W.2d 793, 802 (Minn. App. 2007) (determining that appellant was "entitled to a new trial" where the erroneous admission of laboratory test results "surely influenced the verdict in some way"), *rev. denied* (Minn. Sept. 18, 2007).

We therefore reverse Steeprock's conviction and remand for a new trial. We note that this opinion does not preclude the state on remand from seeking to obtain Steeprock's DNA for analysis based on a valid search warrant.

II. The district court did not abuse its discretion by refusing to instruct the jury that accomplice testimony requires corroboration because "testimony" in section 634.04 refers to statements under oath.

Steeprock argues that "the district court erred by denying [his] motion to instruct the jury, in accordance with section 634.04, that it could not find Steeprock guilty based upon" A.C.'s uncorroborated statements in the jail calls and jail text messages. Because this issue is likely to arise again in a new trial, we consider the parties' arguments. *See State v. Logan*, 535 N.W.2d 320, 325 (Minn. 1995) (addressing "issues raised by defendant on appeal that may arise on retrial"); *State v. Hunter*, 857 N.W.2d 537, 543 (Minn. App. 2014) (addressing an issue raised by a defendant "in the interests of judicial economy because it will likely arise again on remand"). Appellate courts review a district court's decision about jury instructions for an abuse of discretion. *State v. Mahkuk*, 736 N.W.2d 675, 682 (Minn. 2007).

During trial and outside the presence of the jury, the parties argued about whether the district court should instruct the jury that it could not convict Steeprock based on the uncorroborated out-of-court statements

of Steeprock's accomplice, A.C., who did not testify at trial. Steeprock argued that the accomplice-testimony instruction should apply to an accomplice's "out-of-court statements." The state disagreed, contending that testimony is "an in-court under oath statement." The district court denied Steeprock's request and explained that, "[w]ithout further direction from the appellate courts," it would not "give the instruction."

Under Minn. Stat. § 634.04, a "conviction cannot be had upon the testimony of an accomplice, unless it is corroborated by such other evidence as tends to convict the defendant of the commission of the offense, and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof."[13] The state does not dispute that A.C. was Steeprock's accomplice.

Whether "testimony" as used in section 634.04 includes an accomplice's out-of-court statements is a question of first impression that requires statutory interpretation. Appellate courts review a question of statutory interpretation de novo. *State v. Loveless*, 987 N.W.2d 224, 244 (Minn. 2023). The goal of statutory interpretation "is to ascertain and effectuate the intent of the Legislature." *State v. Robinson*, 921 N.W.2d 755, 758 (Minn. 2019) (quotation omitted).

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13. Minnesota's pattern jury instructions incorporate the relevant statute and instruct the jury, "You may not find the defendant guilty of a crime on the basis of the testimony of an accomplice unless that testimony is corroborated by other evidence that tends to convict the defendant of the crime." 10 *Minnesota Practice*, CRIMJIG 3.07 (2023).

When interpreting a statute, appellate courts begin "by considering whether the statutory language at issue is ambiguous." *State v. Holl*, 966 N.W.2d 803, 808 (Minn. 2021). "A statute is ambiguous when the disputed language is subject to more than one reasonable interpretation." *Roberts v. State*, 945 N.W.2d 850, 853 (Minn. 2020). If the language is not ambiguous, appellate courts "abide by the plain language of the statute," but if the language is ambiguous, appellate courts "use the applicable canons of construction to ascertain the statute's meaning." *Holl*, 966 N.W.2d at 808.

Steeprock argues that "testimony," as used in section 634.04, is ambiguous because it "is not defined in the statute" and "there is no one, single definition of the word 'testimony'" in the dictionary. Steeprock also argues that "the legislature recognized that accomplices are untrustworthy" and thus "to allow convictions based on uncorroborated out-of-court accomplice statements but disallow convictions based upon uncorroborated in-court accomplice statements . . . is backwards." The state argues that section 634.04 "uses 'testimony' in its legal sense" to refer to statements under oath. While the state does not explicitly contend that "testimony" as used in section 634.04 is unambiguous, we understand its brief to make this point implicitly.

