The State of New Hampshire

MERRIMACK COUNTY **SUPERIOR COURT**

THE STATE OF NEW HAMPSHIRE

v.

LOGAN CLEGG

Docket No.: 217-2022-CR-01226

ORDER

Following a jury trial, the defendant, Logan Clegg, appealed convictions for second degree murder, falsifying physical evidence, and being a felon in possession of a firearm arising out of the fatal shooting of Djeswende Reid and Stephen Reid. See State v. Clegg, 2026 N.H. 11. On appeal, the New Hampshire Supreme Court determined that this Court "erred in relying upon exigency grounds to deny" Mr. Clegg's pre-trial motion to suppress evidence, see id. ¶ 1, and "remand[ed] this case . . . for the limited purpose of deciding whether [Mr. Clegg's] motion to suppress should have been denied on the basis of the inevitable discovery doctrine." Id. ¶ 33. On remand, the parties submitted supplemental memoranda. See Doc. 331 (State's Mem.); Doc. 334 (Def.'s Mem.). In addition, on April 21, 2026, the Court held a further evidentiary hearing over Mr. Clegg's objection. See Doc. 332 (Def.'s Mot. Cancel Hr'g). The Court has carefully considered the parties' arguments, the evidence, and the applicable law. For the reasons that follow, the Court finds and rules that Mr. Clegg's motion to suppress should be **DENIED** on the basis of the inevitable discovery doctrine.

I. Standard

The State and Federal Constitutions both protect against unreasonable searches and seizures. See State v. Francisco Perez, 173 N.H. 251, 257 (2020). "The essential purpose of" these protections "is to impose a standard of 'reasonableness' upon the exercise of discretion by government officials to safeguard the privacy and security of individuals against arbitrary invasions." Id. (citations, quotations, and alterations omitted). "Under the New Hampshire Constitution, all warrantless searches are *per se* unreasonable, unless they conform to the narrow confines of a judicially recognized exception." State v. Sodoyer, 156 N.H. 84, 85 (2007) (quotations and citation omitted) (explaining that the burden is on the State to prove the applicability of an exception to the warrant requirement).

"The general rule is that evidence must be excluded if it is discovered as a result of police misconduct." State v. Robinson, 170 N.H. 52, 57 (2017) (citation omitted). "The exclusionary rule enjoins the Government from benefiting from evidence it has unlawfully obtained." Id. (quoting United States v. Crews, 445 U.S. 463, 475 (1980)). "The United States Supreme Court has recognized, however, that evidence discovered as a result of unlawful conduct does not automatically become forever inaccessible." Id. (citing Silverthorne Lumber Co v. United States, 251 U.S. 385, 392 (1920)). Rather, in an effort to "properly balance" "the interest of society in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime," state and federal courts have adopted several legal doctrines aimed at "putting the police in the same, not a *worse*, position that they would have been in if no police

error or misconduct had occurred." Id. (quoting Nix v. Williams, 467 U.S. 431, 443 (1984), and discussing the "independent source" doctrine); see also Nix, 467 U.S. at 442–44 ("The core rationale . . . for extending the exclusionary rule to evidence that is the fruit of unlawful police conduct has been that this admittedly drastic and socially costly course is needed to deter police from violations of constitutional and statutory protections. . . . If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means . . . then the deterrence rationale has so little basis that the evidence should be received." (citation and quotations omitted)).

This case implicates one such doctrine: the doctrine of inevitable discovery. "Under this doctrine, illegally seized evidence is admissible if a search was justified, and the evidence discovered illegally would have inevitably come to light in a subsequent legal search." State v. Holler, 123 N.H. 195, 200 (1983) (citations omitted). As the New Hampshire Supreme Court has explained, "[a]n important consideration in applying this doctrine is whether the police have benefited from the initial illegality." Id. Another important consideration is whether the police acted in good faith:

> The element of good faith on the part of the police is inherent in the inevitable discovery exception. We will not permit the police to use this exception as a calculated means of evading the search warrant requirement. Rather, we will consider the exception only where the police were acting in good faith.

Id. at 201 (citations omitted).

Importantly, "good faith" in this context does not contemplate the same "reasonable officer" standard that applies in other contexts. Cf. State v. De La Cruz,

158 N.H. 564, 568 (2009) (noting that the "objectively reasonable" officer standard that applies where, for example, an officer relies on what turns out to be an unconstitutional law, has "(perhaps confusingly)" been called an exception based on "good faith reliance" (citation and quotations omitted)). Rather, in the context of the inevitable discovery doctrine, the "good faith" standard requires a showing that the investigating officer(s) did not deliberately or consciously violate a defendant's constitutional rights in order to expedite their investigation. See Holler, 123 N.H. at 201 (admonishing the police "not to rely on [the inevitable discovery doctrine] to justify illegal searches," and concluding that the element of good faith was satisfied where, "although the search warrant was issued after [an] illegal warrantless search, the police had sought the warrant *prior to and without any reference to the illegality,* and they followed all required procedures for obtaining the warrant"); see also State v. Broadus, 167 N.H. 307, 314 (2015) (citing United States v. Almeida*,* 434 F.3d 25, 28–29 (1st Cir. 2006), and explaining that under the standard applied by the First Circuit, application of the inevitable discovery doctrine must not "provide an incentive for police misconduct"); Commonwealth v. Sbordone, 678 N.E.2d 1184, 1190 (Mass. 1997) (explaining that application of the inevitable discovery doctrine requires, among other things, a finding that "the officers did not act in bad faith to accelerate the discovery of evidence"). In light of these standards, application of the inevitable discovery doctrine is highly fact specific. See Broadus, 167 N.H. at 307–08 (remanding to the trial court because it "made no legal rulings or factual findings" as to the likelihood that the investigating officer "would have" arrested the defendant).

II. Factual Background

Prior to Mr. Clegg's trial, the Court held a three-day evidentiary hearing concerning his motion to suppress evidence and his unrelated motion to suppress statements. The Court derives the following facts from the evidence submitted during that hearing, which took place May 24–26, 2023. On April 20, 2022, the Concord Police Department ("CPD") received information regarding a missing couple. See 2023 Supp. Tr. 7. During a same-day search of the trail system where the couple was known to have recently gone hiking, CPD located a tent site occupied by a man who identified himself as Arthur Kelly. See id. at 13–14.

CPD found the victims' bodies, which were hidden in a wooded area of the trail system, on April 21, 2022. See id. at 21. The next day, CPD returned to the "Arthur Kelly" campsite only to find that it had been completely cleared out. Id. at 23. Based on extensive additional investigation, CPD determined that the man who had identified himself as Arthur Kelly was actually Mr. Clegg. See id. at 35–36. CPD subsequently identified Mr. Clegg as a suspect in connection with the two fatalities. See id. at 78.

On October 3, 2022, CPD learned that an individual identifying himself as Arthur Kelly had purchased a bus ticket to Burlington, Vermont ("Burlington"). See id. at 86. While CPD suspected that this individual was actually Mr. Clegg, CPD's initial efforts to investigate this potential lead ultimately proved fruitless. On October 11, 2022, CPD learned that Mr. Clegg had booked a flight to Berlin, Germany that was scheduled to leave New York at 12:30 a.m. on October 14, 2022. See id. at 48. Shortly before 5:00 p.m. on October 11, 2022, CPD received information concerning the telephone number

and mailing address associated with that flight reservation. See id. at 54–55. Specifically, Mr. Clegg's mailing address was listed on the reservation as 11 Elmwood Avenue in Burlington. Id. at 55. A subsequent investigation indicated that the telephone number listed on the reservation was associated with an individual located in Vermont. See id. at 56.

