STATE OF MINNESOTA

IN SUPREME COURT

A17-2061

Court of Appeals — Hudson, J.
Dissenting, Gildea, C.J., Anderson, McKeig, JJ.

State of Minnesota,

Respondent,

vs.

Filed: May 13, 2020
Office of Appellate Courts

John Thomas Leonard,

Appellant.

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender; and

Emily B. Anderson, Special Assistant Public Defender, Winthrop & Weinstine, P.A., Minneapolis, Minnesota, for appellant.

Teresa J. Nelson, David P. McKinney, American Civil Liberties Union of Minnesota, Minneapolis, Minnesota; and

Elliott J. Nickell, Nickell Law Firm, PLLC, Minneapolis, Minnesota, for amicus curiae American Civil Liberties Union of Minnesota.

S Y L L A B U S

1. An examination of a hotel guest registry conducted by law enforcement officers is a search within the meaning of Article I, Section 10 of the Minnesota

Constitution because an individual's presence at a hotel is sensitive information in which there is an expectation of privacy that society is prepared to recognize as reasonable.

2. Under Article I, Section 10 of the Minnesota Constitution, law enforcement officers must have at least a reasonable, articulable suspicion to search a hotel guest registry.

3. Minnesota Statutes §§ 327.10–.13 (2018), are constitutionally valid under Article I, Section 10 of the Minnesota Constitution because the statutory phrases "shall be open" and "always accessible" do not authorize law enforcement to conduct suspicionless searches of hotel guest registries.

4. The district court erred when it denied appellant's suppression motion because the evidence found in appellant's hotel room was the fruit of the officers' suspicionless search of the hotel guest registry.

Reversed and remanded.

O P I N I O N

HUDSON, Justice.

The State charged appellant John Thomas Leonard with check forgery based on evidence that law enforcement officers discovered in his hotel room. Leonard moved to suppress the State's evidence. He argued, among other things, that the officers violated Article I, Section 10 of the Minnesota Constitution when they examined the hotel guest registry (hereinafter "the guest registry"), which led them to his room, without the officers having any individualized suspicion of criminal activity. The district court denied his motion and later convicted Leonard of check forgery. The court of appeals affirmed.

We hold that the law enforcement officers conducted a search under Article I, Section 10 of the Minnesota Constitution[1] when they examined the guest registry. We hold further that law enforcement officers must have at least a reasonable, articulable suspicion to search a guest registry. Minnesota Statutes §§ 327.10–.13 (2018) ("the hotel guest registry statutes") are constitutional because the phrases "shall be open" and "always accessible" do not authorize suspicionless searches. But, by admitting evidence from the search of Leonard's hotel room—fruit of the illegal, suspicionless, search of the guest registry—the district court erred. We therefore reverse the decision of the court of appeals and remand to the district court for further proceedings consistent with our decision here.

FACTS

Law enforcement officers arrived at a Bloomington hotel on August 14, 2015, for a hotel interdiction.[2] The officers were not responding to a particular call. Without a warrant and without any individualized suspicion of criminal activity, the officers told the clerk on duty that they wanted to examine the guest registry and to be provided with the name of any guest who paid in cash. Hotels and all other overnight lodging establishments are

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[1] We do not reach Leonard's Fourth Amendment challenge under the United States Constitution because we hold that Leonard's rights were violated under the Minnesota Constitution. *See State v. Flowers*, 734 N.W.2d 239, 258 (Minn. 2007) ("[W]e have concluded that Flowers' rights under our state constitution were violated, and therefore we need not address the issue of whether Flowers' rights under the federal constitution were violated.").

[2] A hotel interdiction is a law enforcement strategy where officers work in coordination with hotel operators to reduce criminal activity in hotels. Interdictions are generally designed to target those who check into hotels for the purpose of sex trafficking or to use or to sell drugs.

required to keep these guest registries under the hotel guest registry statutes.[3] Specifically, the hotel guest registry statutes require all lodging establishments to collect each guest's name and address, vehicle information, and the names and addresses of any travel

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[3] Every person operating within this state a recreational camping area, lodging house, hotel or motel, or resort furnishing sleeping or overnight stopping accommodations for transient guests, shall provide and keep thereat a suitable guest register for the registration of all guests provided with sleeping accommodations or other overnight stopping accommodations thereat; and every such guest shall be registered therein. Upon the arrival of every such guest, the operator of the establishment shall require the guest to enter in such register, or enter for the guest therein, in separate columns provided in such register, the name and home address of the guest and every person, if any, with the guest as a member of the party; and if traveling by motor vehicle, the make of such vehicle, registration number, and other identifying letters or characters appearing on the official number plate carried thereon, including the name of the state issuing such official plate. Such registration shall be kept in an accurate and orderly manner and retained for one year so that the same will be always accessible for inspection by the proper authorities.

Minn. Stat. § 327.10.

> Every person, upon arriving at any lodging house, recreational camping area, hotel or motel or other resort described in sections 327.10 to 327.13 and applying for guest accommodations therein of the character described in section 327.10, shall furnish to the operator or other attendant in charge of the establishment the registration information necessary to complete the registration in accordance with the requirements of section 327.10, and shall not be provided with accommodations unless and until such information shall be so furnished.

Minn. Stat. § 327.11.

"The registration records provided for in sections 327.10 to 327.13 shall be open to the inspection of all law enforcement officers of the state and its subdivisions." Minn. Stat. § 327.12.

"Every person who shall violate any of the provisions of sections 327.10 to 327.12 shall be guilty of a misdemeanor." Minn. Stat. § 327.13.

companions. Minn. Stat. § 327.10. Guests must provide this information to the hotel, and hotel operators must make this information available to law enforcement. Minn. Stat. §§ 327.10–.13. Both hotel guests and hotel operators must comply with their statutory duties under threat of misdemeanor prosecution. Minn. Stat. § 327.13.

The clerk complied with the officers' request to examine the guest registry and alerted them that a man had checked into a room for six hours and paid in cash.[4] The officers used the guest registry to identify this man as Leonard. The officers then ran a background check and found that Leonard had prior arrests for, among other things, drugs, firearms, and fraud. Based on this information, the officers developed an individualized suspicion that Leonard was involved in criminal activity and decided to conduct a "knock and talk" at the door of Leonard's hotel room. When Leonard heard the officers knock, he opened the door and gave them limited consent to search the room, but withheld access to his laptop, cell phone, and a file folder where several checks were visible. The officers subdued Leonard through a physical struggle after he tried to flee. After securing a search warrant, the officers discovered over $2,000 worth of suspicious checks paid to the order of "Spencer Alan Hill," over $5,000 in cash, and check-printing paper.

