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January 7, 2026

Honorable Chief Justice and Associate Justices
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625

Re: State v. Phillip Bryant
APP. DIV. DOCKET NO. A1399-24T2

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 decided State v. Bryant, No. A-1399-24, 2025 WL 3481348, at *8, *10-11 (N.J. Super. Ct. App. Div. Dec. 4, 2025). In that decision the panel held that the tower dump warrants utilized in this case was unparticularized and overbroad. Id. at *8, *10-11. However, despite the limited scope of the appeal, and the lack of a full record on the issues, the Appellate Division ruled that the inevitable discovery and independent source doctrines precluded suppression. Id. at *12. Mr. Bryant is seeking summary reversal or, in the alternative, this Court's review of the Appellate Division decision to

apply the inevitable discovery and independent source doctrines in his case on the current record.

Mr. Bryant asserts that the Appellate Division's decision was wrong for several reasons. First, the State waived its ability to rely on the inevitable discovery or independent source doctrine by failing to raise it below or on appeal. Second, the Appellate Division misapplied the inevitable discovery and independent source doctrines given the limited record in this case. Finally, denying Mr. Bryant a hearing on the issues of inevitable discovery and independent source violated his due process and statutory right to a hearing.

Counsel for Mr. Hunter filed a motion before the trial court challenging the tower dumps as being insufficiently particularized and overbroad. (Ma 1-14).[1] Mr. Bryant joined in that motion. A hearing was held on the matter and oral arguments were given by both the defense and prosecution. (T)[2] No testimony was provided and the court proceeded based on records included in the party's respective motions. Ibid. At no point in their papers or oral arguments did the State raise the inevitable discovery or independent source doctrines or provide testimony addressing those issues. Ibid. The trial court denied the motion holding the warrants were sufficiently particularized,

[1] Ma – appendix to Mr. Bryant's motion for leave to appeal
[2] T – Transcript of the trial court suppression hearing.

dismissing the privacy intrusion caused by the seizure of 10,477 people's location data as "next to zero." Id. at 23:8.

Counsel for Mr. Hunter filed a motion for leave to appeal the decision on December 23, 2024, and a supplemental brief on February 18, 2025. On December 23, counsel for Mr. Bryant joined that motion and on March 14, 2025, Mr. Bryant filed a separate brief as a respondent. The State also filed a reply on March 14, 2025, and a response to amicus curiae American Civil Liberties Union on May 12, 2025. (Ma 15-31; Ma 32-40). Neither of these briefings mentioned, let alone affirmatively raised, the independent source or inevitable discovery doctrines. Id.

The Appellate Division held oral arguments on September 9, 2025. At no time during those arguments did the State raise the issue of inevitable discovery or independent source. The Appellate Division *sua sponte* raised the issue of inevitable discovery for the first time at the close of oral arguments, asking for simultaneous supplemental briefings from all parties. Bryant, 2025 WL 3481348, at *11.

Thereafter, the Appellate Division issued a thoughtful and lengthy decision exploring the public's privacy interest in cell site information, the law on tower dump warrants, and the unconstitutionality of the specific tower dump warrants in this case. Id., at *5-11. However, in just under two pages the

court determined suppression was not necessary because "the State would have inevitably or alternatively, independently, and lawfully identified Hunter and Bryant." Id. at *11-12. This decision appears to be based largely on information contained in the search warrant affidavits in support of Communications Data Warrant ("CDW Warrant") for Cellular Telephone Numbers 585-820-8364 and 585-729-4692, which had not previously been presented to either the trial court or the Appellate Division. See Bryant, 2025 WL 3481348, at *11; (Ma 41-55). The court referred to these facts as "undisputed." Bryant, 2025 WL 3481348, at *12. The court also noted that no party had challenged the Warrant for Smith's phone. Id. However, defense has never stipulated to the allegations asserted in those documents, nor are they precluded from challenging the warrant for Smith's phone.

