THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Case No. 2020-0167

THE STATE OF NEW HAMPSHIRE

V.

DANIEL DAVIS

APPEAL PURSUANT TO RULE 7 FROM A JUDGMENT OF THE CARROLL COUNTY SUPERIOR COURT

BRIEF FOR THE DEFENDANT

FOR THE DEFENDANT
Stephen T. Jeffco, Esquire, NH #1262
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CONSTITUTIONAL PROVISIONS

CONSTITUTIONAL PROVISIONS

United States Constitution

Amendment IV
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment XIV
Section 1.
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

New Hampshire State Constitution

Part I – Bill of Rights
[Art.] 19. [Searches and Seizures Regulated.] Every subject hath a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions. Therefore, all warrants to search suspected places, or arrest a person for examination or trial in prosecutions for criminal matters, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order, in a warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued; but in cases* and with the formalities, prescribed by law.
June 2, 1784
Amended 1792 to change order of words.

ISSUES PRESENTED

1. Did the Trial Court err when it denied the Defendant's Motion to Suppress evidence collected in a warrantless search?

2. Did the Trial Court err when it denied the Defendant's Motion to Suppress evidence seized pursuant to a warrant based upon illegally obtained evidence?

STANDARD OF REVIEW

The standard of review for an appeal to review the denial of an evidentiary motion is *"De Novo"*.

STATEMENT OF FACTS

On or about April 6th, 2019 Detective Torch (hereinafter "Torch) of the Conway Police Department received information regarding what he believe was a marijuana growing location in town from a local business owner. (T6, L15).

Torch decided to go to the residence, accompanied by another officer, to conduct what he described as a "knock and talk". (T7, L14). Remarkably, Torch goes on to state that once he exited his cruiser, "within ten feet of the residence" [he] could smell the distinct odor of fresh marijuana...from the street. That was quite a distance from the house." (T7, L19).

Torch testified that the residence is a trailer. He also described the front portion as a "vestibule" as well as "black plastic all over the –all over the doors and windows of the residence." (T7, L23-25; T8, L1-6).

Torch approached and entered what he described as the vestibule and "knocked on the door". Torch goes on to state that "a male voice answered and asked who it was. I explained that it was the police department and I asked him to come to the door." (T8, L11-15).

After a lack of response to the foregoing, Torch and the second officer "backed out to the road" and claimed to then hear "loud noises like crashing and banging within the residence". (T9, L9-17). Torch then stated "I was certain that there was evidence being destroyed within the residence." (T9, L20-21).

However, during questioning by Defendant's counsel, Torch was unable to offer any testimony that he observed anything that appeared to have been out of place or that "could have made the crashing and banging that [he] heard." (T31, L8-25; T32, L1-L8).

This is despite the fact that Torch testified during the same exchange that the noises were "Loud enough that we could hear crashing and banging from outside on the street." (T29, L18-25).

Following hearing the noises, "Officer Baldwin and I approached the front door again and forced entry into the residence." (T9, L23-24). Following the undisputed warrantless entry, Torch testified that "When we opened the door, the residence was almost pitch black except for a tent-like device inside of the residence...When we opened the tent to clear for a person, we noticed that there were grow lights, large marijuana plants and an elaborate grow operation that included hydroponics...we continued to clear the house after that." (T10, L1-16).

The officers then made contact with the defendant inside the trailer and "[h]e was taken into custody." (T11, L19-21).

Only after a warrantless entry of the residence, a search of same and the arrest of the Defendant, did the officers decide to "back out of the trailer and secure[d] it, pending a warrant." (T11, L23-25).

Upon questioning from Defendant's counsel, additional facts came to light. This incident began with a 'tip' from a local businessman to the police. However, Detective Torch never inquired of the tipster <u>when</u> the reported observations took place.

"THE WITNESS: "So this was a casual conversation with this business owner. I didn't ask. But from my conversations with him, it appeared to be a recent event.

Q. (By Mr. Jeffco) When you say from your conversation with him, it appeared to be recent, what led you to believe it was recent?

A. The fact that he was even telling me about it. If it was a-year-or-two-old information, I'm sure that he wouldn't have told me about it...". (T13, L15-25; T14, L1-8).

Despite repeatedly referring to the first door of the residence as a 'vestibule', he struggled to provide specific details that are of critical importance to answer the questions raised by the Defendant's motion.

"Q. So you have no idea whether there was an open door, a vestibule, a front room; is that correct?

A. That's correct." (T19, L3-25).

No attempt was made by the officers to correctly ascertain if the door they initially entered was in fact the primary door to enter the living quarters of the residence. Torch testified that neither he nor Officer Baldwin stopped and knocked on the first door of the trailer but proceeded directly inside to the second door. (T22, L1-8).

Torch testified that a number of "observations were made long before we ever came on to the vestibule area." Torch testified that prior to entering the first door, he observed ventilation and wiring, a refrigerator and a water heater inside. (T22, L14-23)

Despite the rather raucous sounds and noises that Torch testified to, which in his mind necessitated forced, warrantless entry into a private residence, he was unable to provide any testimony that any evidence whatsoever was destroyed, altered or damaged, like a damaged, tipped over or uprooted marijuana plant, for example. (T31, L12-25).

Only after the forced entry, and search of the entire residence did Torch decide to stop and apply for a search warrant, despite there being nothing left in the home to search.

"Q. Based upon your observations after the forced entry, I understand that you applied for – and you used those observations to apply for a search warrant; is that correct?

A. That's correct." (T33, L9-15).

Following Detective Torch's testimony, the Defendant took the stand. The Defendant testified that the trailer was a residence and that he occasionally resided there. (T36, L22-24). The Defendant testified that the front door to the residence had a curtain on it, was almost always closed, was closed on the day in question and no one "routinely just walk[s] through that front door". (T37, L10-25; T38, L1-7).