The State charged Leonard with two counts of check forgery under Minn. Stat. § 609.631, subd. 2(1) (2018), and Minn. Stat. § 609.31, subd. 3 (2018). Before trial, Leonard moved to suppress the evidence found in his hotel room. Leonard argued, among

[4] The dissent contends that Leonard did not exhibit a subjective expectation of privacy in his sensitive location information. We disagree. In a world of electronic money transfers using debit cards, credit cards, and other electronic means of payment, Leonard's cash payment evidences an intent to conceal his presence at the hotel.

other things, that the officers' suspicionless examination of the guest registry violated his rights under Article I, Section 10 of the Minnesota Constitution. Leonard noted the purpose of hotel interdictions and discussed our decision in *Ascher v. Commissioner of Public Safety*, 519 N.W.2d 183 (Minn. 1994). More specifically, he wrote:

> The purpose of "hotel interdictions" is to reduce the use of Minnesota hotels for drug trafficking and prostitution. [This particular hotel] and other Bloomington hotels are targeted by police because they are frequently used for drug trafficking and prostitution, just like the intersection in *Ascher* was selected for the high rate of DWI violations. As the Minnesota Supreme Court held in *Ascher*, there must be more than generalized suspicion to justify intrusion into the private affairs of Minnesotans. Here, *there is clearly no more than a generalized suspicion*.

Finally, Leonard argued that the evidence found in his hotel room must be suppressed because it was the fruit of the officers' suspicionless search of the guest registry.

Acknowledging that Article I, section 10 of the Minnesota Constitution prohibits unreasonable searches, the district court explained that Leonard had the burden of showing that law enforcement intruded upon his zone of privacy. The district court applied the third-party doctrine[5] to determine that Leonard abandoned any reasonable expectation of privacy in his registry information when he gave it to the hotel employee who recorded it in the guest registry. The court reasoned that a guest has no constitutionally protected privacy interest in his hotel registration information, just like a customer has no such privacy interest in his banking information.

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[5] The third-party doctrine provides that there is no reasonable expectation of privacy under the Fourth Amendment in information that an individual voluntarily discloses to a third party. *United States v. Miller*, 425 U.S. 435, 443 (1976).

After the district court denied his motion to suppress, Leonard waived his right to a jury and submitted his case to the district court on stipulated evidence. The district court found Leonard guilty as charged and imposed a presumptive 17-month sentence on count 1.

On appeal, Leonard argued that the district court committed reversible error when it denied his motion to suppress. Leonard claimed that hotel guest registries are not analogous to bank records and that his expectation of privacy in the guest registry was legitimate and consistent with existing Minnesota law. He then argued that the guest registry statutes violated Article I, Section 10 of the Minnesota Constitution because the phrase "shall be open to the inspection of all law enforcement officers" in Minn. Stat. § 327.12 authorized suspicionless examinations of guest registries. Finally, he argued that the evidence found in his hotel room must be suppressed because it was the fruit of the officers' suspicionless search of the guest registry.

The court of appeals affirmed. *State v. Leonard*, 923 N.W.2d 52 (Minn. App. 2019). Like the district court, it applied the third-party doctrine and held that Leonard could not challenge the officers' examination because he did not have a reasonable expectation of privacy in the guest registry.[6] *Id.* at 56–58. We granted review.

[6] The court of appeals also concluded that Leonard erroneously relied on *City of Los Angeles v. Patel*, 576 U.S. 409, 135 S. Ct. 2443 (2015). *State v. Leonard*, 923 N.W.2d 52. *Patel* involved a challenge by hotel operators, not hotel guests, concerning the operators' constitutional rights, therefore avoiding the issue of the third-party doctrine. 576 U.S. at __, 135 S. Ct. at 2448.

ANALYSIS

Leonard argues that the district court committed reversible error by denying his pretrial motion to suppress the State's evidence. For pretrial motions to suppress, we review the district court's factual findings for clear error and its legal determinations de novo. *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006). "Under the de novo standard, we do not defer to the analysis of the courts below, but instead we exercise independent review." *Wheeler v. State*, 909 N.W.2d 558, 563 (Minn. 2018).

The Bloomington Police officers had never heard of Leonard when they arrived at the hotel. They had not procured a warrant to search anything. Nor were they called to the hotel by its employees because of concerns regarding any particular guest. Thus, it is undisputed that they acted without individualized suspicion when they conducted the hotel interdiction and examined the guest registry. We, therefore, begin our analysis with a discussion of the existing protections against law enforcement's suspicionless conduct.

We have repeatedly said that we have a responsibility to "safeguard for the people of Minnesota the protections embodied in our constitution." *State v. Askerooth*, 681 N.W.2d 353, 362 (Minn. 2004); *O'Connor v. Johnson*, 287 N.W.2d 400, 405 (Minn. 1979). We have previously condemned suspicionless searches, observing that "a free society will not remain free if police may use . . . crime detection device[s] at random and without reason."[7] *State v. Carter*, 697 N.W.2d 199, 211 (Minn. 2005) (quoting

[7] *But see City of Golden Valley v. Wiebesick*, 899 N.W.2d 152, 168 (Minn. 2017) (holding that under Minnesota law, "an administrative search warrant need not be supported by individualized suspicion of a code violation when the warrant issued by a district court satisfies an ordinance containing reasonable standards.").

Commonwealth v. Johnston, 530 A.2d 74, 79 (Pa. 1987)). In *Carter*, we acknowledged that a dog sniff outside a self-storage unit was not a Fourth Amendment "search" because, under federal precedent, it did "not implicate legitimate privacy interests." *Carter*, 697 N.W.2d at 208–09 (quoting *Illinois v. Caballes*, 543 U.S. 405, 409 (2005)). Nevertheless, we held that decisions from other state courts, as well as "our own Minnesota constitutional precedents" provided "good reasons to guard against a police officer's random use of a drug-detection dog to sniff in the area immediately outside of a person's storage unit, absent some level of suspicion of drug-related activity." *Id.* at 210. We extended this protection even though a dog sniff does not expose legal, non-contraband items that would otherwise remain hidden from public view. We therefore concluded that Article I, Section 10 of the Minnesota Constitution provided greater protection against suspicionless searches than the Fourth Amendment to the United States Constitution. *Id.*

Our condemnation of suspicionless conduct by law enforcement officers extends beyond searches. For example, we condemned suspicionless seizures of the traveling public in *Ascher*.[8] 519 N.W.2d at 187. We explained that we had "long held" that Article I, Section 10 of the Minnesota Constitution "generally requires law enforcement officers to have an objective individualized articulable suspicion of criminal wrongdoing *before*

[8] Our analysis in both *Carter* and *Ascher* turned on law enforcement's complete lack of individualized suspicion. *See Carter*, 697 N.W.2d at 202–03; *Ascher*, 519 N.W.2d at 186. The dissent does not demonstrate how factual differences render these decisions meaningfully distinguishable. For example, the dissent argues that *Ascher* is irrelevant because it involved seizures instead of searches. That we have condemned suspicionless conduct in cases involving both searches *and* seizures only demonstrates the strength of our commitment to the protections provided by Minnesota's Constitution.

subjecting a driver to an investigative stop." *Id.* We were committed to this principle even though the United States Supreme Court had concluded 4 years earlier that temporary roadblocks that stopped all drivers to catch those driving under the influence of alcohol did not violate the Fourth Amendment. *Id.* at 185–87 (discussing *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444 (1990)).

In sum, *Carter* and *Ascher* demonstrate without a doubt that 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. Keeping in mind this well-established Minnesota law, we now consider whether the suspicionless examination of a guest registry by law enforcement officers is a search under Article I, Section 10 of the Minnesota Constitution.

I.

The Minnesota Constitution protects the "right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." Minn. Const. art. I, § 10. Under Article I, Section 10, a search occurs when law enforcement intrudes upon an individual's subjective expectation of privacy that society is prepared to recognize as reasonable. *State v. Gail*, 713 N.W.2d 851, 860 (Minn. 2006). Leonard has the burden to establish that he has a protectable right under the Minnesota Constitution. *See id.* at 859–60.