Based on the "Arthur Kelly" bus ticket to Vermont and the address and telephone information listed on Mr. Clegg's flight reservation, CPD suspected Mr. Clegg was or had recently been in Burlington. See id. at 57. After looking at a map of Burlington, CPD identified an area similar to the location of Mr. Clegg's Concord campsite. See id. Believing there was a narrow window of time to locate and apprehend Mr. Clegg before he left the country, CPD obtained warrantless exigency "pings" from Verizon for the phone number listed on Mr. Clegg's flight reservation. See id. at 58–59.

During his 2023 hearing testimony, CPD Lieutenant Marc McGonagle explained that he instructed Detective Steven Carter to submit the exigency request to Verizon for this information. See id. at 62. Lieutenant McGonagle also described his experience in submitting warrantless exigency requests to Verizon as well as his experience in obtaining warrants for information held by Verizon. See id. at 67. In brief, Lieutenant McGonagle indicated that CPD is generally able to secure time-sensitive warrants within a few hours. See id. at 68–69. According to Lieutenant McGonagle's training, once CPD receives a warrant that has been approved by a judge, CPD faxes the warrant to Verizon's search warrant team. See id. at 69. As Lieutenant McGonagle understands

it, Verizon's law enforcement response manual expresses a goal for Verizon's search warrant team to respond to warrants within 14 days. See id. at 70.

Lieutenant McGonagle testified that because he did not believe the Verizon search warrant team could respond to CPD's request for information before Mr. Clegg was scheduled to leave the country, he instructed Detective Carter to submit a warrantless exigency request. See id. at 72 (indicating Lieutenant McGonagle reviewed the Attorney General's manual to help him decide whether it would be appropriate to submit warrantless exigency requests in this case)[1]; see also id. at 141–42 (discussing Lieutenant McGonagle's belief that because Verizon has separate options for warrant requests and exigent requests, this implies "that exigency is exigency, and warrants . . . be served on a separate line"). Lieutenant McGonagle estimated that Detective Carter submitted the exigency request by 5:15 p.m. on the 11th. See id. at 73 (indicating the request was submitted "after 4:41" and "within 30 minutes").

Shortly after submitting the exigency request, CPD began to receive sporadic "pings" indicating the relevant phone was turned on and actively pinging in the area of Centennial Woods in Burlington. See id. at 73–74. After receiving this information Lieutenant McGonagle conferred with Deputy William Tufts of the United States Marshals Service about using their cell site simulator to pinpoint the location of the phone. See id. at 74–75. The cell site simulator was located in Boston, Massachusetts on October 11, 2022. Id. at 133–34. This device only works if it is geographically close

[1] The record reflects that in December 2022 Verizon took approximately three weeks to respond to a warrant seeking the same information CPD obtained via the exigency requests. See 2023 Supp. Tr. 85.

to the desired phone. See id. at 134. Lieutenant McGonagle was aware on October 11, 2022, that the State of New Hampshire requires a warrant to obtain the usage of a cell site simulator. Id. Lieutenant McGonagle thus tasked Detective Brendan Ryder with drafting a warrant application for using the cell site simulator. See id. at 76; id. at 147. Detective Ryder began drafting that application around 6:30 p.m. on the 11th, and a judge approved it shortly before midnight that same evening, see id. at 76,[2] within one hour of receiving the warrant application. See id. at 150; id. at 533.

Meanwhile, approximately two hours after Detective Carter submitted the first exigency request to Verizon, he submitted a second such request.[3] See id. at 79; id. at 154 (indicating Verizon received the first exigency request at approximately 5:18 p.m. and the second at approximately 7:07 p.m.). The second exigency request sought information concerning the other phone numbers that had exchanged SMS or text messages with Mr. Clegg's phone. See id. at 79.

By 8:30 p.m. on October 11, 2022, Officers Lemoine and Doyon had left the CPD station and headed to Burlington. Id. at 151; see also id. at 155 (indicating Lieutenant McGonagle sent officers to Burlington approximately 3 to 3.5 hours after CPD received the first "ping" response form Verizon). They arrived in Burlington by 11:00 p.m. See id. at 152. After checking into a hotel to get a few hours of sleep, the officers continued

[2] Ultimately, CPD did not end up utilizing the cell site simulator. See 2023 Supp. Tr. 77. According to Detective Ryder, Deputy Tufts had indicated that the cell site simulator would most likely be available on the morning of October 12, 2022. Id. at 529. Deputy Tufts also assisted Detective Ryder in including the requisite language in his warrant request for the cell site simulator. Id. at 530–31.

[3] Early the next morning (October 12, 2022), Detective Carter submitted a third exigency request to Verizon. See 2023 Supp. Tr. 80. CPD apprehended Mr. Clegg before making any use of the information sought via the third exigency request. Id. at 166. After Mr. Clegg's arrest, however, CPD used the information provided in response to the third exigency request to locate his campsite. See id. at 501–03.

their investigation. Id. at 153; see also id. at 260 (explaining officers did not search for Mr. Clegg's campsite during the night for safety reasons).

In the early morning hours of October 12, 2022, CPD determined that one of the phone numbers Mr. Clegg had recently communicated with was associated with a Price Chopper grocery store in Burlington. See id. at 81 (indicating that TLO database searches of the phone numbers that had exchanged SMS data with Mr. Clegg's phone established a connection to the Burlington Price Chopper). Undercover officers travelled to the Price Chopper at approximately 9:30 a.m. on the 12th. Id. Upon arrival, the officers observed Mr. Clegg collecting his last paycheck and saying goodbye to Price Chopper employees. Id. The officers tracked Mr. Clegg to a nearby Walgreens, then to the South Burlington Public Library. Id. at 262. Mr. Clegg was arrested later that afternoon, at approximately 1:10 p.m. Id. at 265, 497. At the time of his arrest, Mr. Clegg had with him a backpack containing, among other things, a GLOCK 9 millimeter handgun fully loaded with SIG Luger 9 millimeter rounds, which were consistent with the bullets involved in the fatal shootings underlying this investigation. Id. at 82–83.

Lieutenant McGonagle explained during his 2023 hearing testimony that if Verizon had not provided CPD with location data through CPD's exigency requests, CPD "absolutely would have requested a search warrant, not just for location data, for subscriber info, historical data, all phone usage." Id. at 84. He further explained that CPD viewed the phone as "a key element in the investigation" because "phones contain lots of information." Id. Lieutenant McGonagle reiterated, "that phone number was our only means – tangible means, credible means to actually take action and track him." Id.

at 86. Lieutenant McGonagle also noted that CPD was confident the phone was connected to Mr. Clegg because it was listed on his flight reservation, and all of the other listed information had proven accurate. See id. at 84–85.

Detective Wade Brown, another CPD official involved in this investigation, was scheduled to begin a lengthy vacation on October 11, 2022. Id. at 126. As a result, he was not at the CPD station when CPD first learned about Mr. Clegg's scheduled flight to Germany. Id. at 126. During his May 2023 hearing testimony, Detective Brown explained that he changed his work schedule once CPD learned of this development so that he could assist with the investigation into Mr. Clegg's pre-flight whereabouts. See id. at 236; accord id. at 474–75 (explaining Detective Brown was supposed to begin a two-week vacation on October 11, 2022).

Detective Brown arrived at the CPD station around 5:30 p.m. on October 11, 2022. Id. at 476. In discussing CPD's decision to solicit information from Verizon via an exigency request, Detective Brown emphasized (among other things) that CPD felt a particular sense of urgency to act on this new information based on CPD's belief that Mr. Clegg had murdered two strangers for no apparent reason. See id. at 244. According to Detective Brown, this made Mr. Clegg uniquely dangerous, and CPD was concerned he might commit another similar crime before leaving the country. See id.

