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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1385**

State of Minnesota,
Respondent,

vs.

Dustan Charles Schmitt,
Appellant.

**Filed August 10, 2026
Affirmed
Schmidt, Judge
Concurring specially, Larson, Judge
Concurring in part, dissenting in part, Wheelock, Judge**

Hennepin County District Court
File No. 27-CR-23-25545

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Adam Petras, Senior Assistant County Attorney, N. Nate Summers, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Wheelock, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

In this direct appeal from his conviction for fifth-degree drug possession, appellant Dustan Charles Schmitt argues that the district court erred by denying his motion to suppress evidence. Schmitt contends that the police officer unlawfully obtained the evidence after using a minor equipment violation as a pretext to stop his vehicle and to investigate him for other possible crimes after the officer observed him leaving a “high crime” area. Schmitt recognizes that his argument fails under the Fourth Amendment to the United States Constitution. Schmitt contends, however, that the Minnesota Constitution provides broader protections than the United States Constitution and should be read to prohibit pretextual traffic stops.

We conclude that the Minnesota Supreme Court has not decided the question of whether pretextual traffic stops are prohibited under Minnesota’s Constitution. We affirm the district court’s order, but for different analytical reasons.

FACTS¹

While on an overnight patrol, an Eden Prairie police officer drove his unmarked squad car near a gas station that the officer knew had one of the “highest” crime rates in the city. At 3:49 a.m., the officer observed a silver sport-utility vehicle (SUV) with a male driver at the gas station. The officer used the properly displayed back license plate to obtain the vehicle-registration records and learned that the SUV was registered to a female.

¹ These facts were derived from evidence received at the contested omnibus hearing.

As the SUV pulled out of the gas station parking lot, the officer followed in his squad car. While following the SUV for just under one mile through a residential neighborhood, the officer observed no moving violations or equipment violations. The SUV then stopped and legally parked on a residential street. The officer drove past the parked SUV, performed a U-turn, drove towards the SUV, and observed that the front license plate was missing, which constitutes a petty misdemeanor—a civil violation—under Minnesota law. *See* Minn. Stat. § 169.79, subd. 6 (2022). The officer activated the squad car’s emergency lights, turned on his body-worn camera, and initiated a stop.

The police officer approached the SUV’s driver-side window and spoke with the driver, later identified as Schmitt. The officer informed Schmitt that he stopped the SUV due to a missing front license plate and asked Schmitt for his driver’s license and proof of insurance. While Schmitt searched for his proof of insurance, the officer noticed a passenger in the back seat. The officer walked to the rear passenger-side window and requested that the passenger provide identification. After the officer collected the passenger’s identification, Schmitt told the officer that the front license plate was missing because Schmitt did not have the correct size bolt to attach it properly. The officer responded, “Okay, I am not going to tag you for that.” As Schmitt continued to look for his proof of insurance, the officer proceeded to shine his flashlight and look inside the SUV. Schmitt asked the officer to stop and insisted that the officer’s conduct was illegal. The officer disagreed. The officer then saw a broken methamphetamine pipe in the SUV’s center console and informed Schmitt that he was going to search the vehicle.

Upon searching the SUV, the officer found the broken methamphetamine pipe and multiple license plates. The officer arrested Schmitt, placed him in the back of the squad car, and later observed Schmitt attempting to destroy a bag of methamphetamine while in the squad car. Police recovered 1.71 grams of methamphetamine.

Respondent State of Minnesota charged Schmitt with one count of fifth-degree drug possession. Schmitt moved to suppress the evidence, arguing that the officer performed an unlawful pretextual traffic stop that violated article I, section 10 of the Minnesota Constitution. Schmitt did not challenge the stop under the United States Constitution or challenge the expansion of the stop under either the federal or state constitution. The district court denied the motion to suppress. The court found that the officer had a valid basis for the stop, namely, the license-plate violation. The district court determined that article I, section 10 of the Minnesota Constitution does not provide “greater protections for [an] allegedly pretextual stop” than the objective standard articulated by the United States Supreme Court in *Whren v. United States*, 517 U.S. 806 (1996).

The parties then stipulated to the state’s evidence, pursuant to Minn. R. Crim. P. 26.01, subd. 4, in order to obtain appellate review of the suppression order. The district court found Schmitt guilty of fifth-degree drug possession. The court sentenced Schmitt to a 12-month prison sentence, stayed the sentence, and placed Schmitt on probation.

Schmitt appeals.

DECISION

The Fourth Amendment of the United States Constitution and article I, section 10 of the Minnesota Constitution both protect against unreasonable searches and seizures. Evidence obtained in violation of the federal or state constitutions must be suppressed. *Terry v. Ohio*, 392 U.S. 1, 13 (1968); *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011).

Schmitt contends that the district court erred by denying his motion to suppress because the officer recovered the evidence in violation of the Minnesota Constitution.² According to Schmitt, the officer stopped him for a minor equipment violation—the failure to display a front license plate—as a pretext to look for evidence of other crimes only because the officer observed Schmitt leaving a “high crime” area.³ Schmitt asks us to hold that article I, section 10 provides greater protections than the Fourth Amendment⁴ when it comes to a law-enforcement officer conducting a pretextual traffic stop.

² The only issue that Schmitt raised in the district court is whether Minnesota’s Constitution prohibits pretextual stops. Schmitt did not challenge the traffic stop under the United States Constitution or challenge the officer’s expansion of the stop. We do not address other possible theories to resolve this appeal because the party-presentation rule precludes us from doing so. *See Greenlaw v. United States*, 554 U.S. 237, 243 (2008) (“we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present”); *Leuthard v. Indep. Sch. Dist. 912 – Milaca*, 958 N.W.2d 640, 650 (Minn. 2021) (reversing because the Workers’ Compensation Court of Appeals relied on a claim that was not raised on appeal to reverse a compensation judge’s decision).

³ Schmitt, who is white, does not argue that his race contributed to the circumstances that resulted in the alleged pretextual stop.

⁴ Schmitt recognizes that evidence obtained as the result of a pretextual traffic stop will not be suppressed under the Fourth Amendment. We agree. The United States Supreme Court has held that an officer may lawfully stop a vehicle if the officer has an objective basis, supported by reasonable, articulable suspicion, to initiating the stop. *Whren*, 517 U.S. at 808. The officer’s actual motivations for making the stop are irrelevant. *Id.* at 813, 819.

In our de novo review of Schmitt’s state constitutional argument, *State v. Castillo-Alvarez*, 836 N.W.2d 527, 534 (Minn. 2013), our analysis must take several small steps before taking the giant leap that Schmitt asks us to make. First, we must decide whether the Minnesota Supreme Court has answered the question.⁵ If not, we must next decide whether the Minnesota Court of Appeals has the authority to recognize greater protections under the Minnesota Constitution than those recognized under the U.S. Constitution.⁶ If we do have that authority, we must finally decide whether our state constitution provides greater protections than the federal constitution.⁷

A. The Minnesota Supreme Court has not decided whether the Minnesota Constitution prohibits pretextual stops.

Schmitt first argues that the Minnesota Supreme Court has not decided whether the Minnesota Constitution prohibits pretextual stops. In our thorough review of our supreme court’s jurisprudence, we agree.

Before the United States Supreme Court decided *Whren*, the Minnesota Supreme Court had held that pretextual stops were unconstitutional under the Fourth Amendment.

⁵ Judge Wheelock and I agree that this question has not been answered by the Minnesota Supreme Court. *See supra* A. & *supra* opinion concurring in part, dissenting in part (Wheelock, J.). Judge Larson agrees with the result to affirm Schmitt’s conviction because—as articulated in her well-reasoned concurrence—she believes that the supreme court has answered the question. *See supra* concurrence (Larson, J.). Judge Larson’s analysis, therefore, ends after deciding this first issue. *Id.*

⁶ As demonstrated in her well-reasoned dissent, Judge Wheelock and I part ways when deciding this issue. *Compare supra* B. with *supra* opinion concurring in part, dissenting in part (Wheelock, J.). My analysis ends at this step. *See supra* B.

⁷ Judge Wheelock’s thoughtful dissent analyzes this final question.

See State v. Hoven, 269 N.W.2d 849, 852 (Minn. 1978). The supreme court’s analysis in *Hoven* was based upon Fourth Amendment precedent from the United States Supreme Court, which “held that to be reasonable a search must either be conducted pursuant to a valid search warrant or fit into one of the exceptions to the warrant requirement that it has defined.” *Id.* at 853 (citing *Coolidge v. New Hampshire*, 403 U.S. 443 (1971); *Terry*, 392 U.S. at 1). Applying that precedent, our supreme court noted that “[a] pretext arrest to permit an otherwise unauthorized search is not one of these exceptions.” *Id.* *See also State v. Gannaway*, 191 N.W.2d 555, 556 (Minn. 1971) (“officers may not, without a search warrant, make an exploratory search of a person arrested for a minor traffic offense”).

Also, before *Whren* was decided, the Minnesota Supreme Court later recognized that the United States Supreme Court’s Fourth Amendment jurisprudence had shifted away from prohibiting pretextual stops. In *State v. Everett*, the supreme court acknowledged that its prior decisions invalidating pretextual stops have been cabined in light of more recent United States Supreme Court precedent that authorized an arrest or search so long as an officer has “an objective legal basis for an arrest or search[.]” 472 N.W.2d 864, 867 (Minn. 1991). Our supreme court recognized that a search or an arrest does not violate the Fourth Amendment “even if the officer making the arrest or conducting the search based his or her action on the wrong ground or had an improper motive.” *Id.* (citing *Scott v. United States*, 436 U.S. 128 (1978)).

The United States Supreme Court then decided *Whren* and definitively answered the question of the constitutionality of a pretextual stop under the Fourth Amendment. The Supreme Court held that a stop does not violate the Fourth Amendment if an officer has

any objective basis—however minor the moving or equipment violation may be—to stop a vehicle based upon reasonable, articulable suspicion that the driver violated the law. *Whren*, 517 U.S. at 819. The Supreme Court concluded that the “actual motivations of the individual officers involved” are irrelevant. *Id.* at 813, 819. Thus, the alleged pretextual traffic stop in *Whren* had no bearing on the Supreme Court’s Fourth Amendment analysis because the officer articulated an objective basis to initiate the traffic stop. *Id.*

Post-*Whren*, the Minnesota Supreme Court dutifully applied that standard when evaluating Fourth Amendment challenges to traffic stops. In our review of the Minnesota Supreme Court’s jurisprudence, however, the supreme court has not answered the question of whether article I, section 10 of the Minnesota Constitution prohibits pretextual stops.