Whether a guest has a reasonable expectation of privacy in the highly sensitive location information found in a guest registry under Article I, Section 10 is an issue of first

impression.[9] In such cases, we can look to other jurisdictions for guidance. *State v. Willis*, 898 N.W.2d 642, 646 n.4 (Minn. 2017) ("We look outside Minnesota 'when our own jurisprudence is undefined.' " (citation omitted)). *State v. Jorden*, 156 P.3d 893 (Wash. 2007), is instructive.

In *State v. Jorden*, the Supreme Court of Washington held that the Washington Constitution afforded individuals a reasonable expectation of privacy in their guest registry information because "an individual's very presence in a motel or hotel may in itself be a sensitive piece of information." *See id.* at 897–98. The court noted that the anonymity of

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[9] The State cites *United States v. Miller*, 425 U.S. 443 (1976), for the proposition that Leonard had no reasonable expectation of privacy under the Fourth Amendment. Based on that proposition, the State contends that Leonard must articulate a principled basis to interpret Article I, Section 10 more broadly than the Fourth Amendment to receive relief. *See Kahn v. Griffin*, 701 N.W.2d 815, 824–25 (Minn. 2005). We disagree.

In *Ascher* and *Carter*, we extended privacy protections to Minnesotans under our state constitution notwithstanding binding Fourth Amendment precedent that failed to do the same. *Compare Caballes*, 543 U.S. at 409 (upholding dog sniffs as constitutional), *and Sitz*, 496 U.S. at 453 (holding systematic but suspicionless checkpoints are constitutional), *with Carter*, 697 N.W.2d at 208–09 (holding suspicionless searches violate the state constitution), *and Ascher*, 519 N.W.2d at 187 (holding suspicionless checkpoints violate the state constitution). In contrast, the Supreme Court has never applied *Miller* to hotel guest registry information. In the absence of controlling Fourth Amendment precedent, by definition we do not read Article I, Section 10 of the Minnesota Constitution more broadly than the Fourth Amendment on this issue. This observation is not, as the dissent suggests, an assertion that the Supreme Court has limited *Miller* to its facts.

The State also argues that Leonard lacks standing to assert a constitutional violation because the guest registry belongs to the hotel as a business record. *See State v. deLottinville*, 890 N.W.2d 116, 119 (Minn. 2017) (noting that an individual cannot vicariously assert Fourth Amendment rights); *see also Miller*, 425 U.S. at 437, 440 (concluding that the depositor had no Fourth Amendment rights to copies of his checks because they were better characterized as the bank's business records). We disagree. Because we hold that hotel guests have a reasonable expectation of privacy in the sensitive location information found in guest registries under Article I, Section 10, the State's standing argument is unavailing.

hotels may provide necessary space for people engaged in consensual—but deeply private—relationships or confidential business negotiations, for celebrities, and for people experiencing domestic violence who hope to "remain[] hidden from an abuser." *Id.* at 897.

We find the reasoning in *Jorden* persuasive.[10] Imagine instead that Leonard had stayed overnight at the hotel to attend a political or religious conference in the hotel ballroom, or that he had stayed overnight before a medical appointment in hopes of keeping a diagnosis private. In these examples, the guest's highly sensitive location information is revealed, regardless of what actually occurred in the hotel room.[11] That such information would be accessible to the government through a fishing expedition, where the hotel guest was a stranger to law enforcement before the officers' random search, offends our core constitutional principles. The particular role that hotels play in society makes a guest's presence at that location sensitive information that warrants privacy protections.[12] To

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[10] The dissent fails to explain why differences in the language of the Minnesota and Washington Constitutions make the *Jorden* court's insights concerning the role of hotels in society inapplicable.

[11] The dissent does not squarely address Leonard's privacy interest in the sensitive location information found in a guest registry. Instead, it focuses on Leonard's lack of a privacy interest in two separate and distinct pieces of information: his actual activities inside the hotel room, and his name and address.

[12] The Supreme Court has recently recognized a privacy interest in location information in *Carpenter*. *See Carpenter v. United States*, __ U.S. __, __, 138 S. Ct. 2206, 2217–20 (2018) (holding that, in general, law enforcement must have a search warrant to obtain an individual's cell-site location information even though an individual discloses such information to the wireless service company). The Court expressly left open the question of whether such a privacy interest exists in other business records. *Id.* at __, 138 S. Ct. at 2220 ("Our decision today is a narrow one. We do not express a view on

conclude otherwise would deprive Minnesotans of rights that we have the duty to safeguard. *See Askerooth*, 681 N.W.2d at 362 ("It is our responsibility as Minnesota's highest court to independently safeguard for the people of Minnesota the protections embodied in our constitution").

Simply put, we think that most Minnesotans would be surprised and alarmed if the sensitive location information found in the guest registries at hotels, motels, or RV campsites was readily available to law enforcement without any particularized suspicion of criminal activity.[13] Exercising our responsibility to safeguard for the people of Minnesota the protections afforded in our Constitution, we now hold that hotel guests have a reasonable expectation of privacy in the sensitive location information found in guest registries.

We also agree with Leonard that the court of appeals erred in applying the third-party doctrine. Under this doctrine, a defendant loses a reasonable expectation of privacy in information upon disclosure to a third party. It relies on the long-standing and unchallenged principle that "what a person knowingly exposes to the public . . . is not a subject of Fourth Amendment protection." *United States v. Miller*, 425 U.S. 435, 442

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matters not before us . . . [n]or do we address other business records that might incidentally reveal location information.").

[13] We remain unpersuaded by the dissent's assertion that the "long history" of the hotel guest registry statutes suggests that society is prepared to accept suspicionless searches of the sensitive location information found in a guest registry. As discussed in section III of our opinion, the hotel guest registry statutes do *not* authorize suspicionless searches. Consequently, the long history of the hotel guest registry statutes tells us nothing about society's view of suspicionless searches.

(1976) (quoting *Katz v. United States*, 389 U.S. 347, 351 (1967)).[14] In applying this doctrine to Leonard's disclosure under the hotel registry statutes,[15] the court of appeals failed to consider that Leonard's disclosure transformed his otherwise public data into sensitive location information that society is prepared to recognize as a reasonable privacy interest.

Critical to our analysis is the meaning of public exposure. Society views most third-party institutions as places in which private affairs are *not* conducted or exposed. But some third-party institutions are generally considered private (e.g., a doctor's examination room or a lawyer's office).[16] Thus, sharing private information in these spaces does not

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[14] We have not broadly applied the third-party doctrine to Article I, Section 10 challenges. In *State v. Milliman*, we cited *Miller* to hold that a defendant had no reasonable expectation of privacy in his bank and employment records. 346 N.W.2d 128 130 (Minn. 1984) (citing *Miller* to support the proposition that the defendant had no reasonable expectation of privacy in his bank and employment records without specifying whether the analysis occurred under the Fourth Amendment or Article I, Section 10). In acknowledging that the third-party doctrine relies on well-established principles, we do not decide whether it should apply broadly under Minnesota law more generally. We hold simply that the legal principles underlying *Miller*'s third-party doctrine do not apply to guest registries.