Detective Brown further explained that although CPD had considered getting a search warrant for this information, CPD understood "that search warrants sent to Verizon go through a different team" and "process, and [CPD] would not expect . . . to get results" via the warrant process prior to Mr. Clegg's international flight. Id. at 244–

45. Detective Brown subsequently indicated that FBI Special Agent Kevin Hoyland was the person who reminded CPD officers of the different processes used by Verizon for responding to information requests. Id. at 477. Detective Brown acknowledged on cross-examination that a PowerPoint presentation from the Verizon Law Enforcement Resource Team provided members of law enforcement with a contact number that could be used "24/7, 365[.]" Id. at 480, 483, 491. Detective Brown noted, however, that Verizon's exigency request form limits warrantless data requests to no "more than 48 hours[.]" Id. at 492.

Following Mr. Clegg's arrest, officers began looking for his campsite. See id. at 497. After walking some trails in Centennial Woods on the morning of October 13, 2022, Detective Brown formed the belief that "[i]t was unlikely that [CPD] w[as] going to find [the campsite] without significant resources or time." Id. at 499–500. Ultimately, Special Agent Detective Hoyland used the information obtained from CPD's three exigency requests to Verizon to identify a target area for Mr. Clegg's campsite. See id. at 501–03. This information led CPD "quickly to where the site was[.]" Id. at 503.

During his May 2023 hearing testimony, Detective Ryder acknowledged that on the morning of October 12, 2022, he received an email from Deputy Tufts suggesting CPD should obtain "a secondary warrant for Verizon." Id. at 536; see also State's 2026 Ex. A2 (emails). In response, Detective Ryder expressed surprise that CPD "needed a secondary warrant" since CPD had obtained information from Verizon the prior evening. 2023 Supp. Tr. 536. During a follow-up phone conversation, Deputy Tufts indicated it

was his office's practice to serve a warrant on Verizon at the same time the office takes in a cell site simulator warrant. Id.

Near the end of the May 2023 suppression hearing, Mr. Clegg called Denise Riley, an investigator with the New Hampshire Public Defender, to the witness stand. See id. at 537–38. Ms. Riley explained that she had contacted Verizon to confirm whether a police department that has a warrant can use the exigent circumstance hotline. Id. at 539. Ms. Riley noted that when she called the hotline to ask this question, she initially spoke to a woman who "kept putting" Ms. Riley on hold "to go ask somebody else answers to [Ms. Riley's] questions." Id. Ms. Riley subsequently spoke to a gentleman named Cecil who advised that police departments may use the exigent circumstance hotline even if they have a warrant. Id. at 539–40. According to Ms. Riley, Cecil indicated that if a department had a warrant, the exigent circumstance hotline team would turn around the request "as soon as they process the warrant, which they do as soon as possible." Id. at 540. In fact, Cecil reportedly "said, basically everything was as soon as possible." Id.

III. Procedural Background and Further Factual Background

Following the May 2023 suppression hearing, the Court issued an Order denying Mr. Clegg's motion to suppress all evidence obtained as a result of the information produced by Verizon in response to CPD's warrantless exigency requests. See Doc. 99 (June 6, 2023 Order). In that Order, the Court noted that the exigent circumstances exception to the warrant requirement "has two elements: probable cause and exigent circumstances." Id. at 13 (quotations and citation omitted). In assessing whether the

State had established both elements, the Court first found that "probable cause existed to believe that Mr. Clegg's location would be found from a search of cell phone location data of the phone number listed in association with Mr. Clegg's flight booking and that the data would aid in his apprehension." Id. at 14 (noting that the listed number was a working number belonging to a phone owned by Mr. Clegg).

The Court also found that the State had carried its burden with respect to the exigent circumstances element, explaining, "CPD learned that Mr. Clegg booked a flight from JFK to Berlin, Germany set to depart on October 14, 2022 at 12:30 am. This evidence suggests Mr. Clegg was attempting to flee the country to avoid arrest." Id. at 15–16 (characterizing the State's showing of "probable cause to believe Mr. Clegg had committed the offense of murdering the Reids" as "a significant factor to consider in determining whether exigent circumstances exist"). The Court further concluded:

> CPD officers acted reasonably leading up to the exigency requests made to Verizon. CPD made every effort to locate Mr. Clegg for several weeks until they received a phone number connected to him. While police could have applied for a warrant prior to making the exigency request, officers were under the impression that a request to Verizon made with a warrant could take days or weeks to process before cell phone location data would be produced. While defense counsel argues that this may have been a mistaken impression, as officers could have obtained a warrant then made the same exigency requests that they ultimately made, it was reasonable for the officers to rely on their personal experience in determining how long it would take to receive location data from Verizon[.]

Id. at 16–17.

Following Mr. Clegg's conviction and appeal, the New Hampshire Supreme Court reversed this Court's ruling concerning the presence of exigent circumstances. See Clegg, 2026 N.H. 11. In particular, the Clegg court determined that although CPD

reasonably believed Verizon's ordinary search warrant process would take too long, there was no "objective basis in the record for the CPD's apparent belief that using the exigency hotline and obtaining a search warrant were mutually exclusive[.]" Id. ¶¶ 21–22. Accordingly, the Clegg court concluded that this Court "erred when it determined that CPD's impression about Verizon's [exigency] policy was reasonable." Id. ¶ 22. The Clegg court further noted the following:

> [T]he record reflects, as the trial court found, that the delay caused by obtaining a search warrant alone would have been "a few hours." Indeed, in less than six hours, an officer drafted an application for a warrant to search for the phone using cell site simulator technology, submitted the warrant application, and received a decision from a court granting the warrant after business hours. The record also demonstrates that Verizon responded to CPD's request for ping data via the exigency hotline in less than thirty minutes.

Id. ¶ 24.

After vacating this Court's "denial of the motion to suppress" on exigency grounds, the Clegg court "remand[ed] this case . . . for the limited purpose of deciding whether [Mr. Clegg's] motion to suppress should have been denied on the basis of the inevitable discovery doctrine." Id. ¶ 33. The Clegg court instructed this Court to "hold any further proceedings [this Court] deems necessary to resolve this issue and report [this Court's] findings and rulings" by June 15, 2026. Id.

On remand, Mr. Clegg objected to a further evidentiary hearing concerning inevitable discovery, but the Court overruled that objection. See Doc. 322 (Mar. 30, 2026 margin Order). After the State filed a summary of the evidence it expected to present at the 2026 hearing, see Doc. 331, Mr. Clegg moved to cancel the hearing on the basis that the State's evidence was "not new or different from the evidence already

presented at the three-day evidentiary hearing" in 2023. See Doc. 332 ¶ 15 (arguing, for example, that the anticipated testimony of Verizon representative Jennie Tomalin was duplicative of that provided by Ms. Riley during the 2023 hearing). The Court denied Mr. Clegg's motion to cancel the hearing, noting that his "objection to the process . . . is fully preserved for appellate review" and that Mr. Clegg could "raise any further objections to the scope or relevance of any further evidence or testimony at that hearing." Id. at 1 (Apr. 15, 2026 margin Order).

During the April 21, 2026 evidentiary hearing, the State presented testimony from now retired Lieutenant McGonagle, Detective Ryder, now Sergeant Brown, and Verizon representative Tomalin. See Doc. 337 (Exhibit and Witness List). During his testimony, Lieutenant McGonagle reaffirmed 2023 hearing testimony concerning the importance of Mr. Clegg's cell phone to CPD's investigation and the steps CPD would have taken to obtain the relevant cell phone data if it had not pursued the warrantless exigency requests. See, e.g., 2023 Supp. Tr. 84–85. In particular, Lieutenant McGonagle confirmed that CPD would have applied for a warrant seeking real time data, historical data, and subscriber information for Mr. Clegg's phone. Accord id. (Lieutenant McGonagle explaining CPD "absolutely would have requested a search warrant, not just for location data, for subscriber info, historical data, all phone usage"). Lieutenant McGonagle further explained that if CPD had not obtained the necessary data through warrantless exigency requests, CPD would have obtained a warrant and then contacted Verizon via the exigent circumstances hotline (which is staffed around the clock) to

explain the urgency of the request. See id. at 480, 483, 491 (indicating that as of 2022 Detective Brown knew a contact number for Verizon that could be used "24/7, 365").