The Defendant also testified in direct contravention to Torch and explained that given the construction of some of what Torch described, there was no present 'odor' from the street. (T39, L16-18). The Defendant went on to explain that he was asleep, did not hear knocking, nothing was smashed or banged around, nor did he speak with the police prior to the warrantless entry. (T41, L10-22).

SUMMARY OF THE ARGUMENT

The Trial Court's ruling, denying the Defendant's motion to suppress evidence obtained as the result of an unlawful, warrantless entry, and subsequent execution of a search warrant, based upon illegally obtained evidence from that entry was error.

ARGUMENT

1. **The denial of the Defendant's Motion to Suppress evidence that was collected in a warrantless search and the denial of the Defendant's Motion to Suppress evidence seized pursuant to a warrant based upon illegally obtained evidence is a direct violation of the Defendant's State and Federal Constitutional rights to be free from warrantless searches and seizures.**

The Defendant believes that the trial court correctly understood and identified the issues raised by the Defendant's motion to suppress and subsequent evidentiary hearing, however, the Trial Court erred by incorrectly interpreting the facts and evidence elicited and incorrectly applying the law to same.

The Trial Court begins its analysis by stating:

' "Part I, Article 19 of our State Constitution protects all people, their papers, their possessions and their homes from unreasonable searches and seizures." State v. Smith, 163 N.H. 169, 172.' While search warrants generally protect individuals against unreasonable searches, see State v. Plch, 149 N.H. 608, 620 (2003), a warrant that would not have issued but for information that was unlawfully obtained is invalid and a search pursuant to that warrant is therefore presumptively unreasonable, see id; State v. Theodosopoulos, 119 N.H. 573, 578 (1979).'

a. Police Entry into the Enclosed, Primary Door

The testimony of Detective Torch in describing the residence, the layout of the structure, curtains, plastic covered windows and items such as a refrigerator and water heater that are traditionally part of the interior of the home it becomes apparent that the 'vestibule' as he repeatedly described it was in fact not a porch, but the interior of the Defendant's home.

The Defendant similarly testified at the hearing and provided additional information that the 'vestibule' area was not open to the public and was not a porch, open to any uninvited entry. The Trial Court in this instance seems to ignore almost completely the Defendant's testimony but crucial aspects of the officer's as well in applying the law.

Based on the evidence before the Trial Court, it is apparent that the initial door to the trailer encountered by the police was in fact, the entry to part of the actual living quarters of the trailer. "To receive constitutional protection in the area searched in this case, the defendant must have exhibited a subjective expectation of privacy in the area and that expectation must be one that society is prepared to recognize as reasonable. State v. Goss, 150 N.H. at 48-49, 834 A.2d 316 (2003)." State v. Smith, 163 N.H. 169, 172 (2012).

With regard to the initial entry through the first door of the home, Trial Court almost entirely rests its decision and analysis on State v. Orde, 161 N.H. 260 (2010) and State v. Beauchemin, 161 N.H. 654 (2011).

"Our State Constitution 'particularly protects people from unreasonable police entries into their private homes, because of the heightened expectation of privacy given to one's dwelling.' Goss, 150 N.H. at 48, 834 A.2d 316 (quotation omitted)." Orde at 264.

In its ruling, the Trial Court "presumes that Mr. Davis had a subjective expectation of privacy in the enclosed area." *Order on Defendant's Motion to Suppress, (Ignatius, J.) Carroll Superior Court file at p.22.* However, the Court goes on to incorrectly apply the evidence before it to the standards announced in its ruling.

The Trial Court correctly looks to Orde to begin its analysis but seems to abandon one of the key passages from that decision.

The Court in Orde wrote, "We next consider whether the defendant's expectation of privacy in his deck is one that society is prepared to recognize as reasonable. This determination is " highly dependent on the particular facts involved and is determined by examining the circumstances of the case in light of several factors," including " the nature of the intrusion, whether the government agents had a lawful right to be where they were, and the character of the location searched," which entails examining " **whether the defendant took normal precautions to protect his privacy**." Com. v. Krisco Corp., 421 Mass. 37, 653 N.E.2d 579, 582-83 (1995); see also Rakas v. Illinois, 439 U.S. 128, 152-53, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978) (Powell, J. concurring) (recognizing that no single factor is determinative but noting that the United States Supreme Court has looked to normal precautions taken to maintain privacy, how a person has used a location, and whether the type of government intrusion was perceived as objectionable by Framers of Fourth Amendment)." Orde at 265. *[emphasis added]*

Even if the Court were to base its analysis solely on the officer's testimony, taken at face value, about various and distinct window coverings, such as black plastic which would block out all light and visibility into the home, the Defendant went above and beyond "normal precautions".

However, a key difference in this Court's analysis in both Orde and Beauchemin, which led to opposite conclusions, both structures at issue were open ones. The structure in Orde was a largely, inaccessible, cordoned off rear deck without appreciable points of

entry or egress, despite being an 'open' structure. The structure in Beauchemin was an open porch, leading to the main door of the Defendant's home.

In this case, it was the testimony of the Defendant that the first door one would encounter was the main door to his home, and not simply a porch, vestibule or other entryway for the public to enter.