[15] The dissent contends that Leonard's disclosure was voluntary. This contention is an oversimplification and ignores the realities and penalties embedded in the statutes. Hotel operators are required, under threat of misdemeanor prosecution, to collect guest registry information from every guest. Minn. Stat. § 327.13. Guests are similarly required to disclose this information or they will not "be provided with accommodations." Minn. Stat. § 327.11.

[16] Evidentiary privileges and other laws protect this information, which may make these examples appear distinguishable at first glance. *See* Minn. R. Evid. 502 (recognizing the privilege afforded to confidential attorney-client communications); Minn. R. Civ. P. 35.03 (recognizing the privilege afforded to doctor-patient communications). These laws codify what society considers reasonable, much like the *Katz* test that considers whether society is prepared to recognize a particular expectation of privacy. *See Katz*, 389 U.S. at

destroy someone's reasonable expectation of privacy, but rather contributes to its private character. Although a guest registry includes seemingly public information—a name and address—the act of recording this information in the guest registry creates sensitive location information because a hotel is a place where people engage in a variety of already described legal, but often deeply private, activities. The dissent ignores this distinction and lists several examples in which individuals likely understand and accept that their name and address is public, such as on a mailed envelope or in public school directory information. But none of these examples create sensitive location information. Thus, the principles underlying the third-party doctrine are not implicated in this context. Consequently, we hold that a government inspection of a guest registry is a search under Article I, Section 10 of the Minnesota Constitution.

II.

Next, we turn to the level of suspicion that a law enforcement officer must have to search a guest registry. A search is illegal if the government lacks the necessary level of suspicion. Probable cause is the "typical standard." *State v. Carter*, 697 N.W.2d 199, 211 (Minn. 2005).

In *Carter*, we diverged from the "typical standard" to require that officers have reasonable, articulable suspicion to conduct a dog-sniff search outside a self-storage unit. *Id.* We considered this standard the proper balance between an individual's reasonable

361 (Harlan, J., concurring). These examples of private spaces, therefore, are not meaningfully distinguishable.

expectation of privacy in the area outside a self-storage unit and the government's legitimate interest in crime detection. *Id.* at 211–12.

In our view, a suspicionless search of the sensitive location information in a guest registry is at least as intrusive as the dog sniff in *Carter*. A dog sniff typically reveals only the presence of drugs, and "any interest in possessing contraband is not one that society considers legitimate." *Id.* at 214 (Anderson, Russell, J., dissenting) (citing *Caballes*, 543 U.S. at 408–09). A dog sniff does not typically reveal entirely legal and private details—such as political, religious, or sexual associations, business negotiations, or the impacts of domestic violence—like the search of a guest registry can. We recognize that our holding today is in tension with the government's significant interest in proactively addressing the serious criminal behavior that often takes place in hotels. *See, e.g.*, Dep't of Homeland Security, *Hospitality Toolkit* (2016), https://www.dhs.gov/sites/default/files/publications/blue-campaign/toolkits/hospitality-toolkit-eng.pdf (last visited Apr. 27, 2019) [opinion attachment] (educating hospitality industry staff on recognizing signs of human trafficking, because "[t]raffickers often take advantage of the privacy and anonymity offered by the hospitality industry.").

And here, the law enforcement officers at this hotel were acting in their capacity as members of a drug interdiction unit. "But consensus that a particular law enforcement technique serves a laudable purpose has never been the touchstone of constitutional analysis." *Ascher*, 519 N.W.2d at 186–87 (quoting *Sitz*, 496 U.S. at 459 (Brennan, J., dissenting)).

We therefore hold that law enforcement officers must at least have reasonable, articulable suspicion to search the sensitive location information in a guest registry. Requiring officers to have reasonable, articulable suspicion strikes the appropriate balance for the same reasons that we articulated in *Carter*. *See Carter*, 697 N.W.2d at 211–12 (citing the government's "significant interest in the use of drug-detection dogs" in adopting the reasonable, articulable suspicion standard).

Further, the government may still achieve its legitimate purpose in preventing criminal activity in hotels without substantial burden. Nothing about our decision prevents law enforcement from partnering with hotels to help staff members recognize signs of trafficking or other crimes. And nothing about our decision prevents hotel operators from contacting law enforcement to relay suspicious observations. If such observations provide the officers with reasonable, articulable suspicion of criminal activity, they may examine the sensitive location information found in a guest registry.

III.

We must next decide whether the language of the hotel guest registry statutes gives law enforcement officers unfettered access to these guest registries in violation of Article I, Section 10 of the Minnesota Constitution. We interpret statutes de novo. *Pepper v. State Farm Mut. Auto. Ins. Co.*, 813 N.W.2d 921, 925 (Minn. 2012). Statutes are presumed constitutional; we "will strike down a statute as unconstitutional only if absolutely necessary." *In re Welfare of M.L.M.*, 813 N.W.2d 26, 29 (Minn. 2012). We first analyze the plain meaning of the statute. *State v. Eason*, 906 N.W.2d 840, 842 (Minn. 2018). "[I]f we can construe a statute to avoid a constitutional confrontation, we are to do so." *In re*

Civil Commitment of Giem, 742 N.W.2d 422, 429 (Minn. 2007). Because statutes are presumed constitutional, we are required to read a statute as constitutional "*if at all possible*." *Id.* (emphasis added) (citation omitted). Such constructions are especially appropriate when "given the lack of a clear statement of legislative intent." *See State v. Irby*, 848 N.W.2d 515, 522 (Minn. 2014).

Despite Leonard's assertions to the contrary, it is not plain from the text of the hotel guest registry statutes that law enforcement officers have "unfettered access" to guest registries. Leonard's interpretation ignores that the statutes focus on the obligations of hotel owners and guests, as opposed to what, if any, showing law enforcement must make to search a guest registry. Under Minn. Stat. § 327.12, "registration records . . . shall be open to the inspection of all law enforcement officers." Although this language plainly prevents a *hotel owner* from concealing the registration records, it is silent concerning what, if any, standard law enforcement must meet to search a guest registry.

Similarly, Minn. Stat. § 327.10 requires that guest registries "shall be . . . always accessible for inspection by the proper authorities." "Always" means "on every occasion," "at all times," or "throughout all time." *Webster's Third New International Dictionary* 65 (1976).[17] "Always accessible" could refer to time (guest registries must be accessible to law enforcement at all times of the day as opposed to set business hours), or it could refer to circumstance (guest registries must be accessible on every occasion regardless of law

[17] Additional definitions include: "in every circumstance or contingency," "without exception," "at any rate," and "in any event." *Webster's Third New International Dictionary* 65 (1976).

enforcement's suspicion, not only upon a showing of individualized suspicion). The temporal implication of "throughout all time" likewise suggests that "always" is not meant to clarify the necessary level of police suspicion. Further, the term "proper authorities" in Minn. Stat. § 327.10 is broader than "law enforcement" under Minn. Stat. § 327.12.

In sum, because we must construe the hotel guest registry statutes as not authorizing an unconstitutional level of police suspicion, *see Giem*, 742 N.W.2d at 429, the phrase "always accessible" cannot reasonably be read to remove the prohibition in Article I, Section 10 against suspicionless examinations of guest registries.[18] We therefore hold that Minn. Stat. §§ 327.10–.13, are constitutionally valid under Article I, Section 10 of the Minnesota Constitution.

