ARIZONA SUPREME COURT

STATE OF ARIZONA, Appellant/Cross-Petitioner, v. IAN MITCHAM, Appellee/Petitioner.	No. CR-23-0236 PR Arizona Court of Appeals No. 1 CA-CR 23-0014 Maricopa County Superior Court No. CR 2018-118086-001

MITCHAM'S RESPONSE TO AMICUS BRIEF OF THE ATTORNEY GENERAL

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RESPONSE TO THE AMICUS BRIEF OF THE ATTORNEY GENERAL

The Attorney General's argument is based on three misunderstandings. First, inevitable discovery is assessed at the time of law enforcement's illegal conduct. Second, inevitable discovery requires the discovery of evidence, not a lead. Third, inevitable discovery does not apply when there is discretion. Finally, the Attorney General also gets the state constitutional analysis wrong. Article 2, § 8 of the Arizona Constitution provides clear direction that this Court should protect Ian Mitcham's DNA against intrusion.

1. Inevitability is assessed at the time of the misconduct.

When inevitable discovery is at issue, the central focus is what *would* have occurred if the illegal intrusion had never taken place.

During this inquiry, inevitability is assessed at the instant before the illegal conduct. The Second, Third, and Sixth Circuits, as well as California, require the "court to determine, viewing affairs *as they existed at the instant before the unlawful search*, what would have happened had the unlawful search never occurred." *U.S. v. Eng*, 971 F.2d 854, 861 (2d Cir. 1992); *accord U.S. v. Vasquez De Reyes*, 149 F.3d 192, 195 (3d Cir. 1998); *U.S. v. Kennedy*, 61 F.3d 494, 498 (6th Cir. 1995); *U.S. v. Alexander*, 540 F.3d 494, 502 (6th Cir. 2008); *People v. Hughston*, 168 Cal.App.4th 1062, 1072 (Cal.App. 2008).

Similarly, the Eleventh and Ninth Circuits require lower courts "to determine whether a reasonable probability of discovery existed prior to the unlawful conduct, based on the information possessed and the investigations being pursued at such time." *U.S. v. Drosten*, 819 F.2d 1067, 1070 (11th Cir. 1987); *accord U.S. v. Lang*, 149 F.3d 1044, 1047 (9th Cir. 1998).

This Court gave effect to this principle in *State v. Lamb* by requiring the state to prove the illegally obtained evidence would have been obtained "in the normal course of the police investigation and absent the illicit conduct …." *State v. Lamb*, 568 P.2d 1032, 1036 (1977).

But the Attorney General claims that a single sentence in *State v. Davolt* expanded the inevitable discovery doctrine. AG Amicus Br. 6. From this single sentence, the AG argues that Ian's DNA profile would have been inevitably discovered because of a conviction that happened years later. *Id.* at 6-7.

Davolt did no such thing.

In *Davolt*, this Court said that "the State is not required to demonstrate that the police initiated lawful means to acquire evidence prior to its seizure." *State v. Davolt*, 207 Ariz. 191, ¶ 37 (2004).

To illustrate this proposition, this Court cited the appellate court's decision in *State v. Paxton*, 186 Ariz. 580 (App. 1996). In *Paxton*, a detective noticed blood stains on the defendant's shoes during an interview. *Id.* at 583-84.

The detective seized the shoes, and later had them tested. *Id.* The detective testified, however, that he had decided to arrest the defendant before that seizure. *Id.* According to standard booking procedures, the jail would have then taken the defendant's shoes. *Id.* at 584. And standard policy for the detective would have been to have the clothing analyzed. *Id.* at 585.

Paxton thus follows Lamb's normal course of investigation standard. While the detective in *Paxton* had not initiated the arrest, he had decided on it. *Paxton* thus viewed "affairs as they existed at the instant before the unlawful search" and found that the officer would have arrested the defendant, and the shoes would have been seized and tested. *See Eng*, 971 F.2d at 861.

Contrary to the AG's position, Davolt does not stray from the ongoing investigation standard in *Lamb*. Nor does it depart from the standard in most federal courts that we assess inevitability at the time of the illegal search. *Davolt* is not a license for the state to invent reasons to get around the warrant requirement years after the fact. It is a recognition that, at times, the inevitable next step has not yet been taken. But that assessment is still made viewing the affairs at the instant before the illegal search.

