NO. 25-5499

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

TIMOTHY ALEXANDER - PETITIONER Pro Se

vs.

PEOPLE OF THE STATE OF NEW YORK - RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

NEW YORK SUPREME COURT, APELLATE DIVISION, SECOND DEPARTMENT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Can inevitable discovery, as set forth by This Court in Nix V. Williams, be proven through the testimony of a detective not actively involved in the investigation?

2. Should the exclusionary rule be applied when police violate a suspect's Constitutional Rights no less than twenty-five times in one continuous interrogation?

3. Are police free to disregard a suspect's Constitutional Rights when in pursuit of evidence?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

People v. Alexander, No. 21/2019, New York State Supreme Court, Dutchess County. Judgment entered June 28, 2021. (Unpublished)

People v. Alexander, 226 A.D.3d 1042, New York Supreme Court, Appellate Division, Second Department. Judgment entered April 24, 2024.

People v. Alexander, 42 N.Y.3d 937, N.Y., New York Court Of Appeals. Judgment entered August 07, 2024.

People v. Alexander, Slip Copy, 2025 WL 170752, New York Court Of Appeals. Judgment entered May 29, 2025. (Unpublished).

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

Cases from state courts;

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is reported at People v. Alexander, 226 A.D.3d 1042

The opinion of the New York Supreme Court, Dutchess County appears at Appendix B to the petition and is unpublished.

JURISDICTION

Cases from state courts;

The date on which the highest state court decided my case was August 07, 2024. A copy of that decision appears at Appendix C.

A timely motion for reconsideration was thereafter denied on the following date: May 29, 2025, and a copy of the order denying reconsideration appears at Appendix D.

The jurisdiction of this Court is invoked under 28 U.S. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment to the United States Consitution in pertinent part as follows: "No person... shall be compelled in any criminal case to be a witness against himself.."

2. The Fourth Amendment to the United States Constitution provides, in relevant part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated"

3. The Fourteenth Amendment to the United States Constitution provides, in relevant part: "...nor shall any State deprive any person of...liberty...without due process of law."

STATEMENT OF CASE

On November 16, 2018, Mr. Alexander was approached outside his house by detectives of the New York State Police (NYSP). He was informed his ex-wife was found deceased. The detectives asked Mr. Alexander toaccompany them to the State Police (SP) barraks and assist them with information about his ex-wife. Once in the interrogation room the conversation was audio and video recorded. The interrogation lasted approximately 7 and one hald to 8 hours without any breaks. Questioning was conducted by four NYSP detectives. Approximately 5 hours into the interrogation, Mr. Alexander was administered Miranda warnings for the first and only time. Mr. Alexander immediately invoked his Fifth Amendment Right To Remain Silent. The detectives ignored his invocation of his Rights and continued questioning him. Mr. Alexander invoked his Right To Remain Silent no less than twenty-five times. The detectives disregarded his Rights everytime, pressuring his to talk and answer questions as well as make threats towards Mr. Alexander's wife and his three children. Mr. Alexander eventually made inculpatory statements including the location of physical evidence. He was then charged with one count of murder in the second degree, in violation of New York Penal Law 125.25. Prior to trial defence counsel filed an omnibus motion (AppendixEE), which in part sought to have Mr. Alexander's statements and evidence obtained as a d direct resulf ofit suppressed under the "excusionary rule" as "fruit of the poisonous tree". A Mapp/Dunaway/Huntly hearing was held. In the trial courts decision (Appendix B), the statement

was suppressed but the physical evidence was ruled admissible via the "inevitable discovery" exception of the "exclusionary rule". Mr. Alexander was convicted of the charge above by a jury trial and sentenced to twenty-five years to life imprisonment. He appealed his conviction arguing among other things that the trial court erred by applying inevitable discovery to the physical evidence. The New York Supreme Court, Appellate Division, Second Department affirmed the conviction. In their decision (Appendix A), they ruled even though Mr. Alexander's Fifth Amendment Rights were violated, inevitable discovery applied to the physical evidence. Mr. Alexander sought review by the New York Court of Appeals and they denied review (Appendix C). On reconsideration the Court of Appeals again denied review (Appendix D). Mr. Alexander now seeks Certiorari relief from This Court.

REASONS FOR GRANTING THE PETITION

On November 16, 2018, Mr. Alexander was forced to make a choice, protect himself or protect his wife and infant children.

In this case the police were on a mission to gain information and evidence from Mr. Alexander. It is clear they planned to succeed in this mission by whatever means necessary. In the following arguments, the actions, statements, and threats made by the police show they knowingly and intentionally violated Mr. Alexander's Constitutional Rights. This happened no less than twenty-five times. This is the very misconduct this court

created the exclusionary rule to deter.