IV.

We next address whether the district court committed reversible error by admitting the evidence illegally seized from Leonard's hotel room. As noted earlier, it is undisputed that the police officers had no individualized suspicion when they examined the guest registry. In arguing that the evidence was properly admitted, the State asserts a good-faith exception to the exclusionary rule, citing *State v. Lindquist*, 869 N.W.2d 863 (Minn. 2015).

The State's reliance on *Lindquist* is misplaced. In *Lindquist*, we recognized a very narrow good-faith exception to the exclusionary rule that is limited to situations where "law

[18] Leonard also argues that the hotel guest registry statutes effectively compel third-party hotels to collect and provide certain identifying information relating to hotel guests for use by law enforcement officers. Because Leonard incorrectly assumes that law enforcement has "unfettered access" to search guest registries under the hotel guest registry statutes, we do not need to address this argument.

enforcement acts in objectively reasonable reliance on *binding appellate precedent*." *Id.* at 876 (emphasis added). Because no binding appellate precedent authorizes a suspicionless search of a guest registry, the good-faith exception recognized in *Lindquist* does not apply here.

We next consider whether the illegality of the suspicionless search of the guest registry must be extended to the evidence found in Leonard's hotel room under the fruit-of-the-poisonous-tree doctrine announced in *Wong Sun v. United States*, 371 U.S. 471 (1963). We weigh several factors to decide whether evidence is fruit of the poisonous tree: 1) the purpose and flagrancy of police misconduct, 2) intervening circumstances, 3) whether law enforcement would have obtained the evidence without the illegal conduct, and 4) the temporal proximity between the illegal conduct and allegedly resulting evidence. *State v. Warndahl*, 436 N.W.2d 770, 776 (Minn. 1989).

The State argues that the evidence found in Leonard's hotel room is not fruit of the poisonous tree because the clerk's voluntary and additional disclosures to the officers, as well as the consensual "knock and talk," were intervening factors that increased the likelihood that the officers would have obtained the evidence without the illegal search. The State also asserts that sufficient time had passed between when the officers searched the guest registry and when they froze the scene and sought and executed the search warrant.

In contrast, Leonard contends that the evidence found in his hotel room is fruit of the poisonous tree because the officers engaged in flagrant misconduct when they "identified [him] with no reasonable suspicion, went to his hotel room, and rummaged

around for wrongdoing." He dismisses the clerk's additional disclosures and the "knock and talk" as intervening factors because they did not sufficiently attenuate the evidence from the initial, illegal search. He cites *State v. Barajas* to argue that a defendant's consent to a search does not revive the resulting evidence's admissibility if the illegal search triggered that consent. *See* 817 N.W.2d 204, 219 (Minn. App. 2012), *rev. denied* (Minn. Oct. 16, 2012). Finally, Leonard asserts that temporal proximity weighs in his favor because the officers entered Leonard's room "only minutes" after searching the guest registry.

Although it is a close call, on balance, the *Warndahl* factors establish that the evidence found in Leonard's room is fruit of the poisonous tree, and therefore the district court erred by admitting the evidence. We question the "voluntariness" of the clerk's cooperation given that refusing to comply with the hotel guest registry statutes is a misdemeanor. *See* Minn. Stat. § 327.13. And because law enforcement had no prior knowledge of Leonard, the background check, the "knock and talk," and the subsequent warrant were simply logical results—not interruptions—of the illegal search of the guest registry. Stated otherwise, if the officers had not searched the guest registry, they could not have run a background check, would not have known where to find Leonard for a "knock and talk," and could not have applied for a search warrant. Moreover, the officers obtained the evidence soon after conducting the illegal guest registry search, undermining the State's claim that the seized evidence was sufficiently attenuated from the illegal search. Immediately after searching the guest registry, the officers discovered Leonard's hotel room, conducted the "knock and talk," subdued Leonard when he tried to flee, drafted

a search warrant, and received judicial approval—all between 9:45 p.m., when the officers arrived, and 11:45 p.m., when the officers executed the warrant.[19] We therefore hold that the district court erred when it denied Leonard's suppression motion.

Having concluded that the district court erred in admitting the evidence from Leonard's hotel room, we must consider whether the error was harmless beyond a reasonable doubt. An error does not require reversal if it was harmless beyond a reasonable doubt, which requires us to determine if "the verdict was surely unattributable to the error." *State v. Horst*, 880 N.W.2d 24, 37 (Minn. 2016). In *Horst*, we held that a "verdict was surely unattributable" to evidence obtained from an allegedly illegal search even though it may have shaped the State's case. *Id.* Importantly, the State presented "testimony from multiple witnesses" that sufficiently proved Horst's guilt instead of attempting to admit the tainted evidence at trial. *Id.*

Here, the evidence from Leonard's hotel room was the foundation of his conviction. Significantly, this was a stipulated evidence trial, consisting in its entirety of eight exhibits.[20] Based on this record, it would have been impossible for the district court to convict Leonard without the checks that the officers discovered through their illegal search. *See* Minn. Stat. § 609.631, subd. 2(1) (declaring a person guilty of check forgery if a

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[19] We need not decide whether the officers' misconduct was flagrant in this case because on balance, our analysis would still support exclusion.

[20] The parties stipulated to the following exhibits: (1) a copy of the amended complaint; (2) a copy of the Bloomington police reports; (3) a copy of the Brookings police report; (4) a copy of the Faribault police report; (5) a copy of the hotel registration; (6) a copy of the search warrant; (7) copies of the recovered checks and payroll statements; and (8) a copy of the Digital Forensic Summary.

person, with the intent to defraud "falsely makes or alters a check so that it purports to have been made by another . . . under an assumed or fictitious name"); *see also State v. Diede*, 795 N.W.2d 836, 848–50 (Minn. 2011) (foregoing a harmless-beyond-a-reasonable-doubt analysis when the State's only evidence was obtained as fruit of the poisonous tree).

Reversal is required here because the erroneous admission of the evidence was not harmless beyond a reasonable doubt.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and remand to the district court for further proceedings consistent with our decision here.

Reversed and remanded.

D I S S E N T

GILDEA, Chief Justice (dissenting).

The majority holds that the police conducted an unconstitutional search when they obtained Leonard's name and address from a registry at a hotel where Leonard rented a room for six hours. I disagree. Because Leonard did not have a reasonable expectation of privacy in his name and address, and because the majority's decision conflicts with our precedent interpreting the Minnesota Constitution, I dissent.

I.

The threshold question in any case where a defendant claims that police conducted an unlawful search is whether the defendant had a reasonable expectation of privacy in the item searched. *State v. Griffin*, 834 N.W.2d 688, 696 (Minn. 2013). In this case, the item searched was the guest registry where the police found Leonard's name and address. The majority does not focus on Leonard's name and address but instead grounds its result in concerns over the privacy interests Leonard had in his activities inside of the hotel room. But those interests are not at issue in this case because Leonard gave consent for the police to enter and search his hotel room. Rather, we must decide whether Leonard had a reasonable expectation of privacy in his name and address in the hotel registry.