Inevitable discovery hinges on the state of affairs at the time of the illegal conduct. The doctrine requires that the discovery of evidence be inevitable through a lawful process that was already in motion, not based on events that occur more

than four years after the fact and that are not connected to the investigation. It thus cannot be satisfied by the uncertain outcome of a pending case. Ian did not plead guilty to the felony offenses until more than 4 years had passed.

When Lt. Lockerby developed the profile from Ian's DUI blood sample, Lockerby had no way to predict how Ian's DUI cases would resolve. As the trial court held, "the State cannot demonstrate that it would have been able to obtain his DNA sample through the disposition of his pending cases without assuming that the Defendant was guilty of those offenses." I. 439 at 4.

Inevitable discovery requires the state to prove that law enforcement would have obtained admissible evidence through a lawful, ongoing process. Not based on events disconnected from the investigation that come to occur years later. Allowing the state to justify illegal intrusions based on future, unrelated events renders the Fourth Amendment of little value.

2. Inevitable discovery requires the state to prove they would have inevitably discovered admissible evidence. A lead is not enough.

Inevitable discovery focuses on evidence. Consider just the quotations on pages 4 and 5 of the Attorney General's amicus brief:

- "*Evidence* obtained in violation of the Fourth Amendment need not be suppressed when that *evidence* would inevitably have been discovered …." *State v. Paxton*, 186 Ariz. 580, 584 (App. 1996) (emphasis added).

- "The inevitable discovery doctrine, which is an exception to the exclusionary rule, provides that *illegally obtained evidence* is admissible …." *State v. Jones*, 185 Ariz. 471, 481 (1996) (emphasis added).

- "Since the tainted *evidence* would be admissible if in fact discovered …." *Murray v. U.S.*, 487 U.S. 533, 539 (1988) (emphasis added).

- "The 'inevitable discovery' doctrine allows the government to use *evidence* that it obtained illegally but would have obtained legally in any event." *U.S. v. Johnson*, 380 F.3d 1013, 1014 (7th Cir. 2004) (emphasis added).

- "When the challenged *evidence* has an independent source, exclusion of such *evidence* would put the police in a worse position …." *Nix v. Williams*, 467 U.S. 431, 443 (1984) (emphasis added).

But neither MCAO nor the AG have proved how admissible *evidence* would have been inevitably secured in this case.

To the contrary, MCAO and the AG have argued that the state would have inevitably discovered a *lead*. The AG's amicus brief proves this.

The train of thought advanced by the AG is this: First, a sample of Mitcham's "blood or other bodily substances" would have been taken in 2022 because of his felony convictions. AG Amicus 6-7. Nevermind that this sample was never in fact taken after Mitcham's convictions. Next, that sample would have been transmitted to the Department of Public Safety. *Id.* at 7. Presumably, the Department of Public Safety would have developed this sample into a DNA profile. The AG then seemingly assumes the Department of Public Safety would have uploaded the DNA profile into CODIS. An "autosearch" would have been conducted. *Id.* at 9. And the "autosearch" would have identified a match. *Id.*

This thought process is speculative, as shown by one of the cases the AG relies on: *Haynes v. State*, 127 S.W.3d 456 (Ark. 2003). In *Haynes*, the majority concluded the state would have eventually obtained a DNA match. *Id.* at 463-64. But the majority reached this conclusion based on a presumption that law enforcement had taken a sample. *Id.*; *see also U.S. ex re. Sutton v. Hardy*, 2015 WL 13049557, *3 n.2 (N.D. Ill. 2015) (noting *Haynes* was based on a presumption). Two dissenting justices found a problem with this presumption: the state never took the DNA sample. Justice Brown explained that "the issue is whether law enforcement performed the act of drawing blood in 2001 at all, not whether they performed it properly." *Haynes*, 127 S.W.3d at 465 (Brown, J., dissenting). And the majority's presumption was improper. *Id.* Justice Hannah went further; the majority's presumption "improperly shifted the burden from the State to Haynes." *Id.* at 465 (Hannah, J., dissenting).

Justice Brown and Hannah's dissents strike at the heart of one issue in this case: law enforcement never took Ian's subsequent sample. *See* St. Supp. Br. 6 n.1.[1] The AG's inevitable discovery is based on speculation.