During his 2026 hearing testimony, Detective Ryder referenced a timeline of events that he prepared concerning this investigation. See State's 2026 Ex. A1 (also referenced during 2023 hearing). That timeline confirms that Detective Ryder was asked to complete a warrant application for the cell site simulator some time after 4:00 p.m. on October 11, 2022. See id. The timeline also confirms that Detective Ryder prepared the warrant application (which included communications with Deputy Tufts), submitted it to the portal, and received approval from Judge Leonard by 11:30 p.m. that same day (i.e., less than 8 hours after he was asked to prepare the warrant application). See id.; see also State's 2026 Ex. A3 (warrant signed by Judge Leonard).

For his part, Sergeant Brown testified during the 2026 hearing that he communicated the first exigency request to Verizon via the exigency hotline at 5:03 p.m., at which time Verizon orally conveyed information about the first "ping" to Mr. Clegg's phone. Sergeant Brown followed up his phone call with a written request using the exigency form. Sergeant Brown recalled that the second exigency request may have been communicated exclusively in writing, but he noted that he communicated the third exigency request in a manner similar to the first such request: i.e., via the exigency hotline, with a written request to follow. Like Lieutenant McGonagle's 2026 hearing testimony, Sergeant Brown's 2026 hearing testimony confirmed Lieutenant McGonagle's 2023 testimony to the effect that if CPD had not obtained information from Verizon without a warrant, CPD would have prepared a warrant application seeking all

of the information CPD actually obtained via the exigency requests. Sergeant Brown's 2026 hearing testimony also mirrored that of Lieutenant McGonagle insofar as Sergeant Brown also indicated that if CPD had been unable to obtain the necessary information via an exigency request, CPD would have immediately obtained a warrant for the information, submitted the warrant to Verizon upon approval, then contacted Verizon via all available means (including the 24/7 phone number) to request that Verizon expedite its processing. In support of these claims, Sergeant Brown reiterated his own 2023 testimony concerning the importance of the phone data to CPD's investigation, and the urgency CPD felt at the time.

For her part, Ms. Tomalin confirmed during her 2026 hearing testimony that as of 2022, members of law enforcement could serve warrants through an online portal or via fax, then call Verizon if the request at issue needed to be expedited. She further indicated that Verizon is generally able to respond to expedited requests within a few minutes to a few hours. Although Ms. Tomalin's testimony conclusively refuted CPD's 2022 belief that it could not utilize the exigent circumstances hotline process if it had a warrant, she did not suggest that CPD had used the hotline to expedite the processing of warrants prior to October 2022, or that she otherwise had reason to believe CPD knew it could use the exigent circumstance hotline with a warrant as of October 2022.

IV. Analysis

The New Hampshire Supreme Court remanded this matter so that this Court could "decid[e] whether [Mr. Clegg's] motion to suppress should have been denied on the basis of the inevitable discovery doctrine." Clegg, 2021 N.H. 11, ¶ 33. Before

reaching the merits of that issue, the Court first addresses Mr. Clegg's procedural claim that this Court erroneously permitted the State to further develop the factual record on remand. See Doc. 322.

A. Issues Concerning the Post-Remand Proceedings

The remand Order authorized the Court to "hold any further proceedings it deems necessary to resolve" the issue of inevitable discovery. 2026 N.H. 11, ¶ 33. In Broadus, the New Hampshire Supreme Court also remanded for further legal rulings and factual findings concerning the application of the inevitable discovery doctrine. See 167 N.H. at 314–15. Importantly, the Broadus court noted that the parties had "not develop[ed] a sufficient factual record regarding the likelihood of the defendant's arrest," which was a key issue in the State's inevitable discovery argument. See id. As the State bears the burden of proving that the inevitable discovery doctrine applies, see id. at 314, the Broadus court could have ruled based on the insufficiently developed factual record that the State had not carried its burden. Instead, the Broadus court remanded the case so the trial court could "decide . . . in the first instance" whether the inevitable discovery doctrine applied, and "to do so upon further proceedings consistent with" the Broadus court's opinion. See id. at 314–15. In context, this suggests that the Broadus court expected the parties to further develop the factual record on remand. See id.

In this case, the appellate record contained transcripts of the 2023 3-day evidentiary hearing. Like the Broadus court, the Clegg court did not issue a ruling on the application of the inevitable discovery doctrine based on the appellate record but instead remanded the matter to this Court for "further proceedings." Given this

background, the Court continues to find no impropriety in affording the State a narrow opportunity to supplement the record so the Court could make the factual findings necessary to resolving the State's invocation of inevitable discovery. Accordingly, Mr. Clegg's objection to the introduction of new evidence remains **OVERRULED**. See Doc. 322 at 1 (margin Order).

B. Prevailing Inevitable Discovery Standards

The Court now turns to the merits of the parties' inevitable discovery arguments. Although the Clegg court remanded this matter for the express "purpose of deciding whether [Mr. Clegg's] motion to suppress should have been denied on the basis of the inevitable discovery doctrine[,]" 2026 N.H. 11, ¶ 33, the New Hampshire Supreme Court has not yet articulated a definitive standard for this doctrine. See State v. Davis, 174 N.H. 596, 607 (2021). During the 2023 suppression proceedings, the State argued it had made a sufficient showing under each of the three federal standards cited in Broadus. See Doc. 75 ¶¶ 86–87; see also Broadus, 167 N.H. at 314 (citing cases from and describing the standards applied by the First, Second, and Fifth Circuit Courts of Appeal). To illustrate this point, the State asserted argument as to the most demanding federal standard: that applied by the First Circuit. See Doc. 75 ¶¶ 87–95 (citing Almeida, 434 F.3d at 28–29, for the proposition that "for the inevitable discovery doctrine to apply, the government must demonstrate that the legal means by which the evidence would have been discovered was truly independent, that there was a high degree of probability that the evidence would have been discovered by such means,

and that applying the inevitable discovery rule would not provide an incentive for police misconduct or significantly weaken constitutional protections" (quotations omitted)).

Shortly before the 2023 suppression proceedings in this matter, Judge Delker considered the application of the inevitable discovery doctrine in the case of State v. Pereira, No. 216-2021-CR-01916. See Doc. 331 Ex. A8 (Jan. 12, 2023 Pereira Order). Similar to this case, Pereira involved a circumstance in which members of law enforcement submitted warrantless exigency requests for cell phone location data. See id. at 4–5 (indicating that the investigation in Pereira concerned a missing person rather than, as in this case, a murder suspect about to flee the country). In explaining their rationale for not requesting a search warrant for this information, members of the Lawrence Police Department explained "that typically, cell phone providers can take upwards of two weeks to respond to warrants." Id. at 5. After Mr. Pereira moved to suppress the evidence obtained via this process, the State argued both exigent circumstances and the application of the inevitable discovery or independent source doctrines. See id. at 16.

