THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. MERRIMACK COUNTY SUPERIOR COURT

STATE OF NEW HAMPSHIRE

V.

LOGAN CLEGG

217-2022-CR-1226

DEFENDANT'S MEMORANDUM OF LAW ADDRESSSING STATE'S ORIGINAL AND NEW INEVITABLE-DISCOVERY ARGUMENTS

NOW COMES the defendant, Logan Clegg, by and through counsel, Maya Dominguez, Esq., and Thomas Barnard, Esq., and respectfully addresses (a) the inevitable-discovery argument presented by the State in its May 2023 objection to Clegg's motion to suppress, and (b) the new inevitable-discovery argument presented by the State in its April 2026 pleading. This motion is based on the following:

1. In January and May 2023, the State obtained from Merrimack County grand juries indictments charging Logan Clegg with two pairs of alternative counts of second-degree murder, four counts of falsifying physical evidence, and felon in possession of a firearm.

2. In April 2023, Clegg moved to suppress all evidence obtained as a result of the police's warrantless requests for his data from Verizon. He cited Part I, Articles 2-b and 19 of the New Hampshire Constitution and the Fourth and Fourteenth Amendments to the United States Constitution. Clegg moved to suppress both the primary evidence ("the results of the cell phone ping's, RTT, and historical cell phone data") and the derivative evidence ("statements to the police, personal belongings, clothing, gun, electronics and all seizures from the Vermont tent site").

3. In May 2023, the State objected. It argued that exigent circumstances justified the

warrantless searches.

4. The State also argued, in the alternative, that the primary evidence – Clegg's Verizon data – inevitably would have been discovered because, even if the police had not conducted the warrantless searches, the police eventually would have obtained a warrant for Clegg's Verizon data. The State did not argue that the police would have obtained a warrant for Clegg's Verizon data before he departed Vermont or that the police would have inevitably discovered any derivative evidence.

5. In his response to the State's objection, Clegg argued that exigent circumstances did not justify the warrantless searches. Clegg also responded to the State's inevitable-discovery argument.

6. In May 2023, this Court held a three-day evidentiary hearing on Clegg's motion. At the conclusion of the hearing, this Court denied the motion. It ruled that exigent circumstances justified the warrantless searches. Although the State's inevitable-discovery argument had been fully litigated, this Court did not address it.

7. On appeal, the New Hampshire Supreme Court, in an opinion dated March 17, 2026, vacated this Court's denial of Clegg's motion to suppress. It held that exigent circumstances did not justify the warrantless searches, and thus, those searches were unconstitutional.

8. At oral argument, the parties agreed that, if it held that the searches were unconstitutional, the Supreme Court should remand the case for this Court to address, in the first instance, the State's inevitable-discovery argument. The Supreme Court remanded this case to this Court "for the limited purpose of deciding whether the

defendant's motion to suppress should have been denied on the basis of the inevitable discovery doctrine."

9. At the post-remand hearing on March 20, 2026, Clegg stated that the inevitable-discovery issue had been fully litigated and requested that this Court resolve the issue without additional argument. The State told the Court, "Largely, we're in agreement." The State requested only a "limited opportunity to further argue the matter, either in person or in limited pleadings." It explained that it wanted the opportunity to "reference the testimony with the benefit of the transcript that we now have." "It would be valuable" the State continued, "for the parties to have the opportunity to point out certain parts of that to the Court."

10. The Court ordered that, "[o]n or before April 10, 2026, the State shall file any supplemental memoranda on the inevitable discovery issue." "Any objection or response to that filing by the defense," it ordered, "must be filed on or before April 17, 2026." The Court later scheduled a two-day evidentiary hearing for April 21 and 22, 2026.

11. The State, on April 10, 2026, filed a "Pleading Regarding Inevitable Discovery." In this pleading, the State incorporates by reference the inevitable-discovery argument it made in its May 2023 objection to Clegg's motion to suppress. The State then makes a new inevitable-discovery argument, never raised in the history of this case. Specifically, the State now argues that both the primary and the derivative evidence would have been inevitably discovered. As it argued originally, the State maintains that, if the police had not conducted the warrantless searches, they would have obtained a warrant for Clegg's Verizon's data. But now, the State additionally argues that (a) the police inevitably would have applied for a warrant to search Verizon for both Clegg's CSLI and his call

and text history on the night of October 11 or early morning of October 12, 2022, (b) the police inevitably would have served that warrant on Verizon on the night of October 11 or early morning of October 12, 2022, (c) the police inevitably would have taken affirmative steps to cause Verizon to respond to that warrant on the night of October 11 or early morning of October 12, 2022, and (d) the police inevitably would have received Clegg's data and used it to locate Clegg at the Price Choppers grocery store in South Burlington, Vermont, on the morning of October 12, 2022.

12. Clegg incorporates by reference his response to the State's original inevitable-discovery argument set forth in his May 2023 response to the State's objection to his motion to suppress. Below, Clegg both supplements his response to that argument and responds to the State's new inevitable-discovery argument, raised for the first time in its April 2026 pleading.

13. Clegg has eight responses. First, at multiple points in the history of this litigation, the State waived or forfeited the new inevitable-discovery argument it now seeks to raise. Second, the New Hampshire Supreme Court's limited remand of this case does not authorize this Court to address the State's new inevitable-discovery argument. Third, neither the State's original inevitable-discovery argument nor its new inevitable-discovery argument is legally cognizable; both constitute the type of "if we hadn't done it wrong, we would have done it right" argument routinely rejected by courts around the country. Fourth, both inevitable-discovery arguments are categorically barred under the Massachusetts approach the parties agree this Court should adopt. Fifth, both arguments fail because a warrant is not a "means" of searching and because a warrant-authorized search is not "independent" from the same warrantless search. Sixth, both arguments fail

because the police did not act in good faith. Seventh, the facts and evidence do not support the State's new inevitable-discovery argument. Finally, Clegg concludes with a discussion of Coolidge v. New Hampshire, 403 U.S. 443 (1971), which further establishes that neither of the State's inevitable-discovery arguments is cognizable.

