SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2087-23

	:	CRIMINAL ACTION
STATE OF NEW JERSEY,	:	On Appeal from a Judgment of Conviction of the Superior Court
Plaintiff-Respondent,	:	of New Jersey, Law Division, Sussex County
	:	
v.		Ind. No. 19-12-335-I
	:	
JOSEPH M. CRILLEY,	:	Sat Below:
Defendant-Appellant.	:	Hon. Michael C. Gaus, J.S.C.

BRIEF AND APPENDIX ON BEHALF OF DEFENDANT-APPELLANT

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Dated: August 29, 2024

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PRELIMINARY STATEMENT

There is no "car accident" exception to the warrant requirement. To be sure, exceptions exist for emergencies or when police are acting to preserve life or property. But the fact that a car was involved in a serious accident does not, by itself, permit police to conduct a warrantless search of that car.

In this case, State police responded to the scene of a fatal car accident involving defendant Joseph Crilley's tow truck and another vehicle. Although the tow truck appeared to have caused the accident, Mr. Crilley displayed no signs of impairment and coherently explained to officers that the crash occurred because his brakes were not working properly. A preliminary investigation of the roadway rendered plausible that explanation. Nearly an hour and a half after police arrived, and without a warrant authorizing a search of the tow truck, a detective in the Fatal Accident Investigation Unit entered the vehicle to gather information for his accident report. He observed wax folds of suspected heroin inside. Based in part on this observation, police secured and executed a telephonic warrant to test Mr. Crilley's blood and urine for evidence of drug use.

Because the detective's warrantless search of the tow truck violated the Fourth Amendment, the wax folds must be suppressed. The State attempted to shoehorn the detective's search into one of the recognized exceptions to the warrant requirement, but none apply; the detective was not conducting an

administrative search of a commercial vehicle's safety equipment, he was not acting as a community caretaker to preserve life or property, and his search was not a reasonable continuation of a credential search conducted by another officer an hour earlier. In addition, the State failed to carry its burden at the suppression hearing to show that police would have inevitably discovered the wax folds through an eventual inventory or warrant-authorized search of the truck.

Suppression of the biofluid samples is also required because without the wax folds, police did not have probable cause to believe that Mr. Crilley was driving under the influence. Even though his prescription antidepressants were found inside the tow truck during the credential search, investigators failed to ask him any questions about the medication, including whether he had even ingested any pills that day. Considering that he did not exhibit any signs of impairment and instead offered a viable mechanical explanation for the crash, the discovery of the antidepressants, without more, did not establish probable cause.

The purpose of the exclusionary rule is to deter the State from engaging in unlawful investigation tactics by denying them the benefit of illegally obtained evidence. Because the wax folds and biofluid samples were obtained as a direct result of an unconstitutional search, and because the State did not show that it would have been in the same position had no illegality occurred, the exclusionary rule applies. The trial court's decision denying the suppression motion must be reversed.

PROCEDURAL HISTORY

On December 12, 2019, a Sussex County Grand Jury returned Ind. No. 19-12-335-I, charging Mr. Crilley with two counts of second-degree vehicular homicide, in violation of N.J.S.A. 2C:11-5a (counts one and two), fourth-degree assault by auto, in violation of N.J.S.A. 2C:12-1c(1) (count three), and three counts of third-degree possession of a controlled dangerous substance, in violation of N.J.S.A. 2C:35-10a(1) (counts four, five and six). (Da 1-3)[1] Complaint Warrant 2019-138-1905 also charged Mr. Crilley with the disorderly persons offense of possession with intent to use drug paraphernalia, in violation of N.J.S.A. 2C:36-2. (Da 8)

On October 23, 2020, Mr. Crilley filed a motion to suppress the evidence obtained as a result of the unlawful search of his vehicle. (Da 14) The Honnorable Michael C. Gaus, J.S.C. presided over a hearing on the suppression motion on June 28 and 29, 2022. (2T, 3T) Following post-hearing briefing, on January 25, 2023, the trial court denied Mr. Crilley's suppression motion in its entirety. (Da 15-55)

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[1] Da — Defendant's appendix
1T – Transcript of August 6, 2019 telephonic warrant application
2T – Transcript of June 28, 2022 suppression hearing
3T – Transcript of June 29, 2022 suppression hearing
4T – Transcript of August 4, 2023 plea hearing
5T – Transcript of January 26, 2024 sentencing

On August 4, 2023, Mr. Crilley pled guilty to two counts of vehicular homicide and one count of assault by auto (counts one, two, and three of the indictment). (Da 56; 4T 7-12 to 8-13) In exchange, the prosecutor agreed to dismiss the remaining charges and recommend a sentence of 5 years NERA on each of the vehicular homicide counts, to be served consecutively, and a sentence of 18 months on the assault by auto count, to run concurrently with the other two terms. (Da 59; 4T 18-24 to 20-10)

Mr. Crilley was sentenced on January 26, 2024. (Da 63; 5T) In accordance with the plea agreement, he was sentenced to an aggregate term of 10 years NERA, followed by 3 years of parole supervision. (Da 63; 5T 40-7 to 41-5, 43-21 to 44-4) In addition, the sentencing court suspended his driver's license for a period of 10 years following his release from prison. (Da 63; 5T 42-7 to 10)

A notice of appeal was filed on March 15, 2024. (Da 67-71)

STATEMENT OF FACTS

On August 5, 2019, at approximately 10:41 p.m., State Trooper James Celi responded to the scene of a car accident in Lafayette. (2T 10-6 to 18, 12-24 to 13-11) The accident involved a Honda Civic and a tow truck that was towing two vehicles at the time. (2T 19-1 to 13; 3T 24-1 to 5) The tow truck crossed the median and collided with the Honda head-on, causing extensive damage and trapping the Honda driver inside the vehicle. (1T 6-4 to 16; 2T 18-14 to 17, 19-14 to 16) The driver died at the scene from his injuries and one of the passengers later succumbed to his injuries at the hospital, while a second passenger was seriously injured. (1T 5-6 to 16; Da 12)

Upon arriving at the site of the crash, Celi saw Mr. Crilley, who identified himself as the driver of the tow truck. (2T 17-25 to 18-4) Mr. Crilley was sitting on the side of the road and did not have any visible injuries. (2T 15-21 to 16-4, 24-7 to 8) Mr. Crilley told Celi that "he had an issue with his brakes and when he hit the brakes, he wasn't able to stop the vehicle and went into the woods." (2T 23-13 to 25) He also mentioned that his knee was in pain, so Celi instructed him to wait for EMS to "check him out." (2T 24-8 to 16) Celi testified that Mr. Crilley exhibited no signs of impairment during any of their interactions. (2T 83-20 to 24)

At 11:08 p.m., Celi opened the passenger side door of the tow truck and went inside the cab. (Da 72 at 23:08:04 to 23:09:11; 2T 25-9 to 11) He testified that he did

so to obtain Mr. Crilley's license, registration, and insurance information. (2T 25-6 to 21) While inside, Celi saw a prescription pill bottle and grabbed it. (2T 25-24 to 26-13) The label on the bottle indicated that it was the antidepressant Sertraline, a generic form of Zoloft, and that it was prescribed to Mr. Crilley. (2T 26-16 to 21) After exiting the truck, Celi spoke to Mr. Crilley, who confirmed that the pills were generic Zoloft. (2T 28-4 to 9) Celi did not ask Mr. Crilley how long he had been taking the medication, what dosage he takes, or whether he had ingested any pills that day. (2T 10-6 to 102-14)

Daniel Rodriguez, a detective in the State Police Fatal Accident Investigation Unit, also responded to the site of the crash. (3T 16-15 to 17-7) Rodriguez's role was to assist Celi with "all technical aspects of the investigation." (3T 19-25 to 20-4) Upon his arrival, Celi informed Rodriguez about the generic Zoloft found inside the truck. (3T 32-19 to 24) Rodriguez testified that based on his training and experience, Zoloft can cause impairment and should not be taken while operating heavy machinery. (3T 37-23 to 38-9) Rodriguez asked Celi if he had observed any signs of impairment from Mr. Crilley, and Celi replied that he had not. (Da 72 at 23:12:03 to 23:12:40; 3T 54-16 to 22)

Rodriguez investigated the roadway for tire marks and observed that there were "no signs of braking from the rear, at all." (3T 25-7 to 10; Da 72 at 23:26:55 to 23:27:07) Rodriguez explained this to Celi and another officer at the scene, stating,

"So it could be a mechanical issue." (Da 72 at 23:27:07 to 23:27:13) Celi testified at the suppression hearing that his view in real time was that the rear brakes on the tow truck were not working properly. (2T 83-1 to 7)

By 11:45 p.m., the officers had decided to apply for a telephonic warrant to test Mr. Crilley's blood and urine for evidence of drug use. (Da 72 23:45:00 to 23:45:40; 2T 87-20 to 88-15) Celi testified that "there might have been" some concern amongst the investigators at the scene that probable cause for a warrant did not exist. (2T 88-16 to 24) Celi's own body worn camera footage depicts him expressing hesitance to another officer about serving as the witness for the warrant application since he "hardly interacted with the driver." (Da 72 at 0:05:00 to 0:05:10) Shortly thereafter, another officer who overheard this conversation asked Celi why they were applying for a warrant when Mr. Crilley exhibited no signs of impairment. (Da 72 at 0:09:29 to 0:09:40) The officer asked, "Just because there were pills in the car?" Celi did not respond. (Da 72 at 0:09:40 to 0:09:47)

At 12:08 a.m., Rodriguez went inside the cab of the tow truck with another detective. (Da 73 at 00:08 to 00:09:34) According to Rodriguez, he intended to gather information about seatbelt and airbag deployment, as well as vehicle weight, because he needed that information to fill out an accident investigation report. (3T 27-20 to 28-25, 31-8 to 17) Rodriguez did not attempt to gather any of this information from Mr. Crilley prior to entering the tow truck; he did not ask Mr.

Crilley whether he was wearing a seat belt at the time of the crash, whether the airbags deployed during the crash, or whether the truck was even equipped with airbags, which it was not. (3T 31-11 to 12, 53-21 to 54-15)

Upon opening the door of the tow truck, Rodriguez saw wax folds of suspected heroin. (3T 30-1 to 2) Rodriguez testified that he exited the vehicle after seeing the wax folds because "it changed our investigation to possibly a criminal investigation with driver -- possible driver impairment." (3T 33-3 to 9) He testified that if he knew there was going to be a criminal investigation, he "would not have entered the vehicle at all." (3T 59-4 to 5, 72-25 to 73-4)

Rodriguez informed the other investigators about the wax folds. (3T 38-19 to 23) At that point, the tow truck was "secured" until a warrant could be obtained to search the remainder of the vehicle. (3T 39-2 to 7) Before the vehicle was towed from the scene, however, Rodriguez observed employees from the towing company picking up debris from the road and throwing it into the vehicle. (3T 61-17 to 62-6)

Shortly thereafter, at around 12:30 a.m., Celi and Assistant Prosecutor Brent Rafuse applied for a telephonic warrant to obtain samples of Mr. Crilley's blood and urine for a toxicology assessment. (1T 3-3 to 5, 3-23 to 25, 9-11 to 16) Celi relayed the circumstances of the accident to the judge, noting that they had found generic Zoloft in the tow truck, as well as wax folds of heroin, and that Mr. Crilley displayed no signs of impairment. (1T 4-23 to 9-18) In addition, Celi told the judge at one point

that Mr. Crilley's explanation for the crash was that the wheels of the tow truck locked and his brakes did not work. (1T 5-2 to 5) Celi stated at another point that Mr. Crilley had claimed that the crash occurred because the wheels of the car he was towing locked. (1T 10-4 to 18) The judge found that probable cause existed due to the finding of generic Zoloft and the wax folds in the tow truck, "[c]oupled with what is right now, a relatively inconsistent explanation as to how the vehicle locked up and crossed the center line." (1T 11-17 to 12-5) At the suppression hearing, Celi testified that he was mistaken when he told the judge that Mr. Crilley had provided two different explanations of how the crash occurred. In fact, according to Celi, Mr. Crilley had consistently said that the brakes on the tow truck were not working. (2T 81-15 to 82-25)

The warrant to collect and test the biofluid samples was issued at 12:47 a.m. on August 6, 2019, by Judge Michael C. Gaus, J.S.C. (1T 12-7 to 13) A toxicology report indicated that both samples were positive for narcotics. (3T 40-17 to 41-12; Da 74-81) There was no Sertraline (Zoloft) detected. (3T 44-20 to 24)

On August 9, Detective Bernard Wawzyanick submitted an affidavit in support of a search warrant for the the tow truck. (Dca 1-9) The warrant was authorized by Judge Thomas J. Critchley, J.S.C., and effectuated on August 22. (3T 62-11 to 14; Dca 9) Upon searching the tow truck, investigators found a black bag containing suspected marijuana as well as a glass pipe containing suspected CDS.

(3T 62-11 to 63-14) It was determined that the black bag containing marijuana belonged to one of the occupants of the Honda Civic and had been thrown into the tow truck at the scene. (3T 62-22 to 25) As for the glass pipe, Rodriguez testified that he could not be certain whether it belonged to Mr. Crilley given that debris and various items from the roadway had been thrown into the truck. (3T 63-7 to 14)

After he was arrested and charged, Mr. Crilley moved to suppress the wax folds found in the tow truck as well as the blood and urine samples, both of which he contended were the product of an unlawful search of the tow truck by Detective Rodriguez. (Da 15) The evidence at the suppression hearing consisted of the testimony of Celi and Rodriguez, the body worn camera footage of a handful of investigators at the crash scene, and other documentary evidence. (Da 17-18)

The trial court held that the wax folds were admissible for several independent reasons. First, the court determined that Rodriguez saw the wax folds in plain view during a lawful search under the administrative search exception to the warrant requirement. (Da 31-36) The court reasoned that federal and state statutes authorize administrative safety inspections of commercial vehicles, and N.J.S.A. 39:4-126 requires officers who investigate a motor vehicle accident to complete an accident report. (Da 33-34) Thus, the court found it was lawful for Rodriguez to enter the tow truck to gather information he needed to fill out his report.

Second, the court determined that Rodriguez was lawfully permitted to enter the tow truck pursuant to the community caretaking exception to the warrant requirement. (Da 41-44) The court explained that there was an "emergent need to preserve property" inside the tow truck and to make the required observations for the crash report while the scene was undisturbed, i.e. before the vehicle was towed. (Da 44) Third, the court determined that Rodriguez's entry into the tow truck was lawful under the continuation doctrine, as it was a mere continuation of Celi's entry an hour earlier to obtain registration and license information. (Da 45-46)

In addition, the court held that even if the warrantless search was illegal, the wax folds would have been inevitably discovered during a lawful inventory search of the tow truck. (Da 37-40) Likewise, the court concluded that the wax folds would have been inevitably discovered during a lawful search of the vehicle pursuant to the warrant issued by Judge Critchley. (Da 40-41) For all these reasons, the court denied the motion to suppress the wax folds.

As for the biofluid samples, the court ruled that the telephonic warrant was supported by probable cause even without considering the wax folds. (Da 46-50) The court emphasized that an application for a warrant "was already in motion" when the suspected heroin was discovered. (Da 49-50) The court thus concluded that the samples were not "fruit of the poisonous tree" and denied the suppression motion.

LEGAL ARGUMENT

POINT I

THE WAX FOLDS MUST BE SUPPRESSED BECAUSE RODRIGUEZ'S WARRANTLESS SEARCH OF THE TOW TRUCK WAS UNLAWFUL AND CANNOT BE SHOEHORNED INTO ANY OF THE RECOGNIZED EXCEPTIONS TO THE WARRANT REQUIREMENT. (Da 31-46)

The trial court erred in denying Mr. Crilley's motion to suppress the wax folds. Under both the New Jersey and United States Constitutions, a warrantless search "is presumed invalid unless it falls within one of the recognized exceptions to the warrant requirement." State v. Moore, 181 N.J. 40, 44 (2004). The State bears the burden of establishing that one of those exceptions applies. State v. Shaw, 213 N.J. 398, 409 (2012). Contrary to the trial court's decision, the State did not satisfy its burden. The State failed to show that the search was justified under the administrative search exception, the community caretaking exception, or the continuation doctrine, and the State failed to demonstrate that even if the search was illegal, the wax folds are admissible under the inevitable discovery doctrine.[2] Consequently, the wax folds are the fruit of an illegal search and must be suppressed.

[2] The State never raised and the trial court never purported to apply the automobile exception, which permits a warrantless car search "based on probable cause arising from unforeseeable and spontaneous circumstances." State v. Witt, 223 N.J. 409, 450 (2015).

U.S. Const. amends. IV, XIV; N.J. Const. art. 1, para. 7; Wong Sun v. United States, 371 U.S. 471, 484 (1963).