Further argument will show the trial and appellate courts have misapplied inevitable discovery to the evidence. Their ruling is in direct conflict with the precedent set by This Court in Nix v. Williams which is followed by the Circuit Courts and lower state courts. In this case inevitable discovery was applied by relying on the testimony of a detective who was not actively involved in the investigation. At the time of the investigation he had been a detective for no more than three months and offered no evidence "demonstrating historical facts readily available for verification or impeachment". His testimony was speculation based on personal opinion, not facts. If this ruling is allowed to stand, it will effectively eliminate the preponderance of evidence standart required to prove inevitable dicovery. This lowered standard of proof will evicerate the exclusionary rule and the safeguards it provides the Constitutional Rights under the Fourth, Fifth, Sixth and Fourteenth Amendments.

This new precedent will have immediate effects on defendants with open cases awaiting trial or pending appeals, as well as any future cases beeause it will completely change the way evidence can be reviewed when challenged. The effects of this will be significant because often, state court rulings on evidence cannot be challenged in a federal habeas corpus, leaving their rulings to set new precedent. This also encourages future police misconduct. Without the safeguards of the exclusionary rule, the police will not be detered from violating a defendant's Constitutional Rights to gain evidence. The lower courts should not be able to change the long

standing precedent set by This Court.

This COurt noted that the "core rational" of the exclusionary rule is "to deter police from violation of constitutional and statutory pretections." [Nix v. Williams, 467 U.S. 431, 442-43, 104 S.Ct. 2501, 2508, L.Ed.2d 377(1984)]. As stated in Mr. Alexander's omnibus motion (Appendix E) regarding this case,

> The "defence contends that no clearer case of wanton police violation of a defendant's Fifth Amendment Right To Remain Silent could be imagined." pg. 33

In this case the police were so focused on gaining evidence from Mr. Alexander that they intentionally and meliciously disregarded his Constitutional Rights to achieve their goal. During the inter interrogation detectives administered Miranda warnings approximately 5 hours into the interrogation. This is the first and only time Miranda is administered. Following these warnings, Mr. Alexander invoked his Fifth Amendment Right To Remain Silent. Yetythe interrogation continued by four NYSP detectives. The questioning after warnings are as followed:

Detective: "Having these rights in mind, do you wish to talk to us still?"

Mr. Alexander: "I just don't want to talk anymore. I don't know what else to say. I'm so confused. I'm just completely out of it at the moment. I don't want to talk about this anymore."

This unequivocal invocation of his Right to Remain Silent was supposed to be scrupulously honored.

"Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent the interrogation must cease." Miranda v. Arizona, 86, S. Ct.1602.

NOTE: The video recorded interrogation as well as transcripts were made part of the official court record. In the omnibus motion (Appendix E) a full list of page and line numbers of each time Mr. Alexander invoked his Rights are listed. It can also be found in the Summary Statement of Constituional Rights Violation (Appendix F) which was submitted on the record.

Instead of stopping the interrogation, Mr. Alexander's invocation was completely ignored:

Detective: "Do you feel guilty?"

Detective: "Do you want an attorney before answering these questions with us or do you want to answer them now?"

This is in effect telling Mr. Alexander, he does not have the right to remain silent.

Mr. Alexander: "I don't want to answer anything else right now."

This is another unequivocal invocation of the Rights to Remain Silent, which was supposed to be scrupulously honored. Instead it was completely ignored and swerved into coercove, guilt laden conversation as followed:

Detective: "These questions they're asking you, they say you don't want to talk. I don't know if you want an attorney or

not, that's something you're going to have to tell me, but help us help your son... that's the fairest thing I think, and I think we're from the same accord with that when we're speaking, right?"

Mr. Alexander: "The best thing for my son right now is for me to go see him."

Detective: "Help is help your son."

Mr. Alexander: "I just don't want to answer anything. I don't want to talk about anything right now. I just really don't. I'm so done. I'm so tired."

A suspect's invocation of his right to remain silent and to "cut off questioning" must be "scrupulously honored." Michigan v. Mosley, 423 U.S. 96, 103-04(1975). Law enforcement is therefore, prohibited from continuing an interrogation upon a request to stop and from "persisting in repeated efforts to wear down a suspect's resistance and make him change his mind." ld. at 105-06.

It is claer that Mr. Alexander was invoking his Right to Remain Silent and "cut off questioning". Instead of honoring his rights they presisted in repeated efforts to wear down his resistance and make him change his mind. They started by making threats that his son would be placed with somebody in a department other than family. They followed that by telling Mr. Alexander that they knew he knew what happened to his ex-wife.

Detective: "But we need to figure this out right now. And you are the only one that can tell us."

Their persistant pressure on Mr. Alexander began to break down his mind and cause him to start confusing and mixing up what he wanted to say versus what they wanted him to say.

Mr. Alexander: "I don't know what information I need to tell you."

Detective: "Because I know you and I know you know."

Mr. Alexander: "I don't know what to tell you."

Detective: "..you just don't what? You got nothing to hide."

Mr. Alexander: "I just don't want to talk about anythig anymore, I don't want to talk about this at all."

Detective: "I know it's a hard thing but we have to talk about it."

This is exactly the opposite of what is constitutionally required of the poice. The interrogation is to be suspended. Instead, the police tell Mr. Alexander, that he has to talk.

