IN THE SUPREME COURT OF IOWA
Supreme Court No. 19-0109

STATE OF IOWA,
Plaintiff-Appellee,

vs.

IRVIN JOHNSON, JR.,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
THE HONORABLE DAVID STAUDT, JUDGE

APPLICATION FOR FURTHER REVIEW

(Iowa Court of Appeals Decision: March 18, 2020)

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QUESTIONS PRESENTED FOR FURTHER REVIEW

The Iowa Court of Appeals vacated Johnson's convictions for possession of controlled substances and merged into his convictions for felony eluding based on its conclusions the legislature failed to make its intent explicit in the code and that there was not an implied indication the legislature intended cumulative punishments.

(1) Whether the court of appeals erred in concluding the legislature intended two offenses that each address specific harms to merge.

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STATEMENT SUPPORTING FURTHER REVIEW

On March 18, 2020, the Iowa Court of Appeals merged Johnson's convictions and sentences for possession of controlled substances into his convictions and sentences for enhanced felony eluding. *State v. Johnson*, No. 19–0109, 2020 WL 1307839 (Iowa Ct. App. Mar. 18, 2020). Johnson had challenged the trial court's failure to merge his convictions. He claimed the Iowa legislature's 2018 elimination of an automatic driver's license revocation for violations of Iowa Code section 124.401 meant "there is no longer any penalties applying to the possession offense that do not apply to the felony offense." Appellant's Br. 22. And by extension, the legislature's acts had rendered *State v. Eckrich*, 670 N.W.2d 647, 648 (Iowa Ct. App. 2003) no longer good law. The panel agreed, reversed, and merged Johnson's convictions. "After examining the language of the statutes and the legislative history, we conclude the State failed to rebut the presumption created by the *Blockburger* test that marijuana possession was a necessarily included offense of felony eluding enhanced by the driver's possession of marijuana. These offenses must merge under section 701.9 and the double jeopardy clause." *See* Slip.Op. 10 (footnote omitted).

This Court must correct the panel's error for several reasons. It fails to acknowledge a statutory provision stating the legislature desires cumulative punishments for those who commit controlled substances crimes. This statute—Iowa Code § 124.404—has never been construed by an Iowa appellate court. Iowa R. App. P. 6.1103(1)(b)(2), (4). And even after the legislature's amendment to Iowa Code section 901.5(10), the panel's decision remains in conflict with the statements within the Iowa Court of Appeals' own decisions in *State v. Rice*, 661 N.W.2d 550 (Iowa Ct. App. 2003) and *State v. Eckrich*, 670 N.W.2d 647 (Iowa Ct. App. 2003). Iowa R. App. P. 6.1103(1)(b)(1). If left to stand, the decision will frustrate the legislature's recidivism framework in multiple ways. Finally, in the wake of *State v. West*, 924 N.W.2d 502 (Iowa 2019), the opinion will result in an inconsistent merger regime; it is now unclear which controlled substance violations merge into felony eluding. This Court should exercise its discretion, construe section 124.404, and remedy the Court of Appeals' errors. It should grant review and reverse the panel.

STATEMENT OF THE CASE

Nature of the Case

In finding that Johnson's convictions should merge, the Court of Appeals held: (1) the legislature failed to indicate its intent for the crimes to not merge; (2) that the harms created by controlled substance possession is "subsumed" into the eluding enhancement; and (3) that additional sanctions attached to controlled substance violations under Iowa Code section 124.401 did not sufficiently demonstrate a legislative intent for cumulative punishment. The State seeks further review.

Course of Proceedings

Johnson was charged with two separate cases with attempting to elude police as he simultaneously possessed marijuana. App. 6; 10–11. This aggravated the eluding to a "D" felony. App.5–6; 10–11; Iowa Code § 321.279(3)(b). In the first case, Johnson pleaded guilty to felony eluding in violation of Iowa Code section 321.279, driving while barred in violation of Iowa Code sections 321.561 and 321.555, possession of marijuana, first offense in violation of Iowa Code section 124.401(5), and possession of marijuana accommodation in violation of Iowa Code section 124.410. App. 13. In the other, Johnson

pleaded guilty to felony eluding and possession of marijuana, first offense. App. 15.