Waiver and Forfeiture

14. "A waiver is the voluntary or intentional abandonment or relinquishment of a known right." J&C Props., LLC v. Rayster Realty, LLC, 2026 N.H. 12, ¶18. A "forfeiture is the failure to make the timely assertion of a right." State v. Richard, 160 N.H. 780, 786 (2010). Forfeiture includes situations where "a litigant's action or inaction is deemed to incur the consequence of loss of a right." Riso v. Riso, 172 N.H. 173, 177 (2019). Thus, a party may "forfeit[] a right by failing to make a proper objection" in a timely manner. Richard, 160 N.H. at 786. Both the United States Supreme Court and the New Hampshire Supreme Court have recognized that "[t]he Government . . . may lose its right to raise" new arguments for denying a motion to suppress by "fail[ing] to raise such questions in a timely fashion during the litigation." Steagald v. United States, 451 U.S. 204, 209 (1981) (cited with approval and emphasis in State v. Santana, 133 N.H. 798, 808 (1991)).

15. Here, the State waived or forfeited the inevitable-discovery argument it now seeks to raise at three points in the history of these proceedings: (a) its May 2023 objection to Clegg's motion to suppress, (b) the May 2023 suppression hearing, and (c) the November 2025 oral argument.

16. In its May 2023 objection to Clegg's motion to suppress, the State argued that the police would have obtained a search warrant for Clegg's Verizon data eventually, not on the

night of October 11, 2022. The State expressly asserted that "the legal means through which the police would have obtained Clegg's CSLI [was] via search warrant in the normal course." State's Obj., ¶91 (emphasis added).[1] It continued, "This is not a case where the police conducted a warrantless search and later claimed that they would have applied for a warrant." State's Obj., ¶91. The State even conceded that the police deliberately chose to forgo applying for a search warrant on the night of October 11, 2022, because "they believed that by the time received the records, [Clegg] would have escaped." State's Obj., ¶87.

17. The State, moreover, argued only that its inevitable-discovery argument applied to the primary evidence. It asserted, "Had the police not been able to obtain exigency data, they inevitably would have applied for a search warrant for the same records." State's Obj., ¶35 (emphasis added). It asserted, "The data would have been inevitably discovered through lawful means, where the police would have acquired the same information via judicially authorized warrants." State's Obj., ¶36 (emphasis added). It urged, "the evidence relied upon by the police to locate the defendant should not be suppressed, since it would have been inevitably discovered through legal means." State's Obj., ¶95 (emphasis added). The State even expressly disclaimed the notion that its argument applied to a large swathe of derivative evidence, asserting, "This is not a case where police claim that they would have obtained evidence that they could not have

[1]Citations in this pleading are as follows:
"State's Obj." refers to the State's objection to Clegg's motion to suppress, filed on May 4, 2023;
"SH" refers to the transcript of the suppression hearing on May 24-26, 2023;
"Order" refers to this Court's order on Clegg's motion to suppress, issued on June 6, 2023;
"Opinion" refers to the New Hampshire Supreme Court's opinion, issued on March 17, 2026;
"State's Pleading" refers to the State's Pleading Regarding Inevitable Discovery, filed on April 10, 2026;
"Pereira Order" refers to the Superior Court's order in State v. Pereira, No. 216-2021-CR-1916, attached to the State's pleading.

known existed before the exigency request." State's Obj., ¶93. Here, most of the derivative evidence – the cash, the laptop, the fake identification, Clegg's statements – consists of evidence that the police "could not have known existed before the exigency request." State's Obj., ¶93.

18. At the May 2023 suppression hearing, the State told the court that "the information here would have been inevitably discovered." SH 577. By "information," the State clearly meant Clegg's Verizon data; a gun, cash, and fake identification are objects, not "information." But the clearest indication of waiver appears later in that hearing: "We are arguing that the location data that was obtained by the exigent circumstances request was going to be inevitably discovered because, as Lieutenant McGonagle testified, they would have inevitably requested that information as part of their investigation, regardless of whether or not the Defendant was located that day. So that would be the argument for inevitable discovery." SH 583.

19. At the November 2025 oral argument, the State described its inevitable-discovery argument as follows: "[The police] did end up getting a warrant for this information after the fact. And so they would have eventually found a more detailed location for where [Clegg] was in Burlington using all this other technology. And maybe they certainly wouldn't have found [Clegg], I don't think. But they may still have found his campsite. They may have found shell casings 'cause they found spent shell casings and bullets that they could have then used to match to the other bullets they had. And so there was some evidence left behind if they could have found that tent site weeks or even months later when they got a return from the warrant."

20. "[I]t is in the interest of judicial economy to require a party to raise all possible

objections at the earliest possible time." Loeffler v. Bernier, 173 N.H. 180, 188 (2020). While circumstances such as the discovery new facts, a change in the law, or a "plain error" "seriously affect[ing] the fairness, integrity or public reputation of judicial proceedings" may sometimes justify excusing a party from the consequence of its waiver or forfeiture, Richard, 160 N.H. at 786-89, the State does not claim that any such circumstances exist here. Rather, "the bases for" the State's new inevitable-discovery argument was "apparent at the time [it] filed [its] objection to" Clegg's motion to suppress. Loeffler, 173 N.H. at 188.

21. The State, for its part, agrees that April 10, 2026, was too late for the parties to raise new arguments concerning inevitable discovery. In its pleading filed that date – the same one in which it raises, for the first time, its new inevitable discovery argument – the State notes that Clegg "has not challenged this court's conclusion that the State has satisfied the probable cause element." State's Pleading, ¶38. It continues, "[Clegg] did not challenge [probable cause] before and cannot do so now." State's Pleading, ¶38. By ruling that the State has waived or forfeited its new inevitable-discovery argument, raised for the first time in its April 2026 pleading, this Court would only be holding the State to the same standard that the State itself proposes.

22. For these reasons, the State waived or forfeited its new inevitably-discovery argument, and this Court should decline to consider it.