[1] The remaining cases cited by the AG to support inevitable discovery don't apply. *See* AG Amicus 13-14. *Sutton v. Pfister* was a federal habeas case. 834 F.3d 816, 817 (7th Cir. 2016). Federal habeas cases carry only the slightest value because the legal review standard is so deferential. *See State v. Denz*, 232 Ariz. 441, ¶ 15 (App. 2013); 28 U.S.C. § 2254. In *People v. Adams*, the state actually had taken the DNA sample. 120 A.D.3d 1253, 1255 (N.Y. App. Div. 2014). And in *State v. Notti*, the Court's primary ruling was that the defendant had consented to giving a sample so

Setting the speculation of this thought process aside, the AG then trails off. The rest of the process boils down to the claim: "To confirm the match, police would have obtained a buccal swab from Mitcham pursuant to standard procedures." *Id.*; *see also id.* at 10.

The AG trails off for a reason: the CODIS match is not evidence.

Rather, as the FBI explains, "CODIS was established by Congress to assist in providing *investigative leads* for law enforcement in cases where no suspect has yet been identified; therefore a CODIS hit provides new *investigative information* on these cases." FBI.gov, How We Can Help You, Frequently Asked Questions on CODIS and NDIS (emphasis added); *see also* FBI.gov, Law Enforcement Resources, Biometrics and Fingerprints, Combined DNA Index System (CODIS), Overview.

That's why Jones on Evidence explained, "The fact of a CODIS 'match' itself should not, however, be admissible in evidence at trial. Once officials investigating a charge are notified of the 'match,' they should seek authority to obtain a DNA sample directly from the newly identified suspect which is then analyzed and compared to the profile of the crime-relevant DNA." 7 Jones on

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a DNA profile could be generated. 71 P.3d 1233, ¶ 20 (Mont. 2003). The portion the AG relies upon was an afterthought; an alternative basis for its decision, buried in the middle of a paragraph, and unnecessary to the result. It was dicta. *See State ex rel. Mitchell v. Cooper*, 256 Ariz. 1, ¶ 44 (2023).

Evidence § 60:7 (7th ed.). This two-step process "helps protect against clerical errors and the like, and avoids potential hearsay or Confrontation Clause issues relating to how the profile on file with CODIS was originally obtained." *Id.* These Confrontation Clause concerns were validated just a few weeks ago in *Smith v. Arizona*, 602 U.S. ___, 2024 WL 3074423 (2024).

Possessing the profile—or even the CODIS "match"—is not enough. Law enforcement doesn't have evidence at that point; they have a lead. A lead from which they must continue their investigation. Even MCAO agrees the state would then have to confirm the match with a search—securing a blood sample or buccal swab. *See* St. Supp. Br. 6 n.1. And that search would have required a warrant.

Put simply, a CODIS match is the start of the road, not the end of it.

3. Inevitability involves no discretion.

One reason a lead is not enough is because the inevitable discovery doctrine is driven by that first word: inevitability. Inevitable means "incapable of being avoided or evaded." Merriam-Webster.com, inevitable. When there is discretion, a result is capable of being avoided.

Even to this point, there is speculation. Speculation that the state would have taken a swab (even though they didn't when Ian was convicted). Speculation that a

profile would have been generated. Speculation that the profile would have been uploaded into CODIS. Speculation that there would not have been the sort of "clerical error" Jones on Evidence discusses.

But the AG's speculation expands to guesswork once they stop their analysis. And that guesswork, marked by discretion at each step, is incompatible with the inevitable discovery doctrine.

This Court highlighted inevitability in *Brown v. McClennen*, 239 Ariz. 521 (2016). There, the defendant was stopped on Apache Lake for illegally towing a water skier. *Id.* at ¶ 5. After the officer smelled alcohol and performed field sobriety tests, the officer read the defendant an admin per se admonishment that said the law required the defendant to consent to the blood draw. *Id.* at ¶¶ 5-6. The officer then drew the defendant's blood.

After deciding the consent was involuntary, this Court rejected the state's inevitable discovery argument. *Id.* at ¶¶ 13-15. Had the defendant refused consent, the state argued, the officer would have gotten a search warrant. *Id.* at ¶ 13. This Court concluded that the state's "view of the inevitable discovery exception would swallow the rule." *Id.* at ¶ 14. Law enforcement could only have obtained the defendant's blood with a warrant. *Id.* at ¶ 15. "But because the inevitable discovery exception cannot excuse the failure to secure a warrant in the first place, the exclusionary rule applies." *Id.*

