STATE OF WISCONSIN

IN SUPREME COURT

No. 2024AP617-CR

STATE OF WISCONSIN,

Plaintiff-Appellant-Respondent,

v.

CARTER A. NELSON,

Defendant-Respondent-Petitioner.

RESPONSE TO PETITION FOR REVIEW

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The Plaintiff-Appellant-Respondent State of Wisconsin opposes Defendant-Respondent-Petitioner Carter A. Nelson's Petition for Review on the following grounds:

1. Nelson's Petition contends that this Court's review is necessary to address how the inevitable discovery doctrine should be applied when a police department "fail[s] to comply with standard inventory search procedures." (Pet. 3.) Nelson further argues that precluding the application of the inevitable discovery doctrine under such circumstances would serve as an appropriate deterrent to police failing to follow such standard inventory search procedures. (Pet. 10.) In reality, Nelson's position would swallow the inevitable discovery doctrine entirely. At its core, the inevitable discovery doctrine dictates that evidence should not be suppressed if the State can establish that it would have been discovered even in the absence of a constitutional violation. *Nix v. Williams*, 467 U.S. 431 (1984); *State v. Jackson*, 2016 WI 56, 369 Wis. 2d 673, 882 N.W.2d 422. The inventory search exception to the warrant requirement is a completely separate concept implicating different Fourth Amendment principles. *See Colorado v. Bertine*, 479 U.S. 367, 371–72 (1987); *State v.*

Clark, 2003 WI App 121, ¶ 11, 265 Wis. 2d 557, 666 N.W.2d 112. Nelson seems to believe that if the inventory search exception does not apply because certain procedures weren't followed, then the inevitable discovery doctrine cannot apply because police must be deterred from the failure to follow those procedures. But the inevitable discovery doctrine would never need to apply if the inventory search exception applied because a valid inventory search complies with the Fourth Amendment. *Bertine*, 479 U.S. at 371. Nelson thus attempts to create a Catch-22 that would eliminate the inevitable discovery doctrine entirely—under his proposed rule, inevitable discovery would not apply to any situation where there was a separate constitutional violation because officers should be incentivized to avoid those violations. That position is at odds with the fact that this Court has recognized and applied inevitable discovery as recently as *Jackson* in 2016. Nelson's petition nevertheless fails to acknowledge the magnitude of the change in the law that he seeks.

2. Nelson seems to suggest that the court of appeals' conclusion that an inventory search would have occurred and revealed the cocaine in due course is incompatible with the

circuit court's finding that the cocaine was not, in fact, in the officers' plain view. (Pet. 9–10.) But while the circuit court made a factual finding that the cocaine was not in plain view when the search occurred, it made no finding that Officer Goritz's testimony that an inventory search would have occurred—and the cocaine discovered regardless—was in any way inaccurate. As the court of appeals pointed out, there is no question that Nelson's vehicle would have been towed out of the roadway where it was parked and an inventory search conducted regardless of the earlier search by Officer Goritz. (Pet-App. 8–9.) The alternative would have been for officers to leave the disabled vehicle on the road in an area where parking is not allowed, something highly unlikely to happen. (R. 18:37.)

3. Inevitable discovery aside, the State preserved other arguments for appeal that would justify affirming the court of appeals' decision. For example, the State argued in the circuit court that Nelson lacked a reasonable expectation of privacy in the vehicle because it was abandoned. (R. 18:30–31.) The circuit court did not address this argument directly, other than to say that "obviously the car was

abandoned or so it appeared at least." (R. 18:37.) But if this Court were to grant Nelson's petition, it would not even need to address his stated reason for granting review because it could affirm on this basis alone. The law is clear that a person lacks a reasonable expectation of privacy in abandoned property. *Abel v. United States*, 362 U.S. 217, 241 (1960); *State v. Roberts*, 196 Wis. 2d 445, 453, 538 N.W.2d 825 (Ct. App. 1995). And the record here is clear that Nelson's vehicle was abandoned—it was "parked in some cockamamy angle on the side of a roadway where there's no parking allowed," and it was cold, indicating it had been there for some time without the owner reporting it. (R. 18:15, 37.) Indeed, during the entire time officers were on the scene—over three hours—Nelson never returned to the vehicle. (R. 18:37.) The doors were not locked. (R. 18:18.) In short, the facts of record, taken together, illustrate that Nelson had no reasonable expectation of privacy in the vehicle, meaning that the search did not violate the Fourth Amendment. *Rawlings v. Kentucky*, 448 U.S. 98, 104 (1980).

4. In sum, the Petition does not meet this Court's criteria for review because it would involve only the

application of settled legal precedent to the facts. A grant of review in this case would offer little opportunity for this Court to develop the law. This Court should therefore deny the Petition.

Dated this 12th day of March 2025.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this petition or response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a petition or response produced with a proportional serif font. The length of this petition or response is 818 words.

Dated this 12th day of March 2025.

Electronically signed by:

John A. Blimling
JOHN A. BLIMLING
Assistant Attorney General

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 12th day of March 2025.

Electronically signed by:

John A. Blimling
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