The Trial Court made a point to state, "Of course, unlike the open porch-like structures at issue in Beauchemin and Orde, the area at issue here was enclosed. While this court is not aware of any case in which our Supreme Court has applied the reasonable expectation of privacy test to an enclosed are attached to a living space like the one at issue...". *Order on Defendant's Motion to Suppress, (Ignatius, J.) Carroll Superior Court file at p.23.*

In determining that the enclosed area at issue was not part of the Defendant's living space, the Trial Court focused on elements of its rather poor outward appearance, elements of disrepair and an apparent belief that it had been added on later and was not architecturally pleasing. However, the Trial Court makes no mention of the fact that the officer testified that he was able to see a refrigerator and water heater inside the space prior to entry. Also worth noting is the fact that the Trial Court makes no mention whatsoever of the Defendant's sworn testimony about the nature of his own home in its ruling.

b. Warrantless, Forced Entry by the Police

Warrantless searches are per se unreasonable, and in order to overcome that presumption, the State must demonstrate by a preponderance of the evidence that the

facts at issue fit one of very few, narrow exceptions to the warrant requirement. see State v. Theodosopoulos, 119 N.H. 573, 578 (1979).

In this case, the State argued the existence of "exigency". The Trial Court, in siding with the State, ruled that probable cause existed for the forced entry through the second door. The defendant disagrees and submits probable cause did not exist.

In so ruling, the Trial Court stated the following, "However, there was more, as when the officers entered the enclosed area to knock on the interior door they made additional corroborating observations...". *Order on Defendant's Motion to Suppress, (Ignatius, J.) Carroll Superior Court file at p.27.* The Defendant does not concede the police entry through the first door was a lawful one. As such, any observations made once inside should not be considered.

The Trial Court begins its discussion on this topic with "Exigent circumstances exist where police face a compelling need for immediate official action and a risk that the delay inherent in obtaining a warrant will present a substantial threat of imminent danger to life or public safety or create a likelihood that evidence will be destroyed. Robinson, 158 N.H. at 798". *Order on Defendant's Motion to Suppress, (Ignatius, J.) Carroll Superior Court file at p.27.*

In this instance, there were two officers on scene and a strong likelihood that more could have been summoned to secure the location while Torch made the attempt to apply for a lawful search warrant.

The Trial Court also goes on to correctly state that the police may not create the exigent circumstances. State v. Rodriguez, 157 N.H. 100, 108 (2008). However, the troubling specter in this case is that when Torch was cross examined at the hearing, he

was summarily unable to give any testimony, or point to one single fact that corroborated the crashing and banging, and the certitude he claimed to possess that evidence was being destroyed.

As such, it is readily apparent that no exigency existed in the Defendant's case and any evidence gleaned from the warrantless entry and search must be suppressed.

c. Subsequent Search Warrant Based Upon Unlawfully Obtained Evidence

Torch testified that he did not apply for a search warrant until after what amounted to a complete search of the Defendant's trailer by the two officers.

The Trial Court takes great pains to elucidate what it believes forms probable cause, as well as exigency in this case.

Troubling, and in clear error, after a detailed explanation of the law and standard the Trial Court must apply in reviewing a search warrant, the Trial Court wrote "Moreover, because the State has not submitted the warrant affidavit, the court could not apply the 'excise and ignore test', as there is no way to know exactly what information the affidavit contains.". *Order on Defendant's Motion to Suppress, (Ignatius, J.) Carroll Superior Court file at p.21, footnote 1.*

This absence, however did not preclude the Trial Court from denying the defendant's motion as it pertains to the information in the search warrant application.

CONCLUSION

For the foregoing reasons, the order of the Trial Court should be reversed, and all unlawfully obtained evidence should be excluded.

ORAL ARGUMENT REQUEST

The Defendant respectfully requests oral argument.

Respectfully submitted,
DANIEL DAVIS
By and through his counsel
STEPHEN T. JEFFCO, P.A.

Dated: September 4, 2020

By: _____

Stephen T. Jeffco, Esquire
NH Bar Association No. 1262
Nathaniel Walker House
171 Middle Street
Portsmouth, NH 03801
(603) 431-4271

CERTIFICATION

I, Stephen T. Jeffco, Esq., do hereby certify that two true copies of the foregoing **BRIEF FOR THE DEFENDANT** has been electronically served upon: Senior Assistant New Hampshire Attorney General Stephen D. Fuller, Esq., Office of the Attorney General, 33 Capitol Street, Concord, N.H. 03301.

Dated: September 4, 2020

Stephen T. Jeffco, Esquire
NH Bar Association #1262

APPENDIX

THE STATE OF NEW HAMPSHIRE
INDICTMENT

CARROLL, SS — JUNE TERM

At the Superior Court, holden at Ossipee, within and for the County of Carroll aforesaid, on the 21st day of June in the year of our Lord Two Thousand and Nineteen

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon oath, present that

DANIEL DAVIS
(DOB: 12/20/1968)

of 540 Portland Street, Rochester, NH 03867, on or about the 6th day of April 2019 at Conway in the County of Carroll in the State of New Hampshire aforesaid, did commit the crime of

CONTROLLED DRUG ACT: ACTS PROHIBITED
N.H. RSA 318-B:2

in that:

1. Daniel Davis;
2. Knowingly;
3. And with the intent to sell it;
4. Possessed, actually or constructively, or had under his control, a controlled drug;
5. To wit; Marijuana, a Schedule I controlled drug, in an amount greater than 1 ounce but less than 5 pounds.

Said acts being contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

Thomas Palermo
Assistant County Attorney

This is a true bill.

Foreperson

Finding of Guilty by the Court after bench trial on offers of proof.

Honorable Amy L. Ignatius
February 19, 2020

Name:	Daniel Davis
DOB:	12/20/1968
Address:	540 Portland Street, Rochester, NH 03867
RSA:	N.H. RSA 318-B:2
Offense level	Class B Felony (3 ½ - 7 years in the NHSP, $100,000 fine)
Dist/Mun Ct:	

212-2019-CR-00083 CHARGE ID: 1614249C

THE STATE OF NEW HAMPSHIRE

CARROLL, SS

SUPERIOR COURT
Case No. 212-2019-CR-00083

STATE OF NEW HAMPSHIRE

V.