On appeal, Johnson's urged his convictions for possession of a controlled substance under section 124.401(5) must merge into his felony eluding convictions. Appellant's Br. 15–23. Recognizing that a previous Iowa Court of Appeals opinion—*State v. Eckrich*, 670 N.W.2d 647 (Iowa Ct. App. 2003)—foreclosed his claim, he urged a subsequent statutory change and the Iowa Supreme Court's opinion in *West*, 924 N.W.2d 502 undermined the intermediate appellate court's prior reasoning. Appellant's Br. 15–16, 20–21. The State replied that even with the legislature's elimination of the automatic license revocation the *Eckrich* court identified, there remained several other specific sanctions for a conviction of Iowa Code section 124.401 and that the statutes addressed distinct harms. Appellee's Br. 17–19. Accordingly, the *Eckrich* court's ruling remained correct.

The case was routed to the Iowa Court of Appeals where a panel determined that Johnson's convictions *should* merge. Slip.Op.7–10. It framed the question as whether the State had overcome "the presumption of merger under the *Blockburger* elements test by showing a clear expression of legislative intent to impose multiple

punishments." Slip.Op. 7–8. It concluded the legislature had failed to explicitly indicate its intent in the code. Slip.Op.8. It also concluded that in this case the possession of a controlled substance was subject to a lesser punishment than felony eluding, and thus "the greater offense retains its full effect after merger." Slip.Op.8 (citing *West*, 924 N.W.2d at 511). In its view, "these statutes are not aimed at combatting different evils." Slip.Op. 8. It rejected the State's reliance on the fact the controlled substance convictions contained additional sanctions eluding did not as misplaced and reasoned this did not indicate a legislative intent for cumulative punishments. Slip.Op. 8–9. It vacated Johnson's sentences and remanded. Slip.Op.10.

Statement of Facts

The underlying facts are not material to this application and are accurately summarized in the panel opinion. *See* Slip.Op. 2–3.

ARGUMENT

I. The Iowa Court of Appeals' opinion failed to acknowledge the existence of Iowa Code section 124.404 when it incorrectly concluded the legislature has not stated an intent for Johnson's crimes not to merge.

In determining whether the legislature intended possession of a controlled substance crimes not to merge with felony eluding, the panel stated, "The clearest expression of legislative intent is an explicit statement in the criminal statute that the drafters intended multiple punishments despite an identity of elements." Slip.Op. 4 (citing *Missouri v. Hunter*, 459 U.S. 359, 362 (1983)). When it later addressed the question of legislative intent, the panel noted "the legislature did not make its intent explicit in the code." Slip.Op. 8. This was incorrect.

Subchapter IV of the Iowa Code Chapter 124 addressing controlled substances is titled "offenses and penalties." Section 124.404 located within subchapter IV provides that "Any penalty imposed for violation of this subchapter *shall be in addition to, and not in lieu of, any civil or administrative penalty, or sanction otherwise authorized by law*." Iowa Code § 124.404 (emphasis added). By its plain language, the provision directs that an individual convicted of a violation of Iowa Code section 124.401 may indeed be

punished for the crime in addition to any other penalties for other crimes or administrative violations.

Section 124.404 was part of the Uniform Controlled Substances Act adopted by the Iowa legislature. *Compare* Iowa Code § 124.404 *with* UNIF. CONTROLLED SUBSTANCES ACT § 404 [Penalties Under Other Laws] (1970). Although no Iowa court has construed this provision, another court applying a parallel statute has held "although the statute refers to civil penalties, it is clear the legislature intended that no conflict was to be inferred between the penalties of the Act and any other penalties of the law." *Head v. State*, 285 S.E.2d 735, 738 (Ga. 1981) (discussing then Ga. Code § 79A-823 subsequently codified as Ga. Code § 16-13-44). The court in *Head* concluded that Georgia's version of Uniform Controlled Substances Act § 404 was an indication its legislature intended multiple *criminal* punishments arising from the same acts. *Id.* Section 16-13-44 is substantively the same as Iowa Code § 124.404. *Compare* Ga. Code. Ann. § 16-13-44 ("Any penalty imposed for violation *of this article* is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law."(emphasis added)) *with* Iowa Code § 124.404 ("Any penalty imposed for violation *of this subchapter shall*

be in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law."(emphasis added)). Although the elements of the crimes in *Head* were distinct, that court's construction of the statute provides additional support for the State's interpretation here.