We are unpersuaded by the state’s suggestion that *State v. George*, 557 N.W.2d 575 (Minn. 1997) informs our analysis. *George* addressed whether a traffic stop related to a headlight on a motorcycle violated the Fourth Amendment.⁸ *Id.* at 578. The supreme court did not address—or even cite—article I, section 10 of the Minnesota Constitution in concluding that the officer in *George* lacked a valid objective basis for the stop. *Id.* at 579.

Although *George* does not support the state’s position, the decision did raise concerns about the “pretext problem,” *id.* at 579, and the perception that police officers were increasingly asking drivers to consent to a search after a minor traffic violation. The supreme court noted how easy it is for an officer to validly initiate a stop: “very few drivers

⁸ Notably, in the traffic-stop cases that predate *Whren*, the supreme court likewise analyzed only the Fourth Amendment when an appellant challenged the pretextual nature of a stop. See *State v. Pleas*, 329 N.W.2d 329, 332-33 (Minn. 1983); *State v. Faber*, 343 N.W.2d 659, 660 (Minn. 1984).

can traverse any appreciable distance without violating some traffic regulation.” *Id.* (quotations omitted). The supreme court recognized that “police, who have enormous discretion in enforcing traffic laws, may take advantage of their right to stop motorists for routine traffic violations in order to target members of groups identified by factors that are totally impermissible as a basis for law enforcement activity.” *Id.* at 579-80 (quotations omitted). Ultimately, the supreme court did not address the “pretext problem” because it concluded that the state failed to meet its burden of proving that the driver voluntarily consented to the search. *Id.* at 579.⁹

We also are not persuaded by the state’s assertion that *State v. Askerooth*, 681 N.W.2d 353 (Minn. 2004) answers the question that Schmitt raises in this case. In *Askerooth*, the supreme court concluded that “under Article I, Section 10 of the Minnesota Constitution, the state is required to justify the confinement in a squad car of a driver stopped for a minor traffic violation.” *Askerooth*, 681 N.W.2d at 369. Neither the validity of the stop nor whether the stop was pretextual were issues before the supreme court. *Id.*

⁹ In a concurrence, Justice Tomljanovich called for protections to guard against “the increasing use by state troopers and police officers of subtle tactics to get motorists and others to ‘consent’ to searches.” *George*, 557 N.W.2d at 581 (Tomljanovich, J., concurring). She wrote that these issues involve the “liberty and privacy interests of all the people of the State of Minnesota, and we have an obligation to ourselves and to the Constitution of this State to do what we can, in our limited role as a court of last resort, to provide reasonable protection to those interests.” *Id.* at 582 (citing two decisions as having provided such protections in related contexts: *Ascher v. Comm’r of Pub. Safety*, 519 N.W.2d 183, 187 (Minn. 1994) (concluding that sobriety-checkpoint roadblock that attempted to discover impaired motorists violated article I, section 10 of the Minnesota Constitution); *In re Welfare of E.D.J.*, 502 N.W.2d 779, 783 (Minn. 1993) (concluding that article I, section 10 of the Minnesota Constitution provides greater protections than the Fourth Amendment for purposes of determining when a person is seized)).

at 364 (“Because Askerooth does not challenge the initial stop’s validity, our focus is on the second prong of the *Terry* inquiry.”).¹⁰

In our review of the Minnesota Supreme Court’s jurisprudence, we cannot conclude that the slate upon which we write points unequivocally to a conclusion that our supreme court has provided an answer to the “pretext problem” under the Minnesota Constitution. Instead, we agree with Schmitt that whether pretextual stops are permissible under the Minnesota Constitution remains an open question.

B. The Minnesota Court of Appeals lacks the power to interpret Minnesota’s Constitution more broadly than the United States Supreme Court has interpreted the federal constitution.

Although we conclude that the constitutionality of pretextual stops is an open question under Minnesota’s Constitution, precedent suggests that the Minnesota Court of Appeals does not have the authority to answer this open question. That authority rests solely with the supreme court.

As the highest court of our state, the supreme court is “independently responsible for safeguarding the rights of [our] citizens.” *State v. Fuller*, 374 N.W.2d 722, 726 (Minn. 1985) (quoting *O’Connor v. Johnson*, 287 N.W.2d 400, 405 (Minn. 1979) (alteration in original)). And “[i]t is axiomatic that a state supreme court may interpret its

¹⁰ Neither *Pleas*, 329 N.W.2d 329, nor *Faber*, 343 N.W.2d 659, is enlightening to our analysis. Both cases only addressed the constitutional arguments under the Fourth Amendment. *Pleas*, 329 N.W.2d at 330 (“Trial court did not err in denying defendant’s motion to suppress evidence on fourth amendment grounds.” (syllabus)); *Faber*, 343 N.W.2d at 660 (“Trial court, in prosecution of defendant for aggravated DWI, properly denied defendant’s motion to suppress blood test results on fourth amendment grounds.” (syllabus)). Neither case cites the Minnesota Constitution.

own state constitution to offer greater protection of individual rights than does the federal constitution.” *Fuller*, 374 N.W.2d at 726. *See also State v. Harris*, 590 N.W.2d 90, 97 (Minn. 1999) (concluding “it is well established that a state supreme court may interpret its own state constitution as protecting individual rights to a greater extent than does the U.S. Constitution”); *Askerooth*, 681 N.W.2d at 361 (“It is axiomatic that [the supreme court is] free to interpret the Minnesota Constitution as affording greater protection against unreasonable searches and seizures than the United States Constitution.”).

By contrast, it is well-documented that the primary function of the Minnesota Court of Appeals, as an intermediate appellate court, is to identify and correct errors. *See, e.g., State v. McCormick*, 835 N.W.2d 498, 510 (Minn. App. 2013) (“We are ‘an error-correcting court’ . . . Our role ‘is to find the law, to state it and to apply it to the facts.’” (quoting *State v. Adkins*, 706 N.W.2d 59, 63 (Minn. App. 2005), *rev. denied* (Minn. Oct. 15, 2013); *In re Trusteeship of Trust of Williams*, 631 N.W.2d 398, 410 (Minn. App. 2001), *rev. denied* (Minn. Sept. 25, 2001))). *See also* Sam Hanson, *et al.*, *The Minnesota Court of Appeals: Arguing To, and Limitations of, an Error-Correcting Court*, 35 Wm. Mitchell L. Rev. 1261, 1267-73 (2009) (detailing the creation of the Minnesota Court of Appeals and its limitations as an error-correcting court, including this court’s inability to construe a provision of the Minnesota Constitution more expansively than the United States Supreme Court construed its federal counterpart). The court of appeals has noted that “[t]his prudential principle is especially appropriate in a case such as this one,” where a party asks us to extend rights under the Minnesota Constitution, “given the supreme court’s primary role in interpreting the state constitution.” *Cruz-Guzman v. State*,

980 N.W.2d 816, 826 (Minn. App. 2022), *answering certified question in the negative*, 998 N.W.2d 262 (Minn. 2023). *See also Forslund v. State*, 924 N.W.2d 25, 35 (Minn. App. 2019) (declining to extend rights under the Education Clause in Minnesota’s Constitution); *Otto v. Wright County*, 899 N.W.2d 186, 196 n.9 (Minn. App. 2017) (rejecting invitation to interpret the state constitution as having a more stringent standard because such a holding “would be beyond the purview of this court”); *State v. Berge*, 464 N.W.2d 595, 597 (Minn. App. 1991) (“We believe this is not the appropriate court to determine, on first impression, that the Minnesota Constitution offers such breadth of protection . . . it is the province of the state supreme court to extend protection of the state constitution beyond that offered by the United States Constitution.” (quotation marks and citation omitted)), *aff’d* 474 N.W.2d 828 (Minn. 1991); *In re Minn. State Patrol Troopers Ass’n ex rel. Pince v. State, Dep’t of Pub. Safety*, 437 N.W.2d 670, 676 (Minn. App. 1989) (“Minnesota has not yet adopted a good-faith exception” to the warrant requirement and in the absence of the Minnesota Supreme Court adopting “the exception, this court has specifically declined to make such a dramatic change in the interpretation of the Minnesota Constitution . . . as we believe it is not the province of this court to do so”) (quotations and citations omitted), *rev. denied* (Minn. May 24, 1989).¹¹

¹¹ This court has, on occasion, engaged in a fulsome analysis about whether our state’s constitution provides greater protections than the federal constitution. *See, e.g., State v. Gale*, 37 N.W.3d 125 (Minn. App. 2026) (analyzing whether a United States Supreme Court decision represented a “sharp departure” from Minnesota precedent such that the state constitution should provide greater protections than the federal constitution). But those opinions declined to interpret our state constitution more broadly than the federal constitution. *Id.* at 139 (declining to interpret Minnesota’s Constitution to afford greater protections and holding that “an officer’s subjective intent is irrelevant for purposes of the

To be fair, the supreme court has never explicitly held that we *lack* the authority to recognize greater rights under our state constitution. But in the rare instance where we have recognized greater rights under the Minnesota Constitution, the supreme court reversed our decision. *See, e.g., Fuller*, 374 N.W.2d at 726-27 (reversing court of appeals decision that held the “double jeopardy clause of the Minnesota Constitution” bars further prosecution). And, in an analogous context, the Minnesota Supreme Court has expressly held that “[c]reating a new tort is a function properly reserved for the supreme court based upon appropriate facts and record.” *Federated Mut. Ins. Co. v. Litchfield Precision Components, Inc.*, 456 N.W.2d 434, 439 (Minn. 1990).¹² If the Minnesota Court of

emergency-aid exception under the Minnesota Constitution”). *See also In re Matter of Welfare of E.D.J.*, 492 N.W.2d 829, 831 (Minn. App. 1992) (concluding that there is an “insufficient basis for interpreting Article I, section 10 of the state constitution differently than the United States Supreme Court’s interpretation of nearly identical language in the Fourth Amendment”), *rev’d*, 502 N.W.2d 779 (Minn. 1993). Because the opinions declined to interpret the state constitution more broadly than the federal constitution, they are not relevant to the question of whether this court has the authority to do so.