DANIEL DAVIS

MOTION TO SUPPRESS

NOW COMES Daniel Davis, the Defendant in the above-captioned matter, by and through his attorney, STEPHEN T. JEFFCO, ESQUIRE, who moves this Honorable Court for an order of suppression, suppressing as use as evidence, all evidence whether oral or tangible, acquired directly or indirectly, from the unlawful entry and subsequent search of his residence.

As grounds for this motion your Defendant sets forth the following:

1. That on April 6, 2019, a confidential informant advised Detective Torch of the Conway Police Department that he had recently been on a utilities service call at 18 Colbath Street in Conway, New Hampshire and witnessed several large "marijuana" plants in the residence*;
2. That on April 6, 2019, Detective Torch and Officer Baldwin at approximately 1640 hours, (4:40 p.m.), arrived at 18 Colbath Street in Conway, New Hampshire and illegally entered the residence without the consent of anyone authorized to give the same, nor pursuant to a search warrant, nor any known exception to that requirement;
3. That upon illegally gaining entry to the residence, the police conducted an illegal search of the same and arrested your Defendant in a back bedroom;

**based upon discovery provided by the State*

Stephen T. Jeffco, P.A.
The Nathaniel Walker House
171 Middle Street | Portsmouth, NH 03801
Telephone: 603-431-4271 | Fax: 603-436-3388

4. That subsequent to the illegal entry, search of the residence, and arrest of your Defendant, the police, based upon their illegal activities, applied for and acquired a search warrant issued by the Honorable Melissa Vetanze, Judge of the 3rd Circuit Court, Conway District Division;
5. That the Conway Police Department executed the warrant at approximately 1900 hours, (7:00 a.m.), seizing certain items of contraband; U. S. currency, and other items that upon information and belief the State will seek to introduce as evidence at trial against your Defendant;
6. That in the case at bar, the assertions within the affidavit in support of the application for the issuance of a search warrant were all acquired as a result of the initial illegal entry of the residence in violation of your Defendant's rights as guaranteed by Part 1, Article 19 of the New Hampshire Constitution and the 4th and 14th Amendments to the U.S. Constitution.

WHEREFORE, your Defendant, Daniel Davis, respectfully prays the Honorable Court enter the following relief:

A. Grant his motion and suppress all evidence seized as a result of the unlawful entry and search of his residence, and;

B. Schedule a hearing, and;

C. Any such further relief that justice may require

Respectfully submitted by,
DANIEL DAVIS
By and through his attorney,
STEPHEN T. JEFFCO, P.A.

Dated: July 3, 2019

Stephen T. Jeffco, Esquire
NH Bar #1162
171 Middle Street
Portsmouth, NH 03801
(603) 431-4271

ATTESTATION

STATE OF NEW HAMPSHIRE
ROCKINGHAM, SS.

Personally appeared the above-named Stephen T. Jeffco, Esquire, who avers that the foregoing factual allegations subscribed by him are true to the best of his knowledge and belief based upon his review of the discovery material and his investigation into the case at bar.

Date: July 3, 2019

Justice of the Peace/ ~~Notary P~~ublic

CERTIFICATE OF SERVICE

I, Stephen T. Jeffco, Esq., hereby certify that a true copy of the foregoing **Motion to Suppress Evidence** has on this date been served upon the State of New Hampshire by depositing a true copy in the U.S. mails, postage prepaid, addressed as follows: Matthew G. Conley, Esquire, Carroll County Attorney's Office, 95 Water Village Road, Ossipee, NH 03864.

Date: July 3, 2019

By: Stephen T. Jeffco, Esquire

Stephen T. Jeffco, P.A.
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THE STATE OF NEW HAMPSHIRE

CARROLL, SS. SUPERIOR COURT

STATE OF NEW HAMPSHIRE

v.

DANIEL DAVIS

Docket no. 212-2019-CR-00083

STATE'S OBJECTION TO DEFENDANT'S MOTION TO SUPPRESS

The State of New Hampshire, by its counsel, Thomas Palermo, requests that this Court deny the Defendant's Motion to Suppress in this matter. The State asserts the following in support thereof:

BACKGROUND

1. The Defendant, Daniel Davis, is charged with Possession of a Controlled Drug with Intent to Sell, a Class B Felony, in violation of RSA 318-B:2, I.
2. This charge stems from an investigation by the Conway Police Department into a trailer-type residence at 18 Colbath Street, Conway, New Hampshire.
3. On April 6, 2019, Detective Dominic Torch of the Conway Police Department met with a confidential informant, a utilities serviceperson, who indicated that he/she had recently been on a service call at 18 Colbath Street. He/she described seeing a marijuana growing operation in the trailer with several large plants.
4. Detective Torch and Officer Shawn Baldwin went to 18 Colbath Street to perform a "knock-and-talk." The idea behind a knock-and-talk is to knock on the door of a

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suspect's residence and engage him or her in consensual conversation, in order to possibly develop probable cause without violating the suspect's rights.

5. Upon arrival at 18 Colbath Street, Detective Torch saw a number of oddities that, taken together, suggested a marijuana growing operation, to include:

   A. A strong odor of fresh (not burnt) marijuana, detectable from the front yard and "overwhelming" as he approached the front door;

   B. Piping similar to drier hose protruding from the walls;

   C. Extension cords protruding from the walls;

   D. Black plastic covering all windows; and

   E. A buzzing sound, similar to a fan, originating inside the walls.

6. Detective Torch knocked on the front door of the trailer. A voice answered asking who it was, and Detective Torch announced himself as a police officer.

