

Denied. The NH Supreme Court remanded the case to this court for a determination of whether the motion to suppress should have been denied based on the inevitable discovery doctrine. In the remand order, the Supreme Court directed this court to hold "any further proceedings it deems necessary" to resolve this issue. This court has set out a process to comply with that directive. The defendant's objection to the process set out by this court is fully preserved for appellate review. The hearing will go forward as scheduled. The defense can raise any further objections to the scope or relevance of any further evidence or testimony at that hearing. So ordered.



Honorable John C. Kissinger, Jr.

MERRIMACK, SS.

April 15, 2026

THE STATE OF NEW HAMPSHIRE

MERRIMACK COUNTY SUPERIOR COURT

STATE OF NEW HAMPSHIRE

V.

LOGAN CLEGG

217-2022-CR-1226

Clerk's Notice of Decision
Document Sent to Parties
on 04/15/2026

DEFENDANT’S MOTION TO CANCEL EVIDENTIARY HEARING – EXPEDITED RULING REQUESTED

NOW COMES the defendant, Logan Clegg, by and through counsel, Maya Dominguez, Esq., and Thomas Barnard, Esq., and respectfully moves to cancel the two-day evidentiary hearing, scheduled for April 21 and 22, 2026. 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. Prior to trial, Clegg moved to suppress all evidence obtained as a result of the police’s warrantless requests for his Verizon data. 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.
3. The State objected. It argued that exigent circumstances justified the warrantless searches. It also argued that the police inevitably would have discovered Clegg’s Verizon data.
4. 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.

5. 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. It did not address the State's inevitable-discovery argument.
6. On appeal, the New Hampshire Supreme Court vacated this Court's denial of Clegg's motion. It held that exigent circumstances did not justify the warrantless searches, and thus, those searches were unconstitutional.
7. 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 because it recognized, correctly, that this Court should address the State's inevitable-discovery argument in the first instance; it did not remand because it perceived any deficiencies in the evidentiary record.
8. 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 evidence. The State initially agreed. Later in the hearing, however, the State requested additional time to consider whether it would seek to reopen the suppression hearing for additional evidence. This Court granted that request and gave the State until March 23, 2026, to make that decision.
9. On March 23, 2026, the State submitted a pleading entitled "State's Witness List." Treating this pleading as a motion to reopen the suppression hearing for additional evidence, Clegg, on March 27, 2026, objected. He argued that, to justify reopening the suppression hearing for additional evidence, the State had to, at a bare minimum, identify

some evidence that is both (a) relevant, and (b) new or different from the evidence previously presented. The State's witness list, Clegg noted, failed to identify any evidence that is both (a) relevant, and (b) new or different from the evidence previously presented at the three-day evidentiary hearing.

10. On March 30, 2026, this Court issued an order stating, "the objection to the State introducing any new or additional evidence is noted. The Court will permit additional evidence solely on the inevitable discovery issue remanded by the NH Supreme Court to this Court. On or before April 10, 2026, the Court expects the State to identify with specificity how the testimony of any witness supports denial of the motion to suppress based on the inevitable discovery doctrine. . . So ordered."
11. On April 10, 2026, the State submitted a "Pleading Regarding Inevitable Discovery." In paragraphs 3-6 and 9-19 of that pleading, the State sets forth the anticipated testimony of four witnesses: three current or former members of the Concord Police Department and a Verizon representative. Because the State has, yet again, failed to identify any evidence that is both (a) relevant, and (b) new or different from the evidence previously presented at the three-day evidentiary hearing, this Court should cancel the upcoming two-day evidentiary hearing.
12. "[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). A lay witness's after-the-fact assertion that, had circumstances been different, either the witness or someone else "would have" engaged in particular conduct is speculative and irrelevant. Elyria-Lorain Broad. Co. v. Lorain J. Co., 298 F.2d 356, 360 (6th Cir. 1961) ("a witness may not testify to what he would have done

had the situation been different from what it actually was”); Olson v. Ela, 392 N.E.2d 1057, 1059 (Mass. App. Ct. 1979) (generally, a lay witness may not “speculate as to what would have happened had the facts been different from what actually occurred”); Arnold v. Ingersoll-Rand Co., 908 S.W.2d 757, 763 (Mo. Ct. App. 1995) (a witness’s “opinion of what he believed he would have done in a hypothetical situation . . . is speculative and immaterial”). Such testimony is generally inadmissible in any proceeding. Elyria-Lorain Broad, 298 F.2d at 360 (“Such an answer is too speculative to be admissible”). In the inevitable-discovery context, specifically, such an assertion is irrelevant because it is “speculative,” not a “historical fact[] capable of ready verification or impeachment.” Nix, 467 U.S. at 444 n.5. When evaluating claims of inevitable discovery, courts, of course, must make inferences about what, if anything, individuals “would have” done in different circumstances. Nix, 467 U.S. at 444. But those inferences must be drawn by the Court based on historical facts, not the ipse dixit of witnesses. See Olson, 392 N.E.2d at 1059 (the factfinder is “just as capable as the witness of deciding from these basic facts what would have happened”).

13. Here, all the testimony the State anticipates retired Lt. Marc McGonagle to give, set forth at paragraph 3 of its pleading, is speculative. The State anticipates that McGonagle will testify that, had circumstances been different, he or other members of the Concord Police Department – the pleading does not specify which – “would have” engaged in particular conduct. The State fails to identify a single “historical fact” that it anticipates McGonagle to assert.

14. Clegg concedes that, unlike McGonagle, the testimony the State anticipates other

witnesses to give mostly¹ consists of assertions of historical fact, rather than speculation. Those historical facts, however, are either cumulative to the evidence already presented or irrelevant.