A. The Administrative Search Exception Does Not Apply.

Contrary to the trial court's ruling, the administrative search exception has no bearing on this case. Under that exception, no warrant is required for inspections of "certain industries which have been subject to pervasive or long-standing governmental regulation." State v. Rednor, 203 N.J. Super. 503, 507 (App. Div. 1985). The administrative inspections must be carried out pursuant to an established regulatory program that satisfies certain criteria. See New York v. Burger, 482 U.S. 691, 702-03 (1987). Because commercial trucking is a highly regulated industry, existing programs authorize periodic warrantless inspections of commercial trucks performed by authorized agents to ensure compliance with federal safety regulations.

Not only is Rodriguez not an authorized agent, but also he did not enter the tow truck to perform an administrative safety inspection. Instead, he entered to gather information for an accident report under N.J.S.A. 39:4-131, which has nothing to do with the federal safety regulations for commercial trucks. N.J.S.A. 39:4-131 sets out reporting requirements for all car accidents, not just those involving a commercial vehicle. Moreover, it says nothing about searching a vehicle and thus does not separately establish a regulatory program for the warrantless

search of a car involved in an accident. Accordingly, the fact that the tow truck is a commercial vehicle which may at times be subject to a warrantless safety inspection is irrelevant to this case, and Rodriguez's statutory obligation to complete a crash report did not otherwise justify the search. Simply put, the administrative search exception does not apply.

In Burger, the Supreme Court laid out the confines of the administrative search exception. 482 U.S. 691. The Court explained that a regulatory scheme authorizing the warrantless inspection of a commercial premises is lawful when three criteria are satisfied:

> First, there must be a substantial government interest that informs the regulatory scheme pursuant to which the inspection is made….
>
> Second, the warrantless inspections must be necessary to further the regulatory scheme….
>
> Finally, the statute's inspection program, in terms of the certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant. In other words, the regulatory statute must perform the two basic functions of a warrant: it must advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope, and it must limit the discretion of the inspecting officers.

Id. at 702-03 (internal quotations and citations omitted).

Because commercial trucking is a highly regulated industry, courts have held that "the government may establish a regulatory program for administrative searches

of commercial trucks without a warrant." State v. Hewitt, 400 N.J. Super. 376, 385 (App. Div. 2008). Federal regulations establish such a program, and New Jersey has adopted those regulations to create a program of its own. See 49 C.F.R. § 396.9(a) (authorizing warrantless roadside inspections of commercial vehicles); N.J.A.C. 13:60-2.1 (adopting 49 C.F.R. § 396.9(a) and related regulations). The purpose of a warrantless roadside search pursuant to both the federal and New Jersey programs is to ensure compliance with federal safety regulations for commercial vehicles, known as the Federal Motor Carrier Safety Regulations (FMCSR). See State v. Pompa, 414 N.J. Super. 219, 230 (App. Div. 2010).

Federal law limits who may perform these warrantless safety inspections to "special agent[s] of the [Federal Motor Carrier Safety Administration]." 49 C.F.R. § 396.9(a). In New Jersey, the State Police Commercial Carrier Safety Inspection Unit (CCSIU) is tasked with conducting these administrative inspections and enforcing the FMCSR. See Hewitt, 400 N.J. Super. at 380. Troopers in the CCSIU have "specialized training and certifications" in accordance with federal law. See New Jersey State Police, Commercial Carrier Safety Inspection Unit (CCSIU), https://www.nj.gov/njsp/division/homeland-security/Commercial_carrier_safety_Inspection_unit.shtml.

Notwithstanding the existence of these regulatory programs, the administrative search exception cannot justify Rodriguez's warrantless search of the

tow truck. First, there is not a shred of evidence indicating that Rodriguez was conducting a safety inspection of the tow truck to ensure compliance with the FMCSR. Rodriguez never testified that he was intending to carry out such an inspection, nor did the State even argue that this was the reason he entered tow truck. Rather, Rodriguez testified, and the State maintained, that his purpose in entering the vehicle was to gather information he needed to fill out an accident report under N.J.S.A. 39:4-131. (Da 92-95; 3T 27-20 to 28-25, 31-8 to 17) That statute has nothing to do with the FMCSR; it requires an officer to complete a report following any car accident that causes injury or death to a person or results in over $500 of property damage, regardless of whether a commercial vehicle is involved.[3] N.J.S.A. 39:4-130, 39:4-131.

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[3] N.J.S.A. 39:4-131 provides, in relevant part:

> The commission shall prepare and supply to police departments and other suitable agencies, forms for accident reports calling for sufficiently detailed information with reference to a motor vehicle accident, including the cause, the conditions then existing, the persons and vehicles involved, the compliance with [the seatbelt laws] by the operators and passengers of the vehicles involved in the accident, whether the operator of the vehicle was using a cellular telephone when the accident occurred, and such other information as the chief administrator may require.
>
> Every law enforcement officer who investigates a vehicle accident of which report must be made as required in this Title, or who otherwise prepares a written report as a result

Second, nothing in the record indicates that Rodriguez was authorized to perform a warrantless safety inspection under New Jersey law. Rodriguez testified that he is a detective in the "fatal accident investigation unit." (3T 17-3 to 7) There is no evidence that he is a member of the CCSIU or is otherwise certified to enforce the FMCSR. Cf. Hewitt, 400 N.J. Super. at 380, 388 (upholding warrantless search of a tractor-trailer conducted by a member of the CCSIU). Thus, even if Rodriguez did intend to perform a safety inspection under New Jersey's regulatory program, the State failed to carry its burden to show that he was so authorized. See United States v. Feliciana, 974 F.3d 519, 527 (4th Cir. 2020) ("[I]t should go without saying that the officer conducting an administrative inspection must be authorized by the relevant statute or regulation to do so.")

Rodriguez's statutory obligation to complete an accident report also does not justify his warrantless entry into the tow truck. As mentioned, N.J.S.A. 39:4-131 is not limited to car accidents involving commercial vehicles. Considering that the administrative search exception serves to authorize warrantless inspections of businesses or highly regulated industries, it has no relevance to a statute that applies to car accidents involving non-commercial vehicles. Furthermore, N.J.S.A. 39:4-131

> of an accident or thereafter by interviewing the participants or witnesses, shall forward a written report of such accident to the commission, on forms furnished by it, within five days after his investigation of the accident.

says nothing about entering a vehicle to obtain the required information. Instead, it mentions "interviewing the participants or witnesses" to the crash. Id. It therefore does not satisfy the Burger criterion of functioning as an adequate substitute for a warrant because it does not notify individuals that their property may be subject to a random search. See Hewitt, 400 N.J. Super. at 384 (quoting Burger, 482 U.S. at 702-03) (To satisfy the Burger test, "the statute must be 'sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken or specific purposes.'")

In sum, the State "cannot justify the constitutionality of this [search] by relying on a regulatory scheme that was not the basis for the [search]." Feliciana, 974 F.3d at 526. Nor can the State justify the search by relying on a statute that in no way establishes a regulatory program for the warrantless search of a car. For both reasons, the administrative search exception does not apply in this case.

B. The Community Caretaking Exception Does Not Apply.

In State v. Keaton, our Supreme Court held that the community caretaking doctrine does not justify the warrantless search of a vehicle for the purpose of completing an accident investigation report. 222 N.J. 438, 452 (2015). It follows that the community caretaking exception does not apply in this case and the trial court's ruling to the contrary was erroneous.

Under the community caretaking doctrine, a warrantless search is lawful when police are acting "not in their law enforcement or criminal investigatory role, but rather in a community caretaking function." State v. Bogan, 200 N.J. 61, 73 (2009). Police act in a community caretaking function when their underlying motive is to "ensure the safety and welfare of the citizenry at large." State v. Diloreto, 180 N.J. 264, 276 (2004). In addition, they must be "engaged in functions, which are totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." Id. at 275 (cleaned up). Thus, the community caretaking doctrine justifies a warrantless search when "emergent circumstances arise and an immediate search is required to preserve life or property." Keaton, 222 N.J. at 452.

In Keaton, our Supreme Court expressly held that an officer does not have an obligation as a community caretaker to enter a vehicle without a warrant for the purpose of completing an accident report under N.J.S.A. 39:4-131. 222 N.J. at 451-52. There, a trooper arrived at the scene of an accident and observed an overturned car in the middle of the road. Id. at 443. The officer entered the car without a warrant to obtain information for his crash report and observed a handgun and marijuana. Id. at 443-44. The Court affirmed the suppression of this evidence, explaining that while a police officer might have an obligation as a community-caretaker to remove a damaged vehicle from the highway, "the trooper's statutory duty to prepare an

accident report is not an exigent circumstance encompassed by the community-caretaker exception to the warrant requirement." Id. at 452. Keaton is directly on point here and compels a conclusion that Rodriguez's entry into the tow truck for the purpose of completing an accident report was not constitutional.

The trial court distinguished Keaton in its ruling by noting that the car accident in that case involved only one vehicle and the defendant was the only injured party, whereas here it was a two-car accident with two fatalities. (Da 43) This distinction is irrelevant, however, as Rodriguez did not enter the tow truck with the purpose of protecting any of the Honda passengers, only one of whom remained in the vehicle at the time of Rodriguez's entry and had been declared deceased. (3T 21-14 to 22-4, 55-8 to 11) Nor did the trial court find as much. Instead, the trial court found that "there was an urgent necessity to preserve property" based on Rodriguez's testimony that he had to examine the interior of the vehicle prior to it being relocated "in order to make the required observations of the seatbelts and airbags undisturbed." (Da 44)[4] But Keaton explicitly holds that the obligation to gather information about seatbelt and airbag deployment under N.J.S.A. 39:4-131 does not justify a warrantless search

[4] This finding is at odds with Rodriguez's testimony that even if a vehicle has to be cut into parts to remove it from the scene, doing so does not affect seatbelt deployment and thus would not hinder his ability to determine if the driver was wearing a seatbelt by inspecting the vehicle weeks later after having obtained a search warrant. (3T 61-3 to 14, 84-15 to 24) As for airbags, the truck was not equipped with them. (3T 31-10 to 12)

even when the vehicle will have to be towed from the scene. 222 N.J. at 452. Tellingly, Rodriguez admitted on the stand that his duty to complete an accident report does not permit him to conduct a warrantless search. (3T 56-24 to 57-3)

Controlling authority is clear: the statutory duty to complete an accident report does not justify an officer's warrantless entry into a vehicle. Accordingly, the community caretaking exception is not implicated in this case and the trial court's decision must be reversed.

C. The Reasonable Continuation Doctrine Does Not Apply.

The trial court's ruling that the reasonable continuation doctrine applies was also erroneous. That doctrine permits the police under certain circumstances to temporarily suspend a lawful search and to reenter the premises later to continue the search. State v. Finesmith, 406 N.J. Super. 510, 519 (App. Div. 2009). "The later entry must be a continuation of the original search, and not a new and separate search . . . . And the decision to conduct a second entry to continue the search must be reasonable under the totality of the circumstances." Facebook, Inc. v. State, 254 N.J. 329, 367 (2023) (cleaned up). This doctrine is inapplicable to the case at hand because Rodriguez's entry into the truck to observe seatbelt and airbag deployment and determine vehicle weight was in no way a continuation of the credential search Celi conducted an hour earlier. To the contrary, it was a "new and separate search" that requires its own justification. Ibid.

The reasonable continuation doctrine is narrow in scope and has rarely been applied where the initial entry was not made pursuant to a warrant. See Finesmith, 406 N.J. Super. at 519 (describing the reasonable continuation doctrine as permitting police to temporarily pause a search authorized by a warrant and continue the search at a later time). The few cases applying the doctrine where the initial entry was warrantless are instructive.

In State v. Henry, 133 N.J. 104 (1993), an undercover officer entered an apartment with the occupants' consent for the purpose of purchasing drugs. Id. at 106. Once the drug deal was completed, the officer left the apartment and radioed his backup team, stationed a short distance away, to make the arrest. The backup officers arrived fifteen to twenty minutes later and entered the apartment for that purpose. The Supreme Court ruled that the second entry was lawful as a reasonable continuation of the first. The Court explained that "the separate entries can be viewed as components of a single, continuous, and integrated police action and were not interrupted or separated by an unduly prolonged delay." Henry, 133 N.J. at 116 (emphasis added). The Court also observed that "the delay was justified" to ensure the safety of the undercover officer, who was outnumbered by the occupants of the home. Id. at 114. The justified nature of the delay informed the Court's conclusion that the second entry was reasonable under the Fourth Amendment.

In State v. O'Donnell, 408 N.J. Super. 177 (App. Div. 2009) , police responded to a 9-1-1 call reporting that there was an unconscious six-year-old child in an apartment. Id. at 179. Police entered the apartment, found the child deceased, and observed in plain view numerous items of evidential value. Ibid. Rather than immediately seizing those items, however, the officers secured the apartment until members of the homicide unit of the prosecutor's office arrived. Id. at 180. Thirty to forty minutes later, members of the homicide unit entered the apartment and seized the items that police had observed upon their initial entry. Ibid. The Appellate Division held that the first entry was lawful under the emergency aid exception to the warrant requirement and the second entry was a reasonable continuation of the first. Id. at 186-87. The Court emphasized that the purpose of the second entry was "to seize evidence observed in plain view" by the officers during the initial entry. Ibid. Thus, as in Henry, the subsequent entry was "merely another 'component[] of a single, continuous, and integrated police action.'" Ibid. (quoting Henry, 133 N.J. at 116).[5]

[5] The Supreme Court affirmed the Appellate Division's decision in O'Donnell but approached the issue in a different manner. Instead of considering whether the second entry was lawful, the Supreme Court framed the question as "whether the police are allowed to remain at a murder site after a proper entry under the emergency aid exception to the warrant requirement, thereby authorizing the lawful seizure of evidence in plain view." State v. O'Donnell, 203 N.J. 160, 162 (2010). The Court thus focused on the "reasonableness of continuous police presence" rather than the reasonableness of a second entry after the police have entered and then exited private property. Id. at 163.

This case is vastly different from both Henry and O'Donnell. In each of those cases, observations by the officers who made the initial entry rendered lawful certain actions that were then carried out by officers who made the subsequent entry; in Henry, the lawful action was an arrest based on probable cause, and in O'Donnell, the lawful action was the seizure of evidence in plain view. The courts in both cases determined that the delay between the supporting observations and the resulting actions were reasonable under the circumstances. In this case, however, Rodriguez did not enter the truck to continue a course of action that Celi was lawfully permitted to carry out. Instead, these were two separate searches conducted for different purposes and without any coordination between the two investigators. The searches were also carried out an hour apart with no explanation for the delay.

Celi testified that he entered the tow truck to locate Mr. Crilley's license, registration, and insurance information. (2T 25-1 to 8) Mr. Crilley does not dispute that he consented to Celi's entry for this singular purpose. Our courts have held that a credential search must be reasonable in scope and should ordinarily be "confined to the glove compartment or other area where a registration might normally be kept in a vehicle." See Keaton, 222 N.J. at 448-49 (quoting State v. Patino, 83 N.J. 1, 12 (1980)). Thus, Celi was permitted to conduct a limited search of the truck to obtain those items.

On the other hand, Rodriguez testified that he entered the tow truck to observe the seatbelts and airbag deployment and determine the gross vehicle weight, which is usually displayed on the driver's side door. (3T 55-14 to 23) Rodriguez was not looking for Mr. Crilley's credentials, which Celi had already obtained with the exception of his driver's license. (2T 28-10 to 22) Celi was unable to find the license despite entering the truck a second time to look for it, but there is no evidence that he told Rodriguez the license was still missing or that the two communicated at all about Rodriguez's planned entry. (2T 28-17 to 22) Rodriguez's entry was thus entirely separate and distinct from Celi's; it was not a "'component[] of a single, continuous, and integrated police action.'" O'Donnell, 408 N.J. Super. at 186-87 (quoting Henry, 133 N.J. at 116). Accordingly, the reasonable continuation doctrine does not apply, and Rodriguez's warrantless search requires its own justification.

D. The Inevitable Discovery Doctrine Does Not Apply.

"The inevitable discovery exception derives from the principle that the deterrent purposes of the exclusionary rule are not served by excluding evidence that, but for the misconduct, the police inevitably would have discovered." State v. Robinson, 228 N.J. 529, 552 (2017). For the exception to apply, "[t]he State must show by clear and convincing evidence that had the illegality not occurred, it would have pursued established investigatory procedures that would have inevitably resulted in the discovery of the controverted evidence, wholly apart from its

unlawful acquisition." State v. Sugar, 100 N.J. 214, 240 (1985). In this case, the State did not meet its burden to show that it would have inevitably discovered the wax folds through an inventory search of the tow truck or by securing a warrant to search the truck based solely on having found generic Zoloft inside. Even if it had, the rationale behind the exclusionary rule counsels against applying the inevitable discovery exception in the present circumstances.

