

ARIZONA SUPREME COURT

STATE OF ARIZONA,

Appellee,

v.

IAN MITCHAM,

Appellant.

CR–23–0236–PR

Court of Appeals
No. 1 CA–CR 23–0014

Maricopa County Superior Court
No. CR2018–118086–001

BRIEF OF AMICUS CURIAE ARIZONA ATTORNEY GENERAL IN SUPPORT OF STATE OF ARIZONA

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INTEREST OF AMICUS CURIAE

The Arizona Attorney General, as the State’s chief legal officer, *see* [A.R.S. § 41–192\(A\)](#), represents the State before the superior courts, appellate courts, and federal courts in criminal actions and appeals arising from capital and non-capital felony convictions in the State of Arizona. Consequently, the Attorney General has a strong interest in ensuring the law is correctly applied in criminal cases, which includes helping to ensure DNA evidence is not needlessly suppressed in a homicide case. As it did in the court of appeals, the Attorney General submits this brief as *amicus curiae* pursuant to [Arizona Rule of Criminal Procedure 31.15](#) to offer its position on the important issues presented in this appeal.¹

INTRODUCTION

This appeal presents several difficult questions regarding the Fourth Amendment in a fact-scenario that is unlikely to reoccur. But this Court need not resolve those difficult questions; rather, even assuming *arguendo* a Fourth

¹ While this appeal has been pending in the appellate courts, Nick Klingerman, counsel for the Maricopa County Attorney’s Office (“MCAO”) joined the Attorney General’s Office. Mr. Klingerman has been designated a Special Deputy County Attorney to continue to represent the State through MCAO in this case. Mr. Klingerman has been screened from participation at the Attorney General’s Office and did not participate in the drafting of this brief for the Attorney General.

Amendment violation occurred, the DNA evidence should not be suppressed because of the inevitable discovery doctrine.

Appellee Ian Mitcham was convicted of unrelated felony offenses in 2022. Under Arizona law, those convictions required Mitcham to submit a biological sample for DNA extraction to create a DNA profile to upload to Arizona’s DNA database. A DNA profile from the homicide crime scene was already included within the DNA database. Upon running a required “autosearch” between known DNA profiles of convicted felons and unidentified DNA profiles obtained from crime scenes, law enforcement would have inevitably discovered and subsequently confirmed the match between Mitcham’s DNA profile and the DNA profile from the crime scene in the homicide case. Thus, as the court of appeals concluded, the State has proven by a preponderance of the evidence that the inevitable discovery doctrine applies.²

² The court of appeals also concluded the evidence would have been inevitably discovered because police had probable cause to arrest Mitcham and a DNA sample would have been properly taken upon his arrest. See *State v. Mitcham*, 256 Ariz. 104, ¶¶ 39–46 (App. 2023). This is another reason to apply the inevitable discovery doctrine in this case. The focus of this brief, however, is the court of appeals’ conclusion that the DNA evidence would have been inevitably discovered from Mitcham’s unrelated felony convictions. See *id.* at ¶¶ 47–51.

The purposes of the exclusionary rule are not served here when the police would have independently obtained Mitcham's DNA profile and discovered the match. Indeed, any contrary conclusion would put the State in a worse position than it would have been if the alleged Fourth Amendment violation did not occur. *See State v. Gulbrandson*, 184 Ariz. 46, 58 (1995) ("The basic premise of the independent source doctrine is that the police should not be placed in a worse position than they would have been in, absent the illegal conduct.").

Accordingly, this Court need not resolve whether a Fourth Amendment violation occurred. The Attorney General strongly urges this Court to resolve this appeal by applying the inevitable discovery doctrine. *See School Dist. No. 26 (Bouse Elementary) of Yuma Cnty. v. Strohm*, 106 Ariz. 7, 9 (1970) ("Constitutional issues will not be determined ... unless a decision is absolutely necessary in order to determine the merits of the suit.") (citation omitted); *see also Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g, P.C.*, 467 U.S. 138, 157 (1984) ("It is a fundamental rule of judicial restraint, however, that this Court will not reach constitutional questions in advance of the necessity of deciding them.").

Instead, this Court should affirm the court of appeals' application of the inevitable discovery doctrine and reversal of the trial court's suppression order.