Limited Remand

23. A limited remand constrains a trial court's authority to the specific issue or issues remanded. A trial court "is without authority to expand its inquiry beyond the matters forming the basis of the appellate court's remand." Monroe v. FTS USA, LLC, 17 F.4th

664, 669 (6th Cir. 2021). "The basic tenet of the limited remand component of the mandate rule is that a [trial] court is bound to the scope of the remand issued by the [appellate] court." United States v. O'Dell, 320 F.3d 674, 679 (6th Cir. 2003) (quotation marks omitted). "Under a limited remand, the court on remand is precluded from considering other issues, or new matters, affecting the cause." Quicken Loans, Inc. v. Brown, 777 S.E.2d 581, 589 (W. Va. 2014)

24. The remand here is clearly limited. The New Hampshire Supreme Court "remand[ed] this case to [this] court for the limited purpose of deciding whether [Clegg's] motion to suppress should have been denied on the basis of the inevitable discovery doctrine." Opinion, ¶33. The question raised by the State's April 10 pleading is whether it exceeds the scope of the limited remand for this Court to consider a new inevitable-discovery argument not previously raised. The answer is yes.

25. When the Supreme Court issued its limited remand, it was fully aware of the existence and scope of the State's original inevitable-discovery argument. It had the State's May 2023 objection to Clegg's motion to suppress, it had the transcript of the May 2023 suppression hearing, and it heard the State's representations at the November 2025 oral argument. Thus, the only reasonable conclusion is that, when the Supreme Court remanded the case "for the limited purpose of deciding whether the defendant's motion to suppress should have been denied on the basis of the inevitable discovery doctrine," it intended to limit this Court's review to the inevitable-discovery argument that was pending at the time of this Court's June 2023 denial of Clegg's motion to suppress.

26. This conclusion is further confirmed by the specific language the Supreme Court used. The Supreme Court did not authorize to determine whether Clegg's motion "should be

denied"; it authorized this Court to determine whether it "should have been denied." Opinion, ¶33. The Court's use of the past conditional grammatical structure establishes that it intended to authorize this Court to consider only whether Clegg's motion should have been denied in June 2023, on the basis of the inevitable-discovery argument then before this Court. It would be anachronistic to suggest that the Supreme Court intended to authorize this Court to consider whether, in June 2023, Clegg's motion "should have been denied" on the basis of an inevitable-discovery argument that the State would not raise until almost three years later.

"If we hadn't done it wrong, we would have done it right."

27. Both the State's original inevitable-discovery argument and its new inevitable-discovery argument rely on a claim that if the police had not conducted the searches at issue without a warrant, they would have conducted the same searches with a warrant. Courts facing this type of inevitable-discovery argument summarize it as, "If we hadn't done it wrong, we would have done it right." United States v. Thomas, 955 F.2d 207, 210 (4th Cir. 1992). They consider it "far from compelling." State v. Topanotes, 76 P.3d 1159, 1164 (Utah 2003).

28. As detailed below, courts routinely reject this type of argument on various legal grounds, but they are all animated by the same underlying concerns. This type of argument "misses the point" of the exclusionary rule. Id. It "would as a practical matter be beyond judicial review." United States v. Griffin, 502 F.2d 959, 961 (6th Cir. 1974) (cited in State v. Holler, 123 N.H. 195, 201 (1983)). Its acceptance "would provide no deterrent at all" to future constitutional violations, Topanotes, 76 P.3d at 1164, and thus "would tend in actual practice to emasculate the search warrant requirement of the Fourth

Amendment." Griffin, 502 F.2d at 961. "An officer always can apply for a warrant." Gore v. United States, 145 A.3d 540, 549 n.32 (D.C. 2016). "His failure to do so when he should is a reason to apply the exclusionary rule, not a reason to withhold its application." Id.

The inevitable-discovery doctrine does not apply to evidence obtained in violation of the warrant requirement.

29. The State notes that "the New Hampshire Supreme Court has yet to decide what the State must prove for [the inevitable-discovery] doctrine to apply." State's Pleading, ¶24. In other words, the State notes, "the New Hampshire Supreme Court has not adopted a standard for determining whether evidence is admissible under the inevitable discovery doctrine." State's Pleading, ¶25.

30. The State proposes that, when addressing claims of inevitable discovery, following violations of Part I, Article 15 of the New Hampshire Constitution, New Hampshire courts should adopt the approach used by Massachusetts courts under Article 14 of the Massachusetts Declaration of Rights. State's Pleading, ¶26. Adoption of the Massachusetts approach "is appropriate," the State observes, "because the New Hampshire Supreme Court often finds that the state constitution is more protective than the federal constitution, and because much of the New Hampshire Constitution is modeled after the Massachusetts Declaration of Rights." State's Pleading, ¶26.

31. Clegg agrees with the State. When addressing claims of inevitable discovery, following violations of Part I, Article 15 of the New Hampshire Constitution, New Hampshire courts should adopt the approach used by Massachusetts courts under Article 14 of the Massachusetts Declaration of Rights.

32. The Supreme Judicial Court of Massachusetts was first asked to adopt the inevitable-discovery doctrine in Commonwealth v. Benoit, 415 N.E.2d 818 (Mass. 1981). In Benoit, the police, who lawfully possessed the suitcase of a defendant who had been arrested for murder, searched it. Id. at 819-20. They lacked a warrant but believed, mistakenly, that the defendant consented to the search. Id. at 820-21. As a result of the unconstitutional search, the police obtained the defendant's bloodstained pants, which "crucially linked the defendant to the murder scene at the time of the murder." Id. at 820, 824.

33. The trial court denied the defendant's motion to suppress the pants, finding that they would have been "inevitably discovered anyway" when the police obtained a warrant to search the suitcase. Id. at 820. Following trial and conviction, the defendant appealed. Id. at 819.

34. On appeal, the Supreme Judicial Court noted that "some courts" had adopted the inevitable discovery doctrine, but that "the rule ha[d] not gone free from criticism." Id. at 822-23; see also Holler, 123 N.H. at 200 (citing Benoit's compilation of courts adopting the doctrine). "The major concern of the critics," it noted, "is that the rule collides with the fundamental (deterrent) purpose of the exclusionary rule and . . . will encourage police shortcuts[,] since the illegal route is often faster and easier than the legally required route." Id. at 823 (citations and quotation marks omitted).