¹² The court of appeals has consistently abided by that limitation in the scope of this court’s authority by holding that it “is not the function of this court to establish new causes of action, even when such actions appear to have merit.” *Jane Doe 43C v. Diocese of New Ulm*, 787 N.W.2d 680, 690 (Minn. App. 2010). *See also Wise v. Stonebridge Cmty., LLC*, 927 N.W.2d 772, 776 (Minn. App. 2019) (“it is not the function of this court to create new causes of action.”); *Engler v. Wehmas*, 633 N.W.2d 868, 873 (Minn. App. 2001) (declining to expand the tort of negligent infliction of emotional distress because “it is not the function of this court to create new law”), *rev. granted* (Minn. Dec. 19, 2001), *appeal dismissed* (Minn. Apr. 5, 2002); *Stubbs v. N. Mem’l Med. Ctr.*, 448 N.W.2d 78, 81 (Minn. App. 1989) (“It is not, however, the function of this court to establish new causes of action.”), *rev. denied* (Minn. Jan. 12, 1990)). This court has also consistently refused to expand new rights beyond those already recognized because “the task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court.” *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *rev. denied* (Minn. Dec. 18, 1987). *See also SVAP III Riverdale Commons LLC v. Coon Rapids Gyms, LLC*, 967 N.W.2d 81, 86 (Minn. App. 2021) (same); *State v. Thomas*, 890 N.W.2d 413, 420 (Minn. App. 2017) (“The day may

Appeals lacks the power to create a new tort in the common law, the Minnesota Court of Appeals surely lacks the power to recognize new rights under Minnesota’s Constitution. “Of course, if the supreme court were to direct otherwise, [the court of appeals] would address new causes of action along with other questions of first impression.” *Smith v. Piechowski*, No. A23-0481, 2023 WL 8368483, at *5 (Minn. App. Dec. 4, 2023) (declining to adopt a new cause of action because the court of appeals’ error correcting role is inconsistent with creating public policy), *rev. granted* (Minn. Mar. 19, 2024), *opinion vacated & remanded* (Minn. Sept. 17, 2024) (remanding to consider in light of new supreme court decision that recognized the new cause of action).

In support of his argument that we should expand the protections offered by our state constitution beyond those recognized by the federal constitution, Schmitt cites to other jurisdictions to show that disparate police practices have led some states to offer their citizens additional protections beyond those set forth by the Supreme Court. *See State v. Sullivan*, 74 S.W.3d 215, 221-22 (Ark. 2002) (holding that a pretextual arrest violates the Arkansas Constitution), *overruled by Gamble v. State*, 729 S.W.3d 661, 667 (Ark. 2026); *State v. Ladson*, 979 P.2d 833, 842 (Wash. 1999) (concluding that a pretextual traffic stop is made “absent the authority of law” and, therefore, violates Washington State

come when our supreme court wishes to endorse a jury instruction regarding cross-racial identification and reassess its decisions regarding the admissibility of expert testimony on eyewitness identification. But that is not our role.”), *rev. denied* (Minn. Mar. 28, 2017); *State v. Hahn*, 799 N.W.2d 25, 39 (Minn. App. 2011) (“Judicial estoppel has not yet been adopted by the Minnesota courts, and it is beyond our mandate to adopt it now.”), *rev. denied* (Minn. Aug. 24, 2011); *Lake George Park, L.L.C. v. IBM Mid-Am. Emps. Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998) (“This court, as an error correcting court, is without authority to change the law.”), *rev. denied* (Minn. June 17, 1998).

Constitution); *State v. Ochoa*, 206 P.3d 143, 157 (N.M. App. 2008) (holding that “pretextual traffic stops are not constitutionally reasonable” under New Mexico’s Constitution). But Schmitt’s citation to the foreign-jurisdiction cases proves the point that this issue involves a policymaking decision of the sort that is reserved for our supreme court. Answering Schmitt’s question would require this court to formulate an analytical framework that district courts must use when addressing future challenges to alleged pretextual stops. *See Sullivan*, 74 S.W.3d at 221 (determining that the “pretext inquiry is a threshold matter to be resolved before inquiring into other bases for suppression”); *Ladson*, 979 P.2d at 843 (adopting a totality-of-the-circumstances test); *Ochoa*, 206 P.3d at 155-56 (adopting a burden-shifting standard). Such policymaking is not within the purview of our court.¹³ Policy questions, like the one presented here, fall to “the highest court of this state, . . . that [is] and should be the ‘first line of defense for individual liberties within the federalist system.’” *Kahn v. Griffin*, 701 N.W.2d 815, 828 (Minn. 2005) (quoting *Fuller*, 374 N.W.2d at 726).

¹³ The Minnesota Court of Appeals can, and often does, decide issues of first impression. When doing so, however, this court is typically addressing issues that have a developed framework from which we analyze the issue. *See, e.g., Meder v. Rapid Sports Center Inc.*, 773 N.W.2d 341, 343 (Minn. App. 2009) (“This first-impression case presents an issue of statutory construction.”); *State v. McNeal*, 7 N.W.3d 837, 841-44 (Minn. App. 2024) (applying analysis from United States Supreme Court decision to address “an unanswered question in Minnesota” of whether “the warrantless collection of a sample from an apartment door handle and lock violates a party’s constitutional right”). Unlike those circumstances, this case would require us to create a standard out of whole cloth for evaluating alleged pretextual traffic stops. As an error-correcting court, the court of appeals is neither empowered nor equipped to create new law. The court of appeals is, however, fully equipped to apply the law—or an already-articulated analytical framework—to new facts, circumstances, or statutes.

One explanation that the supreme court has guarded against the court of appeals or district courts creating a new tort or recognizing a new constitutional right is because of the structure of our state courts and rules governing appeals. Unless the case involves a first-degree murder conviction, all appeals from the district court must first come to the Minnesota Court of Appeals. The supreme court can only review those decisions from the court of appeals if a party files a petition for review. *See* Minn. R. Civ. P. 117. Should the court of appeals read the Minnesota Constitution as providing broader protections than those recognized under the federal constitution, the aggrieved party could choose not to file a petition for review and, thereby, avoid the Minnesota Supreme Court's review of the issue. It may take months, or years, for the same issue to reach the Minnesota Supreme Court. In the meantime, the new tort or constitutional right becomes law of the state.

"In the absence of supreme court" precedent, our court has never made "such a dramatic change in the interpretation of the Minnesota Constitution." *In re Minn. State Patrol Troopers Ass'n ex rel. Pince*, 437 N.W.2d at 676 (quotation omitted). Because the supreme court has not recognized that pretextual traffic stops are unreasonable under the Minnesota Constitution, the district court's order denying Schmitt's motion to suppress the evidence obtained after stopping his vehicle must be affirmed.

Affirmed.

LARSON, Judge (concurring specially)

Schmitt argues that the district court erred when it denied his suppression motion on the ground that the officer had an objective basis—the license-plate violation—to stop his vehicle. According to Schmitt, the officer used the license-plate violation as a pretextual basis to stop his vehicle,¹ and pretextual traffic stops violate article I, section 10 of the Minnesota Constitution.

When reviewing a pretrial order denying a motion to suppress, we review the district court’s factual findings for clear error and its legal conclusions de novo. *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012). “The interpretation and application of the Minnesota Constitution is a legal question that we review de novo.” *State v. Castillo-Alvarez*, 836 N.W.2d 527, 534 (Minn. 2013); *see also State v. Gale*, 37 N.W.3d 125 (Minn. App. 2026) (citing *Castillo-Alvarez* for our ability to interpret the Minnesota Constitution de novo, and then determining there was no principled basis to interpret the emergency-aid exception under the Minnesota Constitution more broadly than the United States Constitution).

¹ A pretextual traffic stop occurs when an officer “legally stop[s] a vehicle for a traffic infraction that is not the actual motive for the stop” and “the officer’s ulterior motive is to investigate unrelated criminal activity for which the officer has no individualized suspicion.” Farhang Heydari, *The Invisible Driver of Policing*, 76 Stan. L. Rev. 1, 11 (2024); *see also* Stephen Rushin & Griffin Edwards, *An Empirical Assessment of Pretextual Stops and Racial Profiling*, 73 Stan. L. Rev. 637, 649 (2021) (defining a pretextual traffic stop as occurring when a police officer stops a vehicle for “technical violations of the law” but executes the stop primarily to “investigate an unsubstantiated hunch”). Here, Schmitt contends that the officer, on routine patrol in a high-crime area, used the license-plate violation as a pretext to look for evidence of crimes unrelated to the traffic violation.

Both the Fourth Amendment of the United States Constitution and article I, section 10 of the Minnesota Constitution protect “against unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. Generally, evidence obtained in violation of the United States or Minnesota constitutions must be suppressed. *Terry v. Ohio*, 392 U.S. 1, 12-13 (1968); *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011). “The [s]tate bears the burden of establishing that the challenged evidence was obtained in accordance with the constitution.” *State v. Edstrom*, 916 N.W.2d 512, 517 (Minn. 2018).

I disagree with the majority that this case presents an open question. The Minnesota Supreme Court resolved the appropriate test to apply when a defendant challenges the constitutionality of a traffic stop under the Minnesota Constitution in *State v. Askerooth*. 681 N.W.2d 353, 359-64 (Minn. 2004). There, the Minnesota Supreme Court rejected the United States Supreme Court’s holding in *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001), and, instead, “*explicitly* adopt[ed] the principles and framework of *Terry*” when evaluating the constitutional validity of traffic stops. *Id.* at 362-63 (emphasis added); *see also id.* at 364 (“Having concluded that article I, section 10 requires application of *Terry* principles to traffic stops . . .”).

So, what were the “principles and framework of *Terry*” that the supreme court adopted in *Askerooth*? In *Terry*, the Supreme Court assessed whether an exception to the warrant requirement exists for a police officer to stop and frisk a person. 392 U.S. at 21-22. The Supreme Court held that, even without probable cause, “police may stop and frisk a person when (1) they have a reasonable, articulable suspicion that a suspect might be engaged in criminal activity and (2) the officer reasonably believes the suspect might be

armed and dangerous.” See *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff’d sub nom. Minnesota v. Dickerson*, 508 U.S. 366 (1993); see also *State v. Sargent*, 968 N.W.2d 32, 38 (Minn. 2021) (articulating the two-part analysis used when applying the *Terry* framework to a traffic stop). To reach this decision, the Supreme Court discussed the Fourth Amendment’s emphasis on “reasonableness,” explaining:

And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. And in making that assessment *it is imperative that the facts be judged against an objective standard*: would the facts available to the officer at the moment of the seizure or the search ‘warrant a man of reasonable caution in the belief’ that the action taken was appropriate?

Terry, 392 U.S. at 21-22 (emphasis added).