Our Court of Appeals reached a similar decision in *State v. Snyder*, 240 Ariz. 551 (App. 2016). There, an officer contacted the defendant in response to a shoplifting call. *Id.* at ¶ 3. Before the officer arrested the defendant, law enforcement searched the defendant's backpack and found a gun and drugs. *Id.* at ¶ 5. The state argued suppression was improper because the officers would have inevitably discovered the gun and drugs during an inventory search at the jail. *Id.* at ¶ 26. But the court rejected this argument because booking the defendant was discretionary. *Id.* at ¶ 28. And the defendant never actually was booked; he was taken to the hospital and indicted before any arrest. *Id.*

Here, the state's argument is based on speculation and guesswork. The AG speculates that officers would have applied for a warrant, even though they did not in fact apply for a warrant when they should have. The AG guesses that the warrant affidavit would have been properly focused, despite evidence that law enforcement primarily relied on the unlawful match from the DUI blood to establish probable cause. The AG assumes that a judicial officer would have been satisfied and signed the hypothetical warrant. But our judicial officers do not rubber stamp search warrants; they make an independent determination. *See State v. Emery*, 131 Ariz. 493, 506 (1982); *State v. Watling*, 104 Ariz. 354, 358 (1969). And the AG presumes that law enforcement would have timely executed the warrant.

This is the very reason this Court explained in *Brown* that "the inevitable discovery exception cannot excuse the failure to secure a warrant in the first place …." *Brown*, 239 Ariz. 521, ¶ 15.

4. The Arizona Constitution provides a separate and stronger basis for protecting the scope of Ian's consent and limiting exceptions to the warrant requirement.

Article 2, § 8 of the Arizona Constitution provides a separate and stronger reason to protect the scope of Ian's consent and reject the Attorney General's inevitable discovery argument (and MCAO's independent source argument).

In his Supplemental Brief, Ian discussed the plain language of Article 2, § 8; cited a law review on the subject; and discussed one of this § 8 Court's cases.

Yet the AG claims Ian did not explain how § 8 protects the scope of a person's consent and "offer[ed] no historical evidence or any other specific reason to apply that reasoning here." AG Amicus Br. 15.

But the AG improperly looks at just Ian's supplemental brief. Ian also discussed the scope of § 8 in his Answering Brief in the lower court and his Petition for Review.

More to the point, Ian focused where this Court has: the plain language of the Arizona Constitution, a comparison with the language of the U.S. Constitution, the history of Arizona's constitution, and the actions of sister states.

A. The language of Article 2, § 8 protects a person's private affairs.

This Court's starting point is the plain language of the Arizona Constitution. For example, in *Brush & Nib v. Phoenix*, this Court started with the plain language of Article 2, § 6. *Brush & Nib, LC v. City of Phoenix*, 247 Ariz. 269, ¶¶ 42, 45 (2019). And this Court started with the plain language of Article 2, § 24 in *Coleman v. Johnsen*, 235 Ariz. 195, ¶ 8 (2014); *see also State v. Bolt*, 142 Ariz. 260, 263 (1984); *Bailey v. Myers*, 206 Ariz. 224, ¶¶ 9, 12-13 (App. 2003).

Ian focused his analysis in the same place—the plain language of Article 2, § 8. Mitcham Supp. Br. 19; *see also* Pet. Rev. 18; AB 48. Ian quoted § 8. *Id.* And Ian noted that this Court previously found that § 8 is "specific in preserving the sanctity of homes and in creating a right of privacy." *Id.* (quoting *State v. Ault*, 150 Ariz. 459, 166 (1986)).

More to the point, Ian noted in his Answering Brief below that this Court has already explained that the privacy interest protected by § 8 extends to similar issues. AB 48. In *Rasmussen by Mitchell v. Fleming*, this Court interpreted "privacy" and "private affairs" as "encompassing an individual's right to refuse medical treatment." *Rasmussen by Mitchell v. Fleming*, 154 Ariz. 207, 215 (1987). As this Court observed, a person's "right to chart his or her own plan of medical

treatment deserves as much, if not more, constitutionally-protected privacy than does an individual's home or automobile." *Id.*

This Court's conclusion in *Rasmussen* reflects the plain language of the Arizona Constitution. Section 8 guarantees that "No person shall be disturbed in his private affairs …." Ariz. Const. Art. 2, § 8.