7. After several minutes of repeated announcements without a reply, Detective Torch heard "thudding" noises from inside the trailer. Detective Torch believed, based on his training and experience, that the occupants of the trailer were destroying evidence.

8. In order to prevent further destruction of evidence, Detective Torch and Officer Baldwin opened the front door and entered the trailer.

9. Upon opening the door, Detective Torch saw a black tent with red lighting emanating from behind it. Detective Torch and Officer Baldwin unzipped the tent, and were met with a dozen fully-grown marijuana plants, as well as grow lights and ventilation.

10. Continuing through the trailer, Detective Torch located a man in the back room of the trailer. Detective Torch handcuffed him, searched him, and took him into custody. This suspect was later identified as the Defendant.

11. At that point, Detective Torch and Officer Baldwin secured the trailer and applied for a search warrant. That warrant was granted by Judge Melissa Vetanze.

12. A full search of the trailer yielded the dozen plants, several immature marijuana plants, chemicals, filtration systems, fans, U.S. currency, and smoking devices. It also revealed that the trailer was not fit for habitation and had been deconstructed to be used solely as a marijuana growing operation. Water pipes had been diverted into the living room, and there was very little furniture, food, clothing, etc.

EXIGENT CIRCUMSTANCES

13. The officers were legally justified in entering the trailer when they heard thudding noises and believed that evidence was being destroyed because this situation involved exigent circumstances.

14. Police do not need a warrant when they "have probable cause to enter a home and exigent circumstances make it impracticable to obtain a warrant beforehand." *State v. Robinson*, 158 N.H. 792, 798 (2009).

15. Probable cause to search "exists if a person of ordinary caution would justifiably believe that what is sought will be found through the search and will aid in a particular apprehension or conviction." *State v. Ward*, 163 N.H. 156, 159 (2012).

16. "Exigent circumstances exist where police face a compelling need for immediate official action and a risk that the delay inherent in obtaining a warrant will present a substantial threat of imminent danger to life or public safety or create a likelihood that evidence will be destroyed." *Robinson*, 158 N.H. at 798. "Whether exigent circumstances exist is judged by the totality of the circumstances, and is largely a question of fact for the trial court." *Id.*

17. The officers had probable cause to believe the trailer they were outside of was being used to grow marijuana. The combination of the overwhelming smell of fresh marijuana with the numerous ventilation materials, electrical cords, and black trash bags covering every window from view would lead a person of ordinary caution to justifiably believe that marijuana and other items of evidentiary value useful in securing a conviction would be found in a search. Had the officers sought a warrant for the search, they doubtlessly would have been granted one.

18. The totality of the circumstances dictated that there was exigency for the officers to enter and perform an immediate search. The analysis does not stop at the fact that they had probable cause to search. Once the officers knocked on the front door and announced themselves as law enforcement to the Defendant, it became clear that the Defendant was actively going to take steps to hide or destroy evidence. The fact that the officers did not receive a response once they identified themselves, and the fact that they heard thumping noises inside, demonstrated that they needed to act immediately or risk evidence being lost while they waited for a warrant.

19. "Exigent circumstances refer to those situations in which law enforcement agents will be unable or unlikely to effectuate an arrest, search, or seizure, for which probable cause exists, unless they act swiftly and without seeking prior judicial authorization." *State v. Stern*, 150 N.H. 705, 709 (2004) (quotations omitted).

20. Had the officers knocked on the front door, announced themselves, and then departed to prepare a search warrant, they certainly would have lost evidence valuable to prosecution. The Defendant, alerted to police presence, would have gained precious time, to hide, remove, or destroy evidence from the trailer, as it was clear that he was doing even as the

officers were standing outside his door. If the police had entered after properly obtaining a warrant, the resulting search would have been futile.

INEVITABLE DISCOVERY

21. Even if exigent circumstances did not apply, the immediate search was justified by the inevitable discovery doctrine because a search pursuant to a warrant theoretically would have produced the same results.

22. Under the inevitable discovery doctrine, "illegally seized evidence is admissible if a search was justified, and the evidence discovered illegally would inevitably have come to light in a subsequent legal search." *Robinson*, 170 N.H. at 58.

23. The New Hampshire Supreme Court has not ruled on what the State must prove to demonstrate inevitable discovery. *State v. Broadus*, 167 N.H. 307, 314-15 (2015). The United States First Circuit Court of Appeals has held that inevitable discovery claims involve three questions: "[F]irst, whether the legal means by which the evidence would have been discovered was truly independent; second, whether the use of the legal means would have inevitably led to the discovery of the evidence; and third, whether applying the inevitable discovery rule would either provide an incentive for police misconduct or significantly weaken constitutional protections." *U.S. v. Almeida*, 434 F.3d 25, 28 (1st Cir. 2006).

24. All support for probable cause for a search warrant of the trailer was independent of the challenged search in this instance. The officers could easily have obtained a search warrant for the trailer based on what they observed from the exterior, had exigent circumstances not taken over.

25. A lawful warrant-based search of the trailer would inevitably have led to the discovery of the marijuana plants and other evidence found by the officers. Assuming that the occupant of the trailer did not actively try to hide or destroy evidence when he learned of the police presence (as otherwise exigent circumstances did apply), every item of evidentiary value still would have been present and discovered when the officers later returned with a warrant.

26. Applying inevitable discovery in this case provides no incentive for police misconduct or risk of undermining constitutional protections. The police entered the trailer not because they wanted to circumvent the warrant process, but because they reasonably believed that evidence would be lost if they delayed entry to obtain a warrant. Criminals have no constitutional right to hide or destroy evidence of their crimes, and so applying inevitable discovery in this matter neither condones police misconduct nor undermines constitutional protections.