In 1978, the Supreme Court noted that, in the ten years that followed *Terry*, it had consistently “undertaken an objective assessment of an officer’s actions in light of the facts and circumstances then known to him” when evaluating alleged Fourth Amendment violations. *Scott v. United States*, 436 U.S. 128, 137 (1978). Upon analyzing these cases, the Supreme Court concluded that it had held “that the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification

for the officer’s action does not invalidate the action taken as long as the circumstances, viewed *objectively*, justify that action.” *Id.* at 138 (emphasis added).²

Accordingly, at the time the supreme court decided *Askerooth* in 2004, the “principles and framework of *Terry* for evaluating the reasonableness of seizures during traffic stops” unquestionably involved the application of a purely objective test that rendered the subjective motivations of the police irrelevant. *See Askerooth*, 681 N.W.2d at 363; *see also State v. Taylor*, 965 N.W.2d 747, 771 n.12 (Minn. 2021) (Thissen, dissenting) (“This case does not present an opportunity to *revisit* [the application of an objective test] as a matter of state constitutional law” (emphasis added)). Specifically, the supreme court articulated a two-part test, consistent with *Terry*: (1) was “the stop . . . justified at its inception” and, if so, (2) were “the actions of the police during the stop . . . reasonably related to and justified by the circumstances that gave rise to the stop in the first place.”³ *Askerooth*, 681 N.W.2d at 364.

² In 1996, the Supreme Court addressed the application of this precedent to an argument that a pretextual traffic stop violated the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 811-13 (1996). In doing so, the Supreme Court noted, “Not only have we never held, outside the context of inventory search or administrative inspection . . . that an officer’s motive invalidates objectively justifiable behavior under the Fourth Amendment; but we have repeatedly held and asserted the contrary.” *Id.* at 812. Then, specifically referencing *Scott*, the Supreme Court held that its prior caselaw “foreclose[d] any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved.” *Id.* at 813.

³ The majority contends that *Askerooth* did not adopt the *Terry* analysis for the first part of this test because “[n]either the validity of the stop nor whether the stop was pretextual were issues before the supreme court.” In my view, the supreme court’s *explicit* adoption of *Terry* and the clear articulation of the *two*-part test demonstrates that the supreme court adopted the entire *Terry* framework.

Since *Askerooth*, the supreme court has consistently applied this two-part *Terry* framework in cases regarding traffic stops that allege violations of article I, section 10 of the Minnesota Constitution. See, e.g., *Sargent*, 968 N.W.2d at 37-38; *Taylor*, 965 N.W.2d at 752. And, in *State v. Leonard*, the supreme court noted that it has “‘long held’ that [a]rticle I, [s]ection 10 of the Minnesota Constitution ‘generally requires law enforcement officers to have an objective individualized articulable suspicion of criminal wrongdoing before subjecting a driver to an investigative stop.’” 943 N.W.2d 149, 156 (Minn. 2020) (quoting *Ascher v. Comm’r of Pub. Safety*, 519 N.W.2d 183, 187 (Minn. 1994)); see also *State v. Carter*, 697 N.W.2d 199, 210 n.7 (Minn. 2005) (describing the objective test as a “long-held policy in Minnesota”).⁴

Minnesota Supreme Court decisions are “a definitive statement of the law of Minnesota,” and we are not permitted to encroach on the supreme court’s authority. *Willis v. County of Sherburne*, 555 N.W.2d 277, 282 (Minn. 1996); see also *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *rev. denied* (Minn. Dec. 18, 1987). Therefore, in explicitly adopting the two-part *Terry* framework, the supreme court established that we are to apply an objective test when evaluating the reasonableness of a traffic stop under article I, section 10 of the Minnesota Constitution.

⁴ That the *Askerooth* decision formally adopted an objective test—even if the defendant argues a police officer had a pretextual basis for stopping the vehicle—is reinforced by the supreme court’s application of *Terry* and its progeny in Fourth Amendment cases. For example, applying *Scott* in cases challenging allegedly pretextual traffic stops, the supreme court applied an objective test and concluded that the traffic stops were constitutionally reasonable when police officers stopped vehicles for minor traffic violations. See *State v. Pleas*, 329 N.W.2d 329, 332-33 (Minn. 1983); *State v. Faber*, 343 N.W.2d 659, 660 (Minn. 1984).

Schmitt's theory in this case essentially asks that we carve out an exception to the existing objective test and consider the subjective motivations of the police if the defendant argues the basis for the traffic stop was pretextual. That exception does not exist in Minnesota law, at least not yet. And we have twice concluded in nonprecedential opinions that the supreme court's long-held application of an objective test applies to a constitutional challenge to a traffic stop under article I, section 10 of the Minnesota Constitution, even when the defendant argues the basis for the traffic stop was pretextual. *See State v. Anim*, No. A06-1556, 2008 WL 2168010, *1-2 (Minn. App. May 27, 2008), *rev. denied* (Minn. Aug. 5, 2008); *State v. Urman*, No. A07-0031, 2008 WL 1971406, at *2 (Minn. App. May 6, 2008).⁵ I would follow our persuasive, nonprecedential opinions.

Because the Minnesota Supreme Court has concluded that we apply an objective test to assess the validity of a traffic stop under article I, section 10 of the Minnesota Constitution, Schmitt's argument to carve out an exception is foreclosed in his appeal to this court. *See State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018) (stating that the court of appeals is bound by supreme court precedent). Accordingly, I would affirm on the basis that the district court did not err when it denied Schmitt's motion to suppress because the officer had an objective basis—the license-plate violation—to stop Schmitt's vehicle.

⁵ Nonprecedential opinions may be cited as persuasive authority. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

WHEELLOCK, Judge (concurring in part, dissenting in part)

I concur in Section A of the majority's opinion, but I respectfully dissent from Section B. I agree that it is an open question whether the Minnesota Constitution prohibits pretextual traffic stops. I write separately because, in my view, this court has the authority to interpret the Minnesota Constitution to address an issue that has been squarely presented to it. I would conclude that resolving the question presented requires that we interpret article I, section 10 of the Minnesota Constitution, and in doing so, I would conclude that section 10 provides broader protections in this context than the Fourth Amendment to the United States Constitution. I would, therefore, reverse the district court's order denying appellant Dustan Charles Schmitt's motion to suppress the evidence obtained after stopping his vehicle and remand for further proceedings.

I agree with Judge Schmidt's precise analysis of caselaw and his conclusion that the supreme court has not yet addressed the issue presented in this appeal. But I diverge from Judge Schmidt's opinion at the next step in the analysis and conclude that the Minnesota Court of Appeals has the authority to interpret the Minnesota Constitution in the first instance. Because I conclude that we have that authority, I would address the merits of the question raised in this appeal. Ultimately, I would conclude that our state constitution provides broader protection against pretextual traffic stops than those recognized under the Fourth Amendment.

I. The Minnesota Court of Appeals has authority to interpret the Minnesota Constitution.

The court of appeals is an intermediate appellate court created by amendment to the Minnesota Constitution on November 2, 1982. Minn. Const. art. VI, § 2.¹ While this court is a relatively new court, much discussion has occurred over the past 45 years regarding the role it was intended to play within the state judiciary.² In reviewing the history of the court and pronouncements about it in supreme court caselaw, it is clear that the court of appeals is intended to be *primarily* an error-correcting court; but this conclusion does not settle whether the court is, or should be, *only* an error-correcting court, and I have found no definitive statement about this in Minnesota law. Nonetheless, the court of appeals has decided issues of first impression in certain instances such as this one—when a case squarely presents to this court a question of constitutional interpretation.

¹ Section 2 of article VI of the Minnesota Constitution states, in part:

The legislature may establish a court of appeals and provide by law for the number of its judges, who shall not be judges of any other court, and its organization and for the review of its decisions by the supreme court. The court of appeals shall have appellate jurisdiction over all courts, except the supreme court, and other appellate jurisdiction as prescribed by law.

² These discussions occurred in the lead-up to the adoption of the constitutional amendment by Minnesota citizens in 1982, and since then, they have occurred on various of the court's milestone anniversaries. The Minnesota State Law Library has collected resources on the founding of the court of appeals, including scholarly articles, newspaper articles, interviews, and addresses made by former chief judges and others who shepherded the creation of the court and its business in its earliest years. See *Minnesota Court of Appeals 40th Anniversary*, Minnesota State Law Library, <https://mncourts.libguides.com/COA40th/resources> [<https://perma.cc/2N6S-773W>] (collecting sources).

Here, we have been asked whether article I, section 10 of the Minnesota Constitution provides broader protections against pretextual traffic stops than the Fourth Amendment to the United States Constitution, and we have an obligation to answer that question. Because we have previously determined whether article I, section 10 of the Minnesota Constitution provides broader protections than the Fourth Amendment to the United States Constitution in other contexts, the court of appeals has an obligation to resolve cases on its nondiscretionary docket, and no supreme court precedent or rule prohibits the court of appeals from interpreting the state constitution when necessary to resolve questions of law, I conclude that the court of appeals has the authority to answer the open question about the constitutionality of pretextual stops under Minnesota's Constitution.

We have interpreted article I, section 10 of the Minnesota Constitution in other contexts.

To see what we may do, we look to what we have done³ indeed, this court recently considered a nearly identical question in a precedential opinion. *See State v. Gale*, 37 N.W.3d 125, 129 (Minn. App. 2026) (engaging in interpretation of Minnesota

³ I have found no case in which the Minnesota Supreme Court has explicitly held that we lack the authority to recognize greater rights under our state constitution. If such a case existed, this court would be bound by that precedent. There are, however, prior cases in which this court has engaged in resolving state constitutional questions regarding article I, section 10 of the Minnesota Constitution and the supreme court affirmed or reversed our reasoning without commenting or reprimanding this court regarding our scope of authority. *See, e.g., Ascher v. Comm'r of Pub. Safety*, 505 N.W.2d 362, 366-69 (Minn. App. 1993), *aff'd*, 519 N.W.2d 183 (Minn. 1994) ("A state court may interpret its state's constitution so as to offer greater protection of individual rights."); *In re Welfare of E.D.J.*, 492 N.W.2d 829, 830-31 (Minn. App. 1992), *rev'd*, 502 N.W.2d 779 (Minn. 1993) (holding that there was an "insufficient basis for interpreting Article I, Section 10 of the state constitution differently than the United States Supreme Court's interpretation of" the Fourth Amendment in the context of defining a "seizure of a person").