Our Supreme Court has imposed a high burden of proof on the State where it seeks to cast aside the exclusionary rule on the ground of inevitable discovery. This is because in such circumstances, "the police have already violated the law. Evidence has been obtained unlawfully; a defendant's constitutional rights have been denied." Sugar, 100 N.J. at 239. Moreover, "[t]he State itself is directly responsible for the loss of the opportunity lawfully to obtain evidence; the State has created a situation in which it is impossible to be certain as to what would have happened if no illegal conduct had occurred." Ibid. As a result, "the defendant is at a gross disadvantage." Ibid.

To avoid application of the exclusionary rule, the State must show by clear and convincing evidence that

> (1) proper, normal and specific investigatory procedures would have been pursued in order to complete the investigation of the case; (2) under all of the surrounding relevant circumstances the pursuit of those procedures would have inevitably resulted in the discovery of the evidence; and (3) the discovery of the evidence through

> the use of such procedures would have occurred wholly independently of the discovery of such evidence by unlawful means.

Sugar, 100 N.J. at 238, 240.

Here, the State did not satisfy the Sugar test as to either of its inevitable discovery arguments. Starting with the inventory search, the State did not establish by clear and convincing evidence that police would have conducted an inventory search had they not illegally discovered the wax folds, nor did the State establish that an inventory search would have been proper under the circumstances. Thus, the State failed to satisfy prong one of the test with respect to an eventual inventory search. As for the warrant-authorized search, the State did not establish by clear and convincing evidence that it would have sought a warrant for the truck had it not illegally discovered the wax folds, and even if it had applied for such a warrant, probable cause did not exist for its issuance. Thus, the State failed to satisfy both prongs one and two of the test in this regard.

Setting aside the State's failure to satisfy its evidentiary burden, the core rationale behind the exclusionary rule -- deterrence -- weighs in favor of suppression. Rodriguez's actions amount to a flagrant violation of the Fourth Amendment that should be condemned, not condoned. In addition, applying the inevitable discovery doctrine in this context puts the State in a better position than it would have enjoyed had it obtained the wax folds lawfully and would therefore serve to encourage police

to conduct illegal searches. For these reasons, in conjunction with the State's failure to carry its burden to show that the exception applies, the wax folds must be suppressed.

1. The State Did Not Establish That Police Would Have Inevitably Discovered The Wax Folds Through An Inventory Search.

The State utterly failed to meet its burden to show that it would have conducted an inventory search of the tow truck had it not unlawfully discovered the wax folds. Neither Celi nor Rodriguez testified that an inventory search would have occurred in this counterfactual situation. In fact, the only testimony elicited at the suppression hearing on this topic is as follows:

> **PROSECUTOR:** Now, when a car is impounded to the tow yard, is that car typically searched for an inventory of property that's within the vehicle?
>
> **DET. RODRIGUEZ:** It can be. [(3T 42-4 to 7)]

Rodriguez's testimony indicates that sometimes an inventory search is undertaken, and sometimes not. He did not testify about any policies or procedures of the State Police regarding inventory searches, nor did he point to certain aspects of this case that would support a conclusion that police would have inventoried the vehicle. His testimony therefore does not establish by clear and convincing evidence that "proper, normal, and specific investigatory procedures would have been pursued" that would have resulted in the police finding the wax folds. Sugar, 100 N.J. at 238. See Keaton, 222 N.J. at 451 (rejecting the State's argument that it would have inevitably

discovered through an inventory search contraband that it illegally found in defendant's car because there was "no evidence to suggest that the police intended to impound or inventory defendant's vehicle").[6]

On top of the State's failure to show that that it would have conducted an inventory search, it also failed to show that such a search would have been proper under the circumstances. The fact that police had to impound the tow truck does not by itself mean that an inventory search would have been lawful. "Mere legal custody of an automobile by law enforcement officials does not automatically create a right to search its interior." State v. Ercolano, 79 N.J. 25, 52 (1979) (Pashman, J., concurring). Rather, the reasonableness of an inventory search must be evaluated critically to ensure that it is "no more intrusive than reasonably necessary to respond to the protective functions which fostered its creation." State v. Mangold, 82 N.J. 575, 587 (1980). Those "protective functions" are three-fold: "protection of the inventoried property while in police custody, shielding the police and storage bailees from false property claims, and safeguarding the police from potential danger." Id. at 581-82.

Decades ago, our Supreme Court held that "if a vehicle is lawfully impounded and its owner or permissive user is present, that person must be given the option of

[6] The trial court appears to have erroneously applied the preponderance of evidence standard to this analysis, rather than the clear and convincing evidence standard. (Da 38)

either consenting to the inventory or making his own arrangements for the safekeeping of the property contained in the vehicle." Mangold, 82 N.J. at 587. In Mangold, the Court held that the inventory search police conducted was unlawful because, although "the defendants were present and physically capable of making arrangements for the safekeeping of their belongings," the police failed to discuss the disposition of the vehicle's contents with them. Id. at 585-86. The Court explained: "If in fact the principle justifications for an inventory are to protect the property in the vehicle and to shield the authorities from false claims relating to those items, it would seem only reasonable to consult with the owner or temporary custodian of the vehicle." Ibid. See State v. One 1994 Ford Thunderbird, 349 N.J. Super. 352, 366 (App. Div. 2002) (holding unlawful an inventory search because police "made no effort to contact [defendant] with respect to the removal of his personal property before conducting his inventory.")

In this case, Mr. Crilley was alert and present when police arrived at the scene and remained there for a substantial period before going to the hospital. (2T 29-2 to 7; 3T 53-21 to 24) Given the nature of the crash, it was immediately apparent to police that they needed to impound the tow truck, and yet they made no efforts to ask Mr. Crilley whether he would like to make arrangements for the removal of his possessions. In the absence of a factual record demonstrating that an inventory search would have been lawful under the circumstances, prong one of the Sugar test

is not satisfied. The inevitable discovery exception therefore does not apply on this basis.

2. The State Did Not Establish That Police Would Have Inevitably Discovered The Wax Folds By Applying For And Obtaining A Search Warrant For The Tow Truck.

With respect to whether police would have inevitably discovered the wax folds through a warrant-authorized search of the tow truck, the State failed to satisfy either prong one or prong two of the Sugar test. The State did not show by clear and convincing evidence that (1) police would have sought a warrant to search the tow truck had they not found the wax folds inside and that (2) such a warrant would have been issued based on probable cause.

Starting with prong one, there is simply no evidence in the record to indicate that police would have sought a warrant to search the tow truck had they not already found contraband inside. Despite the fact that it was the State's burden to prove inevitable discovery, the State failed to elicit any testimony from either Celi or Rodriguez as to what steps they would have taken had they not discovered the wax folds. And while Detective Wawzyanick applied for a search warrant for the tow truck several days after the crash, the State did not call Wawzyanick as a witness at the suppression hearing. He therefore did not testify about the decision to seek a warrant or whether the application would have been made absent the discovery of contraband inside. Cf. Finesmith, 406 N.J. Super. at 523 (applying the inevitable

discovery doctrine where the investigating detective testified credibly as to what "specific steps" he would have taken to locate evidence had it not been illegally obtained).

Tellingly, there is no evidence that police had begun the process of seeking a search warrant for the tow truck before they found the wax folds. In State v. Johnson, our Supreme Court held that the State satisfied its burden under the Sugar test to show that police would have inevitably discovered evidence found during an illegal search of the defendant's room by obtaining a warrant. 120 N.J. 263, 289-90 (1990). The Court relied on the fact that one of the detectives was in the process of preparing an affidavit for a search warrant at the time that two other detectives coerced the defendant into consenting to the search. Ibid. Thus, the State established by clear and convincing evidence that "proper, normal and specific investigatory procedures would have been pursued in order to complete the investigation of the case" independent of the coerced consent. Sugar, 100 N.J. at 238. Unlike in Johnson, there is nothing in the record demonstrating that police were planning to apply for a warrant for the tow truck before the unlawful intrusion by Rodriguez occurred. In the absence of any supporting evidence, this Court should not simply take the State's word for it that would have pursued a certain course of action. See State v. Worthy, 141 N.J. 368, 391 (1995) (quoting Wayne LaFave, Search and Seizure, § 11.4(a), at 383 (1987) ("Courts must be extremely careful not to apply the 'inevitable

discovery' rule upon the basis of nothing more than a hunch or speculation as to what otherwise might have occurred.")

Prong two of the Sugar test considers whether "under all of the surrounding relevant circumstances the pursuit of [proper, normal and specific investigatory] procedures would have inevitably resulted in the discovery of the evidence." 100 N.J. at 238. In this case, prong two is not satisfied because even if police would have applied for a search warrant for the tow truck independent of finding the wax folds, no warrant would have been issued. Without the wax folds, probable cause to search the truck did not exist.

"Probable cause for the issuance of a search warrant requires 'a fair probability that contraband or evidence of a crime will be found in a particular place.'" State v. Chippero, 201 N.J. 14, 28 (2009) (quoting United States v. Jones, 994 F.2d 1051, 1056 (3d Cir. 1993)). The probable cause standard "is not susceptible of precise definition," but a "principal component is a well-grounded suspicion." State v. Smith, 212 N.J. 365, 388 (2012) ((cleaned up).

Without the wax folds, police did not have a well-grounded suspicion that the truck contained contraband or evidence of a crime. All that had been found inside the truck was a prescription pill bottle for generic Zoloft written out to Mr. Crilley. Prescription pill bottles have been explicitly deemed by our courts to be neutral objects. See Russell v. Coyle, 266 N.J. Super. 651, 661 (App. Div. 1993); see also

Sullivan v. State, 626 S.W.2d 58, 60 (Tex. Crim. App. 1981) (cited favorably by State v. Demeter, 124 N.J. 374, 383-84 (1991)). Here, the prescription was for an antidepressant, not a narcotic or other controlled substance. (2T 87-1 to 8) The State presented no evidence that generic Zoloft is associated with criminal activity.

In addition, although a serious accident had occurred, police lacked probable cause to believe that the truck would contain evidence of the crime of driving under the influence. Mr. Crilley displayed no signs of impairment at the scene, coherently explaining to police that the cause of the accident was a problem with his brakes. (2T 83-20 to 24, 96-9 to 19) Celi testified that this was considered a viable explanation for the crash (2T 83-1 to 7), and Rodriguez's investigation of the roadway supported this explanation, as it revealed "no signs of braking from the rear, at all" (3T 25-7 to 10; Da 72 at 23:26:55 to 23:27:07). The absence of any signs of impairment from Mr. Crilley, in conjunction with a plausible explanation for the crash, undermines the notion that police had anything more than a hunch that evidence of a DUI would be found inside the tow truck.

At bottom, this Court must take seriously the State's burden to show by clear and convincing evidence that the inevitable discovery doctrine applies. Because the State presented insufficient evidence to show that police would have sought a search warrant for the tow truck had they not already discovered contraband inside, or that

such a warrant would have been supported by probable cause, reversal of the trial court's ruling on this issue is required.

3. The Rationale Behind The Exclusionary Rule Also Weighs In Favor Of Suppression.

"The core purpose of the exclusionary rule is 'deterrence of future unlawful police conduct.'" State v. Caronna, 469 N.J. Super. 462, 503 (App. Div. 2021) (quoting State v. Shannon, 222 N.J. 576, 597 (2015)). In this case, the deterrence rationale weighs particularly heavily in favor of suppression and against application of the inevitable discovery exception.

First, this Court should not condone Rodriguez's flagrant violation of Mr. Crilley's Fourth Amendment rights. "In determining the applicability of the inevitable discovery doctrine to an unjustified entry into a dwelling, our courts have previously considered the flagrancy of the illegal conduct." Caronna, 469 N.J. Super. at 503. Although this case involves an unjustified entry into a vehicle, rather than a dwelling, the same considerations apply.

Rodriguez testified that he would not have entered the tow truck had he known there was going to be a criminal investigation into Mr. Crilley. (3T 72-25 to 73-4) But his testimony makes plain that he did know that such an investigation was in the works. He had already been informed about the Zoloft, had asked about driver impairment, and knew that officers were planning to either seek a warrant or consent from Mr. Crilley for a blood and urine test. (3T

32-19 to 24, 39-2 to 17; Da 72 at 23:12:03 to 23:12:40) He decided to enter the truck without a warrant in spite of all that information, demonstrating an utter lack of concern for the Fourth Amendment. This type of careless behavior must be deterred. See Caronna, 469 N.J. Super. at 503 ("[C]onsidering the clear disregard of the police in this case for the court-mandated knock-and-announce requirement, we reject application of the inevitable discovery exception to the exclusionary rule.")

Separate and apart from the flagrancy of the conduct at issue, the inevitable discovery doctrine should not be applied here because doing so puts the State in a better position than it would have enjoyed had it seized the wax folds in a lawful manner. This is because the evidential value of the wax folds would have been diminished had they not been found at the scene, which was ultimately disrupted due to the State's failure to secure it. "Consistent with the deterrent purposes of the exclusionary rule, the prosecution is not to be put in an advantageous position by using illegally obtained evidence." Sugar, 100 N.J. at 237 (1985). The Supreme Court has therefore cautioned that, for the inevitable discovery doctrine to apply, the State "should be required to make a strong showing that, by the admission of the evidence, it is in no better position than it would have enjoyed had no illegality occurred." Sugar, 100 N.J. at 239-240 (emphasis added). The State did not and cannot make such a showing in this case.

Rodriguez testified that after he entered Mr. Crilley's vehicle, he observed the tow truck drivers picking up debris from the road and throwing it into the vehicle. (3T 61-17 to 62-6) It was later determined that some of that "debris" included contraband from the victims' car. (3T 62-11 to 63-14) As a result, had the wax folds been discovered through a lawful search of the truck after it had been removed from the accident scene, a factual issue would have arisen as to who the wax folds belonged to. The existence of this factual issue could have affected the strength of the State's case.

It is the State's fault that the scene was not secured and that items from outside the tow truck were placed inside. Had Rodriguez not illegally searched the truck, the State would have been forced to deal with the consequences of this failure. Applying the inevitable discovery doctrine, however, puts the State in the "advantageous position" of not having to contend with a factual issue that it alone is responsible for. Sugar, 100 N.J. at 237. Because our courts have held that the State should not be permitted to benefit from its own misconduct, the wax folds must be suppressed.

POINT II

THE BIOFLUID SAMPLES MUST BE SUPPRESSED BECAUSE WITHOUT INFORMATION CONCERNING THE DISCOVERY OF THE WAX FOLDS, THE WARRANT AUTHORIZING COLLECTION AND TESTING OF THE SAMPLES WAS NOT SUPPORTED BY PROBABLE CAUSE. EVEN IF THE WAX FOLDS ARE ADMISSIBLE UNDER THE INEVITABLE DISCOVERY EXCEPTION, THE SAMPLES SHOULD STILL BE SUPPRESSED BECAUSE THEIR EVIDENTIAL VALUE IS TIME-DEPENDENT. (Da 46-50)

A. Without The Discovery Of The Wax Folds, The Warrant Authorizing A Blood And Urine Test Was Not Supported By Probable Cause.

This Court must reverse the denial of Mr. Crilley's motion to suppress the biofluid samples because the telephonic warrant application did not establish probable cause. As explained in Point I, the wax folds were the product of an unlawful search. As a result, information concerning their discovery is "tainted" and may not be considered in evaluating whether there was probable cause to believe that Mr. Crilley was driving under the influence and thus that a test of his blood and urine would produce evidence of a crime. See State v. Ortense, 174 N.J. Super. 453, 454-55 (App. Div. 1980). Without this tainted information, all that is left is the discovery of generic Zoloft inside the tow truck and the fact of a serious accident. Those two pieces of information do not establish probable cause for a blood and urine test, particularly given that Mr. Crilley exhibited no signs of impairment at the scene and there was evidence suggesting that the

accident was caused by faulty brakes. Accordingly, the warrant authorizing the collection and testing of the samples was not supported by probable cause, and both the samples and the toxicology report must be suppressed. See State v. Novembrino, 105 N.J. 95, 157-59 (1987) (exclusionary rule applies to evidence seized following a search where the warrant affidavit did not establish probable cause).

To protect against unreasonable searches and seizures, our law generally requires that such actions be authorized by a neutral magistrate in the form of a warrant. See Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973). A magistrate judge may issue a search warrant only where the warrant application demonstrates that "there is probable cause to believe that a crime has been committed, or is being committed, at a specific location or that evidence of a crime is at the place sought to be searched." State v. Boone, 232 N.J. 417, 426 (2017) (quoting State v. Jones, 179 N.J. 377, 388 (2004)) (emphasis omitted).

Our Supreme Court has made clear that securing a warrant "is not a mere formality." Novembrino, 105 N.J. at 107 (quoting State v. Macri, 39 N.J. 250, 255-57 (1963)). To that end, a reviewing court must ensure that the magistrate judge who issued the warrant did not simply ratify bare conclusory statements of the officer who wrote the affidavit. "The duty of a reviewing court is," in other words, "to ensure that the magistrate had a substantial basis for concluding

that probable cause existed." Illinois v. Gates, 462 U.S. 213, 238-39 (1983) (cleaned up). The reviewing court "must consider the totality of the circumstances, without focusing exclusively on any one factor, in considering whether probable cause has been established." State v. Sullivan, 169 N.J. 204, 216–17 (2001) (citing State v. Kasabucki, 52 N.J. 110, 117 (1968)).