Section 634.04 does not define the word "testimony." "When a statute does not define a specific phrase or word, [appellate courts] often look to dictionary definitions." *Robinson*, 921 N.W.2d at 760. Appellate courts generally construe words "according to their common and approved

usage," but "technical words . . . are construed according to [their] special meaning." *State v. Bradley*, 4 N.W.3d 105, 112-13 (Minn. 2024) (quotations omitted) (determining that, in Minnesota's statute proscribing multiple convictions for included offenses of the crime charged, "the only reasonable interpretation of the term 'degree' . . . is the technical meaning referring to the ordinally numbered degrees found throughout the criminal code"). To determine "whether words in a statute have a technical meaning or an ordinary meaning, [appellate courts] look at the context in which the phrase appears." *Id.* at 112 (quotation omitted). "A word has a special meaning if courts have ascribed a well-established and long-accepted meaning to it." *State v. Jonsgaard*, 949 N.W.2d 161, 164, 167-69 (Minn. App. 2020) (concluding that "the special, technical meaning" applied to the word "endorse" as used in a check-forgery statute).

"Testimony" is a technical legal term in section 634.04, which governs convictions and indicates that the relevant context is testimony in a courtroom. In the context of a courtroom, "testimony" means "[e]vidence that a competent witness under oath or affirmation gives at trial or in an affidavit or deposition." *Black's Law Dictionary* 1778 (11th ed. 2019). Even nonlegal dictionary definitions give a special meaning to the word "testimony." *See, e.g.*, *The American Heritage Dictionary of the English Language* 1799 (5th ed. 2018) (defining "testimony" as "[a] declaration by a witness under oath"); *Testimony*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/testimony [https://perma.cc/H8E2-EXS7]

(defining "testimony" as a "solemn declaration usually made orally by a witness under oath").[14]

Caselaw also supports interpreting the term "testimony" according to its technical and legal meaning. In *State v. Davenport*, Davenport and two accomplices were charged with murder. 947 N.W.2d 251, 257 (Minn. 2020). One accomplice pleaded guilty and implicated Davenport in his plea-hearing testimony, which "was admitted as substantive evidence and read aloud" at Davenport's jury trial. *Id.* Davenport challenged the district court's failure to instruct the jury on the corroboration required for accomplice testimony. *Id.* at 260. Although the supreme court declined to decide the meaning of "testimony" under section 634.04, it concluded that the accomplice's plea-hearing testimony was "'testimony' for the purpose of section 634.04."[15] *Davenport*, 947 N.W.2d at 262 & n.7. The

14. We acknowledge that other nonlegal definitions of "testimony" ascribe a broader meaning. *See, e.g.*, *The American Heritage Dictionary of the English Language* 1799 (5th ed. 2018) (providing another definition of "testimony" as "[e]vidence in support of a fact or assertion"). But these definitions are not in the context of courtroom testimony.

15. In *State v. Henderson*, the supreme court also declined to decide the meaning of "testimony," as used in section 634.04, when Henderson challenged the district court's refusal to give an accomplice-testimony instruction for a witness's testimony about the out-of-court statements of Henderson's accomplice. 620 N.W.2d 688, 700-01 (Minn. 2001). The supreme court determined that it "need not decide whether section 634.04 applies to out-of-court statements by an accomplice" because "[e]ven if the court erred in not giving the instruction . . . any error is harmless." *Id.* at 701.

supreme court noted that the accomplice "gave his plea hearing testimony *under oath* during a court proceeding." *Id.* (emphasis added). Thus, the supreme court's ruling in *Davenport* applied section 634.04 to statements under oath.

The statutory scheme also provides another layer of relevant context and supports applying the technical meaning of "testimony." Section 634.04 is part of chapter 634, which is titled "Evidence; Witnesses." Other sections of chapter 634 refer to hearings or trials. This statutory scheme suggests that "testimony" should be interpreted within the context of courtroom or legal proceedings. *See, e.g.*, Minn. Stat. §§ 634.25 ("In a civil or criminal trial or hearing, the results of DNA analysis . . . are admissible in evidence without antecedent expert testimony that DNA analysis provides a trustworthy and reliable method . . . ."), .36 ("In any hearing or trial of a criminal offense or petty misdemeanor . . . evidence of a videotape . . . prepared by a peace officer . . . while in the performance of official duties shall not be excluded on the ground that a written transcript . . . was not prepared . . . .") (2020). In the context of legal proceedings, "testimony" means one thing: statements under oath.