## I. The Government Waived The Inevitable Discovery And Independent Source Arguments By Failing To Raise Them.

The government failed to raise the inevitable discovery or independent source doctrines below or on appeal, until the Appellate Division *sua sponte* ordered simultaneous briefings on the issues. Therefore, both arguments were 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)). "Parties must make known their positions at the suppression hearing so that the trial court can rule on the issues before it." Ibid. 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. Presentation of new issues on appeal "is repugnant to the spirit of our practice which contemplates that, except in extraordinary situations, as where public policy or jurisdiction are involved, a party shall make his points in the court of first instance..." State v. Mahoney, 226 N.J. Super. 617, 626 (App. Div. 1988) (citing State v. Daquino, 56 N.J.Super. 230, 233 (App.Div.1959), certif. den. 30 N.J. 603 (1959), cert. den. 361 U.S. 944 (1960)); see also United States v. Bradley, 959 F.3d 551, 556 (3d Cir. 2020) (refusing to hear arguments or remand the case on pre-Miranda voluntariness because the argument was forfeited by not raising it at the motion hearing).

For these reasons, courts have refused to consider the applicability of the inevitable discovery and independent source exceptions to the exclusionary rule where not raised by the prosecution at the trial court. See Mahoney, 226 N.J.Super. at 626; see also State v. Bradley, 291 N.J.Super. 501, 516 (App.Div.1996); State v. Legette, 227 N.J. 460, 467 n. 1 (2017); State v. Shaw, 237 N.J. 588, 623 (2019) (because the inevitable discovery and independent source exceptions to the warrant requirement were not raised below, and

because the State did not develop the record when given the opportunity to do so before the trial court on remand, we find the State has not met its burden to establish either exception and reject the remand court's legal conclusions).

Here as in Mahoney, 226 N.J. at 626, the inevitable discovery question does not raise matters of public policy or jurisdictional issues. Additionally, the government did not raise the issue of inevitable discovery or independent source below, in their appellate briefings, or at oral arguments. Instead, they did so only at the direction of the Appellate Division after the close of oral arguments. Therefore, the court should deem the arguments waived.

## II. The Appellate Division Misapplied The Inevitable Discovery And Independent Source Doctrines.

The Appellate Division's reliance on the inevitable discovery and independent source doctrine is misplaced because the State failed to meet its burden of proof showing that the government would have sought the subsequent communication's data warrants without the evidence from the tower dumps.

The inevitable discovery doctrine permits the admission of illegally seized evidence if the State can establish that it was inevitable that the evidence would have been lawfully obtained, absent the illegality. The independent source doctrine permits the admission of illegally seized evidence when the State can

establish that the evidence was discovered through a separate, lawful source untainted by police misconduct.

Because these doctrines come into consideration only after a constitutional violation by the State, the State bears the burden of demonstrating their application. State v. Sugar (II), 100 N.J. 214, 240 (1985); State v. Holland, 176 N.J. 344, 361 (2003). The independent source doctrine requires the State to demonstrate, by clear and convincing evidence, that:

> (1) Probable cause existed to conduct the challenged search without the unlawfully obtained information. It must make that showing by relying on factors wholly independent from the knowledge, evidence, or other information acquired as a result of the prior illegal search.
>
> (2) The police would have sought a warrant without the tainted knowledge or evidence that they previously had acquired or viewed.
>
> (3) Regardless of the strength of their proofs under the first and second prongs, prosecutors must demonstrate by the same enhanced standard that the initial impermissible search was not the product of flagrant police misconduct.
>
> State v. Camey, 239 N.J. 282, 310 (2019) (internal quotation omitted).

As this Court previously explained, inevitable discovery "is a variation upon the 'independent source' theory, but it differs in that the question is not whether the police did in fact acquire certain evidence by reliance upon an untainted source but instead whether evidence found because of a Fourth Amendment violation would inevitably have been discovered lawfully."

Holland, 176 N.J. at 361. This doctrine also puts the burden on the State, in this situation to demonstrate that the unlawfully seized evidence would inevitably have been discovered through untainted, lawful means. Id. at 237-40. To do so, the State must demonstrate 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 (II), 100 N.J. at 237-38.

Regarding the first and second prong of inevitable discovery and the second prong of independent source, the State must establish that proper procedures "would have been pursued" to continue the investigation leading to the discovery of the evidence. Ibid. (emphasis added). "Would" does not mean "could"; it requires much more than a mere expression of hope as to what the police ought to have done instead of conducting an illegal search. See LaFave, Search and Seizure, §11.4(a) at 359 ("[C]ourts 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."); Byrnes, Current N.J.