From this point on Mr. Alexander states 19 times, in sum and substance, that he does not want to talk about anything anymore, and that he doesn't want to talk to anyone else or about anything else, and he wants to know how long he is going to continue to sit in the interrogation room, and he doesn't want to do anything else.

After making continued threats towards Mr. Alexander's family the detectives tell him to "Take the leap."

These attacks on Mr. Alexander's Consitutional Rights were a deliberate misconduct by the police to gain information and evidence to build their case against him.

Threats made by police toward Mr. Alexander's family.

Throughout the cource of the interrogation Mr. Alexander repeatedly and persistantly expressed his love for his wife, their twin boys and his eldest son. He expressed these sentiments between 50-100 times as well as his desire to leave and go see them and be with them. The police seized this opportunity to attack and overbear Mr. Alexander's mind and willpower.

> "The risk is great that the police will accomplish behind their closed door precisely what the demands of our legal order forbid: make a suspect the unwilling collaborator in establishing his guilt. This they may accomplish not only with rope and rubber hose, not only by relay questioning persistently, insistently subjecting a tired mind, but by subtler devices." See People v. Aveni, 100 A.D.3d 228 (2nd Dept. 2012), quoting, Culombe v. Connecticut, 367 U.S. 568, 577(1961).

In the Aveni case the court found that the detectives coerced the defendant's confession by deceiving him into believing that his girlfriend was alive and implicitly threatening him with a homicide charge if he remained silent. Thus, the court found that the detectives used the threat of a homicide charge to elicit an incriminating statement by essentially telling the defendant that the consequences of remaining silent would lead to his girlfriend's death, which "could be a problem" for him. The court reasoned, that faced with the aforesaid Hobson's choice, the defendant had no acceptable alternative but to talk to police detectives.

In this case the omnibus motion (Appendix E), starting on page 38, provides excerpts of unmistakable evidence of police misconduct, coercion, deception and threats - all of which was practiced upon the mind of Mr. Alexander, so as to break him down to extort a confession and evidence to build their case against him. These threats include arresting his wife as a murder suspect and subjecting her to marathon interrogation as well as threats that their twin infant boys will be removed by Family Court authorities and placed into a Foster Care Facility. They went onto tell Mr. Alexander he knew if that happened to his wife, being a first time mother, it was going to kill her.

The detectives told Mr. Alexander he must convince them that his

wife did not know what was going on during the night of November 15, 2018.

The detectives state, (at (2:00PM), that it is getting too late for any Family Court Judge to approve a family member getting custody of the twins - implying that the police are about to arrest his wife and turn the twins over to officials in the Family Court System. They claim that time is running out to convince the Family Court Judge that it was safe for the twins to remain in their home: and that if that occurs, his wife will be destroyed. They contintue by telling Mr. Alexander that the only thing he needs to process is how to keep the twins with his wife.

The detectives claim they are insulted by Mr. Alexander's story, and that they are "teetering on removing those children (the twins)".

They follow that by stating it is either 3:40pm or 2:40pm and that there is no more time to discuss the case with Mr. Alexander, and they must "get out of here" - implying that they will be interacting with Family Court to remove the children from his wife and placing them into a Foster Care Facility.

It must also be stated, that these acts, on the part of the NYSP detectives placed Mr. Alexander under immediate and actual fear that, if the foregoing events came to pass, then his wife would likely commit suicide (as Mr. Alexander knew that his wife would not live without her babies).

During the suppression hearing defence counsel attempted to question one of the detectives about these threats. The judge would

not allow the questioning to take place. A written objection was filed with the court in the Summary Statement of Constitutuional Rights Violations (Appendix F).

In Rogers v. Richmond, 365 U.S. 534(1961), This COurt found, where a police officer threatened to take a defendant's wife, (who suffered from arthritis) and foster children into custody, so as to bring them into police headquarters for marathon questioning unless defendant confessed to the crimes he was believed to have committed, that defendant's rights against self-incrimination were violated. If further found that the aforesaid police conduct amounted to phychological coercion, which essentially extorted the confession out of the defendant.

In Lynum v. State of Illinois, 372 U.S. 528(1963), This Court found, the police intentionally subjected a female defendant to phychological coercion, duress and threat, which overbore her will to invoke her Fifth Amendment Right against self-incrimination. The police did this by threatening her children would be taken from her and that all of her finacial aid and that the children would immediately be cut-off, unless she cooperated with the authorities and confessed to the crimes lodged against her.

Both the Rogers and Lynum cases are examples of how This Court has set the precedent that it will not tolerate this kind of intentional police misconduct.

In this case the detectives knew they had intentionally violated Mr. Alexander's Constitutional Rights with their misconduct and tried to make an attempt to clean it up at the end by asking him

how he felt and they wanted to make sure he was treated like a gentleman.

Mr. Alexander: "I mean, you didn't let me not answer questions."

This clearly shows that Mr. Alexander's mindset was that he had no other choice but to speak to the detectives and answer their questions.