ARGUMENT

A. The Inevitable Discovery Doctrine Applies.

Even if a Fourth Amendment violation occurred here, the “extraction of [Mitcham’s] DNA profile,” “the resulting DNA analysis,” and “the subsequent DNA swabs collected pursuant to the warrant,” *see* R.O.A. Item 6, at 6,³ should not be suppressed because all of this evidence inevitably would have been discovered.

1. *Basic principles of the inevitable discovery doctrine.*

“Evidence obtained in violation of the Fourth Amendment need not be suppressed when that evidence would inevitably have been discovered by lawful means.” *State v. Paxton*, 186 Ariz. 580, 584 (App. 1996). “The inevitable discovery doctrine, which is an exception to the exclusionary rule, provides that illegally obtained evidence is admissible “[i]f the prosecution can establish by a preponderance of the evidence that the illegally seized items or information would have inevitably been seized by lawful means[.]” *State v. Jones*, 185 Ariz. 471, 481 (1996) (quoting *State v. Ault*, 150 Ariz. 459, 465 (1986)); *see also Murray v. United States*, 487 U.S. 533, 539 (1988) (“*Since* the tainted evidence would be

³ The record citations are to the parties’ stipulated record on appeal that was filed in the court of appeals on January 19, 2023.

admissible if in fact discovered through an independent source, it should be admissible if it inevitably would have been discovered.” (Emphasis in original)).

“The independent source doctrine,” which is “closely related to the inevitable discovery doctrine,” “allows admission of evidence that has been discovered by means wholly independent of any constitutional violation.” *Nix v. Williams*, 467 U.S. 431, 443 (1984). The key difference between the two doctrines is the inevitable discovery doctrine applies if the evidence *would have been* inevitably discovered and the independent source doctrine applies if the evidence *actually was discovered* independent of the initial illegal search. See *United States v. Johnson*, 380 F.3d 1013, 1014 (7th Cir. 2004) (“The ‘independent source’ doctrine allows the government to use evidence that it obtained both illegally and legally, as when evidence first found in an illegal search is later rediscovered in a legal one. ... The ‘inevitable discovery’ doctrine allows the government to use evidence that it obtained illegally but would have obtained legally in any event.”) (citations omitted).

Both doctrines are based on the same rationale—“When the challenged evidence has an independent source, exclusion of such evidence would put the police in a worse position than they would have been in absent any error or violation.” *Williams*, 467 U.S. at 443. In such cases, “the deterrence rationale of the exclusionary rule has little basis.” *Paxton*, 186 Ariz. at 584. Rather, the

“[e]xclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial but would inflict a wholly unacceptable burden on the administration of criminal justice.” *Williams*, 467 U.S. at 446–47. In other words, because the evidence either was or would have been inevitably discovered, the inevitable discovery and independent source doctrines “purge the taint of impermissible law-enforcement activity, causally disconnecting the acquisition of the evidence from the illegality.” *State v. Soto*, 195 Ariz. 429, 432, ¶ 14 (App. 1999).

“Arizona has adopted the broad view of the inevitable discovery rule,” and “the State is not required to demonstrate that police initiated lawful means to acquire evidence prior to its seizure.” *State v. Davolt*, 207 Ariz. 191, 204, ¶ 37 (2004). The prosecution also does not have to show the absence of bad faith and instead must establish “by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means.” *Williams* 467 U.S. at 444–45. Inevitable discovery focuses on “demonstrated historical facts capable of ready verification.” *Id.* at 444 n. 5.

2. *Because Mitcham was convicted of unrelated felonies, Arizona law required the taking of a biological sample and extraction of his DNA profile.*

Section 13–610(A) provides that “[w]ithin thirty days after a person is sentenced to the state department of corrections ... the state department of

corrections *shall* secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the person if the person was convicted of an offense listed in this section.” (Emphasis added.) That sample is then transmitted to the Arizona Department of Public Safety (“DPS”). [A.R.S. § 13–610\(A\)](#). This statute applies to any person “[c]onvicted of any felony offense.” [A.R.S. § 13–610\(O\)\(1\)](#). If DPS has “previously received and is maintaining a sample sufficient for deoxyribonucleic acid testing,” then a new sample “shall not [be] secure[d].” [A.R.S. § 13–610\(G\)](#).