Constitution when appellant argued her constitutional rights were violated during a stop and search when law enforcement found her slumped with her head leaning back in a parked car on a busy street); *see also McCaughtry v. City of Red Wing*, 816 N.W.2d 636, 644 (Minn. App. 2012) (analyzing, on remand from the supreme court, whether article I, section 10 of the Minnesota Constitution offers more protection than the Fourth Amendment), *aff'd*, 831 N.W.2d 518 (Minn. 2013).⁴

In that case, Gale moved to suppress the evidence obtained from a stop and search, arguing, among other things, that the emergency-aid exception to the warrant requirement did not justify the seizure because the officer was not subjectively motivated to render aid and thus that the stop and seizure violated her rights under article I, section 10 of the Minnesota Constitution. *Gale*, 37 N.W.3d at 130. In our opinion, this court first considered whether the Minnesota Supreme Court had already decided the issue and concluded that it had not. *Id.* at 136. We next determined that resolution of the issue was necessary to Gale's appeal and that doing so required that we interpret the Minnesota Constitution. *Id.*

Gale's state constitutional argument was that the United States Supreme Court issued a decision that was a sharp departure from Minnesota's tradition of considering an officer's subjective intent in the context of the emergency-aid exception, which in turn

⁴ Appellants in *McCaughtry* were landlords and tenants who opposed the city of Red Wing's issuance of administrative warrants for inspections of rental properties. 816 N.W.2d at 638-39. This court initially affirmed the district court's grant of summary judgment in favor of the city based on appellants' lack of standing. *Id.* at 638. The supreme court reversed, determining that appellants had standing and remanded back to the court of appeals for further review of the constitutional claim. *McCaughtry*, 831 N.W.2d at 520.

presented a principled basis on which to interpret article I, section 10 more broadly than the Fourth Amendment in the context of the emergency-aid exception. *Id.* at 137. Ultimately, this court rejected Gale’s principled-basis argument after interpreting the Minnesota Constitution.

It stands to reason that, if in some cases, we may interpret the state constitution and rely on that interpretation to reject a claim that the Minnesota Constitution provides greater protection in certain circumstances than the United States Constitution, then we may do so in other cases to reach the opposite conclusion. We undertake the same analysis regardless of the ultimate determination of the question.

Furthermore, in *Gale*, we explained why we engaged in resolving the question presented, citing previous cases that demanded an answer to constitutional questions of law and acknowledging our obligation to resolve them. We observed that “*Minnesota courts* have a responsibility to safeguard for the people of Minnesota the protections embodied in our constitution” and that “it is axiomatic that [courts] are free to interpret the Minnesota Constitution as affording greater protection against unreasonable searches and seizures than the United States Constitution.” *Id.* at 136-37 (emphasis added) (quotations omitted). We quoted *State v. Leonard* for its statement that, “without a doubt,” section 10 “provides greater protection against suspicionless law enforcement conduct than the Fourth Amendment.” *Id.* (quoting *State v. Leonard*, 943 N.W.2d 149, 156 (Minn. 2020)). The supreme court has said that the responsibility to safeguard the protections for Minnesotans embodied in the state constitution lies with *Minnesota courts*—not only the Minnesota Supreme Court. *State v. Fuller*, 374 N.W.2d 722, 726 (Minn. 1985) (“State courts are, and

should be, the first line of defense for individual liberties within the federalist system.”).⁵

Thus, when presented with a question of the constitutionality of a state actor’s conduct, if there is not an alternative basis on which to decide the issue, the court presented with the question must undertake to answer it to fulfill the court’s duty to administer justice. *Cf. State v. Baumann*, 616 N.W.2d 771, 773 (Minn. App. 2000) (declining to reach the constitutional issue on appeal because “[c]onstitutional questions need be decided by this court only as necessary to dispose of the case presented”), *rev. denied* (Minn. Nov. 15, 2000).⁶

⁵ When presented with a constitutional question, the district courts also engage in analysis and interpretation of the state constitution as necessary to resolve the issues in the cases before them. *See* Minn. Const. art. IV, § 3 (stating that district courts have original jurisdiction in all civil and criminal cases) (codified in Minn. Stat. 484.01, subd. 1 (2024)); *Byers v. Comm’r of Revenue*, 741 N.W.2d 101, 105 (Minn. 2007) (holding that tax court does not have original jurisdiction over constitutional questions and must refer those questions to the district court); *Hous. & Redev. Auth. v. ExxonMobil Oil Corp.*, No. A05-511, 2006 WL 997699, at *3 n.6 (Minn. App. Apr. 18, 2006) (stating that the question of whether the Minnesota Constitution should be read more broadly than the U.S. Constitution was not addressed by the district court and thus declining to address it). If the district courts may do so, it follows that the court of appeals may do so as well.

⁶ In cases in which the supreme court granted review of a court of appeals decision and expressed disapproval, it has typically been for addressing matters the supreme court viewed as unrelated to the scope of issue raised on appeal. *See, e.g., In re Welfare of Child. of L.K.*, 32 N.W.3d 163, 189 (Minn. 2026) (emphasizing that a reviewing court generally considers only those issues presented to and considered by the trial court, noting that the court of appeals recognized that the district court did not rule on appellants’ constitutional challenges, and observing that, “[n]evertheless, the court of appeals considered appellants’ constitutional challenge . . . [when] it clearly did not need to decide those issues in order to address the issues that were properly before it); *Pike v. Gunyou*, 491 N.W.2d 288, 289-90 (Minn. 1992) (observing that the court of appeals opinion extended beyond the scope necessary to adjudicate the issues on appeal).

As in *Gale*, we reach the constitutional interpretation question here only because it is necessary to resolve the appeal. 37 N.W.3d at 134 (determining, first, that there was no alternative basis on which to decide the issue presented). If the issue is squarely presented and necessary to resolve the appeal, we may consider it.

We have an obligation to resolve cases on our nondiscretionary docket.

In reaching the conclusion that the court of appeals has the authority to answer questions of constitutional law, I acknowledge the practical realities of and the differences between the supreme court and the court of appeals. We do not have discretion over which appeals this court hears, whereas the Minnesota Supreme Court has discretion over most of its docket and generally selects the appeals it will hear through the petition-for-review process. There is no guarantee that review will be granted, or a case heard, by the supreme court after we have issued our opinion in a case. This is evident in the statistics. We hear around 2,000 cases per year, while the supreme court hears around 150. Minnesota Judicial Branch, *2018 Annual Report to the Community* 48, 50 (2019), https://mncourts.gov/_media/migration/publicationreports/2018-annual-report/2018-mjb-annual-report-to-the-community.pdf [<https://perma.cc/KWG9-5Z97>] (reporting that the court of appeals heard 2,050 cases in 2018 while the supreme court heard 146). Thus, not all cases can or will be heard by the state supreme court, and the court of appeals is the final word in 96-97% of all cases in which appeal is sought in our state courts. *Id.* at 49.

It is true, as Judge Schmidt observes, that the Minnesota Supreme Court is designed and intended to engage in policymaking decisions and that, comparatively, this court does not have the same resources to perform the type of deep-dive analysis in which our supreme

court regularly engages. The court of appeals operates under time constraints that do not apply to the supreme court, given the volume of cases we hear and the statutory deadline of 90 days from the date of submission for opinions to be released. But, in my view, our role as an error-correcting court and the practical constraints that exist do not mandate a conclusion that we are prohibited from addressing questions of constitutional interpretation when called to do so by the cases presented to us. Rather, we are engaging in the fundamental principles of constitutional interpretation necessary for application of the law to resolve the cases before us.

No supreme court precedent or rule prohibits the court of appeals from interpretation of the state constitution when necessary to resolve questions of law.

I recognize and respect that there are limitations on this court.⁷ The court of appeals is subject to limitations imposed by the Minnesota Supreme Court and, at times, itself.⁸

⁷ The constitutional amendment that created the court of appeals grants “judicial power” to the court of appeals, just as it does to the supreme court, and states, “The court of appeals shall have appellate jurisdiction over all courts, except the supreme court, and other appellate jurisdiction as prescribed by law,” but sets forth no other explicit limitation on the scope of the issues it may consider. Minn. Const. art. VI, § 2.

⁸ One example is that the court of appeals recognizes that it does not have inherent authority to accept a late appeal in the interest of justice, while the supreme court may do so. *Compare Bedner v. Bedner*, 946 N.W.2d 921, 927 (Minn. App. 2020) (citing *Township of Honner v. Redwood County*, 518 N.W.2d 639, 641 (Minn. App. 1994)) (stating that “this court cannot extend the time to appeal”), with *Wells Fargo Bank, Nat’l Ass’n v. True Gravity Ventures, LLC*, 23 N.W.3d 837, 842 (Minn. 2025) (“We have the ‘right to take jurisdiction in those situations where in the interests of justice the merits should be heard’ even if ‘case law, or [the] Rules of Civil Appellate Procedure might otherwise preclude appellate review because the appeal is not timely.’” (quoting *State v. M.A.P.*, 281 N.W.2d 334, 337 (Minn. 1979))); see also Minn. R. Civ. App. P. 103.04, 126.02 (prescribing appellate court scope of review and stating that an appellate court “may not extend the time or limit the time for filing the notice of appeal . . . except as specifically authorized by law”).

Minnesota law provides that only the supreme court hears specific types of appeals, such as first-degree murder, and that only the supreme court may grant relief in the interests of justice. *See* Minn. Stat. § 480A.06, subd. 1 (2024) (specifying that the “court of appeals has jurisdiction of appeals from all final decisions of the trial courts, other than . . . criminal appeals in cases in which the defendant has been convicted of murder in the first degree”). The supreme court also has the authority to establish policy and make decisions based on policy considerations. But here, we are not creating new laws or setting forth a policy; rather, we are being asked to interpret the state constitution similarly to how we interpret the text of a statute, a task that we have regularly undertaken since this court’s creation in 1983.

Given the relatively brief existence of this court, it is informative to consider how leaders in the Minnesota legal community and judiciary have viewed the court of appeals’ role in the state judicial system. Former supreme court justice and court of appeals judge Sam Hanson wrote an article in which he discussed this topic. Sam Hanson, et al., *The Minnesota Court of Appeals: Arguing to, and Limitations of, an Error-Correcting Court*, 35 Wm. Mitchell L. Rev. 1261 (2009). In suggesting that this court’s role is limited to the correction of errors, he points to the court of appeals’ statements that it is “primarily an error-correcting court.” *Id.* at 1270. He also identifies that “the primary area” in which this court has recognized that limitation is “when it is asked to create a new common law cause of action.” *Id.* at 1268-69 (first citing *Belisle v. Dori*, No. C6-99906, 1999 WL 1038013, at *1 (Minn. App. Nov. 16, 1999) (declining to recognize new common-law claim for loss of consortium and stating, “This court, as an error-correcting court, is without

authority to change the law, . . . even when such actions appear to have merit.”); then citing *Engler v. Wehmas*, 633 N.W.2d 868, 873 (Minn. App. 2001) (declining to expand common-law cause of action of negligent infliction of emotional distress and explaining that it is not the function of the court of appeals to create new law); and then citing *Miller v. Mercy Med. Ctr.*, 380 N.W.2d 827, 831 (Minn. App. 1986) (declining to change an existing common-law standard)).