WHEREFORE, the State respectfully requests that this Honorable Court:

A. Deny the Defendant's Motion to Suppress; or

B. Schedule a hearing on this matter; and

C. Grant such other relief as this Court deems appropriate.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its counsel,

July 16, 2019

Thomas D. Palermo, Esq.
NH Bar #271593
Assistant County Attorney

Carroll County Attorney's Office
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CERTIFICATE OF SERVICE

I, Thomas Palermo, certify that a copy of this Objection was forwarded to Stephen Jeffco, counsel for the Defendant in this matter, on July 16, 2019.

July 16, 2019

Thomas Palermo

THE STATE OF NEW HAMPSHIRE

CARROLL, SS. SUPERIOR COURT

State of New Hampshire

v.

Daniel Davis

Docket No. 212-2019-CR-00083

ORDER ON DEFENDANT'S MOTION TO SUPPRESS

The defendant, Daniel Davis, is charged by indictment with a single felony count of possession of a controlled drug in violation of RSA 381-B:2, I. The charge arises out of evidence seized during a warrant search of a trailer in Conway in which Mr. Davis was discovered. Mr. Davis moves to suppress that evidence on the grounds that the warrant was invalid because it was based on unlawfully obtained information. (Court index #14 ("Def.'s Mot. Suppress").) The State objects. (Court index #15 ("State's Obj.").) The court held a hearing on Mr. Davis's motion on October 8, 2019. At the hearing, the State presented the testimony of Sergeant Dominic Torch of the Conway Police Department ("CPD"). Mr. Davis testified on his own behalf and offered numerous photographic exhibits. (See Def.'s Exs. A–E.) The court has considered the evidence and arguments in light of the applicable law and, for the reasons explained below, Mr. Davis's motion is DENIED.

FACTS

The court finds the following facts based on the evidence presented during the October 8th hearing. On April 6, 2019, Sergeant Torch received information from a local business owner that marijuana was being grown inside a residential trailer on Colbath Street in Conway. The business owner reported that during a "recent" service call to the residence he had seen several

marijuana plants in the trailer that were each about two feet in diameter. Based on his experience investigating drug crimes, Sergeant Torch considers plants of such size to be well-developed and "fairly substantial." In light of the information the informant provided, Sergeant Torch and Officer Shawn Baldwin (the "officers") went to the residence later that day to see if they could speak with anyone there.

The officers parked on the street about thirty feet away from the trailer and as they approached the trailer on foot Sergeant Torch could smell fresh marijuana from outside. The officers proceeded up to what Sergeant Torch described as an "enclosed [front] porch" and "glassed-in vestibule" (hereinafter, the "enclosed area"). The enclosed area was structurally distinct from the trailer itself, as it had different siding and a different roofline than the trailer and appeared to have been added on to the trailer's original structure. (See Def.'s Ex. A at 1 (depicting different siding); Def.'s Ex. B at 1–2 (depicting different roof line); Def.'s Ex. C at 1–2 (depicting different siding and roofline).) The enclosed area was also lined with numerous large exterior windows, (see Def.'s Ex. B at 1–2; Def.'s Ex. C at 1), and it had a small set of steps that led up to an exterior wooden door that may have had a curtain draped over its window, (see Def.'s Ex. A at 1).

From their vantage point outside of the enclosed area, the officers could see that all of the windows into the trailer itself had been covered with black plastic. However, the windows looking into the enclosed area had been left unobstructed. (See Def.'s Ex. B at 1–2; Def.'s Ex. C at 1.) Through those windows, the officers could see that the enclosed area contained a disconnected refrigerator and water heater and that there was electrical wiring and piping protruding out of the trailer into the enclosed area. (See Def.'s Ex. D) Sergeant Torch

recognized the wiring and piping coming out of the trailer as signs consistent with indoor marijuana cultivation.

From outside the enclosed area, the officers could also see a closed interior door that appeared to lead into the trailer itself. The interior door was just a few feet inside the exterior door into the enclosed area. Believing that the interior door was the "actual door to the living quarters," the officers entered the enclosed area through the unlocked exterior door and knocked on the interior door.

In response to the knocking, a person inside asked who was there. Sergeant Torch announced it was the police and asked the person to come to the door. Nobody responded. Around this time, Sergeant Torch heard the sound of fans running inside the trailer. He considered this an additional indication that someone was cultivating marijuana inside. After a few moments, the officers knocked again, announced themselves as the police, and asked the person to come to the door. They repeated this sequence a few times without further response before deciding to exit the enclosed area and to return to the street. Upon walking back to the street, the officers heard loud "crashing" and "banging" inside the trailer. According to Sergeant Torch, the officers were "certain" that someone inside the trailer was destroying evidence. Based on this belief, the officers went back to the residence, re-entered the enclosed area, and forced entry through the interior door.

The officers proceeded to sweep the interior of the trailer for occupants. In clearing the front part of the trailer, they saw marijuana plants and other evidence of marijuana cultivation. Thereafter, the officers saw Mr. Davis in a rear hallway. After arresting him, they finished sweeping the trailer for other individuals. Finding no one else, the officers secured the premises and obtained a search warrant. Mr. Davis now moves to suppress the evidence seized during the

subsequent warrant search based on the protections afforded by both the State and Federal Constitutions. Below, the court addresses his arguments under the State Constitution and cites to federal cases only for guidance. See State v. Ball, 124 N.H. 226, 231–33 (1983); see also State v. MacElman, 149 N.H. 795, 801 (2003).