To determine whether Leonard had a reasonable expectation of privacy in his name and address, we engage in a two-part analysis. We examine first whether Leonard "exhibited an actual subjective expectation of privacy" in his name and address. *State v. Gail*, 713 N.W.2d 851, 860 (Minn. 2006). If so, we next consider whether his expectation

is reasonable. *Id*. Leonard bears the burden of proving both parts of the analysis. *Id*. at 859. I would hold that Leonard failed to meet his burden at both steps.

A.

There is nothing in the record to suggest—much less prove—that Leonard exhibited a subjective expectation of privacy in his name and address. As far as I can tell, Leonard willingly gave his name and address to the hotel when he arrived and asked to rent a room.[1] Relevant precedent from the United States Supreme Court confirms that where, as here, the defendant willingly gives his information to a third party, the defendant no longer has an expectation of privacy in the information given to the third party. *Smith v. Maryland*, 442 U.S. 735, 743–44 (1979); *United States v. Miller*, 425 U.S. 435, 443 (1976). In considering the reasonableness of a person's expectation of privacy, the Supreme Court has "drawn a line between what a person keeps to himself and what he shares with others." *Carpenter v. United States*, __ U.S. __, __, 138 S. Ct. 2206, 2216 (2018). When an individual conveys information to a third party, he or she "assum[es] the risk" that the

[1] The majority contends that characterizing Leonard's disclosure of his name and address as "voluntary" is an oversimplification and ignores the law. The voluntary characterization is based on the facts, not on the law. Leonard made a choice to rent a room at a hotel to provide a place for his criminal activities, rather than engaging in the criminal activities in his home, a place where he did have a reasonable expectation of privacy. Leonard also made the choice to register his hotel room using his real name and address rather than giving an alias or fake identification. Leonard's actions show that the disclosure of his name and address was indeed voluntary. Notably, this conclusion aligns with the facts of *United States v. Miller*, 425 U.S. 435 (1976), where the defendant provided his personal information to a bank in order to open and maintain accounts that he used for criminal activity, rather than operating his criminal business on a cash basis. The United States Supreme Court rejected the defendant's argument that the disclosure of his personal information was not voluntary. *Id.* at 442.

information will be revealed to other parties. *Smith*, 442 U.S. at 744. In other words, "[w]hat a person knowingly exposes to the public . . . is not a subject of Fourth Amendment protection." *Miller*, 425 U.S. at 442 (quoting *Katz v. United States*, 389 U.S. 347, 351 (1967)).[2]

Applying *Smith* and *Miller*, I conclude that Leonard did not exhibit a subjective reasonable expectation of privacy in his name and address when he gave the information to rent a hotel room.[3] Even if Leonard harbored any expectation of privacy in his name

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[2] Contrary to the majority's contention, the principle of *Miller* is not limited to its facts. Indeed, federal courts have applied the *Miller* principle to the exact facts presented here. *See United States v. Cormier*, 220 F.3d 1103, 1108 (9th Cir. 2000) ("Although *Miller* addressed whether a depositor possesses a Fourth Amendment interest in bank records, the analysis is equally applicable to motel registration records."); *United States v. Willis*, 759 F.2d 1486, 1498 (11th Cir. 1985) (extending *Miller* to hotel guest registries).

[3] The majority suggests that the police obtained sensitive information about Leonard's private activities in his hotel room simply by searching the hotel registry. But that is not an accurate statement of the facts or sequence of events in this case. The record shows that the police went to the front desk of the hotel and obtained Leonard's name and address from the hotel registry. The officers also obtained additional information as part of a conversation with the hotel clerk working at the front desk, including Leonard's length of stay (a few hours) and method of payment (cash) for the hotel room. The officers then ran a criminal history check on Leonard. Based on all of this information, the officers became suspicious of criminal activity, so they knocked on the door of Leonard's hotel room. Leonard answered the door, identified himself, and invited officers into his hotel room. One officer subsequently obtained a warrant to expand the search. In my view, these facts show that the police used a reasonable and lawful investigation process, and the procurement of Leonard's name and address from the hotel registry at the start of the investigation does not change the outcome.

and address prior to the disclosure, his decision to disclose his name and address to the hotel ended his expectation of privacy. That conclusion should be the end of this case.[4]

B.

But even if Leonard exhibited a subjective expectation of privacy, requiring us to consider the second step of the reasonable-expectation-of privacy analysis, I would still affirm the court of appeals because Leonard has not demonstrated that any expectation of privacy in his name and address is reasonable.

As a threshold matter, the statutes at issue in this case, Minn. Stat. §§ 327.10-.13 (2018), which required the hotel to collect Leonard's name and address as part of the registration process to rent a hotel room, were enacted in 1937. Act of Apr. 12, 1937, ch. 186, 1937 Minn. Laws 250, 250–01 (codified as amended at Minn. Stat. §§ 327.10–.13). For the past 80 years in Minnesota, law enforcement officers have been able to obtain names and addresses from hotel registries.[5] This long history confirms that police did nothing unusual here in collecting Leonard's name and address from the hotel registry, and

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[4] The majority contends that Leonard exhibited a subjective expectation of privacy by making a cash payment for his hotel room. This is pure speculation and was not proven by Leonard.

[5] At least four other states have enacted similar laws. *See generally* Ind. Code Ann. § 16-41-29-1 to -5 (West 2020); Mass. Gen. Laws Ann. ch. 140, § 27 (West 2020); N.J. Stat. Ann. § 29:4-1 to -2 (West 2020); Wis. Admin. Code ATCP §§ 72.06 (1)(a)(5), 72.16 (2020). And in one of the states, the appellate court upheld the statute in the circumstance presented here. *See State v. Lopez*, 928 A.2d 119, 124 (N.J. Super. Ct. App. 2007) (holding that the defendant did not have a reasonable expectation of privacy in his identity when he registered as a guest at a hotel and the police requested his registration information under N.J. Stat. Ann. § 29:4-1).

informs us on what society is prepared to protect as reasonable.[6] *See Minnesota v. Olson*, 495 U.S. 91, 98 (1990) (relying on "longstanding social custom" in concluding that an expectation of privacy was reasonable).

Moreover, name and address information is widely available in many public formats. Government records containing an individual's name and address include real estate sale documents and voter data. *See* Minn. Stat. § 13.44, subd. 3(c) (2018) (defining when appraisal data for real property public); Minn. Stat. § 201.091, subd. 4 (2018) (requiring county auditors to keep a public list of each registered voter in the county that includes the person's name, address, year of birth, and voting history).[7]

In addition to government records, phone books containing the names, addresses, and telephone numbers of individuals residing in a given municipality have existed for more than 100 years. And citizens put millions of pieces of mail containing their names and addresses through the postal system every day. *See Lustiger v. United States*, 386 F.2d 132, 139 (9th Cir. 1967) ("[T]he Fourth Amendment does not preclude postal inspectors from copying information contained on the outside of sealed envelopes . . . ."). Finally,

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[6] The majority contends that members of the general public likely do not know that the obscure hotel registry statutes exist and have been interpreted to authorize law enforcement to conduct random searches of their personal information contained in hotel registries. This belief is inconsistent with the law, and "[a]ll members of an ordered society are presumed . . . to know the law." *State v. King*, 257 N.W.2d 693, 697 (Minn. 1977).