It is Mr. Alexander's contention that the actions by the NYSP detectives during the interrogation, are the type of police misconduct and gross neglect for the Constitution This Court has ruled against. Mr. Alexander's statements were compelled and coerced.

Although police misconduct was argued in both Mr. Alexander's omnibus mition (Appendix E) and on direct appeal, neither the trial court nor the appellate court addressed this argument in their decisions, (Appendixs B & A).

Evidence was obtained as a direct result of the illegal interrogation, the exclusionary rule should apply.

This Court Stated,

> "The exclusionary rule is calculated to prevent, not repair. Its purpose is to deter-to compel respect for the constitutional guarantee in the only effectively available way-by removing the incentive to disregard it." Elkins v. United States, 364 U.S. 206, 217, 80 S.Ct. 1437, 4L.Ed2d 1669(1960).

In this case physical evidence was discovered only as a direct result of the illegal interrogation of Mr. Alexander, statements which the trial court suppressed and the appellate court agreed was in violation of his Fifth Amendment Rights. During the illegal

interrogation the police asked specific questions in order to learn what evidence they needed to look for and its location. The questions by the police make it clear that at the time of the police misconduct they did not have any details about the evidence or where to look for it. Those questions are as followed:

Detective: "Okay, what caused those injuries?"

Mr. Alexander: "A knife."

Detective: "A knife?"

Detective: "And where is that knife?"

Further questioning by police resulted in information directing them to a place called Lake Oniad. Police printed out pictures of the county to show Mr. Alexander because there are multiple bodies of water and they did not know which one was Lake Oniad. In order to discover what evidence they should look for the police asked Mr. Alexander the following:

Detective: "Okay, so what am I.. what is going to be there when I send somebody?"

Detective: "That's okay, because now I have to get a dive team."

At that point the detective left the interrogation room to have police secure the area provided by Mr. Alexander. The record shows that no more than twenty minutes later that area was secured and a dive team was called for assistance. The statements regarding this evidence and the location were suppressed prior to trial as part of the violation of Mr. Alexander's Constitutional Rights. The evidence gained illegally by the police should have been ruled

tainted fruit of the police misconduct.

Michigan v. Tucker, 417 U.S. 433, 94 S.Ct. 2357 at 2365, 41 L.Ed.2d 182(1974), Justice Rehnquist wrote,

> "We have recently said, in a search and seizure context, that the exclusionary rule's "prime purpose is to deter future unlawful police conduct and thereby effectuate the quarantee of the Fourth Amendment against unreasonable search and seizure." United States v. Calandra, 415 U.S. 338, 347, 94 S.Ct. 613, 619 38 L.Ed.2d 561(1974)
>
> The deterrant purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right. By refusing to admit evidence gained as a result of such conduct, the courts hope to instill in those particular investigating officers, or their future couterparts, a greater degree of care toward the rights of an accused.
>
> In a proper case this rationale would seem appicable to the Fifth Amendment context as well."

This case is exactly the kind of Fifth Amendment case Justice Rehnquist was speaking of.

This Court has stated:

> "Under the fruit of the poisonous tree doctrine, evidence may not be used against a criminal defendant if it was obtained by exploitation of as illgal search or seizure and not by means sufficiently distinguishable to be purged of the primary taint." Wong Sun v. United States, 371, U.S. 471, 484, 488, 83 S.Ct. 407, 417, 9L.Ed.2d 441(1963).

U.S. v. Olivares-Rangel, 458 F.3d 1104, The ecxlusionary Rule,

> "is calculated to prevent, not repair. Its purpose is to deter -to compel respect for the constitutional guarantee in the only effective available way-by removing the incentive to disregard it.", Elkins v. United States, 364 U.S. 206, 217, 80 S.Ct. 1437, 4L.Ed2d 1669(1960). see also, Excluding from Evidence, supra, 69 YALE L.J. at 436 n.24 (The threat of exclusion will operate as intended only if an excludable piece of evidence is the' target of the police activity, and if police are previously aware of the rule and its threat to the seccess of their ventures.")"

In Davis and Hayes, This Court held:

"When illegal arrest was used as an investigatory device to obtain fingerprints, the fingerprints were regarded as inadmissible fruit of an illegal detention.", Hayes, 470 U.S. at 817-18, 105 S.Ct. 1643; Davis, 394 U.S. at 727-28, 89 S.Ct. 1394.

It was error to apply the inevitable discovery exception of the exclusionary rule to evidence in this case.

Prior to trial a Mapp/Dunaway/Huntly hearing was held. Three of the police the people called as witnesses testified in regard to the physical evidence.

