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January 7, 2026

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LETTER BRIEF IN SUPPORT TO MOTION FOR LEAVE TO APPEAL ON BEHALF OF DEFENDANT-MOVANT

SUPERIOR COURT OF NEW JERSEY
APP. DIV. DOCKET NO. A-1399-24
INDICTMENT NO. 22-02-0124

STATE OF NEW JERSEY,	:	**CRIMINAL ACTION**
	:	
Plaintiff-Respondent,	:	On Motion for Leave to Appeal an
	:	Order of the Superior Court of New
v.	:	Jersey, Appellate Division.
	:	
JAMES HUNTER,	:	Sat Below:
	:	Hon. Robert J. Gilson, P.J.A.D.
Defendant-Movant.	:	Hon. Lisa A. Firko, J.A.D.
	:	Hon. Lisa P. Friscia, J.A.D.

DEFENDANT IS CONFINED

Your Honors:

Please accept this letter in lieu of a more formal brief in support of the

accompanying notice of motion for leave to appeal. On December 4, 2025, the Appellate Division issued a published opinion on a novel issue: the legality of tower dump warrants. State v. Bryant and Hunter, __ N.J. Super. __ , Docket No. 1399-24 (Dec. 4, 2025) (Scma 1-39).[1] The Appellate Division appropriately held that the warrants, which demanded the disclosure of the private information of over 10,000 New Jerseyans, were overbroad, non-particularized, and invalid. However, the Appellate Division declined to suppress the fruits of the warrants, instead holding that the independent source and inevitable discovery doctrines applied to avoid suppression.

The State never raised inevitable discovery or independent source; not at trial and not in the Appellate Division. At argument, the Appellate Division ordered simultaneous briefing for the parties to address this issue for the first time. After the Appellate Division issued its opinion, defendants moved for reconsideration, explaining that it violated defendants' constitutional rights for these issues to be decided without any sort of trial-level litigation by attorneys equipped to actually address the issue. Critically, defendants explained, appellate counsel was not equipped to address the application of these

[1] Scma – appendix to motion for leave to appeal before this Court
Scmca – confidential appendix to motion for leave to appeal before this Court
Dca – confidential appendix to defendant's brief in the Appellate Division
1T – February 2, 2022
2T – December 2, 2024

extremely fact-sensitive doctrines in a post-argument brief because the scope of representation and the available facts are limited to the narrow issue on appeal: the legality of the tower dump warrants. The motion for reconsideration was denied on December 18, 2025. This motion for leave to appeal follows.

Leave to appeal must be granted and the opinion summarily reversed. In its opinion, the Appellate Division completely ignores the doctrine of waiver, improperly minimizes the State's burden to demonstrate the applicability of the independent source and inevitable discovery doctrines, disregards the fundamental fairness and due process rights attendant to a suppression motion, and denies defendants the right to effective counsel to address the independent source and inevitable discovery issues. The motion must not only be granted in the interest of justice, Rule 2:2-2, but because this published opinion distorts these concepts beyond recognition and will have long-lasting effects on cases to come. Should this Court grant the motion for leave to appeal but decline to summarily reverse, Mr. Hunter respectfully requests the opportunity to file a supplemental brief.

A. The narrow arguments and decision at the motion to suppress

James Hunter moved to suppress the results of four tower dump warrants. In support of that motion, he included the report of an expert in

cellular forensics. Bryant, slip op. at 9. The State opposed that motion and did not raise the issues of inevitable discovery or independent source. The State also did not ask for an evidentiary hearing or dispute any of the facts set forth by the defense expert. Argument was held before the Honorable Thomas J. Buck, J.S.C. The State did not raise the issues of inevitable discovery or independent source at that hearing. Judge Buck ruled on nothing but the narrow issue of the legality of the tower dump warrants. Here is his ruling in its entirety:

> The State's warrant was narrowly -- tailored, particular, and supported by probable cause. Both victim report -- or two victims reported that a suspect -- suspect made at least two phone calls while inside the residence. Surveillance footage shows both suspect one and two entering the residence between 9:26 and 10:59. The victims report, as well as the surveillance video confirmed probable cause for Judge Flynn to issue the warrant.
>
> The State had two suspects and had a date, time, and location. The search area was limited enough for this Court and pointed towards the crime location on the day of the offense within the time frame when the suspects were in the victims' residence.
>
> The State does not have control over the amount of information provided by the cellphone providers. It can only control the specific data it requests. In this case given the probable cause and the information that was provided to Judge Flynn, I do not find that it was overly broad, therefore the motions are denied.
>
> (2T 34-8 to 35-3)

Defendants filed a motion for leave to appeal on the one issue ruled on:

the legality of the warrants. The Appellate Division granted that motion. In its supplemental brief before that court, the State did not raise the issues of inevitable discovery or independent source.

B. The Appellate Division raises the inevitable discovery and independent source doctrines for the first time at argument.

At argument, for the first time, someone raised the issue of inevitable discovery or independent source. It was the Appellate Division. It ordered simultaneous briefing on the issues by the parties. After this briefing, in its published decision, the panel held that "[t]he undisputed facts in the record establish each of the criteria for the application of the inevitable discovery doctrine." Bryant, slip op. at 34. It gave a one-paragraph analysis of the application of this doctrine. It also held that "the independent source doctrine provides another basis for not suppressing defendant's cell records." Id. at 35. It gave a one-paragraph analysis of the application of this doctrine. The Appellate Division did not address the doctrine of waiver in its decision.

C. The Appellate Division's rests its decision on these doctrines, despite the State's waiver, despite the lack of record, and despite the lack of appropriate counsel.

The published Appellate Division decision is both precedential and a gross distortion of all relevant concepts: waiver, burdens, inevitable discovery, independent source, due process, and the effective assistance of counsel. It cannot stand.

First is the doctrine of waiver, which the Appellate Division ignored in its entirety in its decision. Arguments that are not raised before the trial court are deemed waived. It is well-established that "the points of divergence developed in proceedings before a trial court define the metes and bounds of appellate review." State v. Witt, 223 N.J. 409, 419 (2015) (citing State v. Robinson, 200 N.J. 1, 19 (2009)). "The jurisdiction of appellate courts rightly is bounded by the proofs and objections critically explored on the record before the trial court by the parties themselves." Robinson, 200 N.J. at 19 (emphasis added). "Parties must make known their positions at the suppression hearing so that the trial court can rule on the issues before it." Witt, 223 N.J. at 419 (emphasis added). If a party fails to "properly present[ ]" an issue "to the trial court when an opportunity for such a presentation is available," the court on appeal "will decline to consider" the issue. Ibid. Here, it is undisputed that the State did not present this issue to the trial court. Therefore, it was waived. Yet, the Appellate Division did not mention waiver in its decision, let alone explain how the State can defeat its waiver of these issues.

Not only did the State not raise inevitable discovery before the trial court, the State did not do so on appeal before the Appellate Division. It is true that our courts have allowed the State on rare occasion to claim a justification that it did not raise in the trial court, if it does so on appeal, and then the Court

has remanded for a hearing on that issue. See, e.g., State v. Maltese, 222 N.J. 525, 552-553 (2015) (remanding for a hearing on an inevitable discovery issue that the State raised on appeal). But in this case, the State has neither raised the issue at the trial court nor on appeal. The issue is therefore doubly waived. N.J. Dep't of Envtl. Prot. v. Alloway Twp., 438 N.J. Super. 501, 506 n.2 (App. Div. 2015) ("An issue that is not briefed is deemed waived upon appeal.").

Second, the Appellate Division misunderstood the State's burden to prove that inevitable discovery or independent source apply. In order for either doctrine to apply, the State must prove that it meets the relevant standards by clear and convincing evidence. State v. Camey, 239 N.J. 282, 310 (2019); State v. Holland, 176 N.J. 344, 361 (2003). The Appellate Division let the State meet their burden on the basis of assertions made in unchallenged affidavits and a post hoc review of the investigation in light of the answer arrived at by the illegal tower dump searches. But that's not how a high burden is met. Both of these doctrines must be strictly construed and judiciously applied. They cannot be turned into a mechanism that permits the police to entirely dispense with the warrant requirement whenever they want to. See Camey, 239 N.J. at 302 (The inevitable discovery doctrine "cannot be used to elide the warrant requirement."); Sugar II, 100 N.J. at 240 n.3 (the inevitable discovery "exception should not be applied to circumvent the warrant

requirement . . . or to defeat the deterrent purposes espoused in the exclusionary rule").