[7] There are some exceptions not at issue here, such as the Safe at Home Program run by the Minnesota Secretary of State's Office, which allows victims of domestic violence and stalking to maintain a confidential home address. *See generally* Minn. Stat. § 5B.03 (2018).

there is an untold number of sources for obtaining an individual's name and address through internet directories and databases. *See, e.g.*, Holly Kathleen Hall, Arkansas v. Bates: *Reconsidering the Limits of a Reasonable Expectation of Privacy*, 6 U. Balt. J. Media L. & Ethics 22, 37 (2017) ("The Fourth Amendment fails to protect privacy when it comes to [Internet of Things] devices."); Wayne A. Logan and Jake Linford, *Contracting for Fourth Amendment Privacy Online*, 104 Minn. L. Rev. 101 (2019) (discussing the use of contract law as an analytic tool in addressing whether users possess a Fourth Amendment privacy right in their shared information).

In this day and age, most individuals know and expect their names and addresses to be easily discoverable. Because names and addresses are publically available in so many different ways in our society, I would hold that there is no reasonable expectation of privacy in an individual's name and address.

The majority does not address Leonard's expectation of privacy in his name and address and instead focuses on his *presence* at the hotel. Indeed, the majority examines the "meaning of public exposure" and focuses on the fact that hotel guests sometimes engage in legal but "deeply private activities" in a hotel room. But the question is not whether Leonard had a reasonable expectation of privacy in his activities inside the hotel room.[8] The question is whether Leonard had a reasonable expectation of privacy in the information in the guest registry. And the answer is no.

[8] Even if I accept the question as presented by the majority, the facts of this case do not support a finding that Leonard had a reasonable expectation of privacy in his presence and activities in his hotel room. The record clearly reflects that when the police officers

Because Leonard did not prove that he had a reasonable expectation of privacy in his name and address, I would affirm.

II.

But, the majority says, Leonard has broader rights under the Minnesota Constitution, Article I, Section 10, than he does under the Fourth Amendment. Even if this were true, it does not help the majority because we apply the same reasonable-expectation-of-privacy standard under the Minnesota Constitution that the United States Supreme Court applies to the Fourth Amendment. *See Gail*, 713 N.W.2d at 860 (examining reasonable expectation of privacy in connection with a claim that the Minnesota Constitution was violated).

That we apply the same reasonable-expectation-of-privacy analysis makes sense because the language of the Fourth Amendment and Article I, Section 10 of the Minnesota Constitution is identical. *Compare* U.S. Const. amend. IV, *with* Minn. Const. art. I, § 10. In such situations, we favor uniformity and must take a "restrained approach" when providing greater protection under the Minnesota Constitution. *See Kahn v. Griffin*, 701 N.W.2d 815, 828 (Minn. 2005). As noted in the *City of Golden Valley v. Wiebesick*, 899 N.W.2d 152 (Minn. 2017), we do not "cavalierly construe the state constitution more

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knocked on the door of Leonard's hotel room, Leonard voluntarily opened the door, identified himself, and consented to the officers' entry into his hotel room. By opening the door, Leonard revealed his presence in his hotel room. And by consenting to the officers entering his hotel room, Leonard revealed his activities in the hotel room. Certainly, Leonard could have refused to open the door to his hotel room, refused to identify himself, and refused to allow the officers to enter the room without a warrant. But he did none of that. The majority cannot deny that Leonard's actions evinced absolutely no subjective expectation of privacy.

expansively" than the federal constitution "merely because we want to bring about a different end result." *Id.* at 157 (quoting *Kahn*, 701 N.W.2d at 828). But in this case, the majority does just that.

The majority concludes that under Article I, Section 10 of the Minnesota Constitution, a government inspection of a hotel guest registry is a search. The majority reasons that "to conclude otherwise would deprive Minnesotans of rights that we have the duty to safeguard" because guest-registry inspections are data "fishing expeditions" that reveal the activity, location, and relationships of law-abiding Minnesotans. Again, this case is not about what happened inside Leonard's hotel room; Leonard clearly gave the police consent to enter his hotel room. This case is about Leonard's name and address in the hotel registry.[9]

In choosing to protect Leonard's name and address in the hotel guest registry, the majority does not engage in any meaningful analysis of the reasons why it expands the state constitution in this instance. Presumably, the majority expands Article I, Section 10 of the Minnesota Constitution to provide greater protection to citizens of this state because it has determined "that federal precedent does not adequately protect our citizens' basic rights and liberties." *State v. Anderson*, 733 N.W.2d 128, 140 (Minn. 2007) (quoting *Kahn*, 701 N.W.2d at 828). But instead of creating a clear path for its important decision on the

[9] The majority complains that I do "not squarely address Leonard's privacy interest in the sensitive location information found in a guest registry." I do not address what the majority deems "sensitive location information," because this case is not about Leonard's location or whether his location is "sensitive." This case is about the information obtained by the police from the hotel registry, Leonard's name and address.

expansion of the state constitution, the majority simply cites two of our previous cases that "condemn suspicionless searches," *State v. Carter*, 697 N.W.2d 199 (Minn. 2005), and *Ascher v. Commissioner of Public Safety*, 519 N.W.2d 183 (Minn. 1994). Neither case is applicable here.

In *Carter*, we held that a dog sniff outside of an individual's self-storage unit was an unlawful search under the Minnesota Constitution. 697 N.W.2d at 211. The dog sniff in *Carter*, which permitted the police to gain information about the inside of a personal storage space, is materially different from the police gaining access to Leonard's name and address by reviewing the hotel registry. Indeed, in *Carter* we noted that "storage units like appellant's . . . are equivalent in size to a garage and are large enough to contain a significant number of personal items and even to conduct some personal activities." *Id.* at 210–11. The dog sniff in *Carter* invaded the appellant's expectation of privacy for purposes of the Minnesota Constitution because the dog sniff effectively let the police physically intrude into the interior of the storage unit, giving them information regarding the appellant's activities inside of the unit. *Id.* at 211. The facts of this case are not comparable in any respect.[10]

[10] The majority contends that the factual differences between *Carter* and this case do not render the cases "meaningfully distinguishable." The majority is mistaken. *Carter* involved a dog sniff of a self-storage unit, a tool that allowed police to gather information about what was going on inside the unit. This case involves law enforcement officers obtaining a person's name and address from a hotel registry. As I demonstrate above, there is no reasonable expectation of privacy in one's name and address. In contrast, in *Carter* we discussed the privacy interests in the inside of the storage unit. 697 N.W.2d at 211. When expanding the protections of the Minnesota Constitution and relying on our own precedent to do so, these factual distinctions do matter. For example, we declined to rely

Ascher has even less to do with this case than *Carter* because *Ascher* was not a search case. In *Ascher*, the question was whether police were authorized to stop people who were otherwise engaged in a legal activity—driving down the roadway. 519 N.W.2d at 184. In other words, *Ascher* was a case about a traffic stop, not a case about a search. In the context of the seizure that takes place when the police conduct a traffic stop of a vehicle, the driver's reasonable expectation of privacy is not relevant to the legal analysis. Instead, the pivotal question is whether the police have reasonable articulable suspicion of criminal activity to justify their stop and seizure of the vehicle and its occupants. Indeed, our decision in *Ascher* did not examine the driver's reasonable expectation of privacy, but focused instead on what should be required before "subjecting a driver to an investigative stop." *Id.* at 187. The police detention in *Ascher* of individuals involved in a perfectly lawful activity for the sole purpose of interrogating them is markedly different from the facts of this case, where the police acquired a person's name and address from a hotel registry that` the person voluntarily provided in order to rent a hotel room.[11] Neither the facts nor the law of *Ascher* apply to this case.