Because the goal of statutory interpretation is to give effect to legislative intent, we also examine that aspect of section 634.04. The supreme court has noted that "the rationale" for section 634.04 "is that the credibility of an accomplice is inherently untrustworthy." *State v. Strommen*, 648 N.W.2d 681, 689 (Minn. 2002); *see State v. Azzone*, 271 Minn. 166, 135 N.W.2d 488, 493 (1965)

(stating that one object of section 634.04 “is to provide a check upon the credibility of testimony of a person who, having been admittedly involved in criminal conduct, might be disposed to shift or diffuse responsibility”). By interpreting “testimony,” as used in section 634.04, to mean statements under oath, we are giving effect to the legislature’s intent to place a check upon accomplice credibility.

The supreme court has stated that “arguably the same concerns regarding reliance on accomplice testimony exist regardless of the form in which the statements are presented to the jury.” *Henderson*, 620 N.W.2d at 695, 701. We recognize that the consequence of interpreting “testimony” to be statements under oath means that no corroboration is required for an accomplice’s out-of-court statements—which are not subject to cross-examination and are arguably less reliable.

We conclude, however, that section 634.04 unambiguously refers to “testimony,” a technical legal term that means statements under oath. We will not “add words . . . to an unambiguous statute.” *State v. Expose*, 872 N.W.2d 252, 259 (Minn. 2015) (quotation omitted). Nor will we “re-write an unambiguous statute to conform to what may be the Legislature’s intent.” *State v. Struzyk*, 869 N.W.2d 280, 288 n.5 (Minn. 2015). While expanding section 634.04 to include out-of-court statements may be consistent with the legislature’s intent, we defer to the legislature to consider this question and make any necessary amendments.

In short, we conclude that "testimony" in section 634.04 unambiguously refers to statements made under oath. Because A.C.'s recorded statements were made out of court and were not under oath, they are not testimony under section 634.04. Thus, the district court did not abuse its discretion by refusing to instruct the jury that out-of-court statements by an accomplice require corroboration under section 634.04.

III. Admissibility of A.C.'s Statements in the Jail Calls and Jail Text Messages

Steeprock argues that the "primary evidence at [his] trial was the hearsay statements" of A.C., which were "inadmissible because most of those statements were not so against [A.C.'s] penal interest" such that "she would not have made them had they not been true." The state argues that Steeprock forfeited this issue, but if the issue is preserved, the district court did not abuse its discretion by admitting the statements as made against A.C.'s interest.

The Minnesota Rules of Evidence define "hearsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Minn. R. Evid. 801(c). "The use of hearsay evidence generally is prohibited during a trial unless one of several exceptions applies." *State v. Vangrevenhof*, 941 N.W.2d 730, 736 (Minn. 2020); *see* Minn. R. Evid. 802. One of these exceptions is for statements against the declarant's interest. Minn. R. Evid. 804(b)(3).

A district court's analysis of the admissibility of statements against interest in a criminal trial under rule 804(b)(3) follows three steps. *State v. Tovar*, 605 N.W.2d 717, 723 (Minn. 2000). First, "for the statement-against-interest exception to apply, the declarant must be unavailable." *Miles v. State*, 840 N.W.2d 195, 203 (Minn. 2013); *see also* Minn. R. Evid. 804(b). Second, the statement must be

> at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true.

Minn. R. Evid. 804(b)(3).

Third, courts must "construe the term 'statement' narrowly and allow only those statements that directly inculpate the declarant and not admit a larger narrative that merely contains some inculpating statements." *Tovar*, 605 N.W.2d at 723. "[S]tatements incriminating a third party must be scrutinized carefully to ensure that they are truly against the declarant's penal interest and not attempts to shift blame or curry favor." *State v. Usee*, 800 N.W.2d 192, 199 (Minn. App. 2011) (quotation omitted), *rev. denied* (Minn. Aug. 24, 2011).

We observe that the parties agree that A.C. was an unavailable declarant but disagree about whether the

district court abused its discretion on the second and third steps described above. At trial, the state offered into evidence four recorded jail calls involving A.C. and six jail text messages from A.C. Steeprock concedes that the first recorded jail call "was self-incriminating" to A.C., and thus, he challenges only the other three jail calls and the jail text messages.