Arrest, Search & Seizure (Gann), §33:3-3, at 991 (2018) ("The fact that police could have obtained a search warrant does not mean that they would have obtained a search warrant") (citing State v. Keaton, 222 N.J. 438, 451 (2015)).

The State did not meet its burden here. The Appellate Division's decision on how appropriate procedures would have led to the discovery of this evidence is based on speculation and post-hoc reasoning. For instance, as one of the main supporting arguments 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 robbery and Hunter called Bryant. Bryant, 2025 WL 3481348, at *12. This relies on speculation as to the investigative process and ignores the procedural posture of the case. The Court first explained that the State would have obtained the 585-729-4692 number associated with Hunter from Smith's phone extraction. Ibid. However, these claims do not meet the clear and convincing standard. The mere fact that the State would have later obtained Smith's cellphone extraction does not mean the investigation would proceed on a course to Bryant or Hunter.

First, merely having Smith's phone does not mean that the police would have recognized the significance of the 585-729-4692 number associated with

Hunter. In fact, the warrant applications indicate the opposite is true.[3] The contact in Smith's phone for Hunter was apparently 585-773-3796. (Mca 7 ¶ M; Mca 16 ¶ M) The contact name in Smith's phone for the 585-729-4692 number now associated with Hunter was "Jikki." Ibid. The connection between those two contacts was only made during a forensic analysis that showed both numbers were entered into the device on November 9, 2020, and that the "Jikki" contact was edited on November 30, 2020. Ibid. However, that connection was only made because police, at the time of the analysis, knew that the 585-729-4692 number was at the scene of the crime as a result of the tower dump.

Similarly, merely possessing the call detail records for Wayne Smith's phone during the time of the crime would not necessarily mean that the police would have recognized the significance of the 585-729-4692 number now associated with Hunter. The robbery began at approximately 9:26 a.m. and ended at approximately 10:59 a.m. (Mca 25) The exact time of the call between Suspect 1 and Smith's phone is unknown. (Mca 22-25) Therefore, it is not clear from the records that the police would have identified which call Smith may have received from Suspect 1 during that one hour and 33-minute period. The

[3] Appellate counsel does not have access to the forensic extraction of Smith's phone and counsel below has not yet litigated the truthfulness of any statements contained in the affidavits supporting that warrant. Therefore, appellate counsel does not concede that the facts alleged in the affidavit are true.

affidavit states that Smith's records "contained" the 585-729-4692 number.[4] (Mca 5 ¶ F; Mca 14 ¶ F) However, the affidavit does not state when any of those calls occurred. Ibid. Even if they occurred during the one hour and 33-minute period of the crime, Smith could have received dozens of phone calls from other numbers during that time. If that were the case, it is unclear that the call to Hunter's phone would have stood out to the police in any way. It is also unclear that there would have been probable cause to obtain the location information for all individuals who spoke with him close in time to the crime. See Ybarra v. Illinois, 444 U.S. 85, 91 (1979) (probable cause cannot be established by "mere propinquity to others"); see also State v. Boone, 232 N.J. 417, 421 (2017) (affidavit contained no information as to why the apartment unit—one of thirty units in the building—should be searched). Given the procedural posture in this case, there is nothing in the record regarding the number of calls made or received from Smith's phone. So, the Court was left to speculate that law enforcement would have obtained a warrant for the records for the 585-729-4692 based on Smith's cellular activity. Speculation is insufficient to demonstrate that officers would have inevitably honed in on Hunter and Bryant by merely having Smith's phone or call detail records.

[4] Appellate counsel does not have access to Smith's call detail records and counsel below has not yet litigated the truthfulness of any statements contained in the affidavits supporting the other communications data warrants. Therefore, appellate counsel does not concede that the facts alleged in the affidavits are true.

The affidavits here demonstrate that the connection between Smith's phone and the 585-729-4692 number now associated with Hunter was only made because of the unconstitutional tower dump records. In paragraph G they note that it was looking at the tower dump records that informed them Smith's phone received a call from the 585-729-4692 number now associated with Hunter. (Mca 5 ¶ G; Mca 14 ¶ G) Therefore, the affidavits themselves contradict the Appellate Division's post hoc conclusion. If law enforcement were unable to make that link between Smith and Hunter, then there is no way that they could make the link to the 585-820-8364 number associated with Bryant. Again, the affidavits state that this connection was made because when looking at the tower dump records police saw the Smith number "received a phone call from 585-729-4692…" which was "in communication on numerous occasions with phone number 585-820-8363." Ibid.