35. Ultimately, the Court stated, "We need not decide today whether we accept the 'inevitable discovery' rule for, in any event, we would not apply the rule in this case." Id. Citing Griffin, the Court stated, "We decline to apply the rule in a situation where its effect would be to read out of the Constitution the requirement that the police follow

certain protective procedures[,] in this case, the warrant requirement of the Fourth Amendment." Id. at 823.

36. The Supreme Judicial Court was again asked to adopt the inevitable-discovery doctrine in Commonwealth v. O'Connor, 546 N.E.2d 336 (Mass. 1989). O'Connor has since become the seminal and most frequently cited Massachusetts case addressing the inevitable-discovery doctrine.

37. In O'Connor, the police discovered drugs in an unconstitutional pat-down search of an intoxicated defendant. Id. at 338. The trial court found that the police would have inevitably placed the defendant in protective custody and found the drugs during an inventory search. Id. Thus, O'Connor did not involve the sort of "If we hadn't done it wrong, we would have done it right" argument at issue in Benoit.

38. The Court adopted the inevitable-discovery doctrine under Article 14 of the Declaration of Rights and set forth the test proposed by the State in this case. Id. at 339-40; State's Pleading, ¶27. The Commonwealth, it held, must prove "by a preponderance of the evidence" that "discovery by lawful means was certain as a practical matter." Id.; accord State's Pleading, ¶27 ("the State [must] demonstrate by a preponderance standard that discovery of the evidence by lawful means was certain as a practical matter") (brackets omitted). Additionally, it held, "the severity of the constitutional violation is critical in deciding whether to admit evidence that it is shown would inevitably have been discovered." Id. at 340; accord State's Pleading, ¶27 ("the practical constitutional violation [must] not [be] so severe as to require suppression"). Finally, it held, "Bad faith of the police, shown by such activities as conducting an unlawful search in order to accelerate discovery of the evidence, will be relevant in assessing the severity of any

constitutional violation." Id.; accord State's Pleading, ¶27 ("the officers [must] not [have] act[ed] in bad faith to accelerate the discovery of evidence").

39. The Court explained exactly what it meant when it said, "[T]he severity of the constitutional violation is critical in deciding whether to admit evidence that it is shown would inevitably have been discovered." Id. Immediately after setting forth this principle, it continued, "Thus, we have declined to apply an inevitable discovery rule to justify admission of evidence seized in violation of the requirement that a search warrant be obtained, even if it was inevitable that, if sought, a search warrant would have been issued and the evidence would have been found." Id. The Court was, of course, referring to Benoit. Id. (citing Benoit). In other references to Benoit, the Court explained that it "rejected the argument that an illegal warrantless search could be cured by proof that a search warrant, if sought, would have been issued and the evidence inevitably discovered," because accepting that argument "would have undercut the protective warrant requirement of the Fourth Amendment." Id. at 338-39.

40. The principles set forth in O'Connor remain the law in Massachusetts today. This includes the principle, first announced in Benoit, that the inevitable-discovery doctrine does not "justify admission of evidence seized in violation of the requirement that a search warrant be obtained, even if it was inevitable that, if sought, a search warrant would have been issued and the evidence would have been found." Id. at 340. In Commonwealth v. Perrot, 554 N.E.2d 1205 (1990), the Court, citing both O'Connor and Benoit, reiterated that "evidence seized in violation of a search warrant requirement w[ill] not be admitted even if its subsequent lawful discovery was inevitable." Id. at 1210. The Benoit principle is now so well-established in Massachusetts that its

reiteration is sometimes relegated to a footnote. See, e.g., Commonwealth v. DiMarzio, 756 N.E.2d 9, 16 n.7 (Mass. App. Ct. 2001) ("[T]he inevitable discovery rule does not authorize admission of evidence seized in violation of the requirement that a search warrant be obtained, even if it was inevitable that, if sought, a search warrant would have been issued and the evidence would have been found") (quotation marks omitted).

41. In Benoit, the police, by violating the warrant requirement, obtained or "seized" the defendant's pants. Benoit, 415 N.E.2d at 820. It is an open question whether the Benoit principle applies in a different circumstance, namely, when the police, by violating the warrant requirement, merely see – as opposed to obtain – the evidence in question, and only later obtain the evidence via a warrant-authorized search. In this circumstance, "an independently obtained search warrant" may give rise to an argument under the independent-source doctrine, rather than the inevitable-discovery doctrine, and in any event the Benoit principle may not apply. See, e.g., State v. Robinson, 170 N.H. 52, 58 (2017) (evidence admissible in this circumstance without specifying which doctrine this scenario implicates); Commonwealth v. Starkweather, 950 N.E.2d 461, 468 (Mass. App. Ct. 2011) (applying the inevitable-discovery doctrine in this circumstance without acknowledging the Benoit principle); Holler, 123 N.H. at 200 (evidence admissible in this circumstance without specifying which doctrine this scenario implicates). This court need not address this issue, however, because here, unlike in Robinson, Starkweather, and Holler, the police did not merely see Clegg's Verizon data. By violating the warrant requirement, they obtained or "seized" that data and used it to apprehend him, thereby gaining a wealth of derivative evidence.

42. The State cites Benoit for the proposition that "inevitable discovery could not cure a

warrantless seizure where the police did not make any efforts to obtain a warrant." State's Pleading, ¶35. The State appears to argue that the Benoit principle – barring application of the inevitable discovery doctrine to evidence obtained in violation of the warrant requirement – applies only if "the police did not make any efforts to obtain a warrant" after the constitutional violation. See State's Pleading, ¶35 ("The Massachusetts courts have applied the inevitable discovery rule in similar situations where the police obtained a search warrant after an initial warrantless search that was ruled unconstitutional"); State's Pleading, ¶36 ("Here, the Concord Police followed their acquisition of [Clegg's] cell phone data via warrantless searches with a search warrant, obtaining the same information by unassailably legal means").