ANALYSIS

"Part I, Article 19 of our State Constitution protects all people, their papers, their possessions and their homes from unreasonable searches and seizures." State v. Smith, 163 N.H. 169, 172 (2012). While search warrants generally protect individuals against unreasonable searches, see State v. Plch, 149 N.H. 608, 620 (2003), a warrant that would not have issued but for information that was unlawfully obtained is invalid and a search pursuant to that warrant is therefore presumptively unreasonable, see id.; State v. Theodosopoulos, 119 N.H. 573, 578 (1979).

In his motion, Mr. Davis attacks the validity of the search warrant on the grounds that it was procured with information that the police obtained in violation of his State and Federal constitutional right to be free from unreasonable searches and seizures. (Def.'s Mot. Dismiss ¶¶ 2–6.) According to Mr. Davis, the officers violated his right against unreasonable government searches when they (1) entered the enclosed area to knock on the interior door, and (2) forced entry through the interior door. Mr. Davis argues that the underlying warrant affidavit would not have supported probable cause but for its inclusion of observations that the officers made during these purportedly unlawful searches. As such, Mr. Davis asserts that the warrant was invalid and that evidence seized pursuant the invalid warrant must be suppressed. The State objects on the

grounds that the officers acted lawfully when they initially entered the enclosed area and when they subsequently forced entry into the trailer.[1] The court considers these issues in turn.

I. Entry into the Enclosed Area to Knock on the Interior Door

As a preliminary matter, the court notes that Mr. Davis did not expressly challenge the officers' entry into the enclosed area in his written motion. However, at the hearing, defense counsel argued for the first time that the officers conducted an unreasonable search when they entered this space without a warrant. In orally responding to this argument during the hearing, the State asserted that the enclosed area attached to the trailer is akin to a "front porch." As such, the State suggests that this particular area was not subject to a reasonable expectation of privacy and therefore not constitutionally protected like the "home." For the reasons explained below, the court agrees with the State based on the unique facts of this case.

"Our State Constitution particularly protects people from unreasonable police entries into their private homes, because of the heightened expectation of privacy given to one's dwelling." State v. Orde, 161 N.H. 260, 264 (2010) (internal quotation omitted). However, whether a particular area of private property is protected as the "home" for constitutional purposes is ultimately a "fact-sensitive" inquiry that must be resolved by "examining the nature of the area at issue" and "asking whether such an area is as deserving of protection from governmental intrusion as the house." State v. Mouser, 168 N.H. 19, 23 (2015). An area is deemed to deserve the protection of the home if the defendant has a subjective expectation of privacy in that area and society is prepared to recognize that subjective expectation of privacy as

[1] The State has not argued that the warrant affidavit still supports probable cause even if the court were to excise the information gained during the challenged searches. See Plch, 149 N.H. at 620 (explaining that "our settled law" employs the "'excise and ignore' test" under which "[a] warrant based in part on illegally seized evidence is nonetheless valid so long as there was enough other evidence to establish probable cause"); see also State v. Letoile, 166 N.H. 269, 277 (2014) (describing how courts test the validity of a warrant supported by unlawfully obtained information by "excis[ing] the tainted information and examin[ing] the remaining information to determine whether it establishes probable cause"). Moreover, because the State has not submitted the warrant affidavit, the court could not apply the "excise and ignore test," as there is no way to know exactly what information the affidavit contains.

reasonable. Id.; see State v. Goss, 150 N.H. 46, 48 (2003). In ruling on this motion, the court presumes that Mr. Davis had a subjective expectation of privacy in the enclosed area and therefore limits its analysis to whether that expectation was reasonable.

Whether a subjective expectation of privacy in a particular area is reasonable "is determined by examining the circumstances of the case in light of several factors, including the nature of the intrusion, whether the government agents had a lawful right to be where they were, and the character of the location searched, which entails examining whether the defendant took normal precautions to protect his privacy." Orde, 161 N.H. at 265 (internal quotations omitted). Under this framework, our Supreme Court has recognized that the police may enter areas of private property without a warrant so long as they do so for legitimate investigative purposes and "restrict their movements to places visitors could be expected to go (e.g., walkways, driveways, porches) . . . ." State v. Beauchemin, 161 N.H. 654, 657 (2011) (quoting Orde, 161 N.H. at 266); see also State v. Bailey, No. 2013-0770, 2014 N.H. LEXIS 185, at *6 (Dec. 18, 2014) (explaining that "[e]ven within a home's curtilage, we have recognized that a police officer has the same implied license to use the home's access route in order to conduct legitimate business that any member of the public would have") (non-precedential order).

Comparison of our Supreme Court's analysis in Beauchemin and Orde illustrates the fact-sensitive nature of the reasonable expectation of privacy inquiry. Both cases involved challenges to officers entering open structures attached to the home (a "porch" in Beauchemin, and a "deck" in Orde). Despite this general similarity, the specific facts unique to each property led to different outcomes in the two cases.

The Beauchemin court held that there was no reasonable expectation of privacy with respect to the defendant's porch. 161 N.H. at 657. As grounds for this conclusion, the Supreme

Court pointed to "testimony that the porch led to the main door of the defendant's residence" and explained that this evidence showed that the porch "would certainly be a place visitors could be expected to go in order to knock on the front door." Id. In reaching the opposite conclusion with respect to the defendant's deck in Orde, the Orde court emphasized the following facts: there were no pathways from the defendant's driveway to his deck, the deck was partially lined with lilac bushes, the officer had to walk "in between . . . a little bit of an opening" in the bushes to access the deck, and the defendant's family used the deck for "personal and family activities" like "dining, barbequing, and sunbathing." 161 N.H. at 266–67. Implicit in Orde is the conclusion that the defendant's deck was not a place where visitors could reasonably be expected to go.