"[A] search warrant based on illegally obtained information is itself tainted and all evidence seized pursuant to it must be suppressed." State v. Parisi, 181 N.J. Super. 117, 119 (App. Div. 1981) (citing Wong Sun, 371 U.S. 471). Where, as here, a warrant application contains both information lawfully and unlawfully obtained, the unlawfully obtained information is "tainted" and may not be considered in evaluating whether the issuance of a search warrant was justified. See Ortense, 174 N.J. Super. at 454-455.

In this case, because the wax folds were the product of an illegal search, information concerning their discovery may not be considered in assessing whether the warrant to test Mr. Crilley's blood and urine was supported by probable cause. The question then becomes whether, without the wax folds, the totality of the circumstances established probable cause to believe that Mr. Crilley was driving under the influence. Given that Mr. Crilley displayed no signs of impairment at the scene, did not admit to having ingested any drugs or alcohol that day, provided a plausible explanation for the crash that was supported by evidence at the scene, and

was merely found to be in possession of a legal prescription for antidepressants, the answer is decidedly no.

Signs of impairment is the touchstone of probable cause in DUI cases. See, e.g., Schmerber v. California, 384 U.S. 757, 768-69 (1966) ("symptoms of drunkenness" displayed by a driver involved in a car accident provided probable cause for a DUI arrest); State v. Ravotto, 169 N.J. 227, 250 (2001) ("Because defendant's car was found overturned and his behavior demonstrated obvious signs of intoxication, probable cause existed for the police to seek evidence of defendant's blood alcohol content level."); State v. Renshaw, 390 N.J. Super. 456, 460, 469 (App. Div. 2007) (driver's apparent disorientation and inability to comply with officer's request for identification, combined with the odor of alcohol on the driver's breath, provided probable cause for a blood draw). Here, Mr. Crilley displayed absolutely no signs of impairment: he was alert, coherent and explained that the crash occurred because his brakes were not working properly.

The discovery of generic Zoloft inside the tow truck adds nothing to the analysis, particularly given that the officers had no idea whether Mr. Crilley had taken the medication that day. Not only did they never ask him if he had ingested any pills that day, but they also never asked him what dosage he takes or how often he takes the medication, i.e., whether he does so on a regular basis or as needed. (2T

10-6 to 102-14; 3T 46-6 to 25) That information is certainly relevant to the question of whether the medication could have caused any impairment.

In Ruiz v. New Jersey State Police, a federal court in New Jersey evaluated whether police had probable cause to arrest the defendant for DUI after the car she was driving crossed the median and collided head-on with another vehicle. No. CIV A 07-2889 SDW, 2009 WL 2998105, at *1, 4 (D.N.J. Sept. 14, 2009). (Da 104-108) Police found Zoloft inside the defendant's car, she admitted to taking Zoloft at the time of the accident, and she failed a "horizontal gaze nystagmus test," a type of field sobriety test. Id. at *1. Police also noted that when they questioned the defendant about the accident, her explanations "varied widely." Id. at *5. The court concluded that, considering the totality of the circumstances, police had probable cause to arrest her. Id. at *5.[7]

Unlike in Ruiz, the officers here had no idea whether Mr. Crilley had ingested Zoloft prior to the accident, he did not fail any field sobriety tests (none were administered), and he did not show any signs of impairment. Moreover, while the defendant in Ruiz provided a wide variety of explanations for the crash, Mr. Crilley consistently stated that his brakes were not working. (2T 81-15 to 82-25) Rodriguez's observation that the roadway showed "no signs of braking from the

[7] Undersigned counsel is not aware of any contrary unpublished opinions. R. 1:36-3.

rear" of the tow truck rendered plausible Mr. Crilley's explanation. (Da 72 at 23:26:55 to 23:27:07) Consequently, the discovery of Zoloft without all the surrounding circumstances that were present in Ruiz did not establish probable cause.

It is noteworthy that the investigators themselves were skeptical of whether there was probable cause for a warrant prior to the discovery of the wax folds. Of course, probable cause is evaluated objectively and not subjectively. But in the context of the inevitable discovery doctrine, where the State is trying to prove that a warrant application process was already in motion prior to an illegal search, the uncertainty of State actors as to whether probable cause had developed prior to the illegality is significant.

Celi testified that "there might have been" concern amongst the investigators at the scene that probable cause did not exist, and Celi's body-worn camera footage reveals that concern. (2T 88-16 to 24) The footage depicts Celi's hesitance at serving as the witness for the warrant application since he "hardly interacted with the driver." (Da 72 at 0:05:00 to 0:05:10) Presumably, Celi was concerned about not having observed any signs of impairment. In addition, another officer depicted on the footage asked Celi why they were applying for a warrant when Mr. Crilley exhibited no signs of impairment. (Da 72 at 0:09:29 to 0:09:40) The officer asked, "Just

because there were pills in the car?", expressing doubt that the Zoloft alone was enough to establish probable cause. (Da 72 at 0:09:40 to 0:09:47)

For his part, Rodriguez insisted that he did not believe it was a criminal investigation until he saw the wax folds, similarly manifesting a view that the discovery of generic Zoloft was insignificant. Rodriguez testified that, "[similar to] allergy medication, just because you're taking it it doesn't mean you're impaired. That's why I instructed if Trooper Celi can get consent for his blood to determine if he was taking the Zoloft, if it was at a level above prescribed or at a high level where it could cause impairment." (3T 71-22 to 72-5) Rodriguez's testimony indicates that before he observed the wax folds, he did not think the issuance of a warrant to test Mr. Crilley's blood and urine would have been justified.

Considering the totality of the circumstances, police did not have probable cause for a warrant to collect and test Mr. Crilley's blood and urine prior to the unlawful seizure of the wax folds. The trial court misapplied the law by holding that the samples and toxicology report were admissible, and its ruling must be reversed. See Novembrino, 105 N.J. at 157-59.

B. Even If This Court Finds That The Wax Folds Would Have Been Inevitably Discovered And Are Therefore Admissible, The Biofluid Samples Must Be Suppressed Because Their Evidential Value Is Time-Dependent.

Even if the Court concludes that the wax folds are admissible under the inevitable discovery doctrine, suppression of the blood and urine samples is still

required. This is so because the significance of the samples depends entirely on the timing of their collection. Unless the samples were collected relatively quickly, at most within a few days of the crash, they may not have revealed the presence of drugs in Mr. Crilley's system.

There is no evidence in the record to suggest that the samples would have been obtained relatively quickly because the State failed to establish that it would have inevitably discovered the wax folds in a timely manner. The State provided no timeline for when it would have conducted an inventory search of the tow truck, and the warrant-authorized search of the tow truck was not effectuated until August 22, 2019 -- over two weeks after the crash. (3T 62-11 to 14) Thus, the samples cannot be deemed admissible on the basis that police would have inevitably discovered the wax folds and at that point would have had probable cause for the blood and urine tests.[8]

As the Supreme Court has recognized, application of the inevitable discovery doctrine involves working with hypotheticals and is therefore "sometimes problematical." Sugar, 100 N.J. at 237. This is one of those "problematical"

[8] In addition, unless Mr. Crilley was under constant surveillance in the days between the crash and the collection, the State would face the additional hurdle of proving that any drugs detected in his system were ingested prior to the accident and not afterwards. The accident occurred on August 5, 2019, but Mr. Crilley was not arrested and taken into custody until September 17. (Da 65)

situations, because the exact timing of any inevitable discovery of the wax folds impacts the evidential value of any subsequent blood and urine samples.

"As the United States Supreme Court has noted, traces of illegal drugs are continuously eliminated from the bloodstream." Rawlings v. Police Dep't of Jersey City, N.J., 133 N.J. 182, 191 (1993). As a result, "[t]he delay in obtaining a warrant could result in the disappearance of the evidence of drug use." Ibid. The same is true for evidence of drugs in urine. See Moeller, Kissack, Atayee and Lee, Clinical Interpretation of Urine Drug Tests: What Clinicians Need To Know About Urine Drug Screens, Mayo Clinic, May 2017 (Da 109-131). Depending on the amount ingested, opioids may only be detectable in urine for 2-4 days after ingestion, see id. (Da 112), or detectable in blood for up to 3 days, see Drug Testing: An Overview Of Mayo Clinic Tests Designed For Detecting Drug Abuse, Mayo Medical Laboratories, Dec. 2012 (Da 132-161).

The State failed to establish at the suppression hearing that it would have conducted an inventory or warrant-authorized search of the tow truck within a relatively short time of the crash. Consequently, the State failed to make a "strong showing" that "it is in no better position than it would have enjoyed" had the wax folds been found during a lawful search of the tow truck. Sugar, 100 N.J. at 239-240. On the contrary, Rodriguez's unlawful entry into the tow truck facilitated the State's ability to obtain evidence -- blood and urine samples revealing the presence of

narcotics -- that it may not have been able to obtain had it abided by the Fourth Amendment. Because the State did not demonstrate that it would have obtained that evidence regardless of the unlawful search of the tow truck, the biofluid samples remain fruit of the poisonous tree and must be suppressed. U.S. Const. amends. IV, XIV; N.J. Const. art. 1, para. 7; Wong Sun, 371 U.S. at 484.

CONCLUSION

For the reasons set forth above, this Court must reverse the trial court's decision denying the suppression motion. Mr. Crilley respectfully requests that the matter be remanded to the trial court to provide him with an opportunity to withdraw his plea.

Respectfully submitted,
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Dated: August 29, 2024

Superior Court of New Jersey

APPELLATE DIVISION
DOCKET NO. A-2087-23T2

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court of New Jersey, Law Division,
v.	:	Sussex County.
JOSEPH M. CRILLEY,	:	Sat Below: Hon. Michael C. Gaus, J.S.C.
Defendant-Appellant.	:	

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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November 7, 2024

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PRELIMINARY STATEMENT

In August 2019, defendant was driving a tow truck carrying two cars on a highway in Lafayette Township when he crossed onto the other side of the road and smashed into a Honda Civic, killing the driver and severely injuring two passengers, one of whom would later die of his wounds. New Jersey State Police from various units responded to the scene, alongside emergency medical personnel, and controlled the scene while taking statements from eyewitnesses.

Defendant told an officer that his truck was carrying too much weight, causing the brakes to fail. Defendant then allowed the officer to retrieve his driver's license, vehicle registration, and insurance documents from the tow truck. While inside the truck, the officer saw a prescription bottle of sertraline, the generic form of Zoloft, in plain view. The police decided to seek a telephonic search warrant for defendant's blood and urine to determine whether substance use contributed to the crash. Meanwhile, defendant had been transported to a local hospital with minor injuries.

Shortly thereafter, another detective entered the tow truck to perform a routine inspection of the seat belts, airbags, and gross weight of the truck. In doing so, the detective discovered wax folds of heroin in plain view. After police obtained the telephonic warrant, a toxicology report revealed fentanyl and heroin, among other intoxicants, in defendant's system.

Defendant's effort to overturn his convictions should be rejected because the wax folds were properly admitted into evidence and the telephonic warrant was supported by probable cause. The detective lawfully discovered the wax folds without a warrant. First, the detective conducted a limited administrative search and defendant was aware his tow truck was subject to same. Second, the detective was operating under his community-caretaking function by working to preserve property and inspect the truck undisturbed before any items were thrown inside. Third, the detective's entry into the tow truck was a reasonable continuation of the initial entry, as both were part of an overall investigation into a destructive motor-vehicle crash that ultimately resulted in multiple deaths. Finally, even if there was a constitutional violation in obtaining the wax folds, they would inevitably have been discovered by one of various normal police procedures, including a telephonic warrant for samples of defendant's blood and urine, an inventory search, and a warrant to search the tow truck.

Further, the telephonic search warrant for samples of defendant's blood and urine was properly supported by probable cause even without the wax folds. By the time the wax folds were discovered, the officers had already decided to seek a warrant. The bottle of Zoloft found inside the tow truck and defendant's varying statements on the cause of the accident all took place before the wax folds were discovered and thus provided independent probable cause that was

untainted from any illegality in the discovery of the wax folds. There is no reason to apply the exclusionary rule under such circumstances. This Court should thus affirm the denial of defendant's motion to suppress.

COUNTERSTATEMENT OF PROCEDURAL HISTORY

On December 12, 2019, a Sussex County Grand Jury returned Indictment No. 19-12-335-I, charging defendant with two counts of second-degree reckless vehicular homicide, N.J.S.A. 2C:11-5(a) (counts one and two); fourth-degree assault-by-auto, N.J.S.A. 2C:12-1(c)(1) (count three); third-degree possession of heroin, N.J.S.A. 2C:35-10(a)(1) (count four); third-degree possession of cocaine, N.J.S.A. 2C:35-10(a)(1) (count five); and third-degree possession of fentanyl, N.J.S.A. 2C:35-10(a)(1) (count six). (Da1-3).

On January 25, 2023, the Honorable Michael C. Gaus, J.S.C., denied defendant's motion to suppress evidence seized from his vehicle and his blood and urine results. (Da15-55). On August 4, 2023, defendant pleaded guilty to the two reckless-vehicular homicide and the assault-by-auto counts, as well as a motor-vehicle ticket for reckless driving. (4T7-12 to 9-1; Da56-62). On January 26, 2024, Judge Gaus sentenced defendant in accordance with the plea agreement on counts one and two to consecutive five-year prison terms with an eighty-five-percent period of parole-ineligibility on each count pursuant to the No Early Release Act, N.J.S.A. 2C:43-7.2. (5T40-9 to 41-5). He also received a concurrent sixty-day prison term on the reckless-driving motor-vehicle ticket. (5T41-6 to 10). Defendant was thus sentenced to an aggregate ten-year prison term subject to NERA, in addition to applicable fines and a ten-year suspension

of his driver's license following his release from prison. (5T40-9 to 41-10, 42-7 to 43-5).

Defendant filed a notice of appeal on August 30, 2024. (Da67-71).

COUNTERSTATEMENT OF FACTS

The following facts were elicited at defendant's guilty-plea hearing (4T):

Defendant admitted that on August 5, 2019, he was a tow-truck operator in Lafayette returning from cleaning up an accident in Sparta. (4T24-13 to 25-7). Prior to driving the truck that day, he consumed heroin and fentanyl. (4T25-8 to 12). Defendant admitted that, while impaired, he recklessly operated the tow truck, resulting in an accident that killed two people, J.Z. and B.D., and caused serious bodily injury to another, A.J.[1] (4T25-19 to 28-23). He agreed that he drove in a manner that willfully and wantonly disregarded the safety of others on the road and that his impairment and disregard caused the accident. (4T29-1 to 13).

Judge Gaus found that defendant entered his plea knowingly, intelligently, and voluntarily, and he accepted defendant's guilty plea to counts one through three and the reckless-driving motor-vehicle ticket. (4T32-19 to 33-18).

This appeal follows.

[1] It is unclear from the record why initials are used to refer to the victims in the indictment and at the plea and sentencing hearings. The State uses initials in this brief for purposes of consistency.

LEGAL ARGUMENT

POINT I

THE WAX FOLDS DISCOVERED IN DEFENDANT'S TOW TRUCK WERE PROPERLY SEIZED AND RULED ADMISSIBLE.

Judge Gaus appropriately admitted evidence of the wax folds found in the tow truck. In finding the wax folds, the detective lawfully entered the tow truck without a warrant pursuant to the administrative-search and community-caretaking exceptions, as well as the reasonable-continuation doctrine. But even if the police entry was unlawful, the wax folds would inevitably have been discovered when the warrant to search the truck was procured. The judge thus properly denied defendant's motion to suppress.

A. Facts Elicited at the Suppression Hearing

On the night of August 5, 2019, defendant was driving a tow truck, towing two cars, on New Jersey Route 94 in Lafayette Township and crossed the road into oncoming traffic, smashing into a Honda Civic. (2T18-12 to 18, 19-7 to 13). The tow truck and the Honda came to a rest about fifty feet away from the point of impact, with the tow truck pinning the Honda into the ground. (3T21-25 to 22-23). The crash entrapped J.Z., the driver of the Honda, killing him. (2T18-19 to 21, 19-14 to 16). B.D., the rear passenger, and A.K., the front

passenger, were seriously injured and transported to the hospital.[2] (2T19-17 to 20, 30-7 to 18).

Trooper James Celi of the New Jersey State Police (NJSP) responded to the crash scene around 10:41 p.m.; there, he spoke to defendant, who was seated in the grass nearby. (2T12-24 to 13-11, 15-17 to 24). Defendant told Celi that his head and right leg hurt, but that he was otherwise fine, and that he was returning from cleaning up an accident in Sparta at the time of the crash. (2T24-7 to 12; Da72 at 22:46:08 to 22:46:25).