Hanson also acknowledges the alternative viewpoint about this court’s role, however, including that, “when presented with an issue of first impression, a court of appeals must break new ground or else fail to decide the case that was before it” and that “[u]ntil a point has been settled by the higher court it is the function of the inferior tribunal to render *its* decision on the point involved; to express its best thinking for the appraisal of the higher court.” *Id.* at 1270 (quotations omitted). He further points out that this court has at times discussed the balance it seeks to strike: “We acknowledge that we are primarily an error-correcting court. Where our appellate courts have not clearly addressed the central issue in a case, however, it is our duty to note the direction of developments and to anticipate changes in the law.” *Id.* (citation omitted) (discussing *Anderson v. Federated Mut. Ins. Co.*, 465 N.W.2d 68, 72 (Minn. App. 1991)).

In reaching his conclusion about the limited scope of authority of this court, Hanson makes many of the same observations about the differences between the court of appeals and the supreme court that I have noted,⁹ yet he cites no authority to support his contention

⁹ These observations include that the court of appeals hears nearly all of the appeals that are filed challenging decisions of district courts, local governments, and administrative

that correcting errors is the court of appeals' *only* function. While the article illuminates the tension between different perspectives about this court's role, I am not persuaded to conclude that this court's role should be so narrowly construed.

In sum, because we have previously interpreted the state constitution when necessary, we have an obligation to resolve cases on our nondiscretionary docket, and no supreme court precedent or rule prohibits it, I conclude that the court of appeals has the authority to answer the open question about the constitutionality of pretextual stops under Minnesota's Constitution.

II. Article I, Section 10 of the Minnesota Constitution prohibits pretextual traffic stops.

A. We apply the analysis established in *Kahn v. Griffin* to determine whether to depart from federal precedent when interpreting the Minnesota Constitution.

An appellate court reviews a constitutional argument *de novo*. *State v. Castillo-Alvarez*, 836 N.W.2d 527, 534 (Minn. 2013). The Minnesota Supreme Court has “established a definite baseline for how [to] approach the task of interpreting a provision of the Minnesota Constitution, especially when there is an identical or substantially similar federal counterpart.” *Kahn v. Griffin*, 701 N.W.2d 815, 828 (Minn. 2005). In *Kahn*, the supreme court emphasized that the task of interpreting a provision of the Minnesota

agencies; the supreme court's jurisdiction is discretionary, and it grants review in cases that present important questions or matters of significant precedential value or complexity; the supreme court develops the law and doctrine and makes policy as the final word on legal matters; the supreme court exercises supervisory power over all state courts and engages in rulemaking; and the supreme court's decisions are binding on all lower courts. *Id.* at 1274-77.

Constitution must be approached “with restraint and some delicacy” and that departure from federal precedent or the general principle that favors uniformity with the federal constitution may not be based on “slight implication and vague conjecture.” *Id.* The supreme court then identified that, where there is a “principled basis for greater protection of the individual civil and political rights of our citizens under the Minnesota Constitution” that is based on “a clear and strong conviction,” it is appropriate “to interpret the constitution independently to safeguard those rights.” *Id.*

In *State v. McMurray*, decided ten years later, the supreme court applied the principles articulated in *Kahn* and further explained that, when the text of the relevant state constitutional provision is materially identical to its federal counterpart, there are at least three sets of circumstances in which it has construed the Minnesota Constitution to provide greater protection than the federal constitution: (1) when the United States Supreme Court “has made a sharp or radical departure from its previous decisions” and there is “no persuasive reason to follow such a departure”; (2) “when the [Supreme] Court has retrenched on a Bill of Rights issue”; or (3) when the [Supreme] Court’s precedent “does not adequately protect [Minnesota] citizens’ basic rights and liberties.” 860 N.W.2d 686, 688-90 (Minn. 2015) (quotations omitted); *see also Kahn*, 701 N.W.2d at 829 (providing a “nonexclusive list of factors”¹⁰ to consider when determining whether a principled basis

¹⁰ In *Kahn*, the supreme court provided the following “nonexclusive list of factors”:

(1) the text of the state Constitution, (2) the history of the state constitutional provision, (3) relevant state case law, (4) the text of any counterpart in the U.S. Constitution, (5) related federal precedent and relevant case law from other states that have addressed identically or substantially similar constitutional

is present). The supreme court also clarified that the relevant question is not whether the reasoning of the United States Supreme Court in a case interpreting the federal constitution is persuasive, but instead, whether there is a principled basis to interpret the state constitution to provide greater protection in the context presented—which may be demonstrated by the presence of any one of the three sets of circumstances. *McMurray*, 860 N.W.2d at 690-91.

Ultimately, the *Kahn* framework¹¹ directs us through a series of questions, and depending on the answer to each question, the inquiry may stop at that point—leading us to apply an interpretation consistent with the United States Supreme Court’s interpretation of the United States Constitution—or the inquiry may continue to the next step until we reach a final conclusion. We first ask whether there is an identical or substantially similar federal counterpart in the United States Constitution to the provision of the Minnesota Constitution at issue. *Id.* at 690. If the answer to that question is yes, we then ask whether a principled basis exists on which to depart from federal precedent; in doing so, we may consider whether the United States Supreme Court has made a sharp or radical departure

language, (6) policy considerations, including unique, distinct, or peculiar issues of state and local concern, and (7) the applicability of the foregoing factors within the context of the modern scheme of state jurisprudence.

McMurray, 860 N.W.2d at 690 (quoting *Kahn*, 701 N.W.2d at 829).

¹¹ I note that *Leonard*, 943 N.W.2d 149, and *State v. Contreras-Sanchez*, 33 N.W.3d 700 (Minn. 2026), were both decided after *Kahn* and required the supreme court to decide issues presented under the Minnesota Constitution. They are distinguishable from the question raised in this appeal because the United States Supreme Court had not yet addressed the precise context or constitutional arguments presented.

from its previous decisions and there is no persuasive reason to follow that departure, whether the Supreme Court has retrenched on a Bill of Rights issue, and whether federal precedent provides inadequate protection for Minnesota citizens' individual rights. *Id.* at 690-91. If the answer to any of these questions is yes, then we may apply the Minnesota Constitution to provide the protection required thereunder. *Id.*

B. Under the *Kahn* framework, there is a principled basis to interpret article I, section 10 of the Minnesota Constitution to provide broader protections than the Fourth Amendment to the United States Constitution in the context of pretextual traffic stops.

1. The language of Article I, section 10 is identical to that of the Fourth Amendment.

As to the first step under the *Kahn* framework, the supreme court has previously concluded that the provisions of article I, section 10 are identical to those of the Fourth Amendment. *McMurray*, 860 N.W.2d at 690; *Golden Valley v. Wiebesick*, 899 N.W.2d 152, 160 (Minn. 2017) (“We have repeatedly stated, and we state again, that the Fourth Amendment and Article I, Section 10 are in all relevant respects textually identical.” (quotation omitted)).

I therefore take a restrained approach in considering whether the circumstances here reflect those identified in *Kahn*. In doing so, I will consider only the basis on which Schmitt argued that the Minnesota Constitution should provide greater protection than the Fourth Amendment—that the United States Supreme Court’s precedent in *Whren v. United States*, 517 U.S. 806 (1996), for pretextual traffic stops does not adequately protect Minnesota citizens’ basic rights and liberties. *See McMurray*, 860 N.W.2d at 690 (interpreting *Kahn* as identifying three sets of circumstances in which the Minnesota Supreme Court has

interpreted our constitution to provide greater protection than the United States Constitution).

2. Pretextual traffic stops allowed under *Whren* fail to provide adequate protection for Minnesota citizens' individual rights.

When examining whether the United States Supreme Court's precedent "does not adequately protect [Minnesota] citizens' basic rights and liberties," an appellate court considers "whether there is a unique, distinct, or peculiar issue[] of state and local concern that requires protection." *Id.* at 690, 692 (quotation omitted). To determine this, we may look to whether Minnesota has a long tradition of protecting the right at issue. *Id.* at 692 (determining that Minnesota did not have a long tradition of protecting garbage set out for collection from a warrantless search and, on that basis, rejecting argument that Supreme Court precedent failed to adequately protect a unique, distinct, or peculiar issue of state and local concern).

In *Whren*, the United States Supreme Court held that a traffic stop is reasonable under the Fourth Amendment of the United States Constitution if a police officer has probable cause or reasonable suspicion to believe that a traffic violation has occurred, even if the stop is a pretext for the investigation of a more serious crime or an offense for which the officer does not have independent, adequate suspicion. 517 U.S. at 813. This holding can be characterized as a "could have" test—allowing a stop as reasonable when an officer "could have" made the traffic stop, measured in objective terms, even if no reasonable officer "would have" made the stop to enforce the traffic laws. *See id.* at 812-13. The "could have" test allows an officer to legally use a pretextual reason to stop a car to

investigate a mere hunch or intuition that some other criminal activity is afoot. *See id.* In a dissenting opinion in a different case, Justice Kennedy observed that the practical effect of *Whren*'s holding "[i]s to allow the police to stop vehicles in almost countless circumstances." *Maryland v. Wilson*, 519 U.S. 408, 423 (1997) (Kennedy, J., dissenting).

Schmitt asserts that federal precedent "does not adequately protect the basic rights and liberties of Minnesotans" because the *Whren* standard "interacts with complex traffic and equipment laws to provide a loophole large enough to swallow the reasonable-suspicion requirement" and has resulted in discriminatory and dangerous traffic enforcement.

Pretextual Traffic Stops in Minnesota

Schmitt first points to the overly broad net that law enforcement may cast when allowed to make pretextual traffic stops because of the inevitability of a driver committing a violation if officers follow that driver long enough. Schmitt then identifies the disparities in how law enforcement exercises discretion when making traffic stops for minor driver-conduct violations and equipment violations in Minnesota.