The panel was wrong when it concluded the legislature had not spoken on this issue. Section 124.404 is a signal from the legislature that it intends multiple punishments for criminal possession of a controlled substance, even where that crime is used to aggravate another. This alone could resolve the matter and the analysis could end here.

II. The Court of Appeals opinion erroneously concluded that the distinct evils the statutes address and the distinct sanctions attendant to each crime did not raise an inference that the legislature intended cumulative punishments.

After concluding that the legislature failed to explicitly indicate its intent, the panel opinion then concluded that unlike the "asymmetrical" analysis utilized in *West*, *Gallup*, and *Haliburton*, merger of a serious misdemeanor into a "D" felony did not reveal an implicit intent from the legislature to permit dual punishment. Slip.Op. 8. "[U]nlike those cases," the panel justified, "these statutes

are not aimed at combatting different evils. Felony eluding focuses on dangerous driving, deemed more dangerous because the driver possesses marijuana. The danger posed by marijuana possession alone is subsumed in that felony enhancement." *Id.* (discussing *West*, 924 N.W.2d at 512; *State v. Halliburton*, 539 N.W.2d 339 (Iowa 1995); and *State v. Gallup*, 500 N.W.2d 437 (Iowa 1993)). It further rejected the State's argument that Iowa courts who previously examined merger questions involving this very statute had treated the existence of additional, different sanctions as indicia the legislature intended cumulative punishment. Slip.Op.8–9. The panel's decision is at odds with the reasoning within these decisions and the Iowa Supreme Court's own opinions. It is in conflict with the framework of the statutes in question. The panel's incorrect reasoning must be corrected.

A. Past courts have treated the distinction between two crimes' punishments to support a finding the legislature intended multiple punishments.

The panel's opinion is in conflict with the logic from several cases concluding additional sanctions are indicative of a legislative intent for multiple punishments. The first is *State v. Rice*, 661 N.W.2d 550 (Iowa Ct. App. 2003). In *Rice*, the defendant had entered guilty

pleas to felony eluding and second offense operating while intoxicated ("OWI"). *Rice*, 661 N.W.2d at 551. On appeal, he urged his convictions should merged under section 701.9. The drafting of Iowa Code section 321.279(3)(b) meant the defendant could not have committed aggravated eluding without also committing the aggravating offense—OWI. The court rejected Rice's merger claim, concluding both statutes were designed to address separate evils and specifically that "merging operating while intoxicated convictions into eluding convictions would thwart the legislative design of 321J.2 and its subparts, *which detail a number of offense-specific sentencing provisions, including mandatory minimums and subsequent-offense enhancements*." *Id.* (emphasis added).

The Iowa Court of Appeals relied on the *Rice* opinion later that year in *Eckrich*, 670 N.W.2d at 648–50. Eckrich had pleaded guilty to felony eluding in addition to OWI and possession of marijuana. *Eckrich*, 670 N.W.2d at 648. Like Rice, Eckrich urged that double jeopardy precluded him from being subject to multiple punishments and that his sentences should have merged. *Id.* at 649. Acknowledging its prior opinion in *Rice*, the court again found that "the punishment for eluding under section 321.279(3)(b) does not

include several of the punishments for operating while intoxicated under [section 321J.2.]" *Id.* at 650 (citing Iowa Code §§ 321J.2(2)(a)(3), (4). In so holding, it observed a violation of section 124.401 at that time included the sanction of a license revocation pursuant to Iowa Code section 901.5(10); OWI and eluding did not. *Id.*

Reiterating the logic of *Rice*, the *Eckrich* court found "It does not appear the legislature set out to insulate a person from the specific sentencing mandates of section 321J.2(2)(a)(3) and section 124.401, just because that person was also 'eluding' as proscribed under 321.279(3)(b)." *Id.* at 650. Both courts identified the existence of distinct sanctions was one way to determine the legislature's intent to permit cumulative punishments. *Eckrich*, 670 N.W.2d at 649–50; *see also State v. Friedman*, No. 05-0967, 2006 WL 929327, at *2 (Iowa Ct. App. Apr. 12, 2006) (examining additional fines and sanctions in concluding conviction for possession under 124.401(5) should not merge into conviction for introducing controlled substance to a controlled facility in violation of Iowa Code sections 719.7(1)(a), (3)(c), and (4)(b)).