We decline to discuss the admissibility of the three challenged jail calls and the jail text messages in detail because we have otherwise concluded that Steeprock is entitled to a new trial based on the violation of his constitutional rights in obtaining his saliva sample under rule 9.02. But because it may be helpful on remand, we note that, under rule 804(b)(3), the supreme court has instructed courts to "consider whether each declaration or remark—rather than the narrative or conversation as a whole—is sufficiently against the declarant's interest." *State v. Morales*, 788 N.W.2d 737, 763 (Minn. 2010). The supreme court added that courts must "parse a declarant's generally self-inculpatory narrative to separate and omit from the narrative non-self-inculpatory declarations or remarks." *Id.*; *see Williamson v. United States*, 512 U.S. 594, 600-01, 114 S.Ct. 2431, 129 L.Ed.2d 476 (1994) (stating that the hearsay exception for statements against interest "does not allow admission of non-self-inculpatory statements, even if they are made within a broader narrative that is generally self-inculpatory"). Thus, each of A.C.'s statements—rather than the call or text message as a whole—must be sufficiently against A.C.'s interest to be admissible under rule 804(b)(3).

IV. Steeprock's motion to strike parts of the state's supplemental response brief is denied.

Steeprock moves to strike parts of the state's supplemental response brief that was filed in response to his late pro se supplemental brief,[16] arguing that the state improperly made "additional arguments" about the rule 804(b)(3) issues raised in Steeprock's initial brief. Steeprock argues that "other than a brief reference to his trial attorney's argument that [A.C.'s] statements were not 'self-inculpatory'" in his pro se supplemental brief, he "did not raise an issue under Rule 804(b)(3)."[17] The state

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16. We note that this court allowed the state to file a supplemental response brief to avoid any prejudice after Steeprock's pro se supplemental brief was filed late.

17. Many of Steeprock's arguments in his pro se supplemental brief reiterate those raised by his attorney in the initial brief, and none of Steeprock's additional arguments provide a basis for relief. Steeprock argues that the district court erred by granting the state's motion to obtain Steeprock's saliva sample under rule 9.02, subdivision 2 (1)(f), because "the state agreed not to use" the DNA evidence from the pretrial search warrant. This argument is unsupported by legal analysis or citation, and thus, we decline to address it. *See Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994). Steeprock also argues that the statements by A.C. and brother during the recorded jail calls were "non-testimonial" and "violate[ ] the confrontation clause." Steeprock's argument, however, misconstrues the Confrontation Clause, which prohibits the "admission of *testimonial* statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination." *State v. Warsame*, 735 N.W.2d 684, 689 (Minn. 2007) (emphasis added) (quoting *Crawford v. Washington*, 541 U.S. 36, 53-54, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004)).

disagrees, arguing that Steeprock's "pro se supplemental brief raised rule 804(b)(3) as an issue" and that, even if the state made new arguments, they are "allowed," citing *State v. Grunig*, 660 N.W.2d 134 (Minn. 2003).

Because we do not consider the state's arguments in its supplemental response brief, we deny Steeprock's motion to strike as unnecessary. *See Berge v. Comm'r of Pub. Safety*, 588 N.W.2d 177, 180 (Minn. App. 1999) (determining that it was unnecessary to address the merits of the motion to strike because this court did not rely on the objected-to material).

DECISION

When the state obtained Steeprock's saliva sample pursuant to a court order under Minn. R. Crim. P. 9.02, subd. 2 (1)(f), for the express purpose of determining whether Steeprock's DNA matched DNA on a weapon used in the crime charged, the state conducted a search that required a valid warrant. The district court granted the state's rule 9.02 motion and ordered Steeprock to provide a saliva sample, but the state did not obtain a valid search warrant. Thus, we conclude that the state violated Steeprock's constitutional rights and that the exclusionary rule applies; accordingly, the state's DNA evidence derived from Steeprock's saliva sample should have been suppressed. The error in admitting the DNA evidence was not harmless beyond a reasonable doubt, and therefore, Steeprock's conviction is reversed and his case remanded for a new trial.

We also hold that "testimony," as used in Minn. Stat. § 634.04, refers to statements made under oath. The district court therefore did not abuse its discretion by refusing to instruct the jury that A.C.'s out-of-court statements required corroboration, as provided in section 634.04. Next, we need not decide the admissibility of A.C.'s hearsay statements. And finally, we deny Steeprock's motion to strike portions of the state's supplemental response brief.