Celi then walked up to the crash site to investigate. (2T18-5 to 11). He described "extensive damage" to the Honda, including objects and broken glass "all over the place." (2T18-12 to 18). Celi also noted that, at the time, the Honda driver was pinned underneath the tow truck; the driver and the rear passenger suffered "serious injuries" from initial observations, while the front passenger had been "in the roadway and also had extensive injuries and bleeding." (2T18-19 to 24, 19-14 to 20-3). Celi testified that his role was to "get the people injured treated," ensure the safety of the scene from outside drivers, and coordinate with other agencies at the scene to identify the people involved. (2T21-4 to 15).

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[2] According to the judge at sentencing, B.D. died weeks later from his wounds, and A.K. "lost an eye, along with other horrific injuries." (5T23-5 to 9).

Trooper Celi described—and his body-worn camera (BWC) footage displayed—a multitude of witnesses and different responding agencies at the scene because of "the seriousness of the accident." (2T21-18 to 22-1; see Da72). Each agency served a different role, including the fire department, there "to help with the extraction," EMS to assist with injuries, the New Jersey Department of Transportation, and a Sparta police officer with information on the cars defendant was towing. (2T22-2 to 8, 93-14 to 24). There were also eyewitnesses to the crash providing statements to various officers. (2T21-21 to 23; see, e.g., Da72 at 22:48:18 to 22:48:55; Da73 at 22:46:46 to 22:57:40).

Celi explained that several law-enforcement officers from different NJSP units were also at the scene, each working on "different aspects of the investigation." (2T93-14 to 20, 94-10 to 15). For example, Celi noted that the Fatal Accident Investigation Unit focused "on the crash itself, how it occurred, and very specific things that go along with the crash reconstruction and everything like that," assisted by the crime-scene unit. (2T94-16 to 95-3).

At some point, defendant walked up toward the crash site, "kind of staggering a little bit," and Celi asked him to sit back in the grass. (2T23-13 to 17; Da72 at 22:46:08 to 22:47:06). Defendant explained that, because the tow truck did not have an anti-lock brake system, there was too much weight on the lift and "when he hit the brakes, he wasn't able to stop the vehicle and went into

the woods." (2T23-18 to 24; Da72 at 22:46:25 to 22:46:49). Celi noted that defendant was "sweaty" due to the weather, but noticed no other injuries. (2T24-3 to 16). After asking defendant to wait for medical assistance, Celi asked if defendant had his driver's license, which defendant allowed Celi to retrieve from his wallet inside the tow truck. (2T24-13 to 16, 24-24 to 25-3; Da72 at 22:46:49 to 22:46:55).

A few minutes later, Trooper Celi entered the tow truck through the passenger-side door to find defendant's driver's license and the truck's registration and insurance paperwork to complete his accident report. (2T25-4 to 23; Da72 at 23:07:57 to 23:09:12). Upon entry, he noticed "[i]tems scattered throughout the vehicle and the passenger-side floor and all over the center console area," as well as a bottle of prescription pills and a wallet in plain view. (2T25-24 to 26-9; Da72 at 23:07:57 to 23:09:12). Celi inspected the bottle and noted that it was sertraline—later identified as the generic form of Zoloft—which had been prescribed to defendant, before placing it back on the passenger seat. (2T26-10 to 27-3; Da72 at 23:09:12 to 23:10:43, 23:11:42 to 23:12:00). He also obtained the truck's registration and insurance. (2T8-10 to 14).

Examining the wallet, Officer Celi did not locate defendant's driver's license. (2T27-17 to 19). Celi found defendant in an ambulance preparing for transport to the hospital and asked him about the license; defendant said it was

inside a second wallet in the truck. (2T27-20 to 28-1; Da72 at 23:11:17 to 23:11:42). Defendant also confirmed that the pill bottle was his prescribed generic for Zoloft before he was taken to a local hospital for treatment. (2T28-2 to 9, 29-2 to 7; Da72 at 23:11:42 to 23:12:00). Re-entering the tow truck, Celi was unable to find defendant's other wallet. (2T28-17 to 29-1; Da72 at 23:13:19 to 23:13:45).

Around 11:10 p.m., Detective Daniel Rodriguez of the NJSP Fatal Accident Investigation Unit arrived on the scene to assist Celi in the investigation "with all technical aspects." (3T17-3 to 7, 19-21 to 20-4). Rodriguez's role was to inspect the roadway for tire tracks and the vehicles "for their airbags, seat belts, occupant placement," and "gross vehicle weight." (3T25-7 to 21). Rodriguez and Celi walked around the scene, as Rodriguez showed him skid marks on the road, which indicated that defendant's tow truck "clearly had brakes" because of the "rubber on asphalt," though the tow truck's rear brakes could have malfunctioned because there was only a single visible set of tire tracks. (Da72 at 23:19:18 to 23:25:00).

Regarding his inspection, Detective Rodriguez testified that, based on the serious nature of the accident, he knew that to remove the vehicles from the roadway, non-law-enforcement personnel would likely "have to enter to move something to get the two vehicles apart." For example, personnel would have

"to disengage brakes" or "move the steering wheel in different directions to allow it to be removed." (3T75-16 to 76-4, 85-18 to 86-6). He testified that his training and the standard operating procedures for major-crash investigations required making observations for the report before relocation preparation took place so that he "observ[ed] [the truck's interior] undisturbed," because "[m]ost of the time on large crashes," debris is removed from the roadway and "toss[ed] . . . into the vehicles."[3] (3T70-11 to 20, 76-5 to 12).

Seat-belt and airbag checks were necessary to fill out the crash-reporting form "and help[ed] to determine driver kinetics" as the crash occurred. (3T28-22 to 29-4). Rodriguez explained in response to a question by the motion judge that if the seat belt was "retracted and locked, it determines if the seat belt was in use at the time of the crash," because "when there's a strong impact, the seat belt will lock" and there would be "stretching on the seat-belt webbing indicating that there was weight behind it when it was stopped." (3T31-18 to 32-5). Rodriguez confirmed the judge's understanding that, "after the crash, if somebody unlock[ed] the seat belt to get out," the seat belt would "remain in the locked condition." (3T32-6 to 10).

[3] Indeed, as defendant's tow truck was being removed from the scene, Rodriguez saw other tow-truck drivers throwing debris and other items inside despite being instructed not to. (3T61-17 to 62-10).

Further, Detective Rodriguez explained that the gross-weight check helped determine whether the tow truck was overweight for the roadway or its own capacity, which had the potential to "impact its operation." (3T29-5 to 11). To check the gross weight, Rodriguez noted that he had to inspect inside the open driver-side door, typically in the area where the truck's vehicle-identification number would be located. (3T28-12 to 21).

About an hour after arriving, Detectives Rodriguez and Van Lenten[4]—who was assigned to photograph the scene—approached the tow truck. (Da73 at 00:08:00 to 00:09:34).[5] Because the crash made it impracticable to enter through the driver side, Van Lenten stepped up onto the passenger-side footwell to open the door and take photos of the seat belts and lack of an airbag. (3T29-19 to 25, 74-23 to 75-1). From the footwell, Van Lenten saw the Zoloft bottle on the passenger seat and wax folds containing suspected heroin on the driver seat and driver-side floorboard in plain view. (3T30-1 to 2, 32-11 to 18). He told Rodriguez, who stepped up and confirmed Van Lenten's observation. (3T74-23 to 75-11, 78-24 to 79-5).

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[4] Detective Van Lenten's first name is not contained in the record.

[5] Detective Rodriguez testified that at the time of the accident, his unit had not been issued BWCs. (3T21-2 to 6). The footage of him entering the tow truck comes from the BWC of another officer who was standing away from the truck, facing it. (Da73 at 00:08:00 to 00:09:34).

At that time, Rodriguez exited the tow truck without completing his inspection because it morphed into a criminal investigation with "possible driver impairment." (3T33-3 to 9; Da73 at 00:09:28 to 00:09:32). Rodriguez confirmed, however, that before entering the truck, he "did not believe it was a criminal investigation at all," only that it was a fatal-crash investigation, and he would not have entered the truck if he believed there was a criminal investigation. (3T57-8 to 13, 58-3 to 15, 58-24 to 59-5).

The police then secured and impounded the tow truck pending a search warrant and procured a telephonic search warrant to obtain samples of defendant's blood and urine. (3T39-2 to 13, 41-18 to 42-3; 1T). After those samples were obtained at the hospital, defendant tested positive for various narcotics including fentanyl, acetyl fentanyl, morphine, clonazepam (Klonopin), and alprazolam (Xanax), as well as several substances indicating heroin use. (Da74-81; 1T53-8 to 10; 3T41-1 to 17).

Detective Rodriguez explained that the tow truck was impounded because it was disabled and also due to the criminal investigation, but he further testified that cars involved in crashes can also be searched as part of a routine inventory of property "[t]o document any personal belongings within the vehicle," so that "the owner or operator has a record of it as well." (3T42-4 to 12). When the police later obtained a search warrant for the tow truck, Rodriguez conducted

another interior and exterior inspection, as well as a mechanical inspection to test the brakes. (3T43-5 to 17). He also discovered a black bag containing marijuana and other paraphernalia which was later determined to belong to the Honda passengers. (3T61-11 to 25).

B. The Judge's Ruling on the Motion to Suppress

On January 25, 2023, Judge Gaus issued a written opinion and corresponding order denying defendant's motion to suppress the wax folds and his blood and urine results. (Da15-55). After recounting the facts and arguments of the parties, Judge Gaus ruled that the wax folds were lawfully observed in plain view by Detectives Rodriguez and Van Lenten during a warrantless search based on multiple exceptions to the warrant requirement. (Da31-33).

The judge first concluded that the detectives satisfied the administrative-search exception. (Da33-36). He found that Rodriguez's "entry into the tow truck was done in accordance with his statutory obligation to document information relating to the commercial vehicle involved in the crash." (Da35). To this end, he was fulfilling his task of "filling out the New Jersey crash investigation form" while he investigated the seat belts, airbags, and vehicle weight. (Da35). Further, Rodriguez lawfully made the observations from the footwell on the passenger side of the car and inside the car, "[d]etermining seat

belt status [which] is a critical function of the inspection and needs to be done before the vehicle is moved or transported." (Da35). And, when Rodriguez saw the wax folds, "he immediately terminated the investigation." (Da36). The judge explained that there is a substantial government interest in "further[ing] the regulatory scheme of crash investigations" and noted defendant's awareness "that his vehicle could be subject to these types of searches" justified upholding the search because it was "carefully limited in time, place, and scope." (Da36).

Judge Gaus also ruled that the wax folds were admissible because they would have inevitably been discovered during an inventory search or pursuant to the warrant to search the tow truck. (Da36-41). Based on the standards established in State v. Sugar (Sugar II), 100 N.J. 214, 239-40 (1985), the judge concluded that the State demonstrated by clear and convincing evidence that it would have discovered the wax folds during a lawful impoundment. (Da36-38). To this end, the judge explained that impoundment would have occurred pending further investigation because of the nature of the crash, defendant's statement about the unsafe operation based on the two cars he was towing, evidence of the tow truck crossing over to the wrong side of the road, the long distance of braking, and the long distance from the impact point to the rest point, all of which "without question" justified impounding the tow truck. (Da39).

Further, Judge Gaus found that an inventory search would have occurred

because of the nature of the crash and number of parties involved, coupled with the seriousness of the crash and interest in property preservation. (Da40). The judge ruled that the wax folds inevitably would have been discovered based on the BWC footage depicting debris at the crash site and Rodriguez's testimony that because debris had been thrown into the tow truck, an inventory search would have been performed "to protect the police against claims or disputes over stolen property." (Da40).

The motion judge also ruled that the wax folds would inevitably have been discovered pursuant to the State's search warrant for the tow truck. (Da40-41). Judge Gaus concluded that the information included in the search warrant—the seriousness of the crash, two fatalities, a victim "with serious disfigurement," and defendant's explanation that his brakes weren't working—would have provided probable cause to search the tow truck regardless of whether the wax folds were previously discovered. (Da41).

Judge Gaus further concluded that the community-caretaker exception to the warrant requirement applied. (Da41-44). He rejected defendant's reliance on State v. Keaton, 222 N.J. 438 (2015), on the grounds that Keaton involved a single car and a single injured party, Keaton himself. (Da43). But this case involved a fatal accident to whose "disturbing nature" both Celi and Rodriguez testified, "including statements from witnesses that saw the tow truck barrel into

the Honda Civic, crossing the yellow line and virtually crushing it." (Da43). The judge further noted the death of the driver and that paramedics had been attempting to treat the other two victims as well. (Da43-44). To this end, the judge found that Rodriguez had "an urgent necessity to preserve property" and credited his testimony regarding the standard operating procedures requiring "observations of the seatbelts and airbags undisturbed," particularly in light of the fact that Rodriguez saw "other tow truck drivers who were responsible for relocating the vehicles to the impound lots picking up debris and putting them into the cabin." (Da44). Those observations, the judge found, "enhanced [the officer's] concerns to document everything before they were touched or moved." (Da44). He also deemed vehicle access necessary to clear the scene safely and in a timely manner, as the highway was shut down in both directions. (Da44).

Judge Gaus further ruled that the wax folds were properly seized under the continuation doctrine based on "the collaborative nature of the response to the crash." (Da45-46). He noted that the traffic responders and various NJSP bureaus on the scene and credited Celi's testimony that "all responding police officers 'put their heads together at some point.'" (Da46). Judge Gaus explained that Celi had entered the truck to gather the registration, driver's license, and "information relating to the crash," while Rodriguez entered as a fatal-crash investigator to inspect "the seatbelts, airbags, and vehicle weight in

an untouched state after the crash." (Da46). This supported a finding that the police "were working together in a 'single, integrated, continuous' police investigation into the fatal motor[-] vehicle crash." (Da46). Because of the severity of the accident and the injuries, the judge concluded that it was reasonable that various agencies and units were on the scene to investigate, and that separation of Celi's access and Rodriguez's access by about an hour "[was] not surprising or unusual" and thus satisfied the continuation doctrine. (Da46).

With regard to the telephonic search warrant, the judge concluded that the lab results were admissible based on sufficient probable cause with or without the discovery of the wax folds. (Da46-50). The judge credited Celi's testimony that the State intended to seek a telephonic warrant, "based on the nature of the crash including injuries sustained and the presence of Zoloft on the driver's seat," and that any other factors were only considered later. (Da48). And, the judge found "that law enforcement determined that an application for a telephonic warrant for blood should be made almost right away," noting that Celi was already beginning to prepare the application when Rodriguez discovered the wax folds. (Da48-49). During the hearing, Celi stated that defendant had told police "that his wheels locked and that he was unable to stop his vehicle" and "did not show any outward signs of intoxication," and that Celi saw Zoloft in the truck and wax folds were also found. (Da49). Based on the

above, the judge found that probable cause existed to issue the warrant for defendant's blood and urine samples and denied defendant's motion to suppress.[6] This Court should affirm the judge's ruling.

C. The wax folds were properly admitted because the detective lawfully entered the tow truck and saw them in plain view.

Judge Gaus properly denied defendant's motion to suppress the wax folds because they were lawfully observed under multiple exceptions to the warrant requirement. First, Detective Rodriguez conducted an inspection of the tow truck under the administrative-search exception which revealed the wax folds. Also, Rodriguez entered the truck under his community-caretaking function to preserve property. Further yet, Rodriguez's entry to inspect the seat belts, airbags, and gross weight was a reasonable continuation of Trooper Celi's lawful entry to obtain defendant's identification and the truck's registration and insurance card, as both officers were working in tandem on a single, continuous investigation. Finally, even if Rodriguez's entry does not satisfy an exception to the warrant requirement, the wax folds would inevitably have been discovered in plain view after any of a number of normal, proper investigatory procedures

[6] Judge Gaus also denied defendant's motion for a hearing pursuant to Franks v. Delaware, 438 U.S. 154 (1978), regarding whether Officer Celi's testimony at the telephonic-search-warrant hearing involved "a reckless disregard for the truth." (Da50-54). That ruling is unchallenged on appeal.

were undertaken, including a telephonic search warrant for samples of defendant's blood and urine, an inventory search, or a warrant to search the tow truck. This Court should therefore affirm the motion judge's denial of defendant's motion to suppress.

Appellate review of a trial judge's decision on a motion to suppress is limited. State v. Robinson, 200 N.J. 1, 15 (2009). In reviewing a motion to suppress evidence, this Court must uphold the judge's factual finding "so long as those findings are supported by sufficient credible evidence in the record." State v. Rockford, 213 N.J. 424, 440 (2013) (quoting Robinson, 200 N.J. at 15). This Court also defers to a motion judge's findings that are "substantially influenced by [the judge's] opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." Ibid. Only a motion judge's legal conclusions are reviewed de novo. Ibid.