The first to testify was Sergeant Weatherwax who was the Station Commander. Sergeant Weatherwax was the initial supervisor in charge at the crime scene. He supervised the securing of the scene and also instructed "troopers" to conduct interviews of nearby residents. The instructions were to find out if anyone was a witness to the crime, gain pedigree information such as telephone numbers, date of birth and addresses. Sergeant Weatherwax was not present for any searches of the crime scene, as testified, he was not sure if one was done. When asked about a "grid search" he stated the process for a grid search depends on how many personnel are available. At no time did he testify that these searches were a procedural requirement by the NYSP or that they are conducted at every crime scene. He actually stated he only participated in these type of searches when he was a canine handler. On cross-examination defense counsel asked about futher investigative work:

Counsel: "Did you give instructions of any kind for any work to be done in an investigatory manner outside of 161 Cider Mill Loop before you left at four A.M.?"

Sergeant: "No,sir."

Defense counsel then questioned Sergeant Weatherwax about the search of Lake Oniad. Sergeant Weatherwax stated he was not there but directed "Trooper Reiser" to go there as a result of Mr. Alexander's statement,

Counsel: "Do you recall participating in a search of Lake Oniad on November 16th?"

Sergeant: "I did not participate in a search of Lake Oniad. I -- I did not search it. Trooper Reiser was there. He notified me of finding footprints, excuse me, in the snow there, in Lake Oniad after I sent his there during the course of the interview of the defendant Alexander that described Lake Oniad."

Counsel: " Did you dispatch the K-9 unit and Trooper Govoni and K-9 Lexy to Lake Oniad before or after Mr. Alexander was interviewed on November 16th?"

Sergeant: "It was during."

Counsel: "During the interview?"

Sergeant: "Yes, sir."

Counsel: "Okay, was the dispatch to Lake Oniad as a result of information learned is the interview?"

Sergeant: "Of his discription during the interview of Lake Oniad and the area, yes."

The next witness to testify regarding Lake Oniad was investigator DuBois. At the time of the investigation, Investigator DuBois had been emploted with the NYSP for four years and an investigator for only three months. When he arrived at the crime scene he did not take part in any active investigation. He stated, he collected information from the troopers on the scene and the statements they collected from neighbors. After he left the crime scene he spent the majority of November 16th at the District Attorney's Office

waiting to prepare warrants.

When asked about the interrogation of Mr. Alexander and Lake Oniad, he stated:

DuBois: "I had learned that information had been developed during the interview that a weapon was thrown into the lake as well as certain articles of clothing."

Prosecutor: "Okay. And as a result of that information, what steps did the state police take to retrieve those items?"

DuBois: "So, immediately once we had learned that information, I believe Sergeant Weatherwax had contacted the K-9 who were at 161 Cider Mill Loop, Trooper Reiser and Trooper Govoni. Trooper Reiser immediately went to Lake Oniad."

DuBois: "Also our underwater recovery team had been contacted."

During cross-examination, Investigator DuBois admitted there were other investigators on the case and his actual job was "essentially responsible for the file".

Investigator DuBois was not actively involved in any of the investigation in this case and he was not a supervisor making any decisions in the investigation. By hos own testimony, the only information he had throughout the entire investigation was that relayed to him by other members of the state police. Investigator DuBois testified about videos obtained by the state police that dipicted a vehicle that appeared similar to the one owned by Mr. Alexander's wife. On cross when asked about the discovery of the videos, his testimony is as followed:

DuBois: "It would have come later on, the 16th."

Counsel: "After my client had made a statement to your other investigators that he was involved in this crime?"

DuBois: "I believe so. I can't give you have the exact time. I believe so."

During direct and cross-examination, Investigator DuBois was asked about searches. On direct he was asked what HE would do:

Prosecutor: "Can you tell us what, if any, investigative steps you would have taken to further your investigation?"

NOTE: This question was objected to by defense counsel as speculation but it was overruled.

DuBois: "Yes, first we would extinguish any resources New York State Police has to offer... we would use grid searches, we would use cadaver dogs, we would use canines, we would use our underwater recovery team."

This is the only time the people discussed searches with Investigator DuBois. This is actually immaterial to the case because it is a question to what HE would bo, not what the actual procedures of the NYSP were. His further testimony was a list of search techniques the NYSP "could use". On cross, Investigator DuBois was asked more specific questions regarding these searches:

Counsel: "I think you mentioned grid searches; is that right?"

DuBois: "Yes."

Counsel: "Grid search is looking for evidence; is that right?"

DuBois: "Yes."

Counsel: "Like a weapon that could be used; right?"

DuBois: "A grid search could be used for anything, yes, to find any type of item, yes."

Counsel: "But you're not going to do a grid search of the entire county for this case; is that fair to say?"

DuBois: "Not the entire county, no, we could not. We could not do the entire county."

Counsel: "There is limited resources that the State Police have even in conducting any investigation, even a homicide investigation; correct?"

DuBois: "Yes, limited resources, yes."

Defense counsel then asked questions directly related to Lake Oniad:

Counsel: "You had Lake Oniad searched because you had information from a statement of my client that he had thrown a knife into that lake; is that correct?"

DuBois: "And articles of clothing, yes."

Counsel: "And that's why you searched that lake, is that correct?"

DuBois: "We went to the lake, yes. I mean yes."

Counsel: "Did you go -- did you send investigators to that lake to search for clothing after learning that my client had made a statement... that he had thrown articles of clothing and a knife into that lake?"

