Case No. [redacted]
State of Minnesota
in Supreme Court

[redacted],

Petitioner.

PETITION FOR REVIEW OF DECISION OF COURT OF APPEALS

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TO: THE SUPREME COURT OF THE STATE OF MINNESOTA

Petitioner [redacted] respectfully requests Supreme Court review of the above-entitled decision of the court of appeals.

1. Parties

The front cover of this petition identifies the parties and attorneys.

2. Decision Appealed

[redacted] seeks review of a January 8, 2024 decision of the court of appeals. [redacted] made three challenges; the court rejected two and approved one. [redacted] seeks review of one rejected challenge: his "fruit of the poisonous tree" argument. There, the court incorrectly held the trial court didn't err in concluding that the police had purged the "taint" of their violation of [redacted] Fourth Amendment rights by the time they found the incriminating evidence that prompted [redacted] criminal charges.[1]

3. Legal Issue

I. In deciding whether to "purge" the "taint" of unconstitutional conduct by the state, what causation standard should Minnesota courts use when analyzing the "fruit of the poisonous tree" doctrine?

Ruling below: The trial court did not address a causation standard, but instead simply applied the four-factor test "to determine whether evidence is fruit of the poisonous tree."[2] The trial court held it was not. The court of appeals affirmed, applying the same test. The court of

[1] Petitioner's Addendum ("Add.") at 15-22.

[2] *Id.* at 42.

appeals also addressed the test's causation standard, holding it was wrong to use "but-for causation" under *Wong Sun* and Minnesota caselaw interpreting it.[3]

4. Statement of Facts

A woman called the police because her boyfriend, [redacted], made a gun-related threat against her. Police began investigating and learned [redacted] was on state probation for what appeared to be felony convictions out of Virginia. Since people with felony convictions cannot typically possess guns, police applied for and received a warrant to search [redacted] home. The warrant allowed police to search the home for guns and gun-related materials, nothing more. Despite this limitation, during the warrant's execution, police seized and searched a cell phone belonging to [redacted]

Police told [redacted] about their seizure and search of his cell phone, and they also told him they found it odd that the phone had a full battery but was missing its SD card. Police then continued their search of his home, eventually finding the gun they were looking for. Police arrested [redacted] charged him with illegal gun possession, and took him to jail.[4] Police later took the gun and the cell phone into custody. Since [redacted]

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[3] *Id.* at 18, 20.

[4] Notably, the state ultimately dismissed this charge when the local prosecutor realized that [redacted] *wasn't actually a felon*, so it wasn't illegal for him to possess the gun that served as the can opener for this entire, unrelated case. *See* R. Doc. 49—Appellant's Mot. to Suppress at 6 n.17.

had gone from the house, he did not see the police place the phone in their custody. But he later learned it was in custody because police put the warrant materials—including a list of the items seized from the home—in [redacted] property at the jail.

After confirming police had the phone, [redacted] got on the jail phone and made incriminating phone calls to his girlfriend. The calls discussed how the police had his phone and how they knew the phone's SD card was missing. [redacted] also told his girlfriend to look for the SD card, and if she found it, to bury it in the backyard. After their conversation concluded, [redacted] girlfriend called the police and told them what [redacted] had told her. Police listened to the calls, which led them to believe something illegal was on the SD card. Police then applied for and received a second warrant to search [redacted] home, this time for the missing SD card.

During the execution of the second warrant, police located the SD card that [redacted] had called his girlfriend about. Police searched the SD card, found illegal imagery on it, and charged [redacted] with possession of child pornography. [redacted] moved to suppress the SD card because: (1) police's seizure and search of his cell phone was illegal since it was beyond the permissible scope of the gun-related warrant; and (2) the SD card was "poisoned fruit" of this illegal search.

Both the trial court and court of appeals agreed with [redacted] holding that police had acted unconstitutionally in seizing and searching his cell phone. But neither

suppressed the SD card, reasoning that the "taint" of the state's illegal conduct—the illegal cell phone seizure and search—had been sufficiently "purged" under the "fruit of the poisonous tree" doctrine. Both courts determined that the primary thing that "purged" the "taint" was [redacted] incriminating jail calls.