"The Fourth Amendment does not require that every search be made pursuant to a warrant." State v. Terry, 232 N.J. 218, 231 (2018) (citations omitted). Warrantless searches are permissible if the State can prove by a preponderance of the evidence that the search was "justified by one of the 'few specifically established and well-delineated exceptions' to the warrant requirement." Witt, 223 N.J. at 422 (quoting State v. Frankel, 179 N.J. 586, 597-98 (2004)); State v. Elders, 192 N.J. 224, 254 (2007). In the end,

"'[w]hether a search has been conducted in an unreasonable manner is a matter to be determined in the light of the circumstances of the particular case.'" State v. Pompa, 414 N.J. Super. 291, 229-30 (App. Div. 2010) (quoting In re Martin, 90 N.J. 295, 314 n.9 (1982)).

1. Administrative-Search Exception

The motion judge properly admitted the wax folds because Detective Rodriguez lawfully observed them in plain view while conducting an administrative inspection of the tow truck. Because he followed standard operating procedures when he entered the tow truck to inspect the seat belts, airbags, and gross weight before the truck was disturbed or moved, seizure of the wax folds was warranted and the evidence was properly admitted.

One exception to the warrant requirement is an administrative search "of a place of business operations of a highly or pervasively regulated industry." State v. Hewitt, 400 N.J. Super. 376, 384 (App. Div. 2008) (citing New York v. Burger, 482 U.S. 691, 702-03 (1987); N.J. Transit PBA Local 304 v. N.J. Transit Corp., 151 N.J. 531, 545-56 (1997); State v. Turcotte, 239 N.J. Super. 285, 291-97 (App. Div. 1990)). It is well-settled that commercial trucking is highly regulated and that "the government may establish a regulatory program for administrative searches of commercial trucks without a warrant." Id. at 385. Unlike private homes, the privacy expectation in closely regulated commercial

industries is "particularly attenuated." Turcotte, 239 N.J. Super. at 291.

Safety inspections of commercial motor vehicles are authorized by federal and state statutes and regulations. See 49 U.S.C. § 31142; 49 U.S.C. § 31136; 49 C.F.R. §§ 396.9, 396.17; N.J.S.A. 39:5B-32; N.J.A.C. 13:60-2.1. The New Jersey Administrative Code defines a "commercial motor vehicle," in part, as "any self-propelled or towed motor vehicle used on a highway in intrastate commerce to transport passengers or property when the vehicle . . . [h]as a gross vehicle weight rating or gross combination weight rating, or a registered weight of 4,536 kg (10,001 pounds) or more, whichever is greater." N.J.A.C. 13:60-2.1.

The administrative-search exception applies to a highly regulated industry when three criteria exist: (1) there is a "'substantial' government interest that informs the regulatory scheme pursuant to which the inspection is made"; (2) any "warrantless inspections must be 'necessary to further the regulatory scheme'"; and (3) "the statute's inspection program, in terms of the certainty of regularity of its application, [must] provid[e] a constitutionally adequate substitute for a warrant." Burger, 482 U.S. at 702-03 (quoting Donovan v. Dewey, 452 U.S. 594, 600, 602, 603 (1981)). The third prong requires "the two basic functions of a warrant," meaning that the regulatory scheme "must advise the owner of the commercial premises that the search is being made pursuant to

the law and has a properly defined scope, and it must limit the discretion of the inspecting officers." Id. at 703. "[T]he statute must be 'sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes.'" Ibid. (quoting Donovan, 452 U.S. at 600). And the inspecting officers' discretion "must be 'carefully limited in time, place, and scope.'" Ibid. (quoting United States v. Biswell, 406 U.S. 311, 315 (1972)).

Detective Rodriguez, a fatal-crash investigator, was statutorily obligated to conduct a safety inspection of the seat belts, airbags, and vehicle weight under N.J.S.A. 39:4-131.[7] That inspection following the crash, as mandated by statute, constituted a valid administrative search. Indeed, as the judge found, there is a substantial government interest in ensuring the safety of New Jersey drivers and

[7] Investigating officers are required by N.J.S.A. 39:4-131 to create an accident report within five days of the investigation including "sufficiently detailed information" regarding the crash—for example, "the cause, the conditions then existing, the persons and vehicles involved, [and] the compliance with [the Passenger Automobile Seat Belt Usage Act] by the operators and passengers of the vehicles involved in the accident . . . ." Based on defendant's statement to police that the weight of the cars he was towing rendered him unable "to stop the vehicle" and caused him to drive into nearby woods before the crash, Rodriguez needed to check the gross weight of the truck pursuant to his inspection. Further, defendant's statement that he had "begged" his boss to fix the brakes in the tow truck, (Pa1 at 22:54:33 to 22:55:02; 22:56:48 to 22:56:10), warranted inspecting the seat belts and airbags to determine "the cause" and "the conditions then existing" before the vehicle was disturbed or moved for purposes of the statutory accident report.

roadways, and inspecting the largest vehicles on the road—particularly one which had just been involved in a horrific crash—furthered the regulatory scheme by helping determine whether the truck had operational airbags and seat belts and whether it was too heavy. As Rodriguez noted, it was important to conduct this inspection before the interior of the tow truck was disturbed by other personnel removing it from the scene or tossing debris inside.

The statutory scheme also provided an adequate warrant substitute, thus satisfying the third Burger prong. Defendant, a commercial-truck driver, was certainly aware that his tow truck was subject to a safety inspection following the crash. And the search conducted by Rodriguez was "carefully limited in time, place, and scope" because he entered seeking only to inspect three discrete properties of the tow truck: the operation of the seat belts, the existence of airbags, and the gross-vehicle weight. These aspects of the inspection, as noted, related to the potential cause of the accident and the safety conditions of the tow truck at the time of the crash, which Rodriguez was required to document and submit within five days under N.J.S.A. 39:4-131. Indeed, once the administrative inspection expanded into a criminal investigation when Rodriguez discovered the wax folds, he terminated the inspection immediately. The administrative-search exception to the warrant requirement was therefore

satisfied and Rodriguez lawfully discovered the wax folds inside the tow truck.[8]

2. Community-Caretaking Exception

Detective Rodriguez also properly conducted the inspection of the tow truck as part of his community-caretaking function to preserve property. He entered the tow truck to observe the truck while it was undisturbed, aware of the possibility that debris and other items could be thrown inside or that the truck could be cut apart for removal from the wreckage. Seeing the wax folds in plain view, he terminated the inspection. The wax folds were therefore properly

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[8] Defendant mistakenly argues that because 49 C.F.R. § 396.9(a) requires that a "special agent of the [Federal Motor Carrier Safety Administration]" perform warrantless safety inspections, that in New Jersey, Detective Rodriguez was not authorized to conduct an inspection because only the State Police Commercial Carrier Safety Inspection Unit (CCSIU) may do so. In Burger, the United States Supreme Court rejected an argument that an administrative search was unauthorized because the inspecting officer was not an officer of the administrative body for which the regulatory scheme was created. 482 U.S. at 717-18. Indeed, it "decline[d] to impose upon the States the burden of requiring their enforcement of their regulatory statutes to be carried out by specialized agents." Ibid. Where, as here, the regulatory scheme governing motor-carrier safety regulations, N.J.A.C. 13:60-1.1 to 2.1, does not expressly and exclusively authorize a specific agent to conduct safety inspections, Burger permits a fatal-crash investigator like Rodriguez to do so. Cf. State v. Williams, 84 N.J. 217, 222-27 (1980) (rejecting the administrative-search exception and invalidating police search of a tavern where the operative statute expressly provided that tavern inspections be undertaken by agents of the state or local Division of Alcoholic Beverage Control). Thus, the panel's statement in Hewitt that commercial-truck "inspections are conducted by the [CCSIU]," (see 400 N.J. Super. at 380), is of no moment, because the regulatory and statutory scheme does not forbid other police units from performing safety inspections under these circumstances, nor does it affect the constitutionality of the police conduct.

admitted pursuant to the community-caretaking exception to the warrant requirement.

The community-caretaking doctrine, first established by the United States Supreme Court in Cady v. Dombrowski, 413 U.S. 433 (1973), is an exception to the warrant requirement based on the awareness that police officers are often "called on to perform dual roles." State v. Diloreto, 180 N.J. 264, 276 (2004). It "recognizes that police officers provide a wide range of social services outside of their traditional law enforcement and criminal investigatory roles." State v. Scriven, 226 N.J. 20, 38 (2016). "In performing these tasks, typically, there is not time to acquire a warrant when emergent circumstances arise and an immediate search is required to preserve life or property." State v. Edmonds, 211 N.J. 117, 141 (2012). The exception "recognizes that police may, dependent upon the factual circumstances, be required to enter a disabled or abandoned motor vehicle without a search warrant and without probable cause." State v. O'Loughlin, 270 N.J. Super. 472, 487 (App. Div. 1994).

Community caretaking by police officers includes "aiding those in danger of harm, preserving property, and creat[ing] and maintain[ing] a feeling of security in the community." State v. Bogan, 200 N.J. 61, 73 (2009). The actions of the police must be "unconnected to a criminal investigation and objectively reasonable under the totality of the circumstances." Diloreto, 180 N.J. at

278. In Bogan, the Court clarified that "[t]o hold that the police can never legitimately engage in community caretaking activities merely because they are also involved in the detection, investigation, or acquisition of evidence concerning the violation of a criminal statute could lead to absurd results." 200 N.J. at 77 (quoting State v. D'Amour, 834 A.2d 214 (N.H. 2003)). "[T]he absolute separation need only relate to a sound and independent basis for each role, and not to any requirement for exclusivity in terms of time or space." Ibid. (quoting D'Amour, 834 A.2d at 217).

A court must consider whether an officer has reacted to an objectively reasonable concern. Scriven, 226 N.J. 20 at 39. It must also consider whether the caretaking function is a "pretext" for an unlawful warrantless search. Bogan, 200 N.J. at 77. The Bogan Court made clear that "[s]o long as the police had an independent basis for entering the apartment under the community caretaking exception that was not a pretext for carrying out an investigatory search," then it found "no bar . . . under our federal and state constitutions for the police actions in [that] case." Ibid.

Detective Rodriguez testified that he entered the tow truck, in conformance with his training and standard operating procedures for major crash investigations, to observe the seat belts, airbags, gross weight, and interior of the truck "undisturbed," since debris was often thrown into vehicles at large-

scale crash scenes. Rodriguez also explained that during major crashes, tow companies often enter the vehicle to disengage the brakes or move the steering wheel to prepare it for relocation. He stated that based on the nature of the accident, he knew there was "a very good possibility" that the tow company would have to enter the tow truck and disturb the scene. Further, Rodriguez entered the truck solely to conduct this inspection and testified that he "did not believe it was a criminal investigation at all" and would not have entered if he did. Indeed, he ended the inspection as soon as the wax folds were discovered.

Defendant's reliance on Keaton is misplaced. There, an officer entered an overturned car to retrieve the registration and insurance information without asking Keaton (the driver and sole injured party), finding an illegal handgun and marijuana. 222 N.J. at 444. Rejecting the State's community-caretaking exception argument and granting Keaton's motion to suppress, our Supreme Court noted that in spite of the officer's statutory duty to complete an accident report, there was no "exigent circumstance" sufficient to justify searching the car for Keaton's registration and insurance documents. Id. at 451-52.

Here, as the trial court found, Detective Rodriguez worked to preserve property inside the tow truck and make observations of the horrific crash scene that resulted in multiple grave injuries and a known death before the truck's interior was disturbed by other responders at the scene. Indeed, Rodriguez's

objectively reasonable action proved correct—he testified that other tow-truck drivers later tossed debris from the road, including a bag containing marijuana that was later determined to belong to the occupants of the Honda, inside defendant's truck before it was removed from the scene.

Rodriguez's actions greatly differ from the officer in Keaton, who explicitly searched the car for Keaton's documents for his own expediency without asking Keaton. Rodriguez entered the truck here not for efficiency purposes, but because of the urgent need to observe the interior of the truck and its seat belts and airbags before it was disturbed and moved. He testified that he did not believe the investigation was criminal; indeed, he had spoken to Officer Celi, who had already been inside the truck twice with defendant's consent and had not observed the wax folds in plain view despite their visibility on his BWC. Rodriguez therefore lawfully entered the tow truck and saw the wax folds in plain view pursuant to his community-caretaking function.

3. Continuation Doctrine

Because the entries into the tow truck by Trooper Celi and Detective Rodriguez were conducted as part of an overall investigation into a massive motor-vehicle crash with at least one death and two serious injuries known to the officers at the time, the reasonable-continuation doctrine applied to justify Rodriguez's plain-view observation of the wax folds. The trial court properly

admitted the wax folds on this ground as well.

Where police lawfully enter a location without a warrant, a subsequent entry into that location yielding evidence may be permissible under the reasonable-continuation doctrine. See State v. O'Donnell, 203 N.J. 160, 163-65 (2010) (affirming denial of motion to suppress where officers lawfully entered home pursuant to emergency-aid exception and, thirty to forty-five minutes after the emergency ended and police left, re-entered to search and seize evidence for a murder investigation). To this end, "separate entries can be viewed as components of a single, continuous, and integrated police action" if they are "not interrupted or separated by an unduly prolonged delay." State v. Henry, 133 N.J. 104, 116 (1993).

There is no dispute that Trooper Celi's entry into the tow truck to search for defendant's credentials and the tow truck's documents was lawful. As he did so, as noted, his BWC captured the wax folds on the seat, although he did not notice them. Detective Rodriguez, who was on scene to assist Officer Celi "with all technical aspects of the investigation," attempted to fulfill that role by inspecting the seat belts, airbags, and gross weight of the tow truck pursuant to his training and standard operating procedures. On seeing the wax folds, Rodriguez immediately stopped his inspection. About an hour passed between Celi's initial entry at 11:07 p.m. and Rodriguez's entry at 12:08 a.m., which was

reasonable based on (1) the number of different police agencies, first responders, victims, and other witnesses at the scene of the horrific crash; (2) the grievous injuries involved requiring medical attention, including at least one death; (3) the fact that the Honda was pinned underneath the tow truck with a passenger inside; and (4) the amount of collaboration and coordination that was required for the police to complete their fatal-crash investigation. Thus, Rodriguez properly entered the tow truck as part of "a single, continuous, and integrated police action," and the wax folds were lawfully discovered. See Henry, 133 N.J. at 116.

4. Inevitable Discovery

Even if Detective Rodriguez's entry into the tow truck was improper, the wax folds would inevitably have been discovered through one of several means, namely: a telephonic search warrant for samples of defendant's blood and urine that would have revealed the presence of fentanyl and heroin in his system at the time of the crash; an inventory search to preserve property in the tow truck; or a valid search warrant to search the truck. The motion court thus properly admitted the wax folds on this basis as well.

The inevitable-discovery doctrine allows for evidence to be admitted against a defendant if the State shows that (1) proper, normal investigatory procedures would have been pursued to complete the investigation; (2) pursuit

of those procedures under the circumstances would have inevitably resulted in the discovery of the evidence; and (3) such discovery would have occurred independently of the discovery of the evidence by the challenged means. State v. Smith, 212 N.J. 365, 391 (2012); Sugar II, 100 N.J. at 238, 240.

The doctrine arises from the purpose of the exclusionary rule, which is to prevent the prosecution from being placed in a better position as a result of illegal conduct, not to place the prosecution in a worse position that it would have been without that conduct. Ibid. (citing Sugar II, 100 N.J. at 236-37). "Inevitable discovery tempers the 'social costs associated with the exclusionary rule' by placing 'police in the same position that they would have been in had no police misconduct occurred.'" Ibid. (quoting Sugar II, 100 N.J. at 237).

The State need only establish, by a clear-and-convincing record, that the evidence would inevitably have been discovered. But each fact or element of such a showing need only be proved by a preponderance of the evidence, which in combination clearly and convincingly establishes the ultimate fact that the evidence would have been inevitably discovered. State v. Sugar (Sugar III), 108 N.J. 151, 159 (1987). The State need not show precisely "when and under what circumstances the discovery would occur." Id. at 158 (internal citations omitted). Nor does the State need to show "the exact circumstances of the

evidence's discovery" or "the exclusive path leading to the discovery." Ibid. It need only persuade the court that the evidence would have been discovered. Ibid. The State may do so by showing that such discovery would have occurred "in one or in several ways." Id. at 158-59. "A number of possibilities may cumulatively constitute clear and convincing evidence" that the evidence would inevitably have been discovered. Id. at 159. Such a conclusion should be based on the totality of "the evidence understood in light of ordinary experience and common sense." Id. at 163-64.

The facts here clearly and convincingly established that police would have satisfied all three Sugar II prongs using any of several proper, normal, and specific investigatory procedures—a telephonic search warrant for defendant's blood and urine, an inventory search, or a warrant to search the tow truck, for example—to discover the wax folds. See 100 N.J. at 238.

First, as explained further in Point II, infra, the police decided to seek a telephonic search warrant to collect samples of defendant's blood and urine before the wax folds were discovered, and thus there was probable cause to support that warrant without the wax folds based on the Zoloft bottle and defendant's varying explanations of the events. Once that warrant was issued, defendant's toxicology report would have—as it did—returned evidence that he had ingested a variety of substances including fentanyl and heroin that caused

his impairment that led to the crash killing two motorists and severely injuring a third. In turn, even without any other investigatory steps that would have been taken in the interim (such as an inventory search or a warrant to search the tow truck), the report would have provided police probable cause to search the tow truck for evidence of drug use causing the accident and revealed the wax folds.