Reversed and remanded; motion denied.

APPENDIX D — ORDER AND MEMORANDUM OF THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF MINNESOTA, FILED OCTOBER 14, 2021

STATE OF MINNESOTA
COUNTY OF ST. LOUIS

DISTRICT COURT
CRIMINAL DIVISION
SIXTH JUDICIAL DISTRICT

Court File No. 69DU-CR-21-26

STATE OF MINNESOTA,

Plaintiff,

v.

SENECA WARRIOR STEEPROCK,

Defendant.

October 14, 2021

ORDER GRANTING MOTION TO COMPEL DNA UNDER RULE 9.02

This matter came before the undersigned for a Motion Hearing on October 11, 2021. Mr. Steeprock appeared with counsel, Attorney Wallace. Attorney Fralich appeared on behalf of the State.

Having reviewed the parties' briefs, discovery materials, and the file, record, and proceedings herein, the Court makes the following:

ORDER

1. The State's Motion to Compel DNA is granted. Defendant Steeprock must provide a DNA sample to the State.

2. The trial that was set to begin on November 2, 2021, is continued.

3. The memorandum of law attached hereto is incorporated as the Court's Findings of Fact and Conclusions of Law.

BY THE COURT:

/s/Leslie E. Beiers
Honorable Leslie E. Beiers
Judge of District Court

MEMORANDUM

I. FACTS

Defendant Steeprock is charged with aiding and abetting Alexia Cutbank in the attempted murder of Cameron Jones. When police first tried to approach Steeprock after he became a suspect in the case, he fled. He was ultimately apprehended and arrested, and a gun was found in the snow in the area to which he fled. Firearms testing by the BCA concluded that the gun found fired eight of the casings that were recovered from the scene where Jones was shot.

The gun that was recovered contained sufficient DNA for a comparison. Although the State collected a buccal swab of DNA from Mr. Steeprock pursuant to a warrant issued on December 31, 2020, it has since stipulated not to use evidence recovered pursuant to that warrant.[1] The matter is now before the Court on the State's motion to compel Mr. Steeprock to provide a DNA sample under Minn. R. Crim. P 9.02.2(1)(f).

II. ANALYSIS

Under Minn. R. Crim. P. 9.02.2(1)(f), a court can order a defendant to provide a DNA sample if it "will materially aid in determining whether the defendant committed

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1. In the prosecution of Mr. Steeprock's alleged accomplice, Alexia Cutbank, the State stipulated to not use the fruits of the same December 31 warrant after Ms. Cutbank's counsel raised a Franks challenge. The State agreed to the same stipulation in this case.

the offense charged." Here, obtaining a DNA sample will materially aid in determining whether Defendant Steeprock possessed the gun and committed the charged offense, and Steeprock does not argue otherwise. Instead, Steeprock argues that the State cannot now obtain his DNA under Minn. R. Crim. P 9.02.2(1)(f) after having stipulated not to use the fruits of the December 31st search warrant, which included a buccal DNA swab from Steeprock. Steeprock's argument is unpersuasive.

A couple of cases inform the Court's decision. In *Matter of Welfare of J.W.K.*, 583 N.W.2d 752 (Minn. 1998), police were able to use the defendant's DNA profile, even though it was obtained illegally, because they would have lawfully obtained a sample in any case. And in *State v. Eppler*, 362 N.W.2d 315 (Minn. 1985), the Minnesota Supreme Court stated that "as a matter of fourth amendment law, even if the police illegally arrest a person, take that person's picture, and then show the picture to an eyewitness, the eyewitness' identification need not be excluded pursuant to the federal exclusionary rule if a photograph of the person inevitably would have been obtained through lawful means and shown to the eyewitness." Both cases invoke the doctrine of inevitable discovery pronounced in *Nix v. Williams*, 467 U.S. 431, 104 S. Ct. 2501 (1984).