Ultimately, Judge Delker found the evidence "admissible under the inevitable discovery doctrine," and thus did not address the State's alternative arguments. See id. (citing Canty v. Hopkins, 146 N.H. 151, 156 (2001) for the proposition that a court need not consider alternative arguments where one or more others prove dispositive). In reaching this conclusion, Judge Delker applied a Massachusetts inevitable discovery standard that is "more stringent" than the prevailing federal standards, "without

determining definitively if this is the appropriate test under the New Hampshire Constitution." See id. at 18. Judge Delker described that standard as follows:

> "Under the inevitable discovery doctrine, if the [State] can demonstrate by a preponderance standard that discovery of the evidence by lawful means was certain as a practical matter, the evidence may be admissible as long as the officers did not act in bad faith to accelerate the discovery of evidence, and the particular constitutional violation is not so severe as to require suppression." Sbordone, 678 N.E.2d [at] 1190. "It would not be enough to say that the 'inevitability' of discovery is established by proof that, more probably than not, the evidence would ultimately have been found by lawful means. Such a standard dilutes the meaning of the word 'inevitable.'" Commonwealth v. O'Connor, 546 N.E.2d 336, 340 (Mass. 1989).
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> "The element of good faith on the part of the police is inherent in the inevitable discovery exception." Holler, 123 N.H. [at] 201. Good faith of the police in this context is not the same as the good faith exception to the warrant requirement. See State v. Canelo, 139 N.H. 376, 387 (1995). Rather, the good faith inquiry for inevitable discovery ensures that the constitutional violation was not so flagrant as to require suppression of the evidence and to ensure the police do not rely on this exception to circumvent the warrant requirement in the future. See Sbordone, 678 N.E.2d at 1190; Holler, 123 N.H. at 201.
>
> The State must show that with a near level of certainty the police both could have and would have obtained the [evidence] legally . . . to meet the first prong of the inevitable discovery test. This demanding standard requires the Court to make factual findings on how likely it would have been that the police would have made a lawful discovery of the tainted evidence. See Broadus, 167 N.H. [at] 314–15[.] Thus, it is not enough for the State to simply show that [the police] could have obtained [the evidence lawfully], it must also show that it is practically certain the police would have done so. Sbordone, 678 N.E.2d at 1190.

Id. at 18–19 (citations truncated). For the reasons set forth below, the Court will apply the Massachusetts standard, as interpreted and applied by Judge Delker in Pereira, without conclusively determining that this is the correct legal standard as a matter of New Hampshire law.

C. The Merits

In its post-remand memorandum, the State argues that it has made a sufficient showing under the standard applied in Pereira. See Doc. 331 ¶¶ 26–66. Specifically, the State argues that "had the warrantless exigency searches not taken place, [CPD] would have . . . obtained the same data for [Mr. Clegg's] cell phone via a search warrant." Id. ¶ 30. The State further argues that it is practically certain Verizon would have provided that data "in short order" such that CPD would "have been in the same position that they were after the warrantless search," id. ¶ 44, and thus "would have located [Mr. Clegg] at or around the same time[.]" Id. ¶ 45 (analogizing this scenario to Nix, 467 U.S. at 444); see also id. ¶ 50 (arguing that because CPD would have located Mr. Clegg at the same time, CPD would have found all resulting evidence in the same way). The State further argues that CPD did not act in bad faith. See id. ¶¶ 54–58.

In response to the State's post-remand memorandum, Mr. Clegg contends that the State has "waived or forfeited" the theory set forth in the State's post-remand memorandum and that the remand Order does not authorize the Court to address this newly-raised theory. See Doc. 334 ¶ 13. Mr. Clegg further argues that the State's argument improperly amounts to, "if we hadn't done it wrong, we would have done it right[.]" Id. In addition, Mr. Clegg contends that the State has not made the requisite showing "under the Massachusetts approach the parties agree this Court should adopt" because, among other things, CPD "did not act in good faith." Id.

i. Waiver

The Court first addresses Mr. Clegg's waiver argument. In brief, Mr. Clegg contends that prior to remand the State never argued that any derivative evidence would have been inevitably discovered, only that Mr. Clegg's cell phone information would have been inevitably discovered. See id. ¶ 18. In the Court's view, however, this characterization interprets the State's arguments too narrowly. The State did not file a limited or partial objection, but rather argued that Mr. Clegg's motion to suppress should be denied "in its entirety[.]" Doc. 75 at 40. Moreover, the State expressly argued that CPD "clearly had probable cause to support a warrant for [Mr. Clegg]'s CSLI and other cell phone records" "[b]ased on what [CPD] knew on October 11, 2022[.]" Id. ¶ 90. Given this line of argument during the 2023 proceedings, the Court is not persuaded by Mr. Clegg's claim that the State failed to raise this issue prior to trial. Accord 2023 Supp. Tr. 569 (reflecting defense counsel's argument during the 2023 suppression hearing that the way the State described inevitable discovery "in their motion . . . is essentially asking for a do-over. They say that, if they hadn't used the exigency hotline, they would have just gotten the warrant. They didn't. They don't get a do-over"). Relatedly, because the Court concludes that the State did not waive this theory during the pre-trial suppression proceedings, the Court disagrees with Mr. Clegg's assertion that the theory falls outside the scope of the remand mandate. See Doc. 334 ¶¶ 23–26.

Mr. Clegg also contends that the State waived this theory at oral argument. See id. ¶ 19. The Court is also unpersuaded by this contention. In discussing the possibility of a remand at oral argument, Mr. Clegg's counsel noted that "[n]either of the parties

addressed [inevitable discovery] in their briefs" and thus counsel opined that "[i]t would be appropriate for the trial court to address that question in the first instance." See Doc. 338 (Oral Arg. Tr.) at 8–9. Mr. Clegg cites no caselaw in support of the proposition that a comment at oral argument about an issue neither party briefed should foreclose the State from asserting a particular legal theory on remand. Having reviewed the oral argument transcript, the Court does not find it fair or appropriate to limit the State's arguments on this basis.

ii. Scope of the Inevitable Discovery Doctrine in Light of the Good Faith Requirement

Mr. Clegg next argues that as a matter of Massachusetts law, the inevitable discovery doctrine "does not 'justify the 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.'" Doc. 334 ¶ 39 (citing O'Connor, 546 N.E.2d 336). By contrast, the State takes the position that this rule applies only where "the police did not make any efforts to obtain a warrant[.]" Doc. 331 ¶ 35 (citing Benoit, 415 N.E.2d at 823).

Judge Delker addressed this very issue in Pereira:

> Benoit held that the inevitable discovery doctrine could not cure a warrantless seizure. However, the facts of that case do not indicate that the police ever applied for a warrant or otherwise made any effort to actually obtain one like the police did here[.] Additionally, other courts have applied the inevitable discovery doctrine to cellphone location records initially discovered in a warrantless search. See, e.g., State v. Stewart, 867 S.E.2d 33, 37 (S.C. Ct. App. 2021) (applying inevitable discovery to the State's warrantless search of [cell site location information] because the police would have obtained the information through a valid warrant).

Doc. 331 Ex. A8 at 21–22 (citations partially omitted). Ultimately, Judge Delker concluded that in the absence of bad faith and given the other facts and circumstances present in Pereira, the inevitable discovery doctrine applied to the cell phone records the police obtained via an exigency request because the police could and would have obtained a search warrant for those records had they not erred in their "good faith belief that the urgency of [the situation] excused the need for a search warrant." Id. at 24.