43. The State's reading of Benoit is mistaken. The constitutional violation in Benoit was a warrantless search, not a warrantless seizure. Benoit, 415 N.E.2d at 821 ("the failure of the police to obtain a warrant prior to searching the suitcase was a violation of the warrant clause of the Fourth Amendment"). The seizure of the defendant's pants was the result of the constitutional violation, not the violation itself. Id. at 820-21. More importantly, the Court said nothing at all to suggest that its refusal to apply the inevitable-discovery doctrine was in any way dependent on whether the police "ma[d]e . . . efforts to obtain a warrant" after the warrantless search. Id. at 823. In fact, the Court said nothing at all about whether the police in that case did or did not "make any efforts to obtain a warrant" after the warrantless search. Id. at 820. Had the Court intended to limit the principle it announced to cases in which the police "d[o] not make any efforts to obtain a warrant" after the warrantless search, the Court surely would have said something about whether, in that case, the police did or did not "make any efforts to

obtain a warrant" after the warrantless search.

44. Other factors confirm that the Court has never limited the Benoit principle in the manner the State claims. The consideration that led the Court in Benoit to reject the inevitable-discovery argument – that accepting it would "will encourage police shortcuts" because foregoing a warrant is "faster and easier" than obtaining one, id. at 823 – applies regardless of whether the police obtain a warrant after their unconstitutional search. Officers who search first to determine whether getting a warrant is worth the trouble are undoubtedly taking a "shortcut" for speed and convenience, but the limitation claimed by the State would only "encourage" them to do so.

45. The Court's subsequent reiterations of the Benoit principle, moreover, contain no hint that the principle is limited in the manner the State claims. In O'Connor, for example, the court noted, "[W]e have declined [in Benoit] to apply an inevitable discovery rule to justify admission of evidence seized in violation of the requirement that a search warrant be obtained, even if it was inevitable that, if sought, a search warrant would have been issued and the evidence would have been found." O'Connor, 546 N.E.2d at 340. Although the Court referenced Benoit several times, it did not suggest that the Benoit principle is limited in the manner the State claims. Id. at 338-40.

46. In Perrot, the Court, citing both O'Connor and Benoit, reiterated that "evidence seized in violation of a search warrant requirement w[ill] not be admitted even if its subsequent lawful discovery was inevitable." Perrot, 554 N.E.2d at 1210. Yet again, the Court did not suggest that the Benoit principle is limited in the manner the State claims. Id.

47. Finally, Commonwealth v. Ghee, 607 N.E.2d 1005 (Mass. 1993) affirmatively establishes that the Benoit principle is not limited in the manner the State claims. In

Ghee, the police arrested the defendant for DWI and called for a tow truck. Id. at 1008. After towing the defendant's car, the tow-truck driver opened the car's trunk, saw a dead body, closed the trunk, and called the police. Id. The police then opened the trunk and photographed the body. Id. The police then obtained a warrant to search the vehicle. Id.

48. The defendant moved to suppress, arguing that the police violated Article 14 of the Massachusetts Declaration of Rights by opening the trunk and photographing its contents without a warrant. Id. The trial court ruled that no warrant was required because the police had probable cause and exigent circumstances existed. Id. The trial court "also ruled that the discovery of the body was inevitable because, based on probable cause, a search warrant could have been obtained and the body would have been discovered." Id. at 1008 n.4.

49. On appeal, the Supreme Judicial Court held that no warrant was required because the police had probable cause and exigent circumstances existed. Id. In a footnote, the Court also addressed the trial court's inevitable-discovery ruling. Id. at 1008 n.4. "The inevitable discovery rule," it held, "has no application in this case." Id. "In this State," it reiterated, "that rule does not apply where a search warrant should have been obtained but was not, even if it appears that inevitably a search warrant would have been issued if it had been sought." Id. (citing O'Connor and Benoit).

50. Even if the State were correct in asserting that the inevitable-discovery doctrine may apply to evidence obtained in violation of the warrant requirement, provided the police eventually "make an[] effort[] to obtain a warrant," State's Pleading, ¶35, that would only support its original inevitable-discovery argument, not its new one. The police began drafting an application for a warrant for Clegg's Verizon data on October 12,

2022, only because a "secondary warrant" was required to use the United States Marshals Service's cell site simulator. The police developed an interest in using the Service's cell site simulator only after they began receiving Clegg's location data from Verizon. Order, p. 8 ("Once the ping data started coming in, CPD wanted to use a cell site simulator get a more specific location on the phone"). They received Clegg's location data from Verizon only in response to their unconstitutional searches. Opinion, ¶¶ 7, 32. Because the police only started drafting of a warrant application for Clegg's Verizon data in response to their receipt of that data, it cannot form the basis of any inevitable-discovery argument.

51. That leaves the warrant the police obtained for Clegg's Verizon data over two months later. If, as the State suggests, an inevitable-discovery argument based on an assertion that the police would have eventually obtained a warrant requires that the police, in fact, eventually obtain a warrant, then an inevitable-discovery argument based on an assertion that the police would have obtained a warrant within a particular time period requires that the police, in fact, obtain a warrant within that time period. Even if the warrant the police obtained two months later can form the basis of the State's original inevitable-discovery argument, limited to the primary evidence, it cannot form the basis of its new inevitable-discovery argument, extending to derivative evidence.

52. In sum, the parties agree that this Court should apply the Massachusetts approach to inevitable discovery. Under that approach, the inevitable-discovery doctrine does not apply to evidence obtained in violation of the warrant requirement. Because the police obtained Clegg's Verizon data in violation of the warrant requirement, the State's inevitable-discovery arguments are categorically barred. That alone is reason to reject

them. Other reasons abound.

A search warrant is not an "independent means" of obtaining evidence.

53. "The inevitable discovery doctrine, with its distinct requirements, is in reality an extrapolation from the independent source doctrine." State v. Robinson, 170 N.H. 52, 58 (2017). "Since the tainted evidence would be admissible if in fact discovered through an independent source," the idea goes, "it should be admissible if it inevitably would have been discovered." Id. The inevitable discovery doctrine is so closely related to the independent source doctrine that it is sometimes called the "hypothetical independent source doctrine." See, e.g., State v. Boll, 651 N.W.2d 710, 716 (S.D. 2002).