The panel was certainly correct the legislature subsequently removed the mandatory license revocation sanction for individuals convicted of Iowa Code section 124.401. 2018 Slip.Op. 7; 2018 Iowa Acts ch. 1172 § 102. The heart of Johnson's brief on appeal was that this change undercut the *Eckrich* court's analysis and required a different outcome. Appellant's Br. 21–23. For its part, the State urged that there remained a number of other different sanctions that accompanied a conviction for section 124.401 that did not attach for conviction of Iowa Code section 321.279. Appellee's Br. 18–20.

Indeed, an individual convicted of section 124.401(5) is ordinarily subject to subsequent-offense enhancements if they violate the statute again. Iowa Code §§ 124.401(5). If the individual uses a gun during their violation of section 124.401(1), they are potentially subject to increased terms of incarceration and a mandatory one-third period of incarceration. Iowa Code §§ 124.401(1)(e), (f); 124.413(1). Iowa Code sections 901.5(10) and (11) (2019) continue to permit a district court the discretion to enter an order denying federal and state benefits to the defendant. *See* Iowa Code § 901.5(10), (11). Individuals convicted of Iowa Code section 124.401 are also subject to an additional drug abuse resistance education surcharge. Iowa Code §

911.2. They are subject to a law enforcement initiative surcharge. Iowa Code § 911.3. And in the event the individual is granted a suspended sentence and placed on probation, the person is subject to random drug testing. Iowa Code § 124.401(5).

The panel rejected this analysis, concluding the "State misreads *Rice* and *Eckrich* as holding that *any* divergence in the sanctions for the lesser offense from that of the greater offense would reflect a clear legislative intent to impose cumulative punishments." Slip.Op.8–9. While perhaps each sanction taken on its own may not reflect a clear legislative intent, taken together they create a constellation of sanctions that disclose such an intention. The reason is because sanctions inform what the legislature believed the harm of the crime was and, in turn, its intent regarding cumulative punishment. Where one crime has a distinct sanction, it is more likely to address a distinct evil. The *Eckrich* court found little difficulty in concluding the revocation of a license *alone* was sufficient to reveal the legislature's intent and provide satisfactory proof of the legislature's intent for cumulative punishment. Taken together—and alongside the purposes discussed in Subdivision II(B)—the independent sanctions for violating Iowa Code section 124.401 are sufficient to rebut a

presumption of merger. The panel was incorrect when it concluded to the contrary.

B. The panel was mistaken when it concluded these statutes did not address distinct evils.

This Court has pointed out that where violated statutes serve differing purposes, "This distinction in purpose is evidence that the legislature intended to punish both offenses." *See State v. Reed*, 618 N.W.2d 327, 337 (Iowa 2000) (finding Reed's conviction under Iowa Code section 124.401 did not merge with his conviction for ongoing criminal conduct); *see also Halliburton*, 539 N.W.2d at 344–45 (concluding convictions for possession of an offense weapon and felon in possession of a weapon would not merge, "Further evidence of the legislature's intent is found in the differing purposes of these statutes. . . . [T]hese sections focus on different dangers; section 724.3 is aimed at a class of particularly harmful weapons, whereas section 724.26 is aimed at a group of potentially harmful persons."). Here, the panel concluded that the sole evil Iowa Code section 321.279 addresses is "dangerous driving" at that any "danger posed by marijuana possession alone is subsumed in that felony enhancement." Slip.Op.8. This is not so.

Section 321.279 addresses multiple ills, not solely dangerous driving. It is undoubtedly an attempt to sanction those that place the public at risk of injury from their dangerous driving; the sanctions for eluding increase with the eluder's speed and harm that results. Iowa Code § 321.279(2), (3)(c). But felony eluding also addresses the evil of failing to comply with a lawful police directive to bring the motor vehicle to a stop. *See* Iowa Code § 321.279(1),(2), (3). Iowa law in other contexts criminalizes the failure to comply with lawful orders from a police officer; this statute does so as well. *See* Iowa Code §§ 719.1A; 719.2; 723.3; 804.12. The statute's intent to penalize defiance of the law also explains why the punishment for eluding increases where the defendant is simultaneously engaging in other felonious criminal conduct. Iowa Code § 321.279(3)(a), (b). The statue marks the legislature's additional intention to disincentivize eluding to avoid capture for other crimes.