Upon review, the Court agrees with Judge Delker and those other courts which hold that the inevitable discovery doctrine can apply to circumstances where members of law enforcement acting in good faith conduct a warrantless search of cell phone data that they could and would have obtained via a warrant but for their good faith legal error.[4] As Mr. Clegg points out, such an application can fairly be characterized as "if we had not done it the wrong way, we would have done it the right way." In the Court's view, however, the good faith showing required by the State prevents such an application from allowing the exception to swallow the rule. See Garnett v. State, 308 A.3d 625, 646–48 (Del. 2023) ("We share the concern of the exception's critics . . . that applying the exception incautiously could encourage law enforcement to intentionally

[4] Judge Delker's conclusion regarding the scope of the doctrine aligns with that articulated by the Fourth Circuit in United States v. Allen, 159 F.3d 832, 841 (4th Cir. 1998):

> The doctrine may even apply where the subsequent search that inevitably would have uncovered the disputed evidence required a warrant and the police had probable cause to obtain this warrant prior to the unlawful search but failed to do so, *if* the government produces evidence that the police would have obtained the necessary warrant absent the illegal search. Such evidence might include proof that, based on independent evidence available at the time of the illegal search, the police obtained and executed a valid warrant subsequent to that unlawful search, see, e.g., United States v. Whitehorn, 813 F.2d 646, 648–50 (4th Cir. 1987); or took steps to obtain a warrant prior to the unlawful search, see e.g. United States v. Ford, 22 F.3d 374, 377–79 (1st Cir. 1994); United States v. Lamas, 930 F.2d 1099, 1103 (5th Cir. 1991).

bypass the warrant requirement. Therefore, our holding that the inevitable-discovery exception is compatible with Article I, § 6 assumes that it will be applied only when it is clear that the police have not acted in bad faith to accelerate the discovery of the evidence in question." (citation and quotations omitted)).

The good faith requirement precludes the government from invoking inevitable discovery where officers act in a deliberate, conscious manner to forego the warrant process simply out of a desire to expedite their investigation, and thus lack a good faith belief that the exigency (or other similar) exception to the warrant requirement applies. See Pereira, Doc. 331 Ex. A8 at 19 (citing Sbordone, 678 N.E.2d at 1190, and Holler, 123 N.H. at 201, for the proposition that "the good faith inquiry for inevitable discovery ensures that the constitutional violation was not so flagrant as to require suppression of the evidence and to ensure the police do not rely on this exception to circumvent the warrant requirement in the future"). In other words, the good faith requirement ensures that the inevitable discovery doctrine does not apply to circumstances in which unlawful police misconduct constitutes a calculated means of evading the warrant requirement. In this regard, the requirement is perhaps more accurately characterized as a requirement that law enforcement did not act in bad faith. See Garnett, 308 A.3d at 647–48 (holding that the inevitable-discovery exception "will be applied only when it is clear that the police have not acted in bad faith to accelerate the discovery of the evidence in question" (citation and quotations omitted)).

iii. The State Has Met Its Burden Regarding Good Faith

In this case, there is compelling evidence supporting a finding that every CPD officer involved in the exigency process had a good faith belief that obtaining a warrant would prevent CPD from receiving Mr. Clegg's cell phone data from Verizon prior to his international flight. Each officer who testified about this issue confirmed his mistaken but genuine belief that obtaining a warrant would have required CPD to use Verizon's traditional warrant process rather than the exigency hotline. This understanding was seemingly shared by FBI special agent Hoyland, who reminded Detective Brown about Verizon's different processes for responding to information requests.[5] The fact that the Verizon employee who first responded to Ms. Riley's questions repeatedly needed to place Ms. Riley on hold and ask someone else about this issue also supports a finding of good faith: a Verizon employee's confusion on this very issue undermines any suggestion of culpability concerning CPD's confusion.

Moreover, the Court assigns significance to the fact that Lieutenant McGonagle thought about whether to apply for a warrant and completed some research into that issue before CPD pursued the warrantless exigency requests. This demonstrates that CPD was not attempting to run roughshod over Mr. Clegg's constitutional rights, but rather that CPD was following the process the CPD officers genuinely believed to be

[5] The Court also notes that the Lawrence Massachusetts officers who testified in Pereira apparently shared CPD's confusion as to whether obtaining a warrant would delay receipt of information from a cell phone carrier. See Doc. 331 Ex. A8 at 5. Moreover, although the New Hampshire Supreme Court ultimately determined that this Court's exigency ruling was improper because the State failed to establish an objective basis for CPD's belief concerning Verizon's processes, see Clegg, 2026 N.H. 11, ¶¶ 21–22, this Court's original finding concerning the urgency of CPD's investigation demonstrates that reasonable minds can disagree on these issues.

necessary and thus constitutionally permissible under the circumstances. Although the New Hampshire Supreme Court has concluded that the CPD officers were mistaken in that belief, this conclusion does not compel a finding of bad faith.

Lieutenant McGonagle's consideration of obtaining a warrant prior to submitting the first exigency request is also significant because it demonstrates that the CPD officers correctly believed they had sufficient probable cause to obtain a warrant at that time. In the Court's view, this undermines any claim that the officers were ignoring Mr. Clegg's constitutional rights in an improper effort to expedite their investigation. Indeed, the record reflects that the officers knew they could obtain a warrant relatively quickly, and that the basis for their decision not to obtain a warrant was a concern about Verizon's internal processes rather than any concern that they could not obtain a warrant (quickly, or at all) for Mr. Clegg's cell phone data.

The Court also assigns significance to the fact that CPD applied for and obtained a search warrant for use of the cell site simulator prior to midnight on October 11, 2022. During the April 2026 hearing, Mr. Clegg's counsel urged the Court to view this fact as evidence of bad faith: i.e., that CPD only obtained a warrant when it believed it absolutely had to. The Court interprets this fact differently, however. In the Court's view, this demonstrates (among other things) that CPD was not attempting to perform an end-run on Mr. Clegg's constitutional rights, but rather approaching each aspect of this investigation in the manner CPD believed to be necessary.

For the reasons set forth above, the Court finds that the State has more than carried its burden of proof in connection with the requirement of good faith. Accordingly,

the Court concludes that this case fits within the narrow line of cases in which the inevitable discovery doctrine may properly apply "where the subsequent search that inevitably would have uncovered the disputed evidence required a warrant and the police had probable cause to obtain this warrant prior to the unlawful search but failed to do so[.]" See Allen, 159 F.3d at 841; see also Pereira, Doc. 331 Ex. A8 at 24.

iv. Standards For Inevitability

As noted, the Massachusetts standard requires the State to "show that it is practically certain the police would have" and could have obtained the evidence lawfully. See Sbordone, 678 N.E.2d at 1190; see also Pereira, Doc. 331 Ex. A8 at 19. In applying this standard, the Court recognizes that there is a split of authority as to whether law enforcement must have begun the means by which they inevitably would have discovered the evidence at issue prior to the illegality that actually led to that discovery. See State v. Campbell, 587 P.3d 211, 223–25 (Idaho 2026). As the Supreme Court of Idaho explained:

> The United States Supreme Court first recognized the inevitable discovery doctrine in Nix. There, detectives elicited incriminating statements from the defendant about the location of a missing girl's body in violation of his Sixth Amendment right to counsel. The Supreme Court held that because a search party was closing in on the location of the body before being called off, the location would have been discovered without the police misconduct . . . .
>
> After Nix, the Supreme Court once again examined the inevitable discovery doctrine in Murray v. United States, 487 U.S. 533 (1988). There, the Supreme Court clarified the reasoning behind the inevitable discovery doctrine: "Since the tainted evidence would be admissible if in fact discovered through an independent source, it should be admissible if it inevitably would have been discovered." Id. at 539 (emphasis omitted). The dissent succinctly summarized the premise of the doctrine, noting that, under certain circumstances, the deterrence rationale behind the

> exclusionary rule does not "justify the social cost of excluding probative evidence from a criminal trial." Id. at 544–45 (Marshall, J., dissenting) . . . .
>
> Some circuits have interpreted Nix narrowly and only apply the inevitable discovery doctrine if there are other lawful investigatory paths already underway. Under this interpretation, the state must prove that it was lawfully pursuing a separate or parallel investigation, in addition to the tainted investigation, that would have inevitably led to the evidence. These circuits impose two requirements for the inevitable discovery doctrine to apply: (1) there is a reasonable probability that the contested evidence would have been discovered by lawful means in the absence of police misconduct and (2) the Government was actively pursuing a substantial alternate line of investigation at the time of the constitutional violation. . . .
>
> In contrast, many circuit courts have interpreted Nix more broadly and rejected the requirement of a preexisting alternative path. These circuits have held that the analysis should focus on the questions of independence and inevitability, and remain flexible enough to handle the many different fact patterns which will be presented. . . .
>
> Most circuits, including the Ninth Circuit, appear to have followed this "middle ground" approach, holding that a separate, untainted investigation is not a per se requirement, provided the State can prove that the evidence would have been inevitability [sic] discovered by establishing historical facts independent of the illegal search. . . . Thus, in these circuits, there are two instances in which the inevitable discovery doctrine applies: when the government can demonstrate either the existence of an independent, untainted investigation . . . or other compelling facts establishing that the disputed evidence inevitably would have been discovered.