DuBois: "Me specifically, I did not, but they were directed by their supervisor."

Counsel: "Who was that?"

DuBois: "It was Sergeant Weatherwax."

Counsel: "After he was told that there was evidence in that lake that came from a staement of my client?"

DuBois: "Yes."

The third witness the people called regarding the discovery of evidence at Lake Oniad was Senior Trooper Benziger. Trooper Benziger testified as an expert witness. He testified that not every body of water is searched in a homicide case with a missing weapon. Sometimes if there is a nexus between the crime scene and a body of water he will be called to give his opinion. He testified that he did not know if any nexus between the crime scene in this case

and Lake Oniad. Furthermore, he did not get called for his opinion regarding searching any bodies of water in this case. When he was contacted to organize a dive team, he was told exactly where to go and what to retrieve. Shortly after those items were retrieved, the search stopped. He also stated they would not search the entire lake because it would take weeks.

This case is in conflict with precedents established by This Court, Circuit Court decisions and other state court rulings.

This Court expressed proof of inevitable discovery must "focus on demonstrated historical facts capable of ready verification or impeachment." Nix, 467 U.S. at 444 n.5, 104 S.Ct. 2501.

Specifically the Second Circuit has explained that "proof of inevitable discovery involves no speculative elements but focuses on demonstrated historical facts capable of ready verification or impeachment." United States v. Eng, 971 F.2d 854, 859(2nd Cir. 1992), quoting [Nix v. Williams, 467 U.S. 431, 445 n.5 104 S.Ct. 2501]

State v. Brown, 331 Conn. 258(2019), The Supreme Court of Connecticut stated:

> "We have explained that 'application of the exclusionary rule.. is not automatic.' State v. Spencer, 268 Conn. 575, 599, 848 A.2d 1183, 543 U.S. 957, 125 S.Ct. 409, 160 L.Ed.2d 320(2004). 'Under the inevitable discovery rule, evidence illegally secured in violation of the defendant's constitutional rights need not be suppressed if the state demonstrated by a perponderence of the evidence that the evidence would have been ultimately discovered by lawful means.' State v. Badgett, 200 Conn. 412, 433, 512 A.2d 160, cert denied, 479 U.S. 940, 107 S.Ct. 423, 93 L.Ed.2d 373(1986).

For decades, This Court has expressed that the primary purpose of the exclusionary rule is to deter police misconduct. In this case the police refused to honor Mr. Alexander's Consitutional Rights for the sole purpose of gaining evidence to build their case. Although the trial court and appellate court acknowledged Mr. Alexander's Rights had been violated, they failed to address the flagrant actions of the police by misapplying the inevitable discovery exception of the exclusionary rule. By doing so they have encouraged future misconduct. If the courts had not wrongfully applied inevitable discovery, the misconduct by the police in obtainig evidence would warrant exclusion.

In this case the people and courts relied on the testimony of a single investigator to establish inevitable discovery. At the thime of the investigation he had been an investigator for only three months and his responsibilities in the investigation was managing the file. He took no active part in the investigation and he had no supervisory role. Furthermore, he offered no historical or actual procedural practices of the NYSP. For the court to grant the people inevitable discovery, the investigator simply had to take the stand, utter the words "grid search" and give his personal opinion. This does not meet the requirements for inevitable discovery in any court.

Justice Kagan wrote in her dissent of Utah v. Strieff, 136, S.Ct. 2056(2016),

> "Since Brown v. Illinois, 422 U.S. 590, 604-605, 95 S.Ct. 2254, 45 L.Ed.2d 416(1975), three factors have guided that analysis. First, the closer the 'temporal proximity' between the unlawful act and the discovery of evidence, the greater the deterrant value of suppression. Id, at 603, 95 S.Ct. 2254.

> Second, the more 'purposeful' or 'flagrant' the police illegality, the clearer the necessity, and better the chance of preventing similar misbehavior. Id, at 600, 95 S.Ct. 2254. And third, the presence (or absence) of 'intervening circumstances' makes a difference: The stronger the casual chain between the misconduct and the evidence, the more exclusion will curb future consitutional violations. Id, at 603-604, 95 S.Ct. 2254."

Nix v. Williams, 467 U.S. 431(1984).

Hudson v. Michigan, 547 U.S. 586(2006)

In Nix, This Court applied inevitable discovery because an active search was already being conducted. This included a well established search team of over 200 people, maps of the areas to search and instructions of what kind of places to search. At the time the police violated the defendant's rights, the search was closing in on the location of the girls body. The search was stopped because defendant agreed to take police to the location, which was in an area the search team was instructed to search. If the violation had never taken place, the search would not have stopped and inevitably discovered the girls body.

In Hudson, This Court applied inevitable discovery because the police had an active, valid warrant. When they arrived at the defendant's house to execute the warrant, they violated the "knock and announce" rule. Justice Scalia stated in dicta that "The Constitutional violation of an illegal manner of entry was not a "but for" cause of obtaining the evidence. Whether the preliminary misstep had occurred or not, the police would have executed the warrant they had obtained and would have discovered the gun and drugs inside the house." Hudson, 547 U.S. at 592.