54. Because the inevitable-discovery doctrine is so closely related to the independent-source doctrine, "independence remains a 'crucial element' of the [inevitable-discovery] exception." Brierley v. City, 390 P.3d 269, 274 (Utah 2016). The State must show that "the legal means by which the evidence would have been discovered was truly independent." United States v. Fagan, 71 F.4th 12, 23 (1st Cir. 2023); accord State's Pleading, ¶68. "While there must not necessarily be an entirely independent investigation, there must be some independent basis for discovery, and the investigation that inevitably would have led to the evidence must be independent of the constitutional violation." Brierley, 390 P.3d at 274 (citations, quotation marks, and brackets omitted).

55. "For courts confidently to predict what would have occurred, but did not actually occur, there must be persuasive evidence of events or circumstances apart from those resulting in illegal police activity that would have inevitably led to discovery." Id. at 277. Thus, the State must put "forward evidence sufficient to support a conclusion that but for the illegal search something different would have happened and that the 'something

different' would have inevitably resulted in the discovery of the same evidence by lawful means." Id. Courts have found, for example, that the doctrine applies when the police "engaged in lawful and unlawful processes in parallel." Jones v. United States, 168 A.3d 703, 718 (D.C. 2017).

56. A search warrant provides legal authorization to conduct a search. In re C.T., 160 N.H. 214, 219 (2010) ("A search warrant is a judge's written order authorizing a law-enforcement officer to conduct a search of a specified place and to seize evidence.") (brackets and quotation marks omitted). It is not the "means" by which a search is conducted. State v. Fay, 173 N.H. 740, 748 (2020) (distinguishing between a search warrant and "the manner of its execution"). When the government "present[s] no evidence of any other investigation, any routine procedure, or any other officers working on the matter," but merely claims that the same officers who conducted the warrantless search "would have obtained the warrant before [searching] if they had not done the exact opposite," it has not satisfied the requirement of "independent means." Brierley, 390 P.3d at 277. "[W]here the police had mutually exclusive options and, for whatever reason, chose the option that turned out to be unlawful[,] [t]he inevitable-discovery doctrine does not apply." Jones, 168 A.3d at 718.

57. Here, the warrantless searches of Clegg's Verizon data were exactly the same as both (a) the actual, warrant-authorized search conducted over two months later, and (b) the hypothetical warrant-authorized search conducted on the night of October 11. State's Pleading, ¶83 ("the Concord Police would have applied for and obtained a search warrant for the same cell phone data"). All the searches were or would have been conducted by the same entity (Verizon), for the same data. Under the State's new

inevitable-discovery argument, the hypothetical, warrant-authorized search would have taken place at materially the same time as the actual warrantless searches. Thus, neither (a) the actual, warrant-authorized search conducted over two months later, nor (b) the hypothetical, warrant-authorized search on the night of October 11, 2022, constitute "means" that are "truly independent" from "means" of the actual, unconstitutional searches.

58. The core of any valid independent-source or inevitable-discovery argument is a claim that the police obtained (or would have obtained) the same evidence through a different search (or other means). Here, the State merely asserts that the police obtained (or would have obtained) the same evidence through the same search. That assertion cannot form the basis of a valid independent-source or inevitable-discovery argument.

The police did not act in good faith

59. "The element of good faith on the part of the police is inherent in the inevitable discovery exception." Holler, 123 N.H. at 201; accord State's Pleading, ¶23, 54. New Hampshire courts "will not permit the police to use this exception as a calculated means of evading the search warrant requirement." Id. They "will consider the exception only where the police were acting in good faith." Id.

60. The police here knew that Verizon's own exigency form stated that Verizon would not provide location data for more than 48 hours without a warrant. Opinion, ¶22. The unmistakable implication of this is that the police could use Verizon's exigency hotline even if they had a warrant. "Based on this [and other] information, a reasonable officer would have inferred that nothing prevented CPD from requesting data via the exigency hotline while in possession of a warrant." Opinion, ¶22.

61. The question this begs is why the police here failed to recognize what "a reasonable officer would have inferred." Opinion, ¶22. The State answered that question at the hearing on the motion to suppress: "[T]he police did not go and think to themselves, ['W]ell, you know what, if I take two or five more hours, maybe I can get a search warrant and then I'll have everything nicely packed up beforehand for, you know, for later, for trial, for whatever. I'll have all the data that I need, not only to find this person, but it will be constitutional. It will be admissible in a future proceeding.['] That is not what they were concerned with that night." SH 572.

62. A "reckless" or "negligent" "disregard of the truth" precludes a finding of "good faith." United States v. Leon, 468 U.S. 897, 919, 923 (1984). A "deliberate, reckless, or grossly negligent disregard for Fourth Amendment rights" similarly precludes a finding of "good faith." Davis v. United States, 564 U.S. 229, 238 (2011).

63. Here, the police recklessly or negligently disregarded the truth of their belief that they could not use Verizon's exigency hotline with a warrant. Opinion, ¶22 ("a reasonable officer would have inferred that" they could use Verizon's exigency hotline with a warrant). As the State agrees, the police "were [not] concerned with" whether their conduct was "constitutional." SH 572. Their "disregard for Fourth Amendment rights," Id. at 238, was deliberate, reckless, or grossly negligent. Thus, the police did not act in good faith.

64. In arguing that the police did act in good faith, the State analogizes the facts of this case to the facts in State v. Anderson Pereira, No 216-2021-CR-1916. State's Pleading, ¶¶59-66. It asserts that Pereira involved "a similar factual situation." State's Pleading, ¶59. Based on this premise, it then argues that, just as the police in Pereira had a good faith

belief in the exigency of their requests, so did the police here. State's Pleading, ¶66 ("The same finding of good faith should be made in this case").

65. The situation the police face in Pereira could not be farther than the situation the police faced here. The police in Pereira were investigating a missing person. Pereira Order, p. 1-2. The facts known to the police strongly suggested that, five days earlier, someone kidnapped the victim from his Manchester home. Pereira Order, p. 2-3. Using the victim's smartwatch, the victim's family located the victim's work truck abandoned in Lawrence, Massachusetts. Pereira Order, p. 2. There was blood in the truck. Pereira Order, p. 3. Surveillance video showed that, four days earlier, someone other than the victim parked the truck, disposed of the victim's belongings in a nearby dumpster, and departed the area in a car displaying both Uber and Lyft stickers. Pereira Order, p. 2-4. When the police reached out to Uber and Lyft, Uber informed the police that the person who departed the area was the defendant, who the police already knew was the victim's wife's ex-boyfriend. Pereira Order, p. 2, 4. Uber also provided the phone number the defendant used. Pereira Order, p. 4. Faced with these circumstances, Lawrence police sent warrantless exigency requests to T-Mobile to locate the defendant's phone. Pereira Order, p. 4.