Additionally, the Court's assertions of how the 585-820-8364 number and therefore the Cell Site Location Information ("CSLI") from that number would have been inevitably discovered, was inconsistent with the post-hoc claims made by the State about how the investigation would have proceeded. The State, in their supplemental brief, claimed that law enforcement recognized the significance of the number because Smith called it "soon after his November, 30 police interview." (Ma 47) This is consistent with the affidavits for the CDW

Warrants for 585-729-4692 and 585-820-8364, which note that they saw Smith had contacted the 585-820-8364 number on November 30, 2020. (See Mca 5 ¶ G; Mca 14 ¶ G) However, the State later admitted in their papers that the statement "soon after" actually meant that "Smith's phone records revealed that Smith contacted Bryant the day after Smith's police interview." (Ma 52) (emphasis added) The State's brief did not explain how many other people Smith contacted during that period or how the 585-820-8364 number associated with Bryant would have been significant without also knowing that it was found at the scene of the crime. See ibid. In fact, the number was only significant because it was also found in the data obtained through the illegal tower dump. So, without the tower dump, the police would not have made the connection to the 585-820-8364 number. In other words, the connection to the number was not inevitable without the comparison to the tower dump records.

The third prong of the inevitable discovery doctrine and the second prong of the independent source doctrine also require the State to show that the decision to seek the CDW Warrants was not prompted by what was discovered in the tower dump warrants. This is a subjective question that "turn[s] entirely on an evaluation of the officers' intent." Murray v. United States, 487 U.S. 533, 542 (1988) (Marshall, J., dissenting).

It is apparent from the record that the CDW Warrants for 585-729-4692 and 585-820-8364 were sought because of what officers found in the tower dump records. The warrants were only sought on January 29, 2021, over a month after both those numbers were found in the tower dump records and connected to Smith. It is also apparent that the court issuing the communications data warrants for 585-729-4692 and 585-820-8364 relied on the information obtained from the tower dump because they were referenced explicitly in the affidavit. The connections between those numbers and Smith are contained in paragraph G and are the lynchpin of probable cause. (See Mca 5 ¶ G.; Mca 14 ¶ G) Therefore, the logical conclusion is that they were prompted to seek those warrants as a result of the evidence obtained through the tower dumps and used that unlawfully recovered information to establish probable cause. Furthermore, the State admitted that it relied on those unconstitutionally obtained tower dump records to get the later CDW Warrants in its supplemental brief: "Here, the State learned defendants' identities by cross-referencing Wayne Smith's phone number and the telephone-call CSLI it obtained through the tower dump." (Ma 51)

Furthermore, to the extent that this Court disagrees with that assessment of the facts, the State still failed to meet their burden because they chose not to call any officer to the stand to testify about what prompted them to seek the

CDW Warrants for 585-729-4692 and 585-820-8364. After all, the first prong of the independent source doctrine "turn[s] entirely on an evaluation of the officers' intent." Murray v. United States, 487 U.S. 533, 542 (1988) (Marshall, J., dissenting). Without some testimony about the officer's intent there is nothing to evaluate.

In the end the entirety of the State's arguments and the Appellate Division's decision relied on hearsay statements found in affidavits, not actual evidence or testimony presented at a hearing. That alone is enough to prevent the State from meeting the clear and convincing evidence standard. See State v. Atwood, 232 N.J. 433, 446 & 449 (2018) (Noting that the State declined to present witness or evidence at a hearing and holding that "[t]he statements in the warrant affidavit were not enough to carry that evidentiary burden").

In short, the State failed to meet its burden under the independent source or inevitable discovery doctrines because it is utterly unclear that they would have connected Smith to Hunter and Bryant through lawful means. Further, it is unclear that those means would have been independent of the unlawful means used to obtain the information that officers did, in fact, rely on to make those connections. The assertions otherwise rely on hearsay and speculation informed by the benefit of hindsight, which the defense was never able to meaningfully challenge.