And as this Court identified in *Reed*, section 124.401 addresses a *different* evil. It attempts to curtail the possession and trafficking of controlled substances altogether. *Reed*, 618 N.W.2d 336; *see also State v. Caquelin*, 702 N.W.2d 510, 513 (Iowa Ct. App. 2005) ("Based on the differing purposes of the statutes at issue, we believe it is

apparent the legislature intended multiple punishments for both offenses. Iowa Code section 124.401(5) prohibits possession of a controlled substance within the general public. This section was designed to punish an individual who possesses drugs for personal use because such conduct *is destructive to society in general*. . . . The purpose of section 124.401(5) is *to protect the public at-large from substance abusers*." (emphasis added)). Unsurprisingly, the *Rice* and *Eckrich* courts concluded felony eluding and its additional underlying offense were intended to deter and protect society against distinct harms. *See Rice*, 661 N.W.2d 551–52 ("Although both section 321.279 and section 321J.2 were designed for the protection of the public, it is evident each statute is meant to protect against a different form of illegal conduct." (citations omitted)); *Eckrich*, 670 N.W.2d at 650 (contrasting Iowa Code § 124.401 and 321J.2 to Iowa Code § 321.279, "it appears quite evident that each statute was designed to address a separate form of illegal conduct and the punishments designed accordingly.").

Although the panel attempted to distinguish the two cases, its justifications do not undercut these passages. Slip.Op. 9. The panel simply concluded instead that because eluding was "made more

dangerous" by the possession and presence of a controlled substance that crime necessarily also addressed the evil of the controlled substance. *Compare* Slip.Op. 8 *with Rice*, 661 N.W.2d at 551–52 *and Eckrich*, 670 N.W.2d at 650. The panel was mistaken. Each statute is directed at separate evils. Section 124.401 addresses the persistent scourge of controlled substances. Section 321.279(3) addresses an individual's willful decision not to comply with police directives, coupled with dangerous high-speed driving, while also attempting to escape liability for another crime. A simple hypothetical exposes the troubling nature of the panel's logic.

Imagine an individual who has stolen his neighbor's diamond necklace valued at $2,000 and speeds away from the scene with police in pursuit. The police have given visual and audible signals to stop, and instead the individual accelerates to twenty-five miles per hour beyond the posted limit. In committing the theft, the individual has committed a class "D" felony and at this point has also committed felony eluding. *See* Iowa Code §§ 321.279(3)(a); 714.1; 714.2(2). Under the panel's rationale the theft and the eluding must merge. The *Blockburger* elements test shows the enhanced eluding cannot be committed without also committing the felonious theft, the

legislature has not expressly stated an intent for cumulative punishment, and the distinct sanctions for the crime are not sufficient indicia of such intent. But nothing about the commission of the theft or the individual's ongoing possession of the necklace enhances the danger of the eluding. It is no different when the underlying crime is a possession violation of Iowa Code section 124.401. It is the intent of the legislature to punish an individual who commits a crime and then eludes police to avoid detection more harshly. The panel's conclusions to the contrary will disrupt the legislature's reasonable goals and this Court should intervene.

C. The panel's decision will necessarily frustrate the legislature's intent and recidivism framework.

If this Court leaves the panel opinion to stand, it will frustrate the legislature's framework to disincentivize the drug trade. The legislature has clearly indicated it wishes controlled substance recidivists be punished more harshly. An individual convicted of section 124.401(5) is subject to subsequent-offense enhancements if they violate the statute again. Iowa Code § 124.401(5). Other violators of section 124.401 can face significant increases in punishment if they again commit the crime. *See* Iowa Code § 124.413.

Merger of a defendant's drug crime into eluding disrupts this system. So long as a defendant continues to engage in dangerous attempts to elude police as they possess these substances and Iowa courts merge the offenses, these individuals can avoid these increased penalties. The *Rice* court recognized this when it concluded it was unlikely the legislature would intend to insulate a repeat OWI offender from specific sentencing mandates just because that person was also "eluding" as proscribed under 321.279(3)(b). *See Rice*, 661 N.W.2d at 552. Merging the possession conviction into the eluding conviction will necessarily frustrate the legislature's disincentives for recidivism and simultaneously create a boon for egregious behavior.

Examining together the distinct punishments of each crime, the evils each statute attempts to address, the unavoidable frustration of these ends by merger, it is apparent the legislature intended cumulative punishments for Johnson's crimes. This Court should act.