There is an active split in the Circuit Courts regarding inevitable discovery.

The Second, Fifth, Eighth, and Eleventh Circuits, require a form of active pursuit of an independent source. United States v. Eng, 971 F.2d 854(2nd Cir. 1992); United States v. Cherry, 759 F.2d 1196(5th Cir. 1985); United States v. Conner, 127 F.3d 663 (8th Cir. 1997); United States v. Virden, 488 F.3d(11th Cir. 2007

The First, Sixth, Seventh and Tenth Circuits, expressly reject active pursuit of an independent source. United States v. Ford, 22 F.3d 374(1st Cir. 1994); United States v. Kennedy, 61 F.3d 494(6th Cir. 1995); United States v. Langford, 314 F.3d 892 (7th Cir. 2002); United States v. Larsen, 127 F.3d 984(10th Cir. 1997).

The Fourth and Ninth Circuits, require an "independent circumstances" test. This approach is "requiring that the facts or likelihood that make the discovery inevitable arise from circumstances other than those discovered by the illegal search itself." United States v. Boatwright, 822 F.2d at 864-865(9th Cir. 1987); United States v. Thomas, 955 F.2d 207(4ht Cir. 1992).

Although the Circuit Courts are divided on this topic, none of them would apply inevitable discovery in this case.

There was no "active pursuit". "For inevitable discovery to

be demonstratable, it must be the case that the evidence would have been aquired lawfully through an independent source absent the government misconduct." U.S. v. Eng, 971 F.2d(2nd Cir. 1992).

The people offered no evidence that the evidence would "inevitably" be discovered. "If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means...then.. the evidence should be recieved." United States v. Ford, 22 F.3d 374(1st Cir. 1994).

The evidence in this case was discovered as a direct result of the illegal interrogation, it did not "arise from circumstances other than those disclosed by the illegal search itself." United States v. Thomas, 955 F.2d 207(4th Cir. 1992).

Not only does the application of inevitable discovery in this case fall short of the precedent established by This Court and all Circuit Courts, it is in conflict with other state court rulings.

New York Appellate Division, FIrst Department
People v. Savage, 220 A.D. 3d 599(2023),

Mr. Savage was read his Miranda rights. After continued pressure by police, Mr. Savage confessed to the crime and directed the police to the knife he used. Before trial, counsel filed a motion to suppress the statement made by Mr. Savage as well as the knife and DNA from the knife. The trial court denied Mr. Savage's motion. After conviction, Mr. Savage appealed and the New York Appellate Division, First Department reversed his conviction

ordering the staement, knife and DNA be suppressed. They stated there was no "sufficient break in the interrogation to dissipate the taint" from the initial violation.

This case and the Savage case are very similar except, the police misconductis much more flagrant in this case. It is also note worthy that in Savage, the people tried to appeal the decision to the New York Court of Appeals. The Court of Appeals denied review, upholding the appellate courts ruling. In this case, Mr. Alexander tried to appeal to the Court of Appeals and they denied review. Although these cases are near parallel, the Court of Appeals supported suppression in Savage but supported denying suppression in this case. This gives conflicting directions to the lower courts and leaves them in a confusing place when evaluating inevitable discovery.

Supreme Court of Alaska

Smith v. State, 948 P.2d 473(1997),

> "The doctrine is an exception to the exclutionary rule in cases where evidence has been obtained in violation of constitutional protections such as the Fifth Amendment privilege against self-incrimination. The doctrine is essentially a variation of the independent source rule, except that the question is not whether the police actually obtained evidence from an untainted source, but whether evidence obtained through a constitutional violation would inevitably have been discovered through lawful means."

Supreme Court of Hawaii
State v. Lopez, 78 Hawaii, 433 896 P.2d 889(1995),

> "The prosecution should have the burden of providing by a clear and convincing standard of proof that the evidence would have been discovered absent the illegality."

Supreme Court, North Carolina

State v. Garner, 331 N.C. 491, 417 S.E. 2d 502, 511(1992),

> "At the Supreme Court explained in Nix, 'When...the evidence in question would inevitably have been discovered without reference to the police error or misconduct there is no nexus sufficient to provide a taint and the evidence is admissible.' Conversely, if the state finds itself in a situation where it must prove that the evidence inevitably would have been discovered by other legal, independent means, and if it fails to do so, the doctrine is not applied and the evidence is suppressed."

Supreme Court of Arizona

State v. Mitcham, 258 Ariz. 432(2024),

> "To prove the inevitable discovery exception, the state cannot speculate but must instead 'focus on demonstrated historical facts capable of ready verification or impeachment.' quoting Nix"

United States District Court, M.D. Florida

U.S. v. Massey, 437 F.Supp. 843(1977),

> "The violation of Massey's Fifth and Sixth Amendment Rights by the F.B.I. agents was not only genuine, it was flagrant and egregious. The court therefore holds that the tainted fruit of the poisonous tree doctrine should, and does, apply: all indirect evidence, testimonial and tangible, acquired from Massey's admissions must be excluded as the tainted fruit of the disregard of his Fifth and Sixth Amendment Rights."