66. The defendant, later charged with the victim's murder, moved to suppress the T-Mobile data. Pereira Order, p. 1. The State argued that the warrantless requests were justified by exigent circumstances, relying on testimony from the investigating detective "that he believed that at the point he submitted the exigent requests [the victim] could have still been alive but was kidnapped and in peril." Pereira Order, p. 16, 22. The State also argued that the police would have inevitably discovered the data with a warrant. Pereira

Order, p. 16.

67. The Superior Court (Delker, J.) began by noting that the defendant did not "develop an argument based on the text or history of the State Constitution." Pereira Order, p. 6. As a result, it "assume[d] that Part I, Article 19 of the State Constitution [wa]s co-extensive with the Federal Constitution." Pereira Order, p. 7.

68. Inexplicably, the court did not resolve the question of exigency, asserting, without further explanation, that "it is a close call whether an exigency existed in this case." Pereira Order, p. 16, 23. Instead, the court denied the defendant's motion to suppress by applying the inevitable-discovery doctrine. Pereira Order, p. 16. Although the inevitable-discovery doctrine under the Federal Constitution does not require a finding of good faith, Nix, 467 U.S. at 445-46, the court nevertheless found that the police had a good faith belief that exigent circumstances existed. Pereira Order, p. 22. Following conviction, the defendant did not challenge the admission of his T-Mobile records. State v. Pereira, No. 2023-0257, 2025 WL 843851 (March 18, 2025).

69. The facts in Pereira are not comparable to the facts here. The police in Pereira knew that, just days earlier, the victim's wife's ex-boyfriend kidnapped the victim, likely assaulted him, and transported him across the state lines. Pereira Order, p. 2-4. As far as the police knew, the defendant still held the victim captive. Pereira Order, p. 2-4. The whereabouts of both were unknown. Pereira Order, p. 2-4. Although the police didn't know if the victim was dead or alive, they had every reason to believe that, if he was alive, his life was in grave, imminent danger. Pereira Order, p. 22. In short, the police in Pereira faced a textbook case of exigency.

70. The police here faced nothing of the sort. There was no missing victim whose life

appeared to be in grave, imminent danger. The police here were conducting a mine-run criminal investigation, not responding to an ongoing emergency, as in Pereira. See Carpenter v. United States, 585 U.S. 296, 320 (2018) ("While police must get a warrant when collecting CSLI to assist in the mine-run criminal investigation, the rule we set forth does not limit their ability to respond to an ongoing emergency"). Unlike in Pereira, the police here were simply eager to apprehend their suspect, and, as the State conceded, they "were [not] concerned with" the constitutionality of their conduct. SH 572.

71. "It is difficult to imagine a scenario in which immediate police action is more justified than when a human life hangs in the balance." United States v. Holloway, 290 F.3d 1331, 1337 (11th Cir. 2002). The State's claim that the police here faced "a similar factual situation" to those in Pereira, State's Pleading, ¶59, is without merit.

The facts and evidence do not support the State's new inevitable-discovery argument

72. The new inevitable-discovery argument raised in the State's April 10 pleading is that, even if the police did not conduct the warrantless searches for Clegg's Verizon data: (a) the police inevitably would have applied for a warrant to search Verizon for both Clegg's CSLI and his call and text history on the night of October 11 or early morning of October 12, 2022, (b) the police inevitably would have served that warrant on Verizon on the night of October 11 or early morning of October 12, 2022, (c) the police inevitably would have taken affirmative steps to cause Verizon to respond to that warrant on the night of October 11 or early morning of October 12, 2022, and (d) the police inevitably would have received Clegg's data and used it to locate Clegg at the Price Choppers grocery store in South Burlington, Vermont, on the morning of October 12, 2022.

73. "[I]nevitable discovery involves no speculative elements but focuses on demonstrated historical facts capable of ready verification or impeachment." Nix v. Williams, 467 U.S. 431, 444 n.5 (1984). As a matter of "historical fact[]," the State's new inevitable-discovery argument must be rejected.

74. At the May 2023 suppression hearing, Lt. Marc McGonagle testified. McGonagle was the commander of the Concord Police Department's Criminal Investigations Division. SH 5. He oversaw all units within that division. SH 5. In Clegg's case, McGonagle oversaw the general investigative process and all the investigators assigned to the case. SH 6. As the commander of the Criminal Investigations Division, McGonagle "took on a more of a personal role in the actual supervision of this particular case." SH 7. Although there were "lead detectives or investigators" assigned to the case, McGonagle supervised all of them. SH 7.

75. McGonagle testified to the Concord Police Department's protocol regarding the submission of search warrants to Verizon. He summarized that policy as, "You fire it off, and you sit and wait." SH 71. The warrant "is faxed to the general legal compliance fax number for Verizon." SH 67. "[T]hat's the protocol;" "[t]hat's our practice;" "[t]hat's how we've been trained," McGonagle added; "We send it via fax." SH 69. Then, he explained, "[Verizon wi]ll provide us what we're requesting at some point in time." SH 70. McGonagle testified that, under this protocol, he "typically" received results in "two to three weeks" and had never received results "within three days." SH 71.

76. When defense counsel questioned McGonagle about the possibility of 'using the exigency hotline if [the police] are in possession of a warrant," McGonagle answered,

point blank, "[I]t's not protocol." SH 142. "Our protocol," McGonagle testified, was to use Verizon's "24/7" exigency hotline only for warrantless requests, and to send "court order[s,] subpoena[s, and] search warrants . . . through the other avenue, . . . which is via fax." SH 144. McGonagle was asked if he had ever been instructed that he could not use the exigency hotline with a warrant. Officer McGonagle responded, "No. It's implied to me that exigency is exigency and warrants and subpoenas and legal process be served on a separate line." SH 144-45.