Second, even before receiving the toxicology results, however, the police would inevitably have discovered the wax folds during an inventory search. "[T]he propriety of an inventory search involves a two-step inquiry: (1) whether the impoundment of the property is justified; and (2) whether the inventory procedure was legal." State v. Hummel, 232 N.J. 196, 207 (2018) (citing State v. Mangold, 82 N.J. 575, 583 (1980)). Where impoundment is justified, a court "need only analyze the reasonableness of the inventory search." Ibid. With respect to reasonableness, courts balance factors such as "the scope of the search, the procedure used, and the availability of less intrusive alternatives" to ensure the search is not "more intrusive than reasonably necessary to respond to the protective functions which fostered its creation." Id. at 208-09 (quoting Mangold, 82 N.J. at 584, 587).

Given the nature of the crash, the extent of the damage, and the fact that the tow truck was stuck on top of the Honda, there is no dispute that the truck was lawfully impounded. As Detective Rodriguez testified, the police towed

and impounded the truck because it was "disabled" from the crash as well as for the criminal investigation. But as the trial court concluded, given the horrific crash and the disorganization of the interior, including debris from the road thrown inside, an inventory search would have been conducted regardless of any criminal investigation to prevent loss of property and protect the police from liability. Once the truck was inventoried, the wax folds would inevitably and promptly been discovered.

Defendant makes much of the tangential fact that no inventory search was, in fact, performed in this case, and that the State would have had to ask defendant to arrange for the removal of his belongings from the tow truck before performing one. But the discovery of the wax folds, which provided probable cause to seek a search warrant, rendered this hypothetical scenario irrelevant. See Sugar II, 100 N.J. at 237 (recognizing that inevitable discovery may involve "proof of hypothetical independent sources" of discovering evidence). Had the wax folds not been discovered, Rodriguez's repeated testimony regarding disturbances in the interior of the tow truck and debris being tossed inside clearly and convincingly suggests that the officers would have conducted an inventory search. Once they did so, they would have discovered the wax folds in plain view.

Third, and finally, the police also inevitably would have discovered the

wax folds pursuant to a valid warrant to search the tow truck. The destruction caused by the crash (including the fact that, traveling in opposite directions, the tow truck pushed the Honda back fifty feet and pinned it to the ground), coupled with the Zoloft bottle and defendant's claim that his brakes failed to activate when he attempted to stop, would have sufficed to provide probable cause to search the tow truck for evidence of vehicular homicide and assault by auto. Based on the evidence besides the wax folds, the police had an objectively reasonable belief that defendant either operated the truck while intoxicated or otherwise drove recklessly and caused the accident that caused two deaths and a serious injury to the passengers inside the Honda. Once that warrant was issued, the wax folds would inevitably have been found inside the tow truck. Based on the above, there is no reason to disturb the court's ruling below denying defendant's motion to suppress.

POINT II

PROBABLE CAUSE SUPPORTED THE WARRANT TO OBTAIN BLOOD AND URINE SAMPLES FROM DEFENDANT.

Judge Gaus properly issued the telephonic search warrant to obtain samples of defendant's blood and urine. Indeed, the telephonic warrant was supported by probable cause with or without the discovery of the wax folds. Even if discovery of the wax folds was necessary to establish probable cause to obtain that warrant, they nevertheless would have been discovered as part of the normal course of the investigation within time to reveal the drugs in defendant's system. Defendant's motion to suppress the biofluid samples was thus properly denied. This Court should affirm that ruling.

A. Facts Supporting the Telephonic Search Warrant

During Trooper Celi's interactions with defendant at the scene around 10:45 p.m., defendant expressed pain in his head and right leg, telling Celi that he was returning from cleaning up an accident. (2T24-7 to 12; Da72 at 22:46:08 to 22:46:25). Defendant, in turn, granted Celi consent to enter the tow truck to find his driver's license. (Da72 at 22:46:49 to 22:46:55).

Shortly before 11:00 p.m., NJSP Sergeant David Fritsch's BWC showed that he had suggested to a prosecutor over the phone that they should seek a telephonic search warrant for defendant's blood and urine based on defendant's

inconsistent explanations of the crash—that he first stated that the car he was towing "was too heavy," but he later mentioned how he had asked his boss to fix the truck's brakes and they were not working properly—and the fact that the crash involved a commercial vehicle. (Pa1 at 22:57:29 to 22:57:40).

About twenty minutes after talking to defendant, around 11:08 p.m., Trooper Celi entered the tow truck to look for defendant's paperwork and found the Zoloft bottle on the driver seat. (Da72 at 23:07:57 to 23:09:12). Because Celi could not find defendant's driver's license, he returned to defendant, who was inside an ambulance, where defendant explained that his license was in a smaller wallet inside the truck and that the Zoloft was prescribed to him. (Da72 at 23:11:17 to 23:12:00). Moments later, another officer told Celi him that "they're going to get a telephonic [search] warrant" for defendant's blood and urine. (Da72 at 23:12:47 to 23:12:57). When Celi went back to the truck to check for defendant's driver's license, he could not find it. (Da72 at 23:13:19 to 23:13:45).

In a conversation between Celi and an officer shortly thereafter, another officer asked if Celi had identified the other occupants of the Honda, noting that Detective Kyle Phlegar of the Sussex County Prosecutor's Office "needed that information for the telephonic." (Da72 at 23:44:53 to 23:45:50). When Celi stated that he would look for an EMS person to get that information, he was

again told "Phlegar is going to get a telephonic search warrant" so the victims' identities were needed. (Da72 at 23:45:50 to 23:46:36).

Around midnight, after a discussion among a group of officers, Celi agreed to act as the witness for the telephonic-search-warrant hearing with the judge. (Da72 at 23:59:37 to 23:59:54). Celi confirmed that he had "all the info[rmation]" needed to speak to the judge, so the officer said they would "call and get it going." (Da72 at 00:00:15 to 00:00:50). Celi then explained to the Sussex County Assistant Prosecutor at the scene that he "barely interacted" with defendant and saw no signs of impairment, but there was a prescription-pill bottle in the car. (Da72 at 00:05:00 to 00:05:32). Another unidentified officer questioned whether they should seek a telephonic warrant based on the pills. (00:09:30 to 00:09:45). Shortly thereafter, Celi received a phone call and relayed to the assistant prosecutor that wax folds containing heroin were discovered by Detective Rodriguez inside the truck. (Da72 at 00:10:28 to 00:11:03).

Beginning at 12:36 a.m. on August 6, 2019, Judge Gaus held a telephonic-search-warrant hearing regarding samples of defendant's blood and urine. (1T). Officer Celi described the accident, the statuses of the victims, and his discovery of the Zoloft bottle. (1T4-19 to 8-8). He also noted that Detective Rodriguez saw wax folds of heroin in plain view on the floor and driver seat. (1T8-9 to

21). Celi stated that he did not observe "outward signs of intoxication" from defendant, but that defendant complained of pain in his right leg and his head. (1T8-22 to 24, 9-7 to 10).

In response to a question by the judge, Celi explained that defendant told him he was driving down the hill and the wheels on the car that he was towing locked up, so he hit the brakes, the tires skidded, and he drove the truck into the woods before crashing into the Honda. (1T10-4 to 18). Celi noted that on the road, the police noted one set of skid marks and that the rear brakes on the tow truck were not working. (1T10-19 to 11-2). That skid mark began on "the southbound side and it went into the . . . northbound side until the . . . point of contact." (1T11-8 to 14).

Judge Gaus ruled that probable cause existed to issue the telephonic search warrant for defendant's blood and urine samples. (1T11-17 to 20). The warrant was supported by the discovery of the Zoloft bottle, as well as the wax folds and a "relatively inconsistent explanation as to how the vehicle locked up and crossed the center line, striking the blue Honda in the northbound lane." (1T11-21 to 12-2). As noted, defendant's toxicology report revealed positive tests for fentanyl, acetyl fentanyl, morphine, clonazepam, alprazolam, and other substances indicating heroin use prior to the crash. (Da74-81). The judge's ruling should be affirmed by this Court.

B. Probable cause supported the issuance of the telephonic warrant with or without the discovery of the wax folds.

Regardless of whether the wax folds were discovered, the judge properly granted the telephonic search warrant for samples of defendant's blood and urine. Sufficient indicia of probable cause to obtain those samples existed, and the warrant was properly issued. This Court should thus affirm the denial of defendant's motion to suppress the biofluid samples.

Both the United States Constitution and the New Jersey Constitution guarantee freedom from unreasonable searches and seizures by the government. U.S. Const. amend. IV; N.J. Const. art. I, ¶ 7. Taking a biofluid sample to determine whether a defendant was intoxicated constitutes a search. See State v. Zalcberg, 232 N.J. 335, 345 (2018) (citing Schmerber v. California, 384 U.S. 757 (1966)); Int'l Fed'n of Prof'l & Tech. Eng'rs, Local 194A v. Bridge Comm'n, 240 N.J. Super. 9, 18 (App. Div. 1990). A neutral magistrate must be satisfied there is probable cause to believe evidence of a crime will be found at the location specified in the warrant before authorizing it. State v. Andrews, 243 N.J. 447, 464 (2020). This balances the government's need to enforce the laws against a citizen's right to privacy so that neither is unduly hampered or unreasonably impaired. Brinegar v. United States, 338 U.S. 160, 175-76 (1949); State v. Keyes, 184 N.J. 541, 553-54 (2005). Rule 3:5-3(b) permits a judge to issue a warrant telephonically.

Probable cause is a "flexible, nontechnical concept" whose foundation is a "reasonable ground for belief of guilt." Keyes, 184 N.J. at 553; State v. Moore, 181 N.J. 40, 46 (2004). "It requires nothing more than a practical, common-sense decision whether, given all the circumstances . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." State v. Johnson, 171 N.J. 192, 214 (2002) (citations omitted, alteration in original). This is a "low threshold," which our Supreme Court has unanimously decided "is not a stringent standard . . . ." State v. Carroll, 456 N.J. Super. 520, 544 (App. Div. 2018); State in the Interest of J.G., 151 N.J. 565, 591 (1997); see also United States v. Orozco, 41 F.4th 403, 408 (4th Cir. 2022) ("A search warrant's purpose is to gather evidence necessary to determine whether a crime has been committed, and if so by whom. Probable cause is thus not a high bar.") (citations omitted).

Judges reviewing requests for warrants should thus make a "practical, common[-]sense determination" after considering the totality of the circumstances. Moore, 181 N.J. at 46; State v. Marshall, 199 N.J. 602, 611 (2009); State v. Diaz, 470 N.J. Super. 495 (App. Div. 2022). "Although several factors considered in isolation may not be enough, cumulatively these pieces of information may 'become sufficient to demonstrate probable cause.'" Ibid. (quoting State v. Zutic, 155 N.J. 103, 113 (1998)). "[P]robable cause can be,

and often is, inferred . . . ." United States v. Jones, 994 F.2d 1051, 1055 (3d Cir.1993).

Once issued, warrants are presumptively valid and a judge's decision to issue a warrant is entitled to "substantial deference." State v. Marshall, 123 N.J. 1, 72 (1991), supplemented by 130 N.J. 109 (1992). Defendants challenging the warrant have the burden of "proving the invalidity of that search, namely, that there was no probable cause supporting the issuance of the warrant . . . ." State v. Sullivan, 169 N.J. 204, 211 (2001). But an appellate court's review of this decision is limited and the court "should not disturb the trial court's findings merely because it might have reached a different conclusion." Elders, 192 N.J. at 244 (punctuation and citations omitted); State v. Chippero, 201 N.J. 14, 32-33 (2009). "Doubt as to the validity of the warrant should ordinarily be resolved by sustaining the search." Keyes, 184 N.J. at 554 (citations and punctuation omitted). Even if a reviewing court thinks the sufficiency of the warrant is "marginal" or "doubtful," it should uphold the warrant. State v. Wright, 113 N.J. Super. 79, 82 (App. Div. 1971); State v. Sheehan, 217 N.J. Super. 20, 27 (App. Div. 1987). Indeed, "a grudging or negative attitude by reviewing courts is repugnant to the Fourth Amendment's strong preference for searches conducted pursuant to a warrant." Sheehan, 217 N.J. Super. at 27.

The telephonic warrant for samples of defendant's blood and urine was

supported by probable cause even without the wax folds. The Zoloft bottle inside the tow truck, combined with defendant's "relatively inconsistent" explanations of how the crash occurred, as well as the seriousness of the crash, justified issuance of a warrant to determine whether defendant was under the influence at the time of the crash. While Celi told the judge that he did not observe signs of impairment during his brief interactions with defendant, Detective Rodriguez, who was part of the team that decided to apply for the telephonic warrant, stated at the suppression hearing that, based on his background as an EMT, Zoloft can cause impairment and should not be taken while operating a tow truck. (3T37-23 to 38-12). Judge Gaus showed a similar understanding in issuing the warrant when he mentioned both Zoloft and the wax folds when discussing "certain types of substances that are in the bloodstream."

In addition to the Zoloft, Judge Gaus relied on the fact that defendant gave different explanations to police. While Trooper Celi testified on cross-examination at the suppression hearing that he mistakenly told the judge that defendant blamed the accident on the cars he was towing, the BWC footage nevertheless showed that defendant in fact gave various conflicting reasons—and reason to doubt his explanations—for the crash. For example, defendant first told Celi that the truck did not have an anti-lock braking system and "the

back car from the weight pushed" him and would not let him stop. He then told Celi that upon hitting the brakes, "all [he] did was slide." (Da72 at 22:46:20 to 22:46:50; Pa1 at 22:46:30 to 22:46:48). Another officer pointed out a few minutes later that defendant's story had changed, since he first claimed the weight of the back car caused the accident, but he later claimed that the brakes were not working and he had previously "begged" his employer to fix them. (Pa1 at 22:54:33 to 22:55:02; 22:56:48 to 22:56:10). Not only that, but Rodriguez and Celi walked around the scene as Rodriguez showed him the skid marks on the road which indicated that the brakes had been operational. Thus, variance in defendant's accounts existed to further justify issuance of the warrant.

Finally, as shown by the speed with which the police acquired the search warrant, the biofluid samples would have been obtained at the same rate regardless of whether the wax folds were found. As noted, a telephonic warrant is mentioned in the record as early as 10:57 p.m. by Sergeant Fritsch, and Trooper Celi agreed by around midnight to testify at the telephonic-search-warrant hearing, confirming that he had "all the info" ready for the officers to "call and get it going." Detective Rodriguez discovered the wax folds about ten minutes after Celi agreed to be the witness at the telephonic-warrant hearing. Thus, coupled with the fact that the telephonic warrant was supported by

probable cause, nothing in the record indicates that the timing of the warrant issuance and subsequent blood draw and urine sample would have been substantially different had the wax folds not been found. Therefore, with or without the wax folds, probable cause existed to support the telephonic warrant for samples of defendant's blood and urine. Thus, the judge's ruling below should be affirmed.

CONCLUSION

For these reasons, the State urges this Court to affirm the denial of defendant's motion to suppress and to affirm defendant's convictions.

Respectfully submitted,

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APPELLATE BUREAU

OF COUNSEL AND ON THE BRIEF

DATED: November 7, 2024

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2087-23

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
	:	
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court of New Jersey, Law Division, Sussex County.
v.	:	
JOSEPH M. CRILLEY,	:	
	:	Indictment No. 19-12-335-I
Defendant-Appellant.	:	Sat Below:
	:	Hon. Michael C. Gaus, J.S.C.

REPLY BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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DEFENDANT IS CONFINED

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

Defendant-appellant Joseph Crilley relies on the procedural history and statement of facts from his initial brief. (Db 3-11)[1]

LEGAL ARGUMENT

Mr. Crilley relies on the legal arguments from his initial brief and adds the following:

POINT I

THE WAX FOLDS MUST BE SUPPRESSED BECAUSE NEITHER THE ADMINISTRATIVE SEARCH EXCEPTION NOR THE INEVITABLE DISCOVERY EXCEPTION APPLIES.

A. The Burger Test For Administrative Searches Cannot Be Satisfied By Cobbling Together Parts Of Two Different Statutory Schemes. In Addition, Rodriguez Is Not Authorized To Perform Administrative Searches Of Commercial Vehicles In New Jersey.