III. The logic of the Court of Appeals opinion will invite troubling results and confusion in subsequent prosecutions.

Additionally, this Court should vacate the panel's opinion because it will invite unacceptable results and create a complicated merger regime under section 321.279.

As identified in the previous section, the panel's conclusions invite those who repeatedly deal in lower levels of controlled substances to always attempt eluding and avoid capture. If they successfully escape, they may never face justice. If caught, any conviction for possession will simply be merged into their conviction for eluding. And if the convictions merge, they will benefit from avoiding Iowa's recidivism enhancements in the future. Incentivizing *more dangerous* behavior is inconsistent with the legislature's enactment of section 321.279 altogether. Finding no merger means that each crime would be adequately punished and would further serve the legislature's intent to disincentivize dangerous conduct.

And, following *West*'s reaffirmation of the conclusion a more serious "lesser" offense should not merge into the less punished "greater," the panel opinion will result in a regime in which some drug crimes will merge into felony eluding but others will not. *See West*, 924 N.W.2d at 511–12. Under this Court's analysis in *West* and *Lewis*, it would follow that a felony level violation of Iowa Code section 124.401 should not merge into a conviction for 321.279(3). Were it to do so, there would never be reason to charge felony eluding. *See West*, 924 N.W.2d at 511; *State v. Lewis*, 514 N.W.2d 63,

69 (Iowa 1994). Thus, going forward this will mean that all aggravated misdemeanor and lower violations of Iowa Code section 124.401 are the only charges that would merge into felony eluding because "the greater [eluding] offense retains its full effect after merger." Slip.Op. 8. Such an inconsistent regime will frustrate the legislature's goals for all the reasons set out in Subdivision II, and defy the legislature's stated intent identified in Subdivision I.

And if left to stand, there is a risk subsequent courts might erroneously find even greater crimes would merge. Take for instance a defendant convicted of high-speed eluding while simultaneously possessing forty kilograms of marijuana, a "class D" felony. *See* Iowa Code § 124.401(1)(d). There is no reason the panel's logic about the dangers involved in felony eluding would not lead to a conclusion these two crimes should merge. Slip.Op. 8–9. After all, felony eluding and the aggravating controlled substance offense "are not aimed at combatting different evils," the danger of the additional crime is that it makes the eluding more dangerous and is "subsumed in that felony enhancement." Slip.Op.8. The same would be true of the theft-eluding hypothetical described in Subdivision II(B).

But were this the case, a prosecutor would again be confronted with danger identified by this Court in *West*, *Lewis*, and *Halliburton*—there would be no reason for a prosecutor to ever charge felony eluding, any conviction for the additional felony offense or felony violation of Iowa Code sections 321J.2 or 124.401 would be "subsumed" into the eluding offense at sentencing. This troubling product is not desirable and should be foreclosed now. *See Lewis*, 514 N.W.2d at 69. Our courts ordinarily strive to avoid such results. *See Id.*; Iowa Code § 4.4(2) and (3) (requiring courts to presume the legislature intended an "entire statute . . . to be effective" and that in enacting the statute the legislature intended a "just and reasonable result.").

The sensible approach is the simplest—just as with violations of Iowa Code section 321J.2—all violations of section 124.401 do not merge into felony eluding. That conclusion is supported by the fact the legislature has already established its intent that any punishment for a violation of Iowa Code chapter 124 "shall be in addition to, and not in lieu of" any other sanction authorized by law. *See* Iowa Code § 124.404. It is supported by the fact the two statutes indeed tackle distinct evils, have distinct sanctions to address those evils, and that

merger will necessarily frustrate the legislative scheme for punishing recidivism and brazen criminality more severely. This conclusion is further supported because it makes little sense to endorse an inconsistent regime in which certain levels of these offenses would merge while others would not. The panel erred when it concluded to the contrary. This Court should grant further review, vacate the panel opinion, and conclude Johnson's violations of Iowa Code section 124.401 do not merge into his convictions for felony eluding.

CONCLUSION

The State respectfully requests this Court to acknowledge the Iowa legislature has indicated an intent to permit multiple controlled substance punishments through enacting section 124.404, reaffirm that felony eluding serves separate purposes and addresses distinct evils than controlled substance possession offenses, reverse the panel opinion and affirm Johnson's sentences.

REQUEST FOR ORAL ARGUMENT

Although the State believes the matter could be resolved without oral argument, a brief oral argument could assist this Court in resolving questions raised by this appeal.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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