[redacted] argued that his incriminating jail calls were inextricably linked to the police's unconstitutional conduct, meaning [redacted] would never have made them had the police not illegally seized his phone, searched it, and noticed the missing SD card. In short, if the police had never illegally seen the phone's SD card was missing, [redacted] would have had no reason to call his girlfriend from the jail and discuss the missing SD card. Both courts rejected [redacted] argument. This petition follows.

5. Reason for Granting Review

I. The court's "taint-purge" analysis under the fruit of the poisonous tree doctrine makes it the exception that swallows the rule.

The "taint-purge" analysis of the fruit of the poisonous tree doctrine is an exception to the general rule that courts must suppress evidence unconstitutionally acquired by the state. This means it should rarely apply. And that makes sense considering what's at stake. The doctrine holds that when a court knows that the state violated an individual's constitutional rights, it will punish the state by suppressing the fruit of the illegality *unless* the taint has been purged. That's a big deal. The "taint-purge" analysis is thus a constitutional carve-out that, in narrow

circumstances, permits the violation of a right without a remedy. Given this, the importance of keeping the guardrails on the exception cannot be overstated.

The court of appeals decision blows by those guardrails and into dangerous new territory where the exception effectively swallows the rule. The court tries to soften this blow by cabining its decision in a lesson on causation, claiming *Wong Sun* and its Minnesota progeny support its ruling because courts "do not apply but-for causation to determine whether evidence is fruit of the poisonous tree." [5] And "even if intervening circumstances are part of a causal chain of events initially brought on by an illegality, such circumstances are sufficiently distinguishable from the illegality if they are also brought on by an intervening act of a defendant's free will." [6]

But the caselaw on the applicability of "but-for" causation is hardly this clear. First, at least one court of appeals decision uses "but-for" causation as part of its "taint-purge" analysis: "evidence that would not have come to light *but for* police exploitation of their illegal action is generally deemed fruit of the poisonous tree and excluded from the state's use at trial." [7] Next, this Court seemingly approved of

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[5] Add. at 18.

[6] *Id.*

[7] *State v. Davis*, 910 N.W.2d 50, 54 (Minn. Ct. App. 2018) (emphasis).

using "but-for" causation in its "taint-purge" analysis in *State v. Leonard*.[8] And [redacted] addressed *Leonard* in his brief to the court of appeals, but the court ignored it.[9] In sum, both *Davis* and *Leonard* conflict with the court of appeals' decision here. This Court should therefore grant review and clarify the law on "but-for" causation and its proper role in "taint-purge" analysis.

Finally, the court's reliance on the inapplicability of "but-for" causation sidesteps the meat of [redacted] challenge. This isn't the type of attenuated but-for causation scenario that famously gave the judges in *Palsgraf* heartburn.[10] Instead, the incriminating conduct here (jail calls) is much more related to the illegal conduct (phone manipulation) than the court of appeals' decision lets on. It's not simply part of the "causal chain"; it's *the only reason* [redacted] made the incriminating calls that prompted the second warrant. It's thus both the but-for *and* the proximate cause. The court of appeals addressed but-for causation; it ignored proximate causation.

Logically speaking, if the police hadn't touched [redacted] phone and seen it was missing an SD card, there is simply no world in which [redacted] would have ever made the

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[8] 943 N.W.2d 149, 162 (Minn. 2020) (using logic resembling "but-for" causation).

[9] Add. at 77-78.

[10] *See Palsgraf v. Long Island R. Co.*, 248 N.Y. 339, 162 N.E. 99 (1928).

jail calls to his girlfriend. It belies reality and rationality. Why would he ever talk about an incriminating thing if he didn't think the police were aware of the thing and trying to find said thing? That's rhetorical—he wouldn't! [redacted] has made this point in every conceivable way, using every possible turn of phrase, to both the trial court and the court of appeals. But it has fallen on deaf ears. The Court should hear this case, as what [redacted] is saying bears directly on the state's Fourth Amendment jurisprudence, one of the criminal law's most sacrosanct areas.

CONCLUSION

For the reasons above, Petitioner [redacted] respectfully requests that the Supreme Court grant review of his case.

Submitted this 8th day of February, 2024.

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CERTIFICATE OF COMPLIANCE

This petition complies with the word limitations of Minn. R. Civ. App. P. 117, subd. 3. This petition was prepared using Microsoft Word Version 16.0 in 14-point Equity font, which reports that the petition contains less than 2,000 words, exclusive of the caption, signature block, and addendum.

Dated this 8th day of February, 2024.

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