Even when Arizona's constitution was drafted, *affair* carried a broad meaning that incorporated personal concerns. Webster's New Standard Dictionary defined *affair* as "that which is done, or is to be done; business." Webster's New Standard Dictionary 50 (1908). Chambers's Twentieth Century Dictionary of the English Language gave a similar definition: "that which is to be done: business: any small matter: a battle of minor importance: a matter of intimate personal concern, as a duel—a so-called affair of honour, or an intrigue: (*pl.*) transactions in general: public concerns." Chambers's Twentieth Century Dictionary of the English Language 14 (1903).

In *State v. Mixton*, this Court cited the Second Edition of Black's Law Dictionary, which defined *affairs* as "a person's concerns in trade or property; business." *State v. Mixton*, 250 Ariz. 282, ¶ 33 (2021).

But Black's Law came to that definition because the cases to that point—cited in the definition—had dealt with business concerns. *See* Black's Law Dictionary 46 (2d ed. 1910). *Montgomery v. Com.* concerned the affairs of a

township. *Montgomery v. Com.*, 91 Pa. 125, 131 (Pa. 1879). And *Bragaw v. Bolles* concerned a will in which the testator said it was important to have his affairs in order. *Bragaw v. Bolles*, 25 A. 947, 950 (N.J. Chancery 1893).

Such a technical definition does not control our interpretation. Rather, under the Ordinary-Meaning Canon, "Words are to be understood in their ordinary, everyday meanings—unless the context indicates that they bear a technical sense." Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 69 (2012); *City of Phoenix v. Orbitz Worldwide Inc*, 247 Ariz. 234, ¶ 14 (2019). A private affair is thus "that which is to be done" privately; "a matter of intimate personal concern." *See* Webster's New Standard Dictionary 50 (1908); Chambers's Twentieth Century Dictionary of the English Language 14 (1903). That's how this Court understood the phrase in *Rasmussen*.

Section 8 extends beyond the home; it protects people, their medical information, and their decisions. DNA is linked with medical information. *See* ACLU and ACLU-AZ Amicus Br. 2, 5, 8, 13; Kelly Lowenberg, *Applying the Fourth Amendment when DNA collected for one Purpose is tested for another*, 79 U. Cin. L. Rev. 1289, 1298 (2011). Even a standard DNA profile does more than just establish identity; it can also be used to find (at a minimum) family ties and lineage. The AG acknowledged this in their brief. AG Amicus Br. 8. A DNA

profile thus implicates far more than a picture or a fingerprint. A DNA profile is the sort of "private affair" our constitution protects.

B. Article 2, § 8 provides stronger protections than the U.S. Constitution.

This Court also looks at differences between the Arizona Constitution and the U.S. Constitution. In *Brush & Nib*, this Court analyzed the differences between the Arizona Constitution and the First Amendment. *Brush & Nib*, 247 Ariz. 269, ¶ 45. In *Coleman*, this Court emphasized that the "Arizona Constitution thus recognizes the right to appeal in a way that the United States Constitution does not." *Coleman*, 235 Ariz. 195, ¶ 8; *accord State v. Martin*, 139 Ariz. 466, 473 (1984); *Bolt*, 142 Ariz. at 264-65.

In his supplemental brief—as well as in the prior briefs—Ian pointed out that Arizona's "private affairs clause sets Arizona's Constitution apart from its federal counterpart, as well as most states." Mitcham Supp. Br. 19; *see* Pet. Rev. 18; AB 48. Even if Ian had raised no other arguments, this would be more than enough to justify separately analyzing § 8.

C. Arizona's founders intended these stronger protections.

The Attorney General's main complaint is that Ian offered "no historical evidence" supporting a stronger interpretation of § 8. AG Amicus Br. 15.

This is wrong. In his Supplemental Brief, Ian noted that this Court explained in *Ault* that § 8 is "specific in preserving the sanctity of homes and in creating a right of privacy." Mitcham Supp. Br. 19 (quoting *Ault*, 150 Ariz. at 466). And Ian pointed to a law review article that noted Arizona's language is distinct from the Fourth Amendment. *Id.* (citing Timothy Sandefur, *The Arizona "Private Affairs" Clause*, 51 Ariz. St. L. J. 723, 723 (2019)).

Section 8's plain language, and its difference from the Fourth Amendment, reveals our founders' intent. During Arizona's constitutional convention, there were three additional proposals for a declaration of rights: Propositions 98, 104, and 116. *See* The Records of the Arizona Constitutional Convention of 1910, pp. 1247, 1250, 1293 (John S. Goff ed. 1991). Each proposal had language that mirrored the Fourth Amendment. *See id.* at 1247-48 (Proposition 98, § 5), 1256 (Proposition 104, § 26), 1293-94 (Proposition 116, § III). Our founders rejected these Fourth Amendment analogs and chose language that conferred a stronger protection. Further evidencing their commitment to privacy, our founders titled § 8 "Right to privacy." The Washington Constitution—from which Arizona took the text—is titled "Invasion of Private Affairs or Home Prohibited." Wash. Const. Art. 1, § 7.