That burden is not met by the one-sided presentation of "facts" presented for the first time on appeal and speculative way those facts have been put together. For instance, as one of the main supports for its application of these doctrines, the Court's decision posits that the State would have been able to establish probable cause to obtain a warrant for the cell site location records of both Hunter and Byrant because Hunter called Smith at the time of the crime, and Hunter called Bryant during that time period. Bryant, slip op. at 34. The mere fact that the State would have obtained Smith's call logs—which appellate counsel does not possess—does not mean the investigation would proceed on a course to Bryant or Hunter. Having the phone does not mean that the police would have recognized the significance of the number associated with Hunter. Following the execution of the illegal tower dump warrants, that significance is asserted. But the State has not proven that it would have been so clear at the time that the information gained from the tower dumps would have been lawfully obtained in the course of the investigation, because that information shaped the course of the investigation.

Moreover, it is not even clear that the State's assertions about the significance of this call are supported by the record. A victim told police that

one of the perpetrators called a specific number "at least two of three times" and that that number began with "908-3." (Scmca 14)[2] Smith's phone number is 908-821-0393. (1T 59-22 to 23) So it seems that the perpetrator called someone who is not Smith. What does that mean for getting the records of people Smith called or received calls from during the time period of the crime? Would there be probable cause to do so? This is an issue that needs to be dealt with at an evidentiary hearing. Not in simultaneous briefing on appeal after oral argument.

Third is the due process, fundamental fairness, and court-rule based right to present a defense. Once the question turns from the legality of a warrant to matters outside the four corners of a warrant affidavit, the "proper mechanism through which to explore the constitutionality" of a search or seizure "is an

[2] The State did not present this statement at the trial court or before the Appellate Division. The affidavit in support of the tower dump does make clear that the victim heard the perpetrator call a number that was not Smith's, stating that the victim "SUSPECT I attempted to make numerous phone calls, some of which went to voicemail. [Victim 1] indicated he overheard the voicemail state 908-3 prior to SUSPECT I hanging up the phone." (Dca 4) The State's brief after argument elides the discrepancy between Smith's number and what the victim heard and merely asserts that "[o]n Smith's phone, police found records of a call between Smith and Hunter at the time of the offense. This corroborated the victims' recollections that the first perpetrator called a voicemail number containing the numbers 9-0-8 and 3—Smith's phone number starts with 9-0-8 and ends with 3." (State's Brief After Argument at 9) What to make all these conflicting facts and whether Smith's records are corroborative of anything and where that would have led the investigation are all issues to be argued about at the trial court.

evidentiary hearing." State v. Atwood, 232 N.J. 433, 445 (2018). At evidentiary hearings, the State presents witnesses to substantiate its basis for its challenged conduct "and the defense is afforded the opportunity to confront and cross-examine the State's witnesses." Ibid. As the Appellate Division has made clear, "[u]nder Rule 3:5-7(c), the motion judge must conduct an N.J.R.E. 104 evidentiary hearing to provide the parties the opportunity to probe the veracity" of information put forward to justify police action if there is any dispute of material facts presented in a motion to suppress. State v. Parker, 459 N.J. Super. 26, 30 (App. Div. 2019). In Parker, it was simply enough for the defense to say that "defendant denied every material factual contention made by the State" to be entitled to that hearing. Ibid. Here, the defense did not have the opportunity to dispute material factual contentions because these issues were never raised at a time that it could appropriate to dispute them. But if it disputed a single material fact that is presented in these affidavits—which is extremely likely given how much information they contain—Mr. Hunter would be entitled to a hearing. But the Appellate Division has short-circuited that entitlement.