As detailed in the State’s briefing and attachments, Mitcham has three felony convictions—a “narcotic drug violation” under [A.R.S. § 13–3408](#), a class 4 felony, and two aggravated driving under the influence convictions under [A.R.S. § 28–1383\(A\)\(3\)](#), class 6 felonies. R.O.A. Item 2, at 18; Opening Brief (“O.B.”) Appendix (“App.”) A & B. In the 2022 sentencing orders for those cases, the court ordered sentences of incarceration and that Mitcham “must submit to DNA testing for identification purposes in accordance with A.R.S. § 13–610.” O.B., App. A & B. Because [A.R.S. § 13–610\(G\)](#), prohibits double collection of DNA samples, a sample of Mitcham’s DNA was not taken as a result of his 2022 convictions. Nonetheless, absent the creation of the DNA profile from previously collected evidence for Mitcham’s misdemeanor driving-under-the-influence conviction, this would have inevitably occurred. [A.R.S. §§ 13–610\(A\), \(G\), & \(O\)](#)

3. *The unknown DNA profile developed from the homicide crime scene evidence was already in the state DNA database.*

Scottsdale Police Department developed an unknown male DNA profile from the murder investigation crime scene, which was uploaded to CODIS⁴ at the time of the murder in 2015. R.T. 12/9/22, at 22–23; State Petition for Review Response (“P.F.R.R.”), at 6. No hits occurred by 2018, so the Scottsdale Police Department requested DPS conduct a “familial DNA search” to search the known offenders in Arizona to “rank them based on a lineage to compare to the unknown profile.” R.T. 12/9/22, at 22–23. DPS determined that the crime scene profile belonged to a “first-degree relative” of Mark Mitcham, which would be “his son, his brother, or his father.” *Id.* at 24–25; *see also* R.O.A. Hearing Exh. 4.

After further investigation, the Scottsdale Police Department concluded Mark Mitcham had a deceased father, two sons who lived out of state, and two

⁴ CODIS is an acronym for Combined DNA Index System, which is a computer software program that operates local, state, and national databases of DNA profiles from convicted offenders, unsolved crime scene evidence, and missing persons. *See also* [34 U.S.C. § 12592](#) (establishing national DNA database). Arizona has a DNA identification system maintained by the DPS Scientific Analysis Bureau. *See* [A.R.S. § 41–2418](#) (establishing state DNA database); [Mario W. v. Kaipio, 230 Ariz. 122, 124, ¶ 5 \(2012\)](#) (generally discussing state and national DNA databases); *see also* O.B. App. C (CODIS Procedures Manual prepared by the DPS Scientific Analysis Bureau).

brothers who lived in Phoenix, including Ian Mitcham, the defendant in this case. R.T. 12/9/22, at 25.

When the Scottsdale Police Department extracted Mitcham’s DNA from his blood sample collected after his consent in the 2015 driving-under-the-influence investigation, they determined that Mitcham’s DNA matched the DNA profile obtained from the crime scene. R.O.A. Hearing Exhibit 6. Subsequently, police obtained a warrant for Ian Mitcham’s buccal swab, and the match was confirmed. R.O.A. Item 3, Attachment A; Petition for Review (“P.F.R.”), at 4–5; P.F.R.R., at 6–7.

4. “Autosearches” are completed at least once a week to determine whether DNA profiles of convicted offenders match DNA profiles found at crime scenes.

As detailed in the DPS *CODIS Procedures Manual*, the State DNA Index System is “autosearched” “not less than once a week” to determine, in relevant part, whether there is a match between convicted offenders and profiles from a crime scene. O.B. App. C, at § 6.1.3. If, as here, there is an “intrastate offender match”—meaning “a DNA profile developed from crime scene evidence by a casework laboratory matches an offender’s DNA profile developed by a database laboratory within the same state”—several procedures are followed to confirm the match including obtaining a new biological sample from the offender. *Id.* at § 7.1.1.

5. *Mitcham's DNA profile and its subsequent match with the DNA profile from the crime scene evidence would have inevitably been discovered by law enforcement.*

If police had not extracted Mitcham's DNA profile from the blood drawn as part of the 2015 driving-under-the-influence investigation, his DNA profile would have inevitably been extracted and put in CODIS from an independent source and then searched through CODIS. This is because, as noted, subsections 13-610(A) & (O) require convicted felons sentenced to a term of imprisonment in the department of corrections to provide a biological sample for DNA testing and extraction. The only reason this mandatory process did not occur in this case is because Mitcham's profile had previously been received by DPS. A.R.S. § 13-610(G). And, not only would Mitcham's DNA profile have been created and added to CODIS, it would have been subject to the autosearches of the State DNA Index System. O.B., App. C, at § 6.1.3. There inevitably would have been a match between Mitcham's DNA profile and the DNA profile developed from the crime scene evidence that was already contained in the CODIS database. To confirm the match, police would have obtained a buccal swab from Mitcham pursuant to standard procedures. *Id.* at § 7.1.1.