California Court of Appeals, Second District, Division 7

People v. Superior Court (Corrbett), 8 Cal. App. 5th 670(2017),

Prior to trial defendent filed motion to have firearms evidence seized from his home suppressed. Police had violated his Fifth Amendment Rights to Remain Silent in order to gain the location of the firearms. The trial court granted his motion and the people appealed. The Court of Appeals affirmed the trial courts ruling, inevitable discovery did not apply.

Some courts and scholars have expressed concerns about the implication of inevitable discovery.

Texas Criminal Court of Appeals does not recognize inevitable discovery,

State v. Daugherty, 931 S.W.2d 268(1996),

> "The inevitable discovery doctrine assumes a causal relationship between the illegality and the evidence. It assumes that the evidence was actually 'obtained' illegally. The doctrine then asks whether the evidence would have been 'obtained' eventually in any event by lawful means. But the fact that evidence could have been 'obtained' lawfully anyways does not negate the fact that is was in fact 'obtained' illegally... Once the illegality and its causal connection the the evidence have been established, the evidence must be excluded."

United States Court of Appeals, Fifth Circuit

United States v. Castellana, 488 F.2d 65(5th Cir. 1974),

> "To admit unlawfully obtained evidence on the strenght of some judge's speculation that it would have been discovered legally anyways would be to cripple the exclusionary rule as a deterrant to improper police misconduct."

5 Wayne R. LaFave Search & Seizure 11.4(a)(3d ed. 1996)

Professor LaFave summerized the various views,

> "On the one had, is it said that it 'is a valuable, logical and constitutional principle, 'the continued application of which will not 'emasculate' or blunt the force of the exclusionary rule.' So the argument goes, the 'inevitable discovery' test, if properly administered, serves well the raison d'etre of the exclusionary rule by denying to the government the use of evidence 'come at by the exploitation of...illegality and at the same time minimize the opportunity for the defendent to receive an undeserved and socially undesirable bonanza.' Others object that it is 'based on conjecture' and 'can only encourage police shortcuts whenever evidence may be more readily obtained by illegal than by legal means,' and thus 'collides with the fundamental purpose of the exclusionary rule.' As one commentator put it; Such a rule is completely at odds with the purpose of the exclusionary rule. If the police will only be deprived of the evidence which the defendent can show they would not have been able to obtain had they not engaged in the illegality, they will in no way be deterred from such conduct; They will stand to lose what they would not have otherwise had and they might gain some advantage if something slips by. Moreover, the illegal route is often the faster and easier than the legally required route."

In sum, This Court has always been the guardian of the Constitution and the safeguards it provides. The precedents that This COurt takes great consideration and concern in establishing should not be usurped by lower courts. No court, until this case, has ever allowed inevitable discovery to be proven by the speculation and personal opinion of a single member of law enforcement. One whom took no part in the active investigation. This is in direct conflict with the precedent established by This Court in Nix.

Furthermore, the trial court and appellate court never evaluated the police misconduct when considering the exclusionary rule and fruit of the poisonous tree doctrine in this case. THis again conflicts with the central deterrent purpose THis Court established the exclusionary rule for. In addition, the trial court refused to allow defense counsel to properly cross-examine witnesses at the suppression hearing to expose the full depth of the police misconduct. This was objected to in writing to the trial court in the Summary Statement of Consitutional Rights Violations (Appendix F). Instead, the court applied inevitable discovery to save the evidence illegally obtained.

Arguments of evidence and admissibility, even when in violation of the Constitution are not often allowed in a federal habeas corpus when arising from a state court ruling. If This Court does not intervene, the lower court ruling will stand in an attempt to override the precedent of This Court. Members of law enforcement will also be encouraged and emboldened to violate the Constitution.

See, Miranda supra,

"Those who framed our constitution and the Bill of Rights were ever aware of the subtle encroachments on individual liberty. THey know that 'illigitimate and unconstitutional practives get their first footing... by silent approaches and slight deviations from legal modes of procedure.' Boyd v. United States, 116 U.S. 616. The privilege was elevated to constitutional states and las always been 'as broad as the mischief against which it seeks to guard.' Counselman v. Hitchcock, 142 U.S. 547, 12 S.Ct. 195. We cannot depart from this nobel heritage."

The trial and appellate courts erred by ignoring the misconduct by police and by applying inevitable discovery to the evidence. These deviations from the legal modes and procedures created by This Court should not be allowed.

It is for the above reasons, Mr. Alexander humbly requests that This Court grant a writ of certiorari as well as any further relief This Court deems just and proper.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: July 29, 2025

Sworn to me this
29th July 2025

Taylor Perry
Notary Public, State of New York
Reg. No. 01PE6393362
Qualified in Essex County
My Commission Expires June 17, 2027