Schmitt offers support for his contentions by citing scholarly articles that conclude that the "could have" test from *Whren* "allows police officers to stop" virtually any driver given that nearly every conceivable aspect of vehicle operation may result in a traffic-law violation. *See* David A. Harris, *Car Wars: The Fourth Amendment's Death on the Highway*, 66 Geo. Wash. L. Rev 556, 559-60 (1998) (identifying vehicle-operation requirements such as the distance drivers must signal before turning and the times of day and weather conditions that require drivers to turn on their light). Because some traffic

infractions are not clearly defined, officers have the discretion to stop drivers even when they are operating vehicles in ways and under conditions that are “reasonable and prudent.” *Id.* at 560. Legal requirements for vehicle equipment also provide numerous opportunities distinct from driving conduct for the exercise of broad police discretion. *Id.* (“[S]tate traffic codes mandate the kind of lights each vehicle must have and the distance from which these lights must be visible, the types of license plates and regulatory stickers vehicles must carry, how loud an exhaust system may be, and even how deep the tread on a car’s tires must be.” (footnotes omitted)). Most equipment violations—including Schmitt’s failure to display a front license plate—are non-criminal infractions, yet they are frequently a valid basis for a traffic stop under *Whren* and the Fourth Amendment. *See State v. Varnado*, 582 N.W.2d 886, 889 (Minn. 1998) (affirming denial of suppression motion after determining the officers were justified in stopping Varnado because they had probable cause to believe she was violating a traffic regulation by driving a car with a shattered windshield). Thus, these minor moving and equipment violations, which alone do not indicate any criminal activity or pose a substantial and immediate risk to public safety, may serve as an objective basis for law enforcement to engage in a traffic stop.¹² These types of stops may be used in an improper manner—meaning that law enforcement may use one of these minor violations as a pretext to engage in investigation of a completely separate

¹² Indeed, the supreme court has observed, “[T]he factual basis required to support a stop for a ‘routine traffic check’ is minimal. An actual violation of the Vehicle and Traffic Law need not be detectable. For example, an automobile in a general state of dilapidation might properly arouse suspicion of equipment violations.” *Marben v. State Dep’t of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980).

crime for which they do not have reasonable articulable suspicion and as to which their investigation would otherwise be unconstitutional. I am mindful of the fact that many (and perhaps most) law-enforcement officers attempt to abide by the protections the Minnesota Constitution affords to this state’s citizens. But that nonetheless does not foreclose the potential for serious unconstitutional intrusions to steadily occur, as Schmitt demonstrates.

Schmitt also discusses information about the disparity in how law enforcement exercises discretion when making traffic stops. *See Harris, supra*, at 560-61. The reality is that police do not pull over every driver who commits a traffic or equipment violation—they make choices about who, when, and where to pull over drivers they encounter. *See id.* at 561. “[A]vailable evidence indicates that the discretionary power of police to make traffic stops [is] used against” people of color—African American and Hispanic—disproportionately to their presence among drivers, *id.*, including in Minnesota and against Native American drivers in Minnesota, *JLI Vol. 39 Ed. Bd., Refunding the Community: What Defunding MPD Means and Why It Is Urgent and Realistic*, 44 Minn. J.L. & Ineq. 231, 240-41 (2026).¹³

These pretextual stops raise significant concerns about discriminatory enforcement:

Pretextual traffic stops aggravate years of accumulated feelings of injustice, resulting in deepening distrust and cynicism by African-Americans about police and the entire criminal justice system. But the problem goes deeper. If upstanding citizens are treated like criminals by the police, they will not trust those same officers as investigators of crimes or as witnesses in court. Fewer people will trust the police

¹³ Schmitt does not allege that he was stopped on the basis of his race or ethnicity. While concerns about racial inequities may not be present in this case, they are relevant to the question presented in this appeal.

enough to tell them what they know about criminals in their neighborhoods, and some may not vote to convict the guilty in court when they are jurors. Recent polling data show that not just [B]lack, but a majority of *[W]hites* believe that [B]lack face racism at the hands of police. “Driving while [B]lack” has begun to threaten the integrity of the entire process not only in the eyes of the African-Americans, but of everyone.

David A. Harris, *The Stories, the Statistics, and the Law: Why “Driving While Black” Matters*, 84 Minn. L. Rev. 265, 268-69 (1999) (footnote omitted).

Schmitt cites specific examples of high-profile traffic stops in Minnesota that he asserts highlight the impact of discriminatory pretextual stops: the traffic stops of Philando Castile and Daunte Wright. In Castile’s case, he was shot and killed after an officer pulled him over for driving with a broken taillight. *In re Short Call Substitute Teaching License Application of Yanez*, 983 N.W.2d 89, 91-92 (Minn. App. 2022); Maria Lisignoli & Aki Nace, *How Philando Castile’s Legacy Lives on 10 Years After Officer Shot, Killed Him*, CBS News (July 6, 2026, 9:05 a.m.), <https://www.cbsnews.com/minnesota/news/philando-castile-10-years-later/> [<https://perma.cc/5JK6-8L9G>]. The media later reported that Castile had been pulled over 49 times during the 13 years leading up to his death, often for minor traffic or equipment violations. See Sharon LaFraniere & Mitch Smith, *Philando Castile Was Pulled Over 49 Times in 13 Years, Often for Minor Infractions*, N.Y. Times (July 16, 2016). In Wright’s case, he was shot and killed after a traffic stop for a minor equipment violation.¹⁴ Corky Siemaszko, *Daunte Wright Was Stopped for Expired Plates, but Driving*

¹⁴ After the killing of Wright, some police departments began addressing pretextual stops through policy changes on a department level. Tom Crann et al., *Minneapolis Police Cut Back on Pretextual Traffic Stops in Effort to Reduce Racial Profiling*, MPR News: All Things Considered (Aug. 17, 2021, 6:23 P.M.), <https://www.mprnews.org/story/>

While Black May Have Been His “Crime,” NBC News (April 13, 2021, 7:29 a.m.), <https://www.nbcnews.com/news/us-news/daunte-wright-was-stopped-expired-plates-driving-while-black-may-n1263878> [<https://perma.cc/5KSS-X29R>].

2021/08/17/minneapolis-police-ending-pretextual-traffic-stops-in-effort-to-reduce-racial-profiling [<https://perma.cc/DWJ8-P8S3>]. Some counties in Minnesota have also taken steps to reduce race-based pretextual traffic stops. In 2021, the Ramsey County Attorney decided to stop prosecuting felony cases arising out of traffic stops for minor traffic and equipment violations and worked with affiliated police departments to implement the policy. Sam McCann, *Black Drivers Were Pulled Over Less Often After a Minnesota County Changed Its Policies*, Vera Institute of Justice (June 7, 2023), <https://www.vera.org/news/black-drivers-were-pulled-over-less-often-after-a-minnesota-county-changed-its-policies> [<https://perma.cc/U2VW-X9YZ>]. Data released in 2023 revealed that non-public-safety traffic stops fell by 86 percent in cooperating departments and “Black drivers experienced the largest decrease in these kinds of traffic stops, seeing a 66 percent drop in the number of stops per capita.” *Id.* Moreover, the data showed no adverse impact to public safety and there was no increase in violent crime in the jurisdictions that implemented the policy compared to the jurisdictions that did not. *Id.*; see also Yohuru Williams, *Opinion: Moriarty Got It Right: Pretext Stops Are Biased and Ineffective*, The Minnesota Star Tribune (Sept. 24, 2025, 6:00 a.m.), <https://www.startribune.com/mary-moriarty-racial-justice-policing-minneapolis/601479250> [<https://perma.cc/ED5X-DTAR>]. Within the past year, Hennepin County implemented a similar policy that is intended to “prioritize charging offenses that arise from traffic stops that focus on public safety” and is based on a “growing body of research detail[ing] the negative impact certain traffic stops have on the community’s trust of law enforcement, while doing little to improve overall safety.” Office of the Hennepin County Attorney, *Policy on Non-Public Safety Traffic Stops* 1 (effective date October 15, 2025), <https://www.hennepinattorney.org/-/media/cao/news/2025/September/Non-Public-Safety-Traffic-Stop-Policy.pdf?rev=322c5d38f736444a92de1c7710184d58&hash=19E035EC4DDEDE9106EB202E0C12E68C> [<https://perma.cc/BX5Y-CJZF>]. Hennepin County defined “non-public-safety traffic stops” as “those where the justification for the stop is driving conduct and/or equipment violations that, in either case, do not pose a substantial and immediate risk to public safety.” *Id.* Schmitt argues that, while self-regulation by departments and counties is a positive development, the result is an untenable patchwork of policies—protections are available in some areas of the state but not others—and the constitutional rights of Minnesotans should not be left to the discretion of law enforcement. *Cf. McDonald v. United States*, 335 U.S. 451, 455-56 (1948) (“The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals.”).

To support his argument that *Whren* is insufficient to protect Minnesotans from unconstitutional traffic stops, Schmitt cites data that the State of Minnesota has published confirming that “minority drivers were more likely than white drivers to be both stopped and searched, even though officers found contraband more often when searching white drivers.” LaFraniere & Smith, *supra* (citing Inst. on Race & Poverty: Council on Crime & Just., *Minnesota Statewide Racial Profiling Report: All Participating Jurisdictions. Report to the Minnesota Legislature* (Sept. 22, 2003), <https://www.lrl.mn.gov/docs/2004/mandated/040200.pdf> [<https://perma.cc/7PRL-SF72>]); *see also* Minn. Dep’t of Hum. Rts., *Investigation into the City of Minneapolis and the Minneapolis Police Department: Findings from the Minnesota Department of Human Rights* 23-32, 48 (April 27, 2022), https://mn.gov/mdhr/assets/Investigation%20into%20the%20City%20of%20Minneapolis%20and%20the%20Minneapolis%20Police%20Department_tcm1061-526417.pdf [<https://perma.cc/UBN9-LCL6>] (finding that the Minneapolis Police Department was more likely to stop vehicles with people of color and Native Americans and treated them differently than vehicles with white occupants after the stop).

Thus, Schmitt argues that, because the data shows that Minnesotans are subject to pretextual stops in part as a function of their race or their geography and because we cannot leave the constitutional rights of Minnesotans to the discretion of law enforcement, the *Whren* standard is not sufficient to protect the basic rights and liberties of Minnesotans and we have a principled basis to interpret article I, section 10 of the Minnesota Constitution to provide broader protections than the Fourth Amendment to the United States Constitution in the context of pretextual traffic stops.

I am persuaded by Schmitt’s reliance on data specific to Minnesota¹⁵ showing that application of the standard under *Whren*—the “could have” test that allows officers to stop any car if they follow it long enough to observe a minor violation—has resulted in discriminatory and dangerous traffic stops that are of peculiar concern *in Minnesota*.¹⁶

Minnesota Tradition of Protecting Citizens’ Rights

I next consider whether Minnesota has a long tradition of protecting the right at issue—protection against unreasonable traffic stops. In *State v. Askerooth*, the supreme court stated, “It is axiomatic that we are free to interpret the Minnesota Constitution as affording greater protection against unreasonable searches and seizures than the United States Constitution.” 681 N.W.2d 353, 361 (Minn. 2004). It also stated in the same opinion that, in interpreting article I, section 10, appellate courts “will not cavalierly construe our constitution more expansively than the United States Supreme Court has construed the federal constitution.” *Id.* at 362 (quotation omitted).