Id. (citations, quotations, and alterations partially omitted) (citing United States v. D'Andrea, 648 F.3d 1, 12 (1st Cir. 2011) for the proposition that there is "no independent line of investigation" requirement in the First Circuit); see also id. at 226 (collecting cases) ("In addition to the federal circuit courts, it is also worth noting that many state supreme courts have also rejected a strict requirement for a separate, independent investigation.").

In the Court's view, the requirement of an ongoing, independent investigation reflects a natural desire to establish a brightline, predictable rule. See State v. Jackson, 882 N.W.2d 422, 439 (Wis. 2016) ("Other jurisdictions apply alternative, fact-intensive versions of the inevitable discovery exception that do not require proof of active pursuit in all cases."). The problem, however, is that "some cases demonstrate inevitability in such a compelling way 'that the exclusionary rule is a mechanical and entirely unrealistic bar, preventing the trier of fact from learning what would have come to light in any case.'" Campbell, 587 P.3d at 225 (quoting United States v. Boatwright, 822 F.2d 862, 864 (9th Cir. 1987)). Adopting a strict independent investigation requirement that precludes the application of the inevitable discovery doctrine in these circumstances would not "put[] the police in the same . . . position that they would have been in if no police error or misconduct had occurred" but would instead put police in a "worse" position, thereby creating an improper balance between "the interest of society in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime[.]" Robinson, 170 N.H. at 57 (quoting Nix, 467 U.S. at 443). Accordingly, like the Supreme Court of Idaho, this Court concludes that the middle ground approach of considering but not strictly requiring an independent investigation as evidence of inevitability correctly balances the relevant interests. See Campbell, 587 P.3d at 225 (noting that while the facts in "Nix involved a separate investigation already underway, the Supreme Court majority did not suggest that it is a strict requirement" (citation omitted)). "This approach stays true to the rationale behind the Nix and Murray decisions, while recognizing that flexibility is necessary to fulfill its

purpose in different circumstances." Id.; see Jackson, 882 N.W.2d at 438 (quoting 6 Wayne R. LaFave, Search and Seizure § 11.4(a), at 365–68, for the proposition that "[w]hile some courts have taken the position that the inevitable discovery doctrine applies *only* where the government was actively pursuing a substantial, alternative line of investigation at the time of the constitutional violation, such an absolute limitation is unsound, as it allows for the exclusion of evidence that inevitably would have been discovered" (citations and quotations omitted)).

Another important consideration in the inevitability analysis is the Nix court's requirement "that there be 'no speculative elements' and that inevitability be supported by 'historical facts capable of ready verification or impeachment[.]'" Id. at 225 (quoting Nix, 467 U.S. at 444 n.5). Mr. Clegg raised this issue during the 2026 evidentiary hearing, objecting to testimony about what CPD "would have" done if it had not mistakenly believed it needed to obtain Mr. Clegg's cell phone data without a warrant in order to locate Mr. Clegg before he left the country. As the Campbell court explained, however, "in conducting an inevitable discovery analysis, some conjecture . . . is unavoidable in determining what inevitably would have been discovered had the illegality not occurred." See id. at 228 (citations omitted). Accordingly, when determining whether the State has made the necessary showing, the Court must determine whether the level of conjecture underlying the State's theory of inevitability exceeds permissible bounds. See id.

v. The State Has Met Its Burden Regarding Inevitability

Applying the standards described above, the Court finds and rules that the State has carried its burden of demonstrating with historical facts capable of ready verification or impeachment that it is practically certain the police both could and would have obtained Mr. Clegg's cell phone data lawfully, and thereafter would have apprehended Mr. Clegg at or before the time of his actual arrest on October 12, 2022. As outlined above, the applicable standard considers what CPD would have done if it had not submitted warrantless exigency requests based on a mistaken but good faith belief that this was the necessary course of action. See Robinson, 170 N.H. at 57 (quoting Nix, 467 U.S. at 443, for the proposition that legal doctrines such as the inevitable discovery doctrine are aimed at "putting the police in the same, not a worse, position that they would have been in if no police error or misconduct had occurred").

Here, the evidence presented during the 2023 suppression hearing strongly supports an inference that CPD would have obtained a warrant for Mr. Clegg's cell phone data if CPD knew that it would still be able to obtain that data from Verizon in an expedient manner. The historical facts demonstrate that CPD investigated this matter exhaustively. CPD not only went to great lengths to identify Mr. Clegg shortly after the murders, but CPD also explored all possible avenues in an effort to determine whether the "Arthur Kelly" who purchased a bus ticket to Burlington was in fact Mr. Clegg. Unfortunately, the investigative trail ran dry until CPD learned of the address and telephone information associated with Mr. Clegg's international flight booking.

Armed with that information, CPD immediately began efforts to obtain Mr. Clegg's cell phone data. Indeed, although Detective Brown was scheduled to begin a 2-week vacation on October 11, 2022, he reported to the CPD station once he learned about this potential break in the case. This historical fact aligns with Detective Brown's 2023 hearing testimony describing the sense of urgency surrounding CPD's efforts to locate Mr. Clegg (based on his upcoming flight as well as his suspected murder of two individuals who had been apparent strangers to him). The historical facts surrounding the timing of CPD's warrantless exigency requests—the first of which was submitted by 5:15 p.m. on October 11, 2022—also align with Detective Brown's testimony concerning the perceived urgency of the situation.

In conjunction with CPD's warrantless exigency requests, CPD also applied for and obtained a warrant to use the Marshals Service's cell site simulator. CPD obtained the approved warrant within six hours of beginning the drafting process: shortly before midnight on October 11, 2022. This timeline further supports a finding that CPD treated this investigation with substantial urgency.

Moreover, Lieutenant McGonagle credibly testified during the 2023 suppression hearing that prior to pursuing the warrantless exigency requests he spent approximately 30 minutes considering whether CPD should obtain a warrant for Mr. Clegg's cell phone data. Although the New Hampshire Supreme Court has determined that Lieutenant McGonagle ultimately made the wrong call, the fact that he affirmatively considered obtaining a warrant at the beginning of this process demonstrates that had he not mistakenly believed obtaining a warrant would have precluded CPD from receiving

expedient responses from Verizon, CPD would have pursued a warrant rather than submitting the warrantless exigency requests.

The Court also credits Lieutenant McGonagle's testimony that CPD's warrant application would have included requests for a broad range of cell phone data including location data, subscriber information, historical data, and all phone usage. In other words, the Court finds that but for CPD's good faith mistake, it would have promptly applied for a warrant concerning all of the information CPD actually obtained via its warrantless exigency requests. Indeed, although CPD submitted its warrantless exigency requests in more of a piecemeal fashion, CPD's preparation of the cell site simulator warrant application reflects deliberation and care. For that reason, the Court finds that CPD would have requested all of the relevant cell phone data in its warrant application. Moreover, the Court previously found and continues to find that at the time CPD submitted its first exigency request to Verizon, CPD had probable cause to believe that Mr. Clegg had committed the murders, that he was about to leave the country, and that his location would be found via a search of cell phone location data of the phone number listed in association with his flight booking.