The fact that Mitcham's DNA sample was not taken again upon conviction is the difference between the inevitable discovery and independent source doctrines in this case. If a new sample had been taken from Mitcham and a new

DNA profile created, then the independent source doctrine applies. See *United States v. Ramirez-Sandoval*, 872 F.2d 1392, 1396 (9th Cir. 1989) (“The ‘independent source’ exception operates to admit evidence that is actually found by legal means through sources unrelated to the illegal search.”). But because there was no need to develop a new DNA profile when Mitcham’s DNA profile has already been determined, the argument is better characterized under the inevitable discovery doctrine. *Id.* (“The ‘inevitable discovery’ exception ... allows the introduction of illegally obtained evidence if the government can show by a preponderance of the evidence that the tainted evidence would inevitably have been discovered through lawful means.”) (citation omitted); see also *Murray*, 487 U.S. at 539 (describing the inevitable discovery doctrine as an “extrapolation from the independent source doctrine”). Regardless, these doctrines are “closely related,” see *Williams*, 467 U.S. at 443, and the same arguments apply even if this Court were to find it better characterized as valid under the independent source doctrine.

In sum, Mitcham’s DNA profile and the match to the DNA profile from the homicide crime scene evidence would have inevitably been discovered. See *Brown v. McClennen*, 239 Ariz. 521, 525, ¶ 14 (2016) (stating the inevitable discovery doctrine “applies if the evidence would have been lawfully discovered despite the unlawful behavior and independent of it”).

6. ***The trial court incorrectly suppressed the DNA evidence because the inevitable discovery doctrine applies.***

The trial court improperly rejected application of the inevitable discovery doctrine. It is not mere speculation that the DNA evidence would have inevitably been discovered. Instead, the State has proven the doctrine's application by a preponderance of the evidence based on "demonstrated historical facts capable of ready verification." *Williams*, 467 U.S. at 444 n.5. The State has provided Mitcham's sentencing orders for his felony convictions and the CODIS Procedures Manual, both of which are subject to judicial notice. *See Ariz. R. Evid. 201(b)(2)* ("The court may judicially notice a fact that is not subject to reasonable dispute because it ... can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."); *In re Sabino R.*, 198 Ariz. 424, 425, ¶ 4 (App. 2000) ("It is proper for a court to take judicial notice of its own records or those of another action tried in the same court."). As set forth above, [section 13-610](#) requires those convicted of felony offenses to provide a biological sample to extract a DNA profile to be uploaded to CODIS. And it is undisputed that the DNA profile from the crime scene sample here was already in CODIS because that is how the familial search was completed. None of this is mere guesswork or supposition; rather, they are facts "capable of ready verification." *Williams*, 467 U.S. at 444 n.5.

Notably, courts in other jurisdictions have applied the inevitable discovery doctrine in similar circumstances. For example, in *Sutton v. Pfister*, 834 F.3d 816, 817 (7th Cir. 2016), Illinois admitted it had unlawfully collected the defendant's blood sample in 1991, which ultimately connected the defendant to an unsolved 1990 home invasion and sexual assault. But the defendant was also convicted of several felony offenses in 1991 and would have been required to submit "blood and saliva" samples because of those convictions. *Id.* at 818. Because "[t]he law on the books required the court to order [defendant] to provide a blood sample," the Seventh Circuit Court of Appeals held the inevitable discovery doctrine applied. *Id.* at 822. And even though the State had not collected a new sample after conviction, presumably because it already had one, the inevitable discovery doctrine still applied because of the mandatory language of the statute. *Id.*

Other state courts have also applied the inevitable discovery doctrine in similar cases. In *Haynes v. State*, 127 S.W.3d 456, 463–64 (Ark. 2003), the Arkansas Supreme Court concluded that even if the State had illegally taken the defendant's DNA sample, the State would have inevitably obtained a DNA sample when a statute required the defendant to provide a DNA sample when he was paroled for a burglary conviction. Further, "the Crime Lab would have obtained its 'hit'" and connected the defendant to the unsolved rape case. *Id.* at 464.

