No. 25-1207

IN THE

Supreme Court of the United States

MINNESOTA,

Petitioner,

v.

SENECA WARRIOR STEEPROCK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

This case illustrates the unjust consequences of the undisputed split over the inevitable-discovery doctrine. Under the minority rule adopted below, evidence of guilt is unnecessarily suppressed. This may make prosecution impossible. At best, under a situation like this case, victims and witnesses must endure a retrial even though the DNA evidence (or other evidence) used will be exactly the same as that used in the first trial. Pet. App.48a. Under the majority rule, by contrast, no retrial would be required here because the record establishes that the prosecution would have inevitably obtained the same DNA evidence through lawful means. That is true even though the prosecution was not contemporaneously pursuing a warrant when it obtained the buccal sample pursuant to a district court order issued under Minnesota Rule of Criminal Procedure 9.02, subdivision 2(1)(f).

The parties agree that resolution of the question presented here turns on the proper interpretation of *Nix v. Williams*, 467 U.S. 431 (1984). BIO 4, 11; Pet. App.31a. The division among courts is whether, under *Nix*, the inevitable-discovery doctrine requires proof that officers were already seeking a warrant or pursuing an alternative line of investigation at the time of the challenged conduct, or whether courts can determine inevitability based on facts showing that lawful discovery would have occurred in the ordinary course.

This case is a clean vehicle to resolve the split. The prosecution sought Steeprock's DNA through a then-authorized state-court procedure after setting forth facts sufficient to establish probable cause to obtain the

same evidence by warrant. And, significantly, this is not a case involving dissipating or destructible evidence, police misconduct undertaken to evade the warrant requirement, or speculative discovery. The petition should be granted to resolve the division over the proper application of the inevitable-discovery doctrine and to restore uniformity to the administration of the Fourth Amendment.

ARGUMENT

I. The Minnesota Supreme Court's Decision Deepens a Conflict Among the Courts

Steeprock does not deny that federal and state courts are divided over whether the inevitable-discovery doctrine requires active pursuit of a warrant or an alternative line of investigation at the time of the challenged conduct. As the petition explains, at least five federal courts of appeal and several state supreme courts reject such a requirement, while a smaller group of courts – including the Minnesota Supreme Court here – require proof of contemporaneous investigative efforts before the inevitable-discovery doctrine may apply. Pet.10-14.

Steeprock instead argues that the decision below falls outside the active-pursuit camp because the Minnesota Supreme Court never used that phrase. BIO 5-6. But his argument elevates form over substance. The relevant question is not whether the court used particular terminology, but whether its reasoning imposed the active-pursuit requirement.

The Minnesota Supreme Court rejected inevitable discovery solely because there are "no historical facts"

showing that the State "did anything to secure a search warrant" after the State stipulated that it would not rely on evidence obtained under the challenged warrant. Pet. App.31a. In doing so, the court made contemporaneous warrant-seeking efforts dispositive: absent proof that officers were already pursuing a warrant, the inevitable-discovery doctrine could not apply. That is the essence of the active-pursuit requirement.

Because what matters is the substance of a state court's rule – not the terminology used – the decision below falls squarely within the minority approach that makes a contemporaneous investigative effort a prerequisite to admissibility.

II. The Decision Below is Wrong

The active-pursuit requirement adopted by the Minnesota Supreme Court cannot be reconciled with *Nix*. *Nix* directs courts to ask a question: whether it is more likely than not that lawful discovery of the challenged evidence would have occurred based on "demonstrated historical facts." 467 U.S. at 444 (applying "preponderance of the evidence" standard to whether "the information ultimately or inevitably would have been discovered by lawful means").[1] That inquiry permits courts to draw reasonable, common-sense inferences from established facts to determine what would have happened in the ordinary course. Just as a constitutional error does not require reversal if it is harmless beyond a reasonable

1. "Preponderance of the evidence" means "more likely than not." *See, e.g., Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 329 (2007).

doubt, so too can a warrantless search be harmless under *Nix*'s more-likely-than-not test.

The minority approach improperly narrows the inevitable-discovery doctrine by converting *Nix*'s fact-based inquiry into a rigid requirement equivalent to proof of harmlessness *beyond any doubt*. Under the active-pursuit requirement, inevitable discovery is unavailable unless officers can point to contemporaneous investigative efforts already underway, even when the surrounding facts establish that it is more likely than not that lawful discovery would have occurred. This requirement is inconsistent with *Nix*'s focus on inevitability rather than investigative timing.

The Minnesota Supreme Court applied the minority rule here. The court acknowledged that the State had previously obtained a warrant for the same identity evidence, and it did not question the existence of facts sufficient to establish probable cause. Yet it deemed the State's inevitable-discovery showing insufficient because there were no historical facts proving that the State took steps to secure a second warrant after stipulating that it would not rely on the initial warrant. Pet. App.31a. In other words, the absence of contemporaneous warrant-seeking efforts – not the demonstrated intent to obtain the evidence and the strength of the underlying probable-cause facts – drove the analysis.