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on *Carter* to expand the protections of the Minnesota Constitution to dog sniffs of mailed packages because "the number of personal items a package can contain is significantly lower" than a personal storage unit, which we noted is more like a garage. *State v. Eichers*, 853 N.W.2d 114, 126 (Minn. 2014).

[11] There are other instances where we have has declined to construe the Minnesota Constitution to prohibit law enforcement officers from making contact with citizens. For example, in *State v. Harris*, 590 N.W.2d 90 (Minn. 1999), we concluded that a passenger on a bus was not subjected to an unlawful search and seizure under the Minnesota Constitution when police officers conducted drug interdiction operations by boarding interstate buses to search for people transporting controlled substances. At the time the

Other than *Carter* and *Ascher*, the majority looks to a case from the State of Washington to support its interpretation of the Minnesota Constitution, *State v. Jorden*, 156 P.3d 893 (Wash. 2007). In *Jorden*, the Washington Supreme Court found that individuals have a reasonable expectation of privacy in their hotel registry information because "an individual's very presence in a motel or hotel may in itself be a sensitive piece of information." *See* 156 P.3d at 897. Both the *Jorden* court and the majority incorrectly focus on whether an individual has a reasonable expectation of privacy in his or her activities in a hotel room, rather than in the name and address provided to a hotel in order to rent a room.

More importantly, the language in the Washington Constitution is markedly different from the language in the Minnesota Constitution. Unlike the language of Minn. Const. art. I, § 10, which is textually identical to the language of the Fourth Amendment, the language in Wash. Const. art. I, § 7 states "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." *Compare* Wash. Const. art. I, § 7 *with* Minn. Const. art. I, § 10. The Washington Constitution expressly provides broader protection for an individual's "private affairs." *See Jorden*, 156 P.3d at 895 (noting that it

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officers boarded the bus, they did not have reasonable suspicion to believe that the passenger was transporting controlled substances. *Id.* at 101. We found "no basis" to construe Article I, Section 10 of the Minnesota Constitution to protect the passenger from interaction with the police. *Id.* at 100. Notably, in *Harris* we distinguished *Ascher* because the record did not show "that the officers impeded the progress of the interstate bus or otherwise used coercion in boarding the bus and questioning passengers." *Id.* We also pointed out that *Ascher* was not relevant to the analysis because "the constitutional deficiency in *Ascher* involved impeding, without reasonable articulable suspicion, the progress of motorists." *Id.*

is "well established that [Article I, section 7 of the Washington Constitution] qualitatively differs from the Fourth Amendment" (citation omitted)). Washington defines "private affairs" as "those interests which citizens of this state have held, and should be entitled to hold, safe from government trespass." *Jorden*, 156 P.3d at 896 (citation omitted) (internal quotation marks omitted). In contrast, the Minnesota Constitution, like the U.S. Constitution, protects "the right of the people to be secure in their persons, houses, papers, and effects." Minn. Const. art. I, § 10. Given the material differences in the language of our state constitutions, I would not look to Washington to help us decide what interests the Minnesota Constitution should protect.

I would instead adhere to our longstanding precedent and decline to extend broader protections under the Minnesota Constitution. The majority's decision to expand the protections of Article I, Section 10 of the Minnesota Constitution goes against the weight of our precedent, as we have repeatedly declined to extend broader protections. *See, e.g.*, *Wiebesick*, 899 N.W.2d at 167–68 (declining to extend broader protections under Article I, Section 10 of the Minnesota Constitution in the context of administrative search warrants); *State v. deLottinville*, 890 N.W.2d 116, 122 (Minn. 2017) (declining to expand Article I, Section 10 of the Minnesota Constitution to require a search warrant for police to enter a home to arrest a short-term guest); *State v. McMurray*, 860 N.W.2d 686, 693 (Minn. 2015) (declining to expand Article I, Section 10 of the Minnesota Constitution to protect against warrantless searches of garbage containers set out for collection); *State v. Bartylla*, 755 N.W.2d 8, 18–19 (Minn. 2008) (declining to expand Article I, Section 10 of the Minnesota Constitution to prohibit collection of DNA samples from convicted felons);

Anderson, 733 N.W.2d at 140 (declining to expand Article I, Section 10 of the Minnesota Constitution to prohibit probation conditions that allow warrantless searches); *State v. Harris*, 590 N.W.2d 90, 100 (Minn. 1999) (declining to expand Article I, Section 10 of the Minnesota Constitution to protect passengers on a bus from encounters with police investigating drug trafficking).

Rather than depart from this precedent, I would follow it and affirm the court of appeals. I would hold that the district court did not err when it denied Leonard's motion to suppress evidence because the officer's retrieval of Leonard's name and address from the hotel registry did not constitute a search under the Fourth Amendment or the Minnesota Constitution.

ANDERSON, Justice (dissenting).

I join in the dissent of Chief Justice Gildea.

MCKEIG, Justice (dissenting).

I join in the dissent of Chief Justice Gildea.

BLUE CAMPAIGN
One Voice. One Mission. End Human Trafficking.

What is Human Trafficking?

Human trafficking is modern-day slavery and involves the use of force, fraud or coercion to obtain labor or commercial sex. Every year, millions of men, women and children are trafficked in countries around the world, including the United States.

There are different types of human trafficking:

- **Sex Trafficking**
  Victims of sex trafficking are manipulated or forced to engage in sex acts for someone else's commercial gain. Sex trafficking is not prostitution.

  Anyone under the age of 18 engaging in commercial sex is considered to be a victim of human trafficking. **No exceptions.**
- **Forced Labor**
  Victims of forced labor are compelled to work for little or no pay, often manufacturing or growing the products we use and consume every day.
- **Domestic Servitude**
  Victims of domestic servitude are forced to work in isolation and are hidden in plain sight as nannies, housekeepers or domestic help.

Human trafficking and the hospitality industry

Traffickers often take advantage of the privacy and anonymity offered by the hospitality industry. They can operate discreetly because staff and guests may not know the signs of human trafficking.

You may have employees who are victims of forced labor. If a third party applied for a position on behalf of an individual or if employees are not receiving their own paychecks, these could be signs of human trafficking.

Hotels and motels are also major locations where traffickers force sex trafficking victims to provide commercial sex to paying customers. Victims may be forced to stay at a hotel or motel where customers come to them, or they are required to go to rooms rented out by the customers.

What actions can I take at my business to help stop human trafficking?

You play a significant role in helping to stop this terrible crime by:

- Knowing the signs of human trafficking.
- Designing a plan of action to respond to reports of human trafficking in your business.
- Partnering with agencies that provide services to victims of human trafficking. In the case of lodging, consider offering vouchers to victims. Immediate housing for victims plays a vital role in beginning a victim's healing process.
- Providing employee training to help them understand and identify signs of human trafficking.
- Distributing and posting the fact sheets in this kit to your employees.

Information on additional resources, literature, materials, and training offered by the Blue Campaign can be found at www.dhs.gov/bluecampaign.