Likewise, the Montana Supreme Court applied the inevitable discovery doctrine when the defendant claimed his DNA profile had been improperly put in the State DNA Identification Index, resulting in a match to evidence collected in an unsolved murder case. *State v. Notti*, 71 P.3d 1233, 1236 (Mont. 2003). Because the defendant had also been convicted and sentenced of a sexual assault, he was required by law to provide a DNA sample. *Id.* at 1238–39. The defendant’s “DNA profile would have been placed on the State’s DNA Identification Index and submitted to CODIS, which would have inevitably led to the discovery of a match by either a CODIS computer check or when another Crime Lab employee compared profiles in the ‘forensic unknown’ database with the State’s DNA Identification Index.” *Id.* at 1239. Thus, regardless of whether the State improperly put the defendant’s DNA sample in the database when it did so, it inevitably would have been lawfully included and resulted in the match. *Id.*; see also *People v. Adams*, 120 A.D.3d 1253, 1255 (N.Y. App. Div. 2014) (“Since an authorized DNA sample was taken from the defendant in connection with another unrelated charged shortly after he was arrested on the charges at issue on this appeal, the People established by a very high degree of probability that the evidence in question would have been obtained independently of the tainted source during the normal course of police investigation.”).

Moreover, suppressing the evidence in this case “would operate to undermine the adversary system by putting the State in a worse position than it would have occupied without any [alleged] police misconduct” and it “adds nothing to either the integrity or fairness of a criminal trial.” *Williams*, 467 U.S. at 446–47. “[T]he interest of society in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime are properly balanced by putting the police in the same, not a worse, position that they would have been in if no police error or misconduct had occurred.” *Id.* at 443.

Further, the private affairs clause of the Arizona Constitution, *Ariz. Const. art. 2, § 8*, does not prevent application of the inevitable discovery doctrine to this case. In *State v. Ault*, 150 Ariz. 459, 466 (1986), this Court refused to apply the inevitable discovery doctrine to evidence that was the direct product of an unlawful entry into a home. *Ault* is based upon the private affairs clause’s purpose in “preserving the sanctity of homes and in creating a right of privacy.” *Id.* Besides just asserting it does, Mitcham does not explain how this reasoning applies here to “protect[] the scope of a person’s consent.” Mitcham Supp. Br., at 19–20. He offers no historical evidence or any other specific reason to apply that reasoning here. See *State v. Mixton*, 250 Ariz. 282, 290, ¶ 32 (2021) (although the private affairs clause provides “broader protections to the home than the Fourth

Amendment,” there is “value in uniformity with federal law when interpreting and applying the Arizona Constitution”).

Here, at bottom, we are talking about suppressing evidence of the defendant’s identity, specifically his DNA profile. This is evidence that everyone agrees can be lawfully obtained from Mitcham because of his unrelated criminal convictions. *See In re Leopoldo L.*, 209 Ariz. 249, 255, ¶ 23 (App. 2004) (holding that “the DNA testing required by § 13–610 serves the government’s special needs to identify perpetrators of past and future crimes and to deter a known class of offenders from re-offending,” and concluded it was reasonable under the Fourth Amendment); *see also Maryland v. King*, 569 U.S 435, 445 (2013) (“All 50 States require the collection of DNA from felony convicts[.]”). As the United States Supreme Court has recognized, a person’s privacy interest in a DNA profile is significantly different than the privacy interest in other information such as genetic information contained in a DNA sample. *King*, 569 U.S at 464. And, Mitcham has a reduced expectation of privacy in the evidence of his identity because of his criminal convictions. *See Samson v. California*, 547 U.S. 843, 849 (2006) (recognizing those convicted of crimes and on probation have a diminished expectation of privacy). Mitcham’s DNA profile “establishes only a record of [his] identity—otherwise personal information in which the qualified offender can claim

no right of privacy once lawfully convicted of a qualifying offense[.]” *United States v. Kincade*, 379 F.3d 813, 837 (9th Cir. 2004).

Therefore, for all these reasons, the exclusionary rule should not apply to suppress the DNA evidence that inevitably would have been discovered.