Here, the doctrine of inevitable discovery permits the State to obtain a sample of Steeprock's DNA, notwithstanding the stipulation not to use evidence recovered under the earlier warrant. The doctrine applies because a DNA profile, like an individual's appearance, is an innate, immutable characteristic—Steeprock's DNA

profile is the same now as it was when the earlier buccal swab was collected as it was when Steeprock allegedly committed the offense.[2]

Further, case law aside, as a practical matter the evidence that the State stipulated that it would not use was one buccal swab of Steeprock's DNA. The State did not stipulate that it would not use, more generally, DNA evidence as a whole, which is effectively the position that Steeprock takes.

III. CONCLUSION

Because obtaining a sample of Steeprock's DNA will materially aid in determining whether he committed the charged offense, and because the State's stipulation not to use the earlier buccal swab does not prevent the State from now seeking a DNA sample under Minn. R. Crim. P. 9.02.2(1)(f), the State's motion is granted.

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2. As an aside, in most instances the doctrine of inevitable discovery will apply to evidence of identity because the evidence's enduring qualities. And Minn. R. Crim. P 9.02.2(1) would seem to apply primarily, if not solely, to such evidence of identity: it permits a court to order a defendant to appear in a lineup, to speak for purposes of voice identification, to permit fingerprinting or body measurements, to pose for photos, and to provide hand-writing samples. As such, it seems unlikely that the State would ever be prevented from obtaining such evidence under Rule 9.02.2(1) after charges have been brought as a result of defective pre-charging search warrants that sought the same evidence.

APPENDIX E — MOTIONS IN THE SIXTH JUDICIAL DISTRICT OF THE STATE OF MINNESOTA, FILED SEPTEMBER 23, 2021

STATE OF MINNESOTA
COUNTY OF ST. LOUIS

DISTRICT COURT–CRIMINAL DIVISION
SIXTH JUDICIAL DISTRICT

District Court File No. 69DU-CR-21-26

STATE OF MINNESOTA,

Plaintiff,

v.

SENECA WARRIOR STEEPROCK,

Defendant.

September 23, 2021

PROSECUTION'S MOTIONS TO COMPEL DNA UNDER 9.02

TO: THE HONORABLE LESLIE BEIERS, AND Gerald K. Wallace, ATTORNEY FOR THE ABOVE-NAMED DEFENDANT:

Pursuant to Minnesota Rules of Criminal Procedure 9.02.2(1)(f), the State, through counsel, hereby moves

this Court for an Order requiring defendant to permit the taking of saliva for the purpose of comparative DNA analysis.

On or about December 29, 2020, officers located a male identified as Cameron Maurice Jones, had been shot. Mr. Jones had obvious injuries, but was not able to provide any information at that time. Officers were able to ascertain that the shootings had occurred inside the upper apartment located at 1 West Fourth Street in the City of Duluth, St. Louis County, Minnesota. Several 9mm cartridge casings were collected and secured as evidence in the shooting.

Officers were able to develop suspects in the case through various statements, witnesses, and recorded jail phone calls. They were identified as Alexia Cutbank and Seneca Steeprock. Investigator Nevanen determined he had probable cause for the arrest of Cutbank and Steeprock. Investigators located Cutbank and Steeprock together in the Gateway Towers parking lot. Cutbank was taken into custody and searched incident to arrest. Officers located a Walther Model PPS 9mm Luger caliber pistol in her purse which was the same caliber as the casings recovered from the scene of the shooting.

Steeprock initially fled from officers. He was eventually secured and taken into custody. Officers located a Taurus Model PT 111 G2 A 9mm Luger caliber pistol in the snow directly in the line of travel for Steeprock's flight from officers. The firearm was loaded with the same caliber of casings recovered from the scene of the shooting.

Firearms testing by the BCA concluded the Walther Model PPS 9mm fired seven of the 9mm caliber cartridge cases recovered from the scene of the shooting. Further firearms testing by the BCA concluded the Taurus Model PT111 G2 A 9mm fired eight of the 9mm caliber cartridge cases recovered from the scene of the shooting.

Initial testing by the BCA has revealed DNA suitable for comparison from both firearms.

The collection of a known sample of Defendant's DNA will materially aid in determining whether the Defendant committed the offense as charged. As such, the State, respectfully requests an Order that Defendant permit the taking of a saliva sample in order to provide the BCA with a known sample for comparative analysis.

Dated at Duluth, Minnesota: September 23, 2021

Respectfully submitted,

St. Louis County Attorney

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