15. The testimony the State anticipates Verizon representative Jennie Tomlin to give, set forth at paragraphs 4-6 of its pleading, is not new or different from the evidence already presented at the three-day evidentiary hearing. At that hearing, Denise Riley, a defense investigator, testified that she spoke to a member of Verizon's Security Assistance Team and recounted the information he provided about Verizon's policies. Clegg also introduced Defense Exhibit E, a PowerPoint slide published by Verizon, that set forth its policies. To the extent that Tomlin would give additional detail about Verizon's policies, that testimony is entirely irrelevant. Clegg has maintained throughout this litigation that the police could have obtained a warrant for his Verizon data before using Verizon's exigency hotline, and that doing so would not have materially delayed their receipt of that data. These facts were, indeed, the basis of his argument that the warrantless searches were unconstitutional. The State's belated acknowledgment of these facts does not justify reopening the suppression hearing.

16. As set forth at paragraphs 9 of its pleading, the State asserts that it anticipates that Det. Brendan Ryder will testify that, after the police began receiving Clegg's Verizon data in response to their unconstitutional searches, William Tufts, a member of the United States Marshals Service, told him that, to use the Service's cell site simulator, the police would

¹ The State's anticipated testimony from other witnesses is not entirely free from speculation. At paragraph 6 of its pleading, the State asserts that it expects Verizon representative Jennie Tomlin to testify that, under different circumstances, "if the police had" made certain requests, they "would begin receiving" some data "as soon as the request was set up," and "would . . . then receive the other data when that was available." At paragraph 12 of its pleading, the State asserts that it expects Sgt. Wade Brown to testify that, under different circumstances, "the Concord Police would have" engaged in particular conduct.

need to obtain a “secondary warrant” for that data. This is entirely duplicative of Ryder’s testimony at the prior hearing. SH² 536.

17. At paragraph 10 of its pleading, the State asserts that Ryder then drafted a search warrant for Clegg’s Verizon data. While this testimony would be new, it would be entirely irrelevant. According to the State’s pleading, Ryder drafted an application for a “secondary warrant” only because Tufts told him that a “secondary warrant” was required to use the 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. The State fails to “identify with specificity how” Ryder’s drafting of a warrant application, after and in response to the receipt of information obtained from their unconstitutional searches, “supports [the] denial of the motion suppress based on the inevitable discovery doctrine.”

18. At paragraphs 11-19 of the State’s pleading, the State sets forth the anticipated testimony of Sgt. Wade Brown. The State fails, however, to identify any new and relevant historical fact to which it expects Brown to testify. October 11, 2022, was the first day of Brown’s two-week vacation. SH 474. He only returned to the office after McGonagle called him and told him that, as a result of the first warrantless search, the police learned

²Citations in this pleading are as follows:

“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.

that Clegg’s phone was in or near Burlington, Vermont. SH 476. At the prior hearing, Brown testified that, while he “believe[d] that there was a discussion on [October 11, 2022]” “about whether or not [the police] should get warrant” for Clegg’s Verizon data, he had no “specific memory of it at this moment.” SH 476.

19. In light of the fact that Brown was on vacation during the events that precipitated the constitutional violations and only returned to the office after the first unconstitutional search, it is extremely unlikely that he can offer testimony about any relevant historical fact, over and beyond those already established at the prior evidentiary hearing. Indeed, aside from one instance of pure speculation³, the State’s pleading indicates that Brown will testify only about (a) the data received as a result of the unconstitutional searches, (b) the use of that data to locate Clegg and his campsite, (c) specific items of evidence obtained as a result of the location of Clegg and campsite, (d) the fact that the police, over two months after their unconstitutional searches, executed a warrant for the same data initially obtained as a result of the unconstitutional searches, and (e) the fact that the police, eight months after their unconstitutional searches, learned that Clegg had booked a flight from Burlington to New York City on October 13, 2022. Brown’s anticipated testimony on topics (a) through (d) above is already well-established by the existing evidentiary record. Evidence of Clegg’s Burlington-New York flight would be new, but, yet again, the State fails to “identify with specificity how” this testimony “supports [the] denial of the motion suppress based on the inevitable discovery doctrine.”

20. Even if this Court perceives some new, relevant evidence in the State’s pleading, there remains one final ground upon which this Court should nevertheless cancel the

³ See footnote 1, supra.

evidentiary hearing. At no point in the State’s 35-page pleading does it make even the slightest attempt to explain “why the new information could not have been presented to the Court at the original hearing.” Matter of Penichet, 177 N.H. 227, 237 (2025). The scope of deference and discretion – “What can a trial court do?” – are issues for an appellate court. The question for this Court is much simpler: What should the Court do? When a matter has been fully litigated and submitted to a court following a three-day evidentiary hearing, it would undermine notions of fundamental fairness, the evenhanded administration of justice, and judicial economy to permit a litigant to reopen the evidence, almost three years later, with no explanation whatsoever as to why the litigant failed to present the newly proffered evidence at the original hearing. This Court should cancel the hearing.

Wherefore, Logan Clegg respectfully requests that this Honorable Court cancel the evidentiary hearing. In the alternative, Clegg requests that this Court: (a) preclude Marc McGonagle from testifying, (b) preclude Jennie Tomlin from testifying, (c) preclude Brendan Ryder from testifying, and (d) preclude Wade Brown from testifying. Clegg respectfully requests that this Court rule on this motion on an expedited basis.

Dated: April 14, 2026

Respectfully submitted,

/s/ Thomas Barnard
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Notice is being electronically provided to the office of the Attorney General on April 14, 2026.

/s/ Thomas Barnard
Thomas Barnard, Esq.