In his initial brief, Mr. Crilley argued that the administrative search exception cannot justify Detective Rodriguez's warrantless search of the tow truck. (Db 13-18) Although New Jersey has adopted a statutory scheme authorizing administrative inspections of commercial vehicles to ensure compliance with federal regulations, Rodriguez was not acting pursuant to that

[1] This brief uses the same abbreviations as Mr. Crilley's initial brief. In addition, Db refers to Mr. Crilley's initial brief and Sb refers to the State's brief.

scheme. Instead, he was acting under an entirely separate statute that requires the completion of reports following car accidents. See N.J.S.A. 39:4-131. That statute does not authorize warrantless searches. See ibid. In addition, even if Rodriguez acted pursuant to regulations authorizing administrative inspections of commercial vehicles, the search remains unlawful because Rodriguez is not permitted to conduct these administrative inspections under New Jersey law. (Db 17) Rodriguez is a member of the Fatal Accident Investigation Unit, not the Commercial Carrier Safety Inspection Unit, which consists of troopers specially trained to enforce federal safety regulations for commercial vehicles.

In its response brief, the State attempts to Frankenstein a cohesive statutory scheme that would render Rodriguez's search a lawful administrative inspection. (Sb 22-26) The State also responds that New Jersey law "does not expressly and exclusively authorize a specific agent to conduct safety inspections." (Sb 26) Both arguments lack merit.

With respect to the first argument, the State contends that the test for administrative inspections set forth in New York v. Burger, 482 U.S. 691 (1987), is satisfied because (1) there is a substantial government interest in ensuring the safety of New Jersey drivers, (2) inspecting a vehicle post-accident furthers that interest, and (3) the statutory scheme provided an adequate substitute for a warrant because Mr. Crilley, as a commercial truck driver, was aware that his

vehicle is subject to warrantless inspections, and the inspection had a limited scope. (Sb 24-25) This argument misconstrues the law regarding the administrative search exception.

The State must satisfy Burger's three-pronged test as to a single regulatory scheme. In other words, under prong two, the warrantless inspection must be necessary to further the same regulatory scheme, which, under prong three, functions as an adequate substitute for a warrant by providing sufficient notice to property owners and limiting the discretion of the inspecting officers. 482 U.S. at 702-703. The State may not rely on more than one statutory scheme to satisfy the different prongs of the test.

Here, the State is doing just that. With respect to prong two, the State argues that Rodriguez's warrantless search was necessary to further N.J.S.A. 39:4-131, which mandates that police officers complete reports providing detailed information about car accidents. (Sb 24-25) With respect to prong three, however, the State points to New Jersey's adoption of the Federal Motor Carrier Safety Regulations (FMCSR), which notify commercial motorists that their vehicles may be subject to warrantless inspections to ensure compliance with the FMCSR, and which limit the discretion of inspectors by creating six distinct categories of inspections with established guidelines for each. See State v. Pompa, 414 N.J. Super. 219, 225, n. 5 (App. Div. 2010).

The State cannot rely on the fact that the New Jersey regulations adopting the FMCSR function as an adequate substitute for a warrant while at the same time admitting that that those regulations were in no way the reason for the search at issue. The Burger test could only be satisfied with respect to Rodriguez's search if N.J.S.A. 39:4-131 itself functioned as an adequate substitute for a warrant. But as the State appears to implicitly concede, it does not; the statute makes no mention of a vehicle inspection or a search, nor does it in any way cabin the discretion of the police officers who would perform such a search.[2] To the contrary, the statute requires officers to report on "the cause" of an accident, which could be interpreted to permit a search of every part of a vehicle without any limit. This Court must reject the State's improper attempt to cobble together from different statutes a scheme that would justify Rodriguez's warrantless entry into the tow truck.

Turning to the State's second argument, it is not true that New Jersey law does not limit who may conduct administrative inspections of commercial vehicles. New Jersey has "adopt[ed] and incorporate[ed]" the FMCSR, including the regulations set forth in 49 C.F.R. § 396.9. See N.J.A.C. § 13:60-

[2] Although the State maintains that Rodriguez was "statutorily obligated to conduct a safety inspection of the seat belts, airbags and vehicle weight under N.J.S.A. 39:4-131," this assertion conflicts with the plain language of the statute, which does not contemplate a "safety inspection" and instead simply requires the preparation of a written or electronic report. (Sb 24)

2.1. Section 396.9 provides that "special agent[s] of the FMCSA" are authorized to perform administrative inspections of commercial vehicles. See 49 C.F.R. § 396.9. As other courts have recognized, this provision "limit[s] who may perform inspections" to "licensed FMCSA agents." See, e.g., Commonwealth v. Leboeuf, 78 Mass. App. Ct. 45, 50 (2010). By adopting this provision, New Jersey has also limited who may perform these inspections to licensed FMCSA agents. See New Jersey State Police, "Commercial Carrier Safety Inspection Unit" (CCSIU), https://www.nj.gov/njsp/division/homeland-security/Commercial_carrier_safety_Inspection_unit.shtml (explaining that, pursuant to the FMCSR, the CCSIU consists of "troopers with specialized training and certifications" who "conduct roadside safety inspections and post-crash investigations on a myriad of commercial vehicle types") (last visited Nov. 20, 2024).

The reason for this limitation is obvious: administrative inspections pursuant to the FMCSR are highly technical and require specialized training. See Commercial Vehicle Safety Alliance, "Inspections," https://www.cvsa.org/inspections/ (last visited Nov. 20, 2024). Thus, while the State is correct that Burger does not mandate that states require their regulatory statutes to be enforced by specialized agents, states may appropriately choose to do so depending on the industry at issue. In the case of commercial vehicles,

which have mechanical equipment that must be inspected at a technical level, both the federal government and New Jersey have opted to require that inspections be carried out by specially trained individuals.

Because the Burger test is not satisfied here, and because Rodriguez is not authorized to perform administrative inspections of commercial vehicles under New Jersey law, the administrative search exception does not apply to this case. The trial judge's ruling to the contrary must be reversed.

B. The State Cannot Rectify Its Failure To Meet Its Evidentiary Burden To Establish The Applicability Of The Inevitable Discovery Exception. Its Fruitless Attempt To Do So Only Serves To Underscore Why The Exception Should Not Apply Here.

As argued in Mr. Crilley's opening brief, the inevitable discovery exception also cannot justify Rodriguez's warrantless search of the tow truck. (Db 25-37) The State failed to satisfy its burden at the suppression hearing to show by clear and convincing evidence that, had Rodriguez not found the wax folds through a warrantless search of the truck, police nevertheless would have found them by (1) conducting an inventory search of the tow truck after impounding it or (2) seeking and obtaining a warrant to search the truck based solely on the fact of a serious accident and the discovery of generic Zoloft in the truck's cab.

Starting with the inventory search, the State responds that "given the horrific crash and the disorganization of the interior, including debris from the

road thrown inside, an inventory search would have been conducted regardless of any criminal investigation to prevent loss of property and protect the police from liability." (Sb 36) While this might sound reasonable, it remains the case that the State presented no evidence at the suppression hearing from which a conclusion could be drawn that an inventory search would have been conducted. Neither of the two police witnesses at the hearing testified to that. Rodriguez simply testified that an inventory search "can be" conducted; not that it always is or even typically is. (3T 42-4 to 7) The State cannot rectify its failure to meet its evidentiary burden in the trial court by arguing on appeal that it would have been reasonable for police to conduct an inventory search under the circumstances.[3]

Separate and apart from the State's failure to meet its evidentiary burden, the State's argument that it would have been reasonable for police to conduct an inventory search given the circumstances underscores why the inevitable discovery doctrine should not apply in this case. The State essentially posits that because there were two vehicles involved in the crash and various items from inside the vehicles had been strewn about the road and then deposited into the tow truck by workers cleaning up the crash scene, it would have been important

[3] The State does not address Mr. Crilley's argument that it failed to meet its evidentiary burden to show that police would have sought a warrant for the tow truck had they not found the wax folds at the scene. (Sb 32-37)

for police to document the items inside the tow truck after it was removed from the scene to prevent property loss and protect the police from liability. In other words, because it appeared likely (and ultimately turned out to be the case) that items that did not belong to Mr. Crilley were thrown inside the tow truck at the scene, an inventory search post-impoundment was necessary. This argument thus acknowledges that an inventory search post-impoundment would have yielded different results than Rodriguez's on-scene search, which occurred before various items were thrown into the truck by workers. Had the wax folds been found during a post-impoundment inventory search along with the items thrown into the truck on-scene, their evidential value would have been lessened, as it could not have been presumed that they belonged to Mr. Crilley. Applying the inevitable discovery doctrine in a scenario like this unfairly benefits the State by putting it in a better position than it would have enjoyed had no Fourth Amendment violation occurred.

Finally, the State suggests that it would have inevitably discovered the wax folds after obtaining and executing a telephonic search warrant to test Mr. Crilley's blood and urine for evidence of drug use. At that point, the toxicology report establishing that Mr. Crilley had drugs in his system would have supplied police with probable cause to search the tow truck without a warrant under the automobile exception. (Sb 34-35)

This argument puts the cart before the horse. The State secured a telephonic warrant to obtain and test Mr. Crilley's biofluid samples in part based on Rodriguez's discovery of the wax folds. As argued in Mr. Crilley's initial brief, without the wax folds, probable cause for that telephonic warrant did not exist. (Db 38-44) The State therefore cannot rely on the toxicology report being issued before the wax folds were discovered.

More importantly, however, this argument was not raised in the trial court. Arguments not raised below are presumed waived and should not be considered by the appellate court. State v. Witt, 223 N.J. 409, 419 (2015). The rationale behind this rule is that the opposing party was deprived of the opportunity to develop the evidentiary record, and the trial judge was not asked to rule on the issue in the first instance. Ibid.

Even if this Court were to consider the issue, it would have to rule that the State failed to establish that a warrantless search of the tow truck after the toxicology report was obtained would have been lawful under the automobile exception. Significantly, "police cannot conduct a search pursuant to the automobile exception to the warrant requirement once a vehicle has been towed away and impounded." State v. Courtney, 478 N.J. Super. 81, 87 (App. Div.), leave to appeal denied, 257 N.J. 413 (2024), and leave to appeal denied, 257 N.J. 417 (2024) (citing Witt, 223 N.J. at 448-49). Here, the record does not

establish that police would have obtained the toxicology report prior to the impoundment of the tow truck. In fact, the record suggests the opposite: the toxicology report indicates that it was issued on September 3, 2019 -- nearly a month after the accident, the night of which the tow truck was impounded. (Da 74) Both because the issue was not raised below and because the State failed to meet its evidentiary burden, this argument for application of the inevitable discovery doctrine must be rejected.

At bottom, none of the exceptions put forth by the State justify Rodriguez's warrantless entry into the tow truck. As explained in Mr. Crilley's opening brief, controlling precedent demonstrates that the community caretaking doctrine does not apply in this scenario (Db 18-21), and the continuation doctrine is similarly inapposite (Db 21-25). The wax folds must be suppressed as the fruits of an illegal search. U.S. Const. amends. IV, XIV; N.J. Const. art. 1, para. 7; Wong Sun v. U.S., 371 U.S. 473, 484 (1963).

POINT II

THE BIOFLUID SAMPLES MUST BE SUPPRESSED BECAUSE HAD POLICE NOT DISCOVERED THE WAX FOLDS BY CONDUCTING AN ILLEGAL SEARCH, A TELEPHONIC WARRANT TO SEIZE THE SAMPLES WOULD NOT HAVE BEEN ISSUED.

Mr. Crilley argued in his opening brief that without the wax folds, a telephonic search warrant to obtain and test samples of his blood and urine for evidence of drug use would not have been issued. (Db 38-44) The discovery of generic Zoloft -- prescribed to Mr. Crilley -- inside the truck, coupled with the serious nature of the accident, did not suffice to establish probable cause that a search of the truck would yield evidence of drug use, particularly given that Mr. Crilley displayed absolutely no signs of impairment at the scene.

In response, the State insists that "independent probable cause" supported the telephonic warrant.[4] (Sb 2) The State downplays the fact that Mr. Crilley displayed no signs of impairment at the scene, asserting that he nevertheless

[4] The State also emphasizes that "the police decided to seek a telephonic search warrant to collect samples of defendant's blood and urine before the wax folds were discovered." (Sb 34) The State suggests that this means there was probable cause to issue a warrant without the wax folds. On the contrary, the fact that police intended to apply for a warrant does not establish that there was probable cause to issue one.

aroused suspicion by offering "varying statements on the cause of the accident." (Sb 2)

To support this argument, the State relies on Sergeant Fritsch's body-worn camera (BWC) footage, which captures an unidentified officer saying that Mr. Crilley told him that his brakes were not working and that he had begged his employer to fix them. (Sb 45-46; Pa1 at 22:54:30 to 22:54:39) Another officer (presumably Sergeant Frisch) replies by saying that Mr. Crilley's "story's changed because when I first got here he said that because the weight of the back car, he couldn't stop, it was too heavy." (Pa 22:54:39 to 22:54:47) Neither the unidentified officer nor Sergeant Fritsch served as a witness for the telephonic warrant application, and neither testified at the suppression hearing.

This Court should reject the State's invitation to base its ruling on double hearsay that was not presented to the warrant-issuing judge. Because the unidentified officer did not serve as a witness for the telephonic warrant application, Judge Gaus did not have the opportunity to consider this evidence prior to issuing the telephonic warrant. In addition, because the unidentified officer did not testify at the suppression hearing, Judge Gaus did not have the opportunity to assess the reliability of his statement to Sergeant Fritsch after-the-fact. Accordingly, neither the unidentified officer's statement about what Mr. Crilley told him nor Sergeant Frisch's conclusion based on that statement

that Mr. Crilley's story had changed should be considered by this Court in assessing whether probable cause for a warrant existed without the wax folds.

Setting aside the untested reliability of the unidentified officer's statement, Judge Gaus also did not have the opportunity to consider in the first instance whether Sergeant Frisch's conclusion that the claims were inconsistent was accurate. Trooper Celi's BWC footage shows Mr. Crilley saying that the accident occurred because the truck was not equipped with an anti-lock braking system and that, because there was too much weight on the lift, his brakes did not allow him to stop. (Da 72 at 22:46:20 to 22:46:49) The unidentified officer's statement that Mr. Crilley later claimed the brakes were not working and that he had begged his employer to fix them is not necessarily inconsistent with what Mr. Crilley told Celi. Both explanations involve a brake-related issue.

More fundamentally, it is unlikely that Mr. Crilley knew the precise mechanical cause of the accident immediately after it occurred. From his perspective, he stepped on the brakes and the truck did not stop. It is not surprising or suspicious that he did not know the underlying mechanical reason for this brake failure a mere hour or so after the accident.[5]

[5] The State erroneously asserts that the skid marks on the road "indicated that the brakes had been operational." (Sb 46) The State does not cite to the record to support this false assertion, which is contradicted by the State's own recognition that Celi's BWC footage shows Rodriguez analyzing the roadway and concluding that "the tow truck's rear brakes could have malfunctioned

Because Judge Gaus did not consider and rule on this issue, this Court should decline to consider it for the first time on appeal. As the State acknowledges, although Judge Gaus did rely on the fact that Mr. Crilley offered different explanations of how the accident occurred when he approved the telephonic warrant application, Celi later testified at the suppression hearing that he was mistaken when he relayed to Judge Gaus the different explanations Mr. Crilley offered. (Sb 45) In fact, Celi testified that Mr. Crilley consistently said that the accident was caused by an issue with the brakes. (2T 81-15 to 82-25) This Court should reject the State's attempt to preserve its "different explanations" argument by pointing to evidence that did not form the basis of Judge Gaus's initial determination that Mr. Crilley provided inconsistent stories.

In sum, without the wax folds, police lacked probable cause to obtain and test samples of Mr. Crilley's blood and urine for evidence of drug use. The samples and the resulting toxicology report are therefore fruit of the poisonous tree and must be suppressed along with the wax folds. U.S. Const. amends. IV, XIV; N.J. Const. art. 1, para. 7; Wong Sun, 371 U.S. at 484. Moreover, as explained in Mr. Crilley's opening brief, even if this Court finds that the wax folds are admissible under the inevitable discovery doctrine, suppression of the

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because there was only a single visible set of tire tracks. Da72 at 23:19:18 to 23:25:00." (Sb 11)

biofluid samples is still required because the samples themselves are time-dependent, and the State failed to establish that it would have inevitably discovered the wax folds (and correspondingly obtained the samples) in a timely manner.[6] (Db 44-47)

CONCLUSION

For the reasons set forth here and in Mr. Crilley's initial brief, this Court must reverse the trial court's decision denying the suppression motion. Mr. Crilley respectfully requests that the matter be remanded to the trial court to provide him with an opportunity to withdraw his plea.

Respectfully submitted,

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Dated: November 20, 2024

[6] The State appears to misunderstand Mr. Crilley's argument about the samples being time dependent. The State argues that even if the wax folds had not been found, police would have obtained the telephonic warrant the night of the accident. (Sb 46-47) Mr. Crilley does not disagree with this hypothetical timeline but instead maintains that no probable cause would have existed to issue the warrant without the wax folds. Because the wax folds were crucial to the probable cause finding for the telephonic warrant, the timing of when they would inevitably have been discovered is what matters, and the State failed to establish that they would have been discovered relatively quickly either via an inventory search or a search pursuant to a warrant.