To the extent the CPD officers' 2023 hearing testimony left any doubt, their 2026 hearing testimony credibly and conclusively established that CPD would have applied for a warrant concerning all of Mr. Clegg's cell phone data if CPD had not mistakenly believed that this step would have prevented CPD from obtaining timely responses from Verizon. In the Court's view, the officers' 2026 hearing testimony does not amount to mere speculation but rather relied on many of the same historical facts identified above.

Given CPD's obvious dedication to this investigation, the Court has no doubt that CPD would have promptly applied for such a warrant but for its mistaken belief concerning Verizon's internal processes and the resulting delay in CPD's receipt of information.

The Court further finds that CPD would have obtained a warrant for all of the cell phone information CPD actually obtained via the warrantless exigency requests at some point prior to midnight on October 11, 2022. This finding is once again grounded in historical facts: CPD submitted its first exigency request prior to 5:30 p.m., and CPD drafted, submitted, and received approval of a warrant for using the cell site simulator all within a total of six hours. Thus, had CPD pursued a warrant rather than warrantless exigency requests, it would have obtained that warrant prior to midnight. Accord Clegg, 2026 N.H. 11, ¶ 24 ("Indeed, in less than six hours, an officer drafted an application for a warrant to search for the phone using cell site simulator technology, submitted the warrant application, and received a decision from a court granting the warrant after business hours. The record also demonstrates that Verizon responded to CPD's request for ping data via the exigency hotline in less than thirty minutes.").

The Court also finds that once CPD obtained a warrant for Mr. Clegg's cell phone data, it would have taken no more than a few hours for CPD to submit that warrant to Verizon and begin to receive Mr. Clegg's cell phone data from Verizon. This finding is also based on historical facts, including the speed with which CPD submitted the exigency requests and the testimony from Ms. Riley and Ms. Tomalin regarding Verizon's internal processes. Moreover, Detective Brown credibly testified in 2023 that he was aware of a number for Verizon that law enforcement could use "24/7, 365." In

addition, Lieutenant McGonagle credibly testified in 2026 that even if he did not believe that CPD could officially utilize Verizon's exigency hotline with a warrant, he would have contacted Verizon via that number (because he knew that it was staffed around the clock) to convey the urgency of the warrant request.

The historical facts further demonstrate that CPD sent Officers Lemoine and Doyon to Burlington within 3.5 hours of receiving the first ping response from Verizon, and that the officers arrived in Burlington within another 2.5 to 3 hours. Given Verizon's actual response time in connection with the CPD's exigency requests, the Court finds that it would have taken no more than thirty minutes to an hour for CPD to receive the first ping from Verizon after submitting a warrant for that information: i.e., by 1:00 a.m. on October 12, 2022. Accordingly, even if CPD waited the same amount of time to send officers to Burlington after receiving those pings, the officers would have arrived in Burlington by 7:30 a.m. on October 12, 2022.

The historical facts also establish that when Detective Brown returned to work on the morning of October 12, 2022, he ran TLO searches of the numbers that traded SMS data with Mr. Clegg's phone, eventually finding a connection to the Burlington Price Chopper. Given the above-described timeline, the historical facts demonstrate that Detective Brown would have had the SMS data in time to perform the TLO searches as he actually performed them October 12th. Accordingly, the timeline of his discovery concerning the connection between Mr. Clegg and the Burlington Price Chopper would have been the same, as would the CPD officers' resultant observation of Mr. Clegg at the Price Chopper and their subsequent arrest of Mr. Clegg later that day.

Consistent with the foregoing, the Court finds that CPD would have inevitably discovered the evidence that was inside of Mr. Clegg's backpack at the time of his arrest as well as the evidence found at his Burlington campsite. Indeed, the historical facts demonstrate that under this scenario CPD would have located the campsite at least as quickly as it was able to following the warrantless exigency requests.[6] Accordingly, the State has carried its burden of showing that "it is practically certain [CPD] would" and could have obtained this evidence lawfully. See Sbordone, 678 N.E.2d at 1190; see also Pereira, Doc. 331 Ex. A8 at 19.

vi. The Severity of the Constitutional Violation Does Not Require Suppression

The final step in the Court's analysis is to consider the severity of CPD's constitutional violation. See Sbordone, 678 N.E.2d at 1190. This consideration is important to the goal of properly balancing "the interest of society in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime[.]" See Robinson, 170 N.H. at 57 (quoting Nix, 467 U.S. at 443). While society always has an interest in deterring unlawful police conduct, that consideration is necessarily weightier in cases of severe police misconduct.

In this case, although the evidence demonstrates that CPD was mistaken in its belief that it could not utilize Verizon's exigency line if it obtained a warrant, for the reasons outlined above, the Court finds that this mistaken belief was the product of

[6] Under the unique facts of this case, the Court could not reach a finding of inevitability unless the historical facts established that CPD would have obtained this information in time to locate Mr. Clegg at the Burlington Price Chopper. For the reasons outlined above, the Court makes all of the findings necessary to that ultimate conclusion.

good faith. Moreover, the police misconduct at issue—the submission of three warrantless exigency requests seeking Mr. Clegg's cell phone data—is not akin to the unlawful entry of a home or vehicle. Indeed, CPD did not even obtain the substance of Mr. Clegg's cell phone communications, but rather location data and information concerning the telephone numbers with which Mr. Clegg had recently communicated. Given the limited nature of CPD's intrusion and the absence of bad faith, the Court concludes that the weight of society's interest in deterring CPD's unlawful police conduct is relatively low.

By contrast, the weight of the public interest in having the jury receive all of the probative evidence implicated by Mr. Clegg's motion to suppress is comparatively high. The State has conceded that absent the application of the inevitable discovery doctrine, CPD likely would not have discovered the evidence obtained at Mr. Clegg's Burlington campsite, and thus that evidence would not have been introduced at trial. The State's concession on this point is reasonable given Mr. Clegg's history of clearing out his campsite before leaving a particular location. In addition, the Court finds that if Mr. Clegg had not been arrested prior to his arrival at the airport in connection with his flight to Germany, he would have almost certainly discarded the handgun, holster, and magazine that were introduced at trial. Although Mr. Clegg would likely have retained his passport, a fake Romanian passport found at the time of his arrest, his laptop, and the cash that CPD found in his possession, the evidentiary value of those items pales in comparison to that of the gun and other evidence more directly tying Mr. Clegg to the murders.

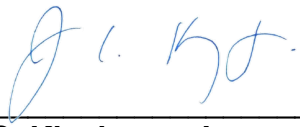
On balance, the Court finds that under the unique facts and circumstances of this case, the public interest in having juries receive all probative evidence concerning Mr. Clegg's crimes greatly exceeds the interest of society in deterring CPD's unlawful conduct. See id. Accordingly, the Court concludes that it would be inappropriate to apply the exclusionary rule where, as here, the State has carried its burden of demonstrating "by a preponderance standard that discovery of the evidence by lawful means was certain as a practical matter" (i.e., practically certain), and that the CPD "did not act in bad faith to accelerate the discovery of evidence." See Sbordone, 678 N.E.2d at 1190; see also Pereira, Doc. 331 Ex. A8 at 18–19.

V. Conclusion

For the reasons set forth above, the Court finds and rules that Mr. Clegg's motion to suppress should be **DENIED** on the basis of the inevitable discovery doctrine.

SO ORDERED.

June 12, 2026
_____
Date



_____
John C. Kissinger, Jr.
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 06/12/2026