The language *is* the historical evidence. The language reflected the growing concern in America with privacy. *See* Sandefur, 51 Ariz. St. L. J. at 726.

Because forensic science and detective work was gaining acceptance, and questions about the power of companies to control employees were being raised, "Washingtonians and Arizonans of the time had good reason to be worried about interference in their private affairs." *Id.* at 726-27. Indeed, Arizona's constitutional convention followed close on the tails of Louis Brandeis and Samuel Warren's article *The Right to Privacy*, 4 Harv. L. Rev. 193 (1890).

D. Other states have relied on their state constitutions to find stronger protections.

This Court also looks to cases from other states when deciding whether to construe Arizona's Constitution as stronger than its federal counterpart. *See State v. Jean*, 243 Ariz. 331, ¶¶ 95-96 (2018) (Bolick, J., concurring); *see, e.g., Bolt*, 142 Ariz. at 265; *Bailey*, 206 Ariz. 224, ¶ 22.

That's why Ian, in his Answering Brief, discussed Vermont's treatment of their state constitution in *State v. Medina*, 102 A.3d 661 (Vt. 2014). *See* AB 49. In *Medina*, the Vermont Supreme Court analyzed their unique protection against searches and seizures. *See Medina*, 102 A.3d 661, ¶ 13. They observed that the applicable provision did "not expressly limit its protection to 'unreasonable' searches and seizures as does the Fourth Amendment," but noted they consistently imported the reasonableness requirement. *Id.* It was under this state constitutional provision that the Court concluded that "Defendants, like the rest of us, have an

expectation of privacy in their oral cavity and in the information contained in their DNA." *Id.* It was thus the state's burden to prove the constitutionality of their scheme and intrusion. *Id.*

The Supreme Court of Appeals of West Virginia also relied on their state constitution to reject the broad view of the inevitable discovery doctrine that the AG claims this Court adopted in *Davolt*. *State v. Flippo*, 575 S.E.2d 170, 190-91 (W.Va. 2002). The applicable section of the West Virginia Constitution mirrors the Fourth Amendment. *See* W. Va. Const. Art. III, § 6. But the Supreme Court of Appeals of West Virginia still concluded that a broad approach to the inevitable discovery doctrine would be inconsistent with their state constitution. *Flippo*, 575 S.E.2d at 190-91. "If police are allowed to search when they possess no lawful means and are only required to show that lawful means could have been available even though not pursued, the narrow inevitable discovery exception would swallow the constitutional warrant protection." *Id.* at 190 (cleaned up).

The Court thus required the state to prove three things:

(1) There was a reasonable probability that the evidence would have been lawfully discovered without police misconduct;

(2) Law enforcement had the leads making the discovery inevitable at the time of the misconduct; and

(3) The police were pursuing a lawful alternative line of investigation to seize the evidence before the misconduct.

Id. at 190-91.

The plain language of Article 2, § 8 gives even more reason to guard against ever-expanding exceptions to the warrant requirement. As in *Medina*, Article 2, § 8 has no express limitation to "unreasonable" searches or seizures. More than *Medina* and *Flippo*, Article 2, § 8 uses the expansive language of privacy and private affairs.

CONCLUSION

The AG's inevitable discovery doctrine cannot excuse law enforcement's decision to exceed the scope of Ian's consent and develop a profile from a blood sample he gave for drug and alcohol testing. First, the AG relies only upon information that law enforcement may have learned years after officers violated the law. But a claim of inevitable discovery must be based on what law enforcement knew and how they were proceeding the moment before their illegal conduct. Second, the AG's argument boils down to a claim that they would have developed a lead. But a lead is not enough; inevitable discovery requires proof that the state would have discovered admissible evidence. Third, the AG assumes how law enforcement and the courts might have exercised their discretion. But inevitable discovery cannot turn on discretion. Finally, Article 2, § 8 of the Arizona Constitution provides even more reason to protect the scope of a person's consent and prevent expansion of narrow warrant exceptions.

RESPECTFULLY SUBMITTED this 1st day of July, 2024.

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