## III. The Appellate Decision Denied Mr. Bryant Due Process Of Law.

Mr. Bryant was never offered an opportunity to present evidence controverting the government's factual assertions in support of their inevitable discovery or independent source arguments or to test their evidence through an adversarial process. Therefore, denying suppression based on the inevitable discovery and independent source doctrines was denial of due process of law.

The guarantees of due process call for a "hearing appropriate to the nature of the case." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Where there are questions of fact it is an abuse of discretion not to conduct an evidentiary hearing. See United States v. Pena, 961 F.2d 333, 339 (2d Cir. 1992). Furthermore, whether the inevitable discovery or independent source rule applies is a fact intensive inquiry that requires a hearing. See e.g. State v. Maltese, 222 N.J. 525, 532 (2015) (remanding for a hearing on inevitable discovery); State v.Robinson, 228 N.J. 529, 552 (2017) (same); Bradley, 959 F.3d at 558 (same). This is because "[p]roof of inevitable discovery involves no speculative elements but focuses on demonstrated historical fact capable of ready verification or impeachment…" Vasquez De Reyes, 149 F.3d 192,195 (3d Cir. 1998) (citing United States v. Kennedy, 61 F.3d 494 (6th Cir.1995))

"At evidentiary hearings, the State presents witnesses to substantiate its basis for the challenged… conduct, and the defense is afforded the opportunity to confront and cross-examine the State's witnesses." State v. Atwood, 232 N.J. 433, 445, 180 A.3d 1119, 1125 (2018); See also United States v. Hodge, 19 F.3d 51, 53 (D.C. Cir. 1994); United States v. Salsedo, 447 F. Supp. 1235, 1241 (E.D. Cal. 1979), vacated on an unrelated point, United States v. Torres, 622 F.2d 465 (9th Cir. 1980) (per curiam); People v. Williamson, 79 N.Y.2d 799, 800 (N.Y. 1991); State v. Ehtesham, 309 S.E.2d 82, 84 (W. Va. 1983).

Furthermore, Mr. Bryant has a statutory right to an evidentiary hearing where material facts are disputed.2 See 1A N.J. Prac., Court Rules Annotated R 3:5- 7 (2025 ed.). R. 3:5–7 contemplates a "full airing of the evidence" during the suppression hearing, and [appellate courts] may only consider whether the motion to suppress was properly decided based on the evidence presented at that time. State v. Turcotte, 239 N.J. Super. 285, 299 (App. Div. 1990) (citations omitted).

The Appellate Division stated that their decision was based on "undisputed facts in the record." Bryant, 2025 WL 3481348, at *12. The decision then went on to claim that the State would have obtained the 585-729-4692 number associated with Hunter from Smith's phone extraction. Ibid. Defense has never conceded that point nor stipulated to that fact. This allegedly

"undisputed fact" along with all other "facts" used by the Appellate Division are hearsay statements found in affidavits, not actual evidence or the statements of witnesses testifying at a hearing. Appellate counsel does not have Smith's phone extraction, and no record was made regarding the contents of the device in the hearing below. Similarly, appellate counsel does not have the phone records allegedly recovered from Sprint related to Smith's number, nor were they ever introduced into evidence, nor was testimony given regarding their contents. But most importantly, no State witness has ever explained how they would have made the connection between all three numbers without the use of the data illegally obtained from the tower dumps. Defense does not and has never conceded this point and any arguments that they would have made this connection is conjecture.

Here Mr. Bryant has not been afforded any opportunity to challenge the claims made by the government or the "facts" relied on by the Appellate Division. Therefore, admission of evidence under the inevitable discovery or independent source doctrines would be a denial of his due process rights under the constitutions of New Jersey and the United States of America.

In sum the Appellate Division's decision below was based on an undeveloped record, misapplied the law and denied Mr. Bryant due process of law. Therefore, Mr. Bryant requests summary reversal. Should this Court grant

certification but decline to summarily reverse, Mr. Bryant respectfully requests the opportunity to file a supplemental brief.

Respectfully submitted,

BY: _____

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CERTIFICATION

I hereby certify that the foregoing petition presents substantial issues of law and is filed in good faith and not for purposes of delay.

Respectfully submitted,

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