B. The State did not waive the inevitable discovery argument regarding Mitcham’s other felony convictions.

Mitcham contends this Court should not consider the inevitable discovery or independent source doctrine regarding his other felony convictions because the State waived the argument. Mitcham Supp. Br., at 15. The court of appeals correctly concluded that the argument should not be deemed waived, *see State v. Mitcham*, 256 Ariz. 104, ¶ 48 (App. 2023).

Most importantly, the State raised the applicability of the inevitable discovery doctrine in its response to Mitcham’s suppression motion. *See* R.O.A. Item 2, at 1–2, 16–18. Specifically, the State argued that because Mitcham was convicted of felony offenses after the alleged Fourth Amendment violation, he was required under A.R.S. § 13–610 to provide a DNA sample for law enforcement purposes. *Id.* at 18. Mitcham responded to these arguments in his reply in support of his suppression motion. R.O.A. Item 3, at 19–23. The superior court then ruled on the inevitable discovery doctrine in its order. R.O.A. Item 6, at 4.

An issue is preserved for review when parties make “sufficient argument to allow a trial court to rule on the issue.” *State v. Kinney*, 225 Ariz. 550, 554, ¶ 7 (App. 2010). Here, the State timely raised the applicability of the inevitable discovery doctrine, Mitcham responded to the argument, and the trial court ruled on it. Further, the State provided the cause numbers for Mitcham’s other felony convictions, and the superior court may take judicial notice of its own records. *See Ariz. R. Evid. 201(b)(2); In re Sabino R.*, 198 Ariz. at 425, ¶ 4.

Mitcham’s unrelated convictions are from the same superior court as the pending homicide case and are “not subject to reasonable dispute,” *see* O.B. App. A–B, and an appellate court “may take judicial notice of anything of which the trial court could take notice, even if the trial court was never asked to take notice.”⁵ *In re Sabino R.*, 198 Ariz. at 425, ¶ 4; *see also State v. Sanders*, 245 Ariz. 113, 125, ¶ 38 (2018) (taking notice of the superior court’s records relating to a criminal

⁵ The State’s appendix in the court of appeals also contains the procedure manual governing the State’s DNA database. O.B., App. C. This manual is also publicly available on the Arizona Department of Public Safety’s website at <https://azdps.qualtraxcloud.com/showdocument.aspx?ID=3369> (last visited June 9, 2024). *See State v. Rojers*, 216 Ariz. 555, 560–61, ¶ 26 (App. 2007) (taking judicial notice of Phoenix Police Department Operations Order and approvingly citing cases taking judicial notice of manuals published by various government agencies); *see also State ex rel. Montgomery v. Harris*, 234 Ariz. 343, 347, ¶ 23 (2014) (relying on publicly available report from the National Highway Traffic Safety Administration in resolving claim).

conviction); *State v. Rose*, 231 Ariz. 500, 508, ¶ 32, n.1 (2013) (same). No further factual development or fact-finding is necessary to determine whether the inevitable discovery doctrine applies.

Additionally, the State explicitly argued in the court of appeals that the reasons the independent source doctrine applied were the same reasons the inevitable discovery doctrine was satisfied. O.B., at 24 n.10. As Mitcham admits, *see Mitcham Supp. Br.*, at 15, “[t]he independent source doctrine” is “closely related to the inevitable discovery doctrine.” *Williams*, 467 U.S. at 443. The State fully developed its independent-source-doctrine argument in its opening brief and included an appendix with the necessary documents to easily resolve this argument in the court of appeals. *See O.B.*, at 1–2, 24–25, App. A–C. Therefore, there was no waiver.

In any event, waiver is a “procedural and not jurisdictional” rule. *Evenstad v. State*, 178 Ariz. 578, 582 (App. 1993). “If application of a legal principle, even if not raised below, would dispose of an action on appeal and correctly explain the law, it is appropriate for [this Court] to consider the issue.” *Id.* As previously explained, the inevitable discovery doctrine applies based on “demonstrated historical facts capable of ready verification,” not speculation. *Williams*, 467 U.S. at 444 n.5. For these reasons, this Court should not find the State waived the application of the inevitable discovery or independent source doctrine.

CONCLUSION

This Court should affirm the court of appeals' application of the inevitable discovery doctrine and reversal of the trial court's suppression order.

Respectfully submitted,

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