77. Defense counsel again asked McGonagle about the possibility of calling the exigency hotline with a warrant. SH 145. McGonagle testified, "We've never – and I've never done that. No." SH 145.

78. McGonagle testified that, on October 11, 2022, the police did not apply for a search warrant for Clegg's Verizon data because, in his words, "I knew we were not going to get that information prior to Clegg's departure." SH 72. Obtaining a search warrant at that time, McGonagle testified, "was going to hinder our ability to apprehend him." SH 72.

79. McGonagle's incredulity at the suggestion that the exigency hotline could be used with a warrant stands in direct contrast with the State's claim that the police would have persevered in order to get assistance from Verizon through those same means.

80. Moreover, McGonagle testified that the police would have obtained a search warrant eventually, not that night. SH 84. The prosecutor asked, "[W]ould you have ultimately requested a search warrant for location data associated with that phone number, as part of the investigation?" SH 84. McGonagle answered, "[A]bsolutely." SH 84. When the prosecutor asked, "Why is that?", McGonagle explained the importance of "historical

data." SH 84. He interrupted his explanation, however, to reiterate, "[W]e're looking at this if we had gathered this information at a later date." SH 84.

81. Detective Danika Gorham was assigned as the lead investigator in the case. SH 179. Detective Wade Brown was assigned to assist her. SH 179. Although Brown was on vacation when the warrantless searches began and was not called into the office until after the first ping was received, SH 476, he reiterated McGonagle's understanding of the Concord Police Department's policy regarding data requests to Verizon. He testified that it was a "fact that search warrants sent to Verizon go through a different team" than exigency requests go through. SH 244-45. "They go through a different process," he added. SH 245. "[If] we simply did a search warrant," he continued, "we were not expected to get results before that flight left." SH 245. Later in the hearing, he reiterated that "[s]earch warrants are . . . sent to different teams" and are subject to a "different process" than are exigency requests. SH 476-77. He agreed that the, if the police used a search warrant, they "wouldn't get the results . . . prior to [Clegg's] flight." SH 477. He further testified that his understanding of these matters was confirmed by Kevin Hoyland, an FBI agent. SH 477.

82. Brown testified that he had submitted search warrants to Verizon in the past, and that it typically took ten days to three weeks, "sometimes longer," for Verizon to respond. SH 245.

83. Brown's testimony is irrelevant to the question of the police's hypothetical actions if they had not received the exigency information because there is no evidence to suggest that Brown would have left his vacation. Nonetheless, his prior testimony further supports McGonagle's position that "exigency is exigency, and warrants and subpoenas and legal

process" were a separate line. SH 144-45.

84. Both McGonagle and Brown testified that their practice was to use the exigency hotline exclusively without a warrant. Any claim that suggests they would have acted inconsistent with that experience and practice rests solen on hindsight reconstruction rather than any contemporaneous evidence of what officers actually would have done.

85. The police here did not conduct just one unconstitutional search, but three. Their first unconstitutional search requested Clegg's location data. The police did not decide to request historical text data until after they received the location data. Only after receiving historical text data and conducting additional investigation did the police infer, from the historical text data, that Clegg may have been corresponding with someone who worked at Price Choppers. Only by "connecting the dots" between Clegg's real-time location data and that inference did the police infer that Clegg might be at the specific Price Choppers location at which he was found.

86. The State argues that, had the police not violated the warrant requirement, they would have obtained one search warrant. But just as the initial exigency request did not encompass historical text data, the State's hypothetical search warrant, if sought, would not have encompassed historical text data. The State does not claim that the police would have located Clegg at the Price Choppers in South Burlington using only the location data, without historical text data.

87. Accordingly, even if the Court was unpersuaded by the legal arguments above, the facts and evidence do not support the State's claim.

Coolidge v. New Hampshire

88. This is the not the first case in which New Hampshire police officers, engaged in "a massive investigation" of "a particularly brutal murder" that "created great alarm in the area," violated the warrant requirement. In Coolidge v. New Hampshire, 403 U.S. 443 (1971), the police suspected the defendant of murdering a 14-year-old girl. Id. at 445-46. The month following her disappearance and the discovery of her body, the New Hampshire Attorney General, acting pursuant to state statute and the Manchester Police Department's policy and practice, issued a warrant to search the defendant's car. Id. at 446-47, 452. Evidence obtained in that search was used at trial to secure the defendant's conviction. Id. at 448.

89. On appeal, the defendant argued that that the search warrant was invalid because it was not issued by a "neutral and detached magistrate." Id. at 449. The Attorney General, he noted, "was actively in charge of the investigation and later was to be chief prosecutor at the trial." Id. at 450.

90. The New Hampshire Supreme Court affirmed. Id. at 448. Among other things, it "held in effect that the state attorney general's participation in the investigation of the case at the time he issued the search warrant was 'harmless error' if it was error at all." Id. at 501 (Black, J., concurring and dissenting).

91. The State pressed that argument in the United States Supreme Court, asserting that "any magistrate, confronted with the showing of probable cause made by the Manchester chief of police, would have issued the warrant in question." Id. at 450.

92. The United States Supreme Court rejected the argument. Id. 450-51. "[O]ur single

duty," it recognized, "is to determine the issues presented in accord with the Constitution and the law." Id. at 445. The State's argument, it noted, "renders noncompliance with the warrant procedure an irrelevance." Id. 450-51.

93. The State's inevitable-discovery arguments here are no different that its argument in Coolidge. Just as it was trivial, in Coolidge, for the State to assert that, if the police hadn't obtained the warrant from a justice of the peace involved in the investigation, they would have obtained it from one not involved, it is trivial, here, for the State to assert that, if the police hadn't obtained a warrant from no one at all, they would have obtained one from a court. As Coolidge establishes, the warrant requirement – "a fundamental premise of both the Fourth and Fourteenth Amendments," id. at 453 – is simply too important to crumble in the face of such a paltry assertion.

Wherefore, Logan Clegg respectfully requests that this Honorable Court rule that his motion to suppress would not have been denied on the basis of the inevitable-discovery doctrine.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum is being electronically provided to the office of the Attorney General on April 17, 2026.

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