The supreme court has determined that article I, section 10 of the Minnesota Constitution provides greater protection from suspicionless law enforcement conduct in the search-and-seizure context than does the Fourth Amendment to the United States

¹⁵ Minnesota-specific data is particularly helpful, as the inquiry here asks whether federal precedent adequately protects the rights of Minnesotans. *See McMurray*, 860 N.W.2d at 690.

¹⁶ The traffic stops that involved Castile and Wright are tragic symptoms of the problem of unconstitutional pretextual traffic stops and were likely precipitating events that led to the changes that local departments and counties in Minnesota are making to reduce driving-conduct and equipment-violation stops that do not pose a substantial and immediate risk to public safety. *See supra* note 14.

Constitution. *See Leonard*, 943 N.W.2d at 156 (“[W]ithout a doubt . . . Article I, Section 10 of the Minnesota Constitution provides greater protection against suspicionless law enforcement conduct than the Fourth Amendment to the United States Constitution.”); *State v. Sargent*, 968 N.W.2d 32, 34 (Minn. 2021) (holding police cannot expand scope of stop to investigate pretrial release condition violation without reasonable, articulable suspicion under Minnesota Constitution); *State v. Davis*, 732 N.W.2d 173, 180-82 (Minn. 2007) (holding that a dog sniff in a hallway outside an apartment constitutes a search requiring at least a reasonable articulable suspicion of criminal activity under the Minnesota Constitution); *State v. Carter*, 697 N.W.2d 199, 202 (Minn. 2005) (holding that a dog sniff of a storage unit is a search under the Minnesota Constitution); *State v. Fort*, 660 N.W.2d 415, 416 (Minn. 2003) (holding that search of passenger stopped for routine traffic violations violated section 10 because it exceeded scope of a traffic stop without reasonable suspicion); *In re Welfare of B.R.K.*, 658 N.W.2d 565, 578 (Minn. 2003) (holding that short-term social guests have an expectation of privacy under Minnesota Constitution greater than that under the United States Constitution); *Ascher*, 519 N.W.2d at 187 (holding that temporary roadblocks to stop cars without objective, individualized articulable suspicion violate section 10); *E.D.J.*, 502 N.W.2d at 783 (holding that a seizure occurs under Minnesota Constitution when a reasonable person would not feel free to leave).

Pretextual traffic stops are akin to “suspicionless law enforcement” because the true reason for the stop is to conduct an investigation that is not yet supported by reasonable articulable suspicion of criminal activity separate from the basis for the stop. While a

pretextual traffic stop may be supported by an “objective basis,” *State v. Gibson*, 945 N.W.2d 855, 857 (Minn. 2020), that objective basis does not extend to the real reason for the stop—it is likewise essentially “suspicionless.”

The Minnesota Supreme Court has expressed concern about the “pretext problem.” *State v. George*, 557 N.W.2d 575, 579-80 (Minn. 1997); *see also Varnado*, 582 N.W.2d at 892 (holding that pretext is a factor relevant for intrusions without probable cause); *State v. Taylor*, 965 N.W.2d 747, 767-772 (Minn. 2021) (Thissen, J., dissenting) (discussing pretextual traffic stops and observing that, while *Taylor* did not present an opportunity to revisit pretextual stops as a matter of state constitutional law, we should not necessarily “ignore the objective racial disparities in traffic stops . . . when conducting the balancing of societal values underlying the constitutional standard we set for reasonable suspicion”). Although the Minnesota Supreme Court has applied *Whren* to affirm convictions obtained through pretextual stops under the Fourth Amendment, it has noted that the issue of consent searches during traffic stops should be carefully scrutinized, especially when there is evidence of pretext. *See George*, 557 N.W.2d at 579. In *George*, it recognized that “very few drivers can traverse any appreciable distance without violating some traffic regulation” and expressed concern consistent with the social-science data above that police may exercise their discretion improperly. *Id.* (quotation omitted). Indeed, the supreme court stated: “[P]olice, who have enormous discretion in enforcing traffic laws, may take advantage of their right to stop motorists for routine traffic violations in order to target members of groups identified by factors that are totally impermissible as a basis for law enforcement activity.” *Id.* at 579-80 (quotation omitted).

We are not the only state that has expressed concerns about disparate police practices—some states have interpreted their state constitution to provide their citizens additional protections beyond those set forth by the Supreme Court. Washington and New Mexico have rejected *Whren*’s standard as a matter of state constitutional law and require an assessment of the reasonableness of a traffic stop based on the subjective motivations of the police. *State v. Ladson*, 979 P.2d 833, 840 (Wash. 1999) (holding that “a traffic infraction may not be used as a pretext to stop to investigate for a sufficient reason to search even further”); *State v. Ochoa*, 206 P.3d 143, 146 (N.M. App. 2008) (holding that pretextual stops violate the New Mexico Constitution); see *State v. White*, 996 N.W.2d 206, 217 n.7 (Minn. App. 2023) (noting that precedent from other states can be persuasive), *aff’d*, 13 N.W.3d 395 (Minn. 2024). As the New Mexico Court of Appeals stated:

We do not accept the State’s arguments that our constitution, which favors an examination into the reasonableness of officers’ actions under the circumstances of each case, should disempower and disable the courts from examining whether an officer has an unconstitutional reason for making a stop. This would be an abdication of our judicial responsibility to meaningfully review police action, ferret out police perjury, weigh the evidence, and guard our citizens’ privacy rights. We would in effect legitimize a charade, a mockery of the legal justifications we recognize for permitting the most common of police intrusions. This we will not do. We hold that pretextual traffic stops are not constitutionally reasonable in New Mexico.

Ochoa, 206 P.3d at 155.

These cases are consistent with Minnesota caselaw holding that article I, section 10 of the Minnesota Constitution provides greater protection in the search-and-seizure context when federal caselaw is inadequate to protect the basic rights and civil liberties of

Minnesotans. *See Leonard*, 943 N.W.2d at 156. Like the New Mexico and Washington Constitutions, the Minnesota Constitution affords greater protections against unreasonable searches and seizures than the federal constitution. This includes protection against unreasonable pretextual traffic stops that fail to disincentivize police misconduct, exacerbate dangerous racial inequities in stops and searches, and erode trust in the criminal-justice system.

In light of the Minnesota Supreme Court's expressions of concern about the broad discretion afforded the police when pretextual stops are allowed and the tradition in Minnesota of expansive civil rights to prohibit unreasonable stops and seizures, I am persuaded that there is a tradition in Minnesota of protecting citizens from overreach by law enforcement that results in discriminatory and dangerous traffic stops. While the United States Supreme Court has established a floor, Minnesotans do not depend on the federal constitution as their only source of protection against unreasonable searches and seizures. I agree with Schmitt that Supreme Court precedent fails to adequately protect a unique, distinct, or peculiar issue of state and local concern and that the Minnesota Constitution provides broader protections necessary to address the inequities in the justice system that arise out of pretextual stops.

Far from "lightly reject[ing]" the United States Supreme Court's interpretation of the Fourth Amendment or "cavalierly construing our constitution" "merely because [I] want to bring about a different result," *Kahn*, 701 N.W.2d at 824, 825, I have a clear and strong conviction that a principled basis exists to construe article I, section 10 of the Minnesota Constitution to provide greater protection than the Fourth Amendment to the

United States Constitution because the United States Supreme Court's precedent in *Whren* does not adequately protect Minnesota citizens' basic rights and liberties in the context of pretextual traffic stops.

C. The New Mexico test in *Ochoa* provides a workable definition for pretextual traffic stop and a test for determining when a traffic stop is pretextual and a violation of Minnesota citizens' rights under the Minnesota Constitution.

Because I conclude that pretextual traffic stops violate the Minnesota Constitution, I am next obligated to discern the standard to determine whether a traffic stop is, in fact, pretextual. Because I am persuaded that the test established in New Mexico is a workable test, I conclude that it is the test that should be adopted and applied in Minnesota.

According to the New Mexico Court of Appeals, a pretextual stop is readily defined as “a detention supportable by reasonable suspicion or probable cause to believe that a traffic offense has occurred but is executed as a pretense to pursue a ‘hunch,’ a different more serious investigative agenda for which there is no reasonable suspicion or probable cause.” *Ochoa*, 206 P.3d at 152. In determining whether a stop was pretextual, courts should consider the “totality of the circumstances, judge the credibility of witnesses, weigh the evidence, make a decision, and exclude the evidence if the stop was unreasonable at its inception.” *Id.* at 155. And, as part of considering the totality of the circumstances, courts should consider both the objective reasonableness of an officer's actions and “the subjective intent of the officer—the real reason for the stop.” *Id.*

The appropriate framework for conducting the pretextual-stop analysis would proceed as follows. The district court must first identify whether reasonable suspicion or

probable cause for the stop existed, with the state bearing the burden to establish that either one applies. *Id.* at 155-56. If the state establishes that the stop is objectively justified as supported by either probable cause or reasonable suspicion, the burden would shift to a defendant asserting that a stop was pretextual to prove that it was such, based on a totality of the circumstances. *Id.* at 156. If a defendant successfully articulates facts that sufficiently show that an officer had an unrelated motive, they establish a rebuttable presumption that a stop was pretextual. *Id.* The burden would then shift back to the state to rebut the pretext presumption, requiring it to show that the officer would have stopped the defendant regardless of the unrelated, improper motive. *Id.* And if a district court determines that the stop is unreasonable based on pretext, the court should grant a motion to suppress the evidence obtained from the unconstitutional search.

The final step needed here to resolve the issue presented by Schmitt is to apply the test to the facts of this case; however, this is a task the district court should undertake in the first instance and as to which it may wish to reopen the record. I would therefore remand this case to the district court to determine whether the police officer's stop of Schmitt was unreasonable because it was pretextual and whether, therefore, Schmitt is entitled to suppression.

In sum, I first join Judge Schmidt's opinion concluding that the Minnesota Supreme Court has not yet answered the question squarely presented in this appeal, and neither has this court. Second, I conclude that the court of appeals has the authority and obligation to resolve this case on the issue as presented. Third, I conclude that, regarding pretextual stops, the Minnesota Constitution affords greater protection than its federal counterpart.

Under article I, section 10 of the Minnesota Constitution, a traffic stop is unreasonable if it is pretextual; and to make that determination, I would rely on the test adopted by the New Mexico Court of Appeals. I would therefore reverse the district court's order denying Schmitt's motion to suppress and his conviction and remand for application of the test.

Ultimately, I would construe the Minnesota Constitution as granting broader protection against pretextual traffic stops because the United States Supreme Court's precedent in *Whren* does not adequately protect the basic rights and liberties of Minnesotans.