The Appellate Division did not only deprive Mr. Hunter of the right to cross-examine witnesses at that hearing, but it deprived him of the right to put on his own witnesses at such a suppression hearing. It also deprived the

defense of the right to make oral argument about the issue, a deprivation that the Appellate Division has found warranted a reversal of a motion to suppress. Parker, 459 N.J. Super 30-31 ("The availability of oral argument on criminal motions is implicit within the language of Rule1:6-2(a). Oral advocacy is a fundamental aspect of our criminal justice system and should be encouraged, preserved, and protected.") (internal alterations and citations omitted). A court can't decide a fact-sensitive suppression issue by denying the defense any opportunity to confront the State's witnesses, to provide its own evidence, or to argue about the issues, and then hand-wave away an illegal search. That is not due process.

Moreover, the defense has not had an opportunity to make other motions that may change assumptions the Appellate Division made in its opinion in order to deny suppression. For instance, the Appellate Division relied on the fact that "[n]o defendant has challenged that warrant" for Smith's phone to support its conclusion that the inevitable discovery doctrine applies. Bryant, slip op. at 34. But no one has done so yet. This case is still in pretrial litigation, and a motion for leave to appeal was granted on one narrow issue – the constitutionality of the tower dump warrants. But there are numerous potential challenges to the phone warrant, including: (1) the police unlawfully seized the device; (2) the subsequent search warrant lacked probable cause and

particularity; (3) the search conducted exceeded the scope of the warrant; and (4) compelling Smith to decrypt his phone violated the Fifth Amendment. It is premature to assume that no defendant will raise any of these challenges. Similarly, the Appellate Division relied on affidavits submitted by the State in its supplemental brief to conclude that defendants' cell phones would have been obtained. Id. at 33. But this presumes, without support, that no defendant will challenge the validity of these affidavits under Franks, or for other reasons.

In short, litigation is not yet complete. This was an interlocutory appeal on a narrow issue. Making a determination about the inevitable discovery and independent source doctrines based on the State's speculative, one-sided presentation of facts not presented to the trial court is unfair and contrary to our law.

Fourth is the right to effective assistance of counsel. The scope of undersigned counsel's representation is limited to the issue actually on appeal, which is the issue ruled on by the trial court: the legality of the tower dump warrants. Undersigned counsel does not have all of the discovery in this case. Undersigned counsel therefore cannot effectively challenge assertions made by the State or by the Appellate Division that rely on facts outside of those established at the trial level because it does not have the discovery or the

knowledge to do so.

D. Conclusion

The Appellate Division decided this issue in an inappropriate way in the inappropriate court with the inappropriate lawyers. If it is committed deciding an issue it raised sua sponte for the first time on appeal, that court knows how to do that in an appropriate manner: by remanding for an evidentiary hearing at which this can be done the right way. See State v. Shaw, 237 N.J. 588, 622 (2019) (despite the issues of independent discovery and independent source never being raised by the State, this Court remanded for a hearing on the issues. At that hearing, "[t]he State failed to make the necessary showing under either exception to the exclusionary rule[]," and the evidence was suppressed). The zeal to protect the State's investigation of a horrific crime does not provide carte blanche to dispense with all procedural protections a defendant is entitled to at a suppression hearing. State v. Handy, 206 N.J. 39, 46 (2011) (the exclusionary rule must be applied in order to protect "judicial integrity. . . Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence . . . . The ignoble shortcut to conviction left open to the State tends to destroy the entire system of constitutional restraints on which the liberties of the people rest.") (internal quotation marks omitted).

The motion for leave to appeal must be granted, the Appellate Division decision summarily reversed and, at most, the case remanded for an evidentiary hearing. If this Court declines to grant summary reversal, Mr. Hunter respectfully requests the opportunity to submit a supplemental brief.

CONCLUSION

For the foregoing reasons, this Court must grant Mr. Hunter's motion for leave to appeal and summarily reverse the Appellate Division decision. If the motion is granted but the decision is not summarily reversed, Mr. Hunter requests the opportunity to provide supplemental briefing.

Respectfully Submitted,

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Attorney for Defendant

BY: _____
TAMAR Y. LERER
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Dated: January 7, 2026