This active-pursuit requirement was outcome-determinative. *See* Pet.13-14, 17. Steeprock contends otherwise, claiming that "the state did not prove by a preponderance of the evidence that it would have inevitably discovered" the DNA evidence. BIO 11. But the record establishes precisely that.

There is no need to speculate on whether the prosecution intended to obtain Steeprock's DNA after the first warrant was challenged; it did obtain the DNA again, using Minnesota Rule of Criminal Procedure 9.02. Nor is there a reasonable basis to conclude that the prosecution would have abandoned efforts to obtain Steeprock's DNA had Rule 9.02 been unavailable, especially given the facts supporting probable cause for a warrant.

At the time the prosecution obtained the DNA, it is undisputed that it knew:

- Steeprock had been identified as a suspect in the attempted murder and was using a car associated with the victim that was observed leaving the scene of the shooting. Pet.4.
- Two days after the shooting, when the police saw Steeprock walking toward the car, he fled as officers approached. *Id.*
- Officers recovered a gun from the snowbank at the location where Steeprock was apprehended. Pet.4-5.
- Testing established that this gun fired eight of the fifteen cartridge casings recovered from the shooting scene. Pet.5.
- DNA evidence was found on the gun. *Id.*

Under these facts, the record readily establishes that the prosecution more likely than not would have continued pursuing Steeprock's DNA through lawful means had

Rule 9.02 been unavailable.[2] And given the evidence connecting Steeprock to the gun used in the shooting, there can be no doubt that a warrant seeking a DNA sample for comparison purposes would have been signed.[3]

III. This is an Excellent Vehicle

Finally, Steeprock argues that this Court's review would be advisory because the Minnesota Supreme Court's decision rests on state law; he cites the broader scope of Minnesota's exclusionary rule. BIO 7-9. This contention fails.

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2. The Petition's explanation (at 13-14, and 17) that the State could and would have obtained a search warrant – had it not obtained the Rule 9.02 order – stands unrebutted. The State did not separately litigate inevitable discovery below because under Minnesota precedent it did not need to do so, at least until the Minnesota Supreme Court overruled that precedent in the decision at issue here. Pet. App.30a; BIO 13-16. Notably, Steeprock does not contend that the State engaged in misconduct by relying on Rule 9.02's plain language to obtain the DNA sample.

3. To be clear, the search here just involved using a buccal swab to obtain a saliva sample only for DNA comparison. Pet. App.6a, 18a; BIO 1, 3, 11. And although Steeprock repeatedly asserts that the original warrant application contained material misstatements, no court has ever so held. The prosecution elected not to waste resources on a *Franks* hearing; instead, it stipulated it would not use evidence obtained under the challenged warrant, and proceeded under the long-standing plain language of Rule 9.02. The State is not contesting the subsequent determination that a warrant was required. But the facts supporting probable cause to obtain Steeprock's DNA have never been meaningfully disputed, and the record establishes that it is more likely than not that the State would have obtained the DNA through lawful means even if denied use of Rule 9.02.

Michigan v. Long instructs that when, as here, a state court interweaves federal and state law, this Court presumes the decision rests on federal grounds unless the state court makes a "plain statement" that its judgment is independently supported by state law. 463 U.S. 1032, 1041 (1983). To insulate such a decision from this Court's review, the state court must "clearly and expressly" indicate that its decision rests on a separate, adequate, and independent state ground. *Id.* No such statement appears here.

To the contrary, the Minnesota Supreme Court grounded its inevitable-discovery analysis in *Nix*. Pet. App.28a-32a. It did not suggest that its holding rested on an independent state-law exclusionary rule. Where a decision "fairly appears to rest primarily on federal law," this Court will not presume the existence of an adequate and independent state ground. *Caldwell v. Mississippi*, 472 U.S. 320, 327 (1985).

Steeprock's reliance on the broader scope of Minnesota's exclusionary rule does not alter this analysis. BIO 8-9. The question is not whether Minnesota may adopt more protective rules as a matter of state law – it may – but rather whether the decision below rests on such a rule. It does not. The court analyzed and rejected inevitable discovery under *Nix*, not under a distinct state-law standard. Pet. App.25a–32a.

Nor does the possibility that the Minnesota Supreme Court could reach the same result on remand render this case advisory. This Court routinely reviews state-court decisions applying federal law, even where the state court remains free to adopt broader protections on remand. *See, e.g., Arizona v. Evans*, 514 U.S. 1, 8 (1995) ("Under our

decision today, the State of Arizona remains free to seek whatever solutions it chooses .... Indeed, it is freer to do so because it is disabused of its erroneous view of what the United States Constitution requires."). Clarifying the scope of the inevitable-discovery doctrine under *Nix* would not be advisory, it would resolve an important legal question and guide further proceedings.

CONCLUSION

The petition for writ of certiorari should be granted.

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Respectfully submitted,

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