Of course, unlike the open porch-like structures at issue in Beauchemin and Orde, the area at issue here was enclosed. While this court is not aware of any case in which our Supreme Court has applied the reasonable expectation of privacy test to an enclosed area attached to a living space like the one at issue, the fact-sensitive inquiries in Beauchemin and Orde suggest that whether the constitutional protections for the home extend to such areas ultimately depends on the circumstances. Notably, such an approach is consistent with the manner in which courts in other jurisdictions have analyzed similar cases involving enclosed areas attached to the home. Compare, e.g., People v. Tierney, 703 N.W.2d 204 (Mich. Ct. App. 2005) (no reasonable expectation of privacy in enclosed area attached to home); State v. Kennedy, No. 00-2058, 2002 WL 984515 (Iowa Ct. App. May 15, 2002) (unpublished opinion) (same); State v. Kitchen, 572 N.W.2d 106 (N.D. 1997) (same); State v. Edgeberg, 524 N.W.2d 911 (Wis. 1994) (same); People v. Arias, 535 N.E.2d 89 (Ill. App. Ct. 1989) (same); Commonwealth v. McDonnell, 516 A.2d 329, 331 (Pa. 1986) (same), with State v. Reinier, 628 N.W.2d 460 (Iowa 2001)

(reasonable expectation of privacy in enclosed area attached to home); United States v. Wilson, No. 08-CR-2020-LRR, 2009 U.S. Dist. LEXIS 26130, at *14–27 (N.D. Iowa Mar. 30, 2009) (same).

In light of the foregoing principles and based upon the specific facts of this case, the court finds that Mr. Davis's subjective expectation of privacy against the officers entering the enclosed area to knock on the interior door was not a reasonable expectation of privacy. The court reaches this conclusion based on the totality of the following circumstances.

First, numerous characteristics of the enclosed area materially distinguished it from the residential space inside the trailer itself. For one, the enclosed area was structurally distinct from the trailer as it appeared to have been added to the original structure based on the different siding and rooflines. Consistent with this structural differentiation, the manner in which several detached appliances were openly displayed in the enclosed area and the exposed electrical wiring and piping in that space all indicated that the enclosed area was not being used as a living space. (See Def.'s Ex. D.) This is consistent with the fact that one of the windows looking into the enclosed area appears to have been broken in half, (see Def.'s Ex. B at 2 (second window from left); Def.'s Ex. C at 1 (same)), and with the fact that a door into the back of the enclosed area does not appear to have been airtight, (see Def.'s Ex. D (depicting light entering through door frame)). Further, the fact that the windows into the enclosed area were not covered with black plastic, as were the windows into the trailer strongly indicated that privacy was expected beyond the enclosed area but not in that area itself.

In addition to the foregoing characteristics indicating a reduced expectation of privacy in the enclosed area, other characteristics of the property indicated that the area the officers entered was an access route to the main door into the trailer that strangers had an implied license to enter.

Specifically, there were unobstructed steps leading up to the exterior door into the enclosed area. Moreover, the exterior door did not have a doorbell or knocker, (see Def.'s Ex. A at 1–2), and the interior door into the trailer was plainly visible from outside and was only a few feet inside the exterior door. Under these circumstances, and where it was otherwise plainly apparent that an intrusion into the enclosed area would not amount to an intrusion into the living space, a stranger reasonably could have believed that he could lawfully enter the enclosed area for the limited purpose of knocking on the interior door. Cf. Arias, 535 N.E.2d at 895–96 (explaining that enclosed porch was not subject to reasonable expectation of privacy where, inter alia, the porch was structurally different from the home, surrounded by windows, accessed via unlocked screen door, did not have a doorbell, was used as a storage and not a dwelling space, and where the character of the door and windows leading from the porch into the dwelling space signified privacy was expected beyond the porch). Consistent with this implied license, the officers did not rummage around when they entered the enclosed area—instead, they simply entered through the exterior door, knocked on the interior door, and waited for a response. As such, they limited their intrusion to the legitimate investigative purpose for which they had gone to the property. See State v. Johnston, 150 N.H. 448, 455–56 (2004) (recognizing legitimacy of "knock and talk" procedure).

For all of these reasons, the court finds that the officers did not violate Mr. Davis's reasonable expectation of privacy when they entered the enclosed area to knock on the interior door. See Mouser, 168 N.H. at 23. Accordingly, to the extent Mr. Davis argues that the warrant was invalid because it was based on information that the officers learned after entering the enclosed area to knock on the interior door, his motion is DENIED.

II. Forced Entry through the Interior Door

Mr. Davis next contends that the officers' warrantless search of the trailer following their forced entry through the interior door was unreasonable. To overcome the law's presumption that warrantless searches are per se unreasonable, see State v. Theodosopoulos, 119 N.H. 573, 578 (1979), the State contends that the search was justified under the exigent circumstances exception to the warrant requirement. Under the exigency exception, the police may search a home without a warrant when they have probable cause to believe that there is evidence of a crime in the home and it would be impracticable to obtain a warrant due to some exigent circumstance. State v. Robinson, 158 N.H. 792, 798 (2009). In order to overcome the presumption of unreasonableness, the State must prove that this warrant exception applies by a preponderance of the evidence. Theodosopoulos, 119 N.H. at 578. The court finds that the State has met this burden for the reasons explained below.

First, the officers had probable cause to search the trailer for evidence of illegal drug activity prior to forcing entry through the interior door. "Probable cause exists if a person of ordinary caution would justifiably believe that what is sought will be found through the search and will aid in a particular apprehension or conviction." State v. Letoile, 166 N.H. 269, 273 (2014). Thus, there is probable cause to search a home for evidence of a crime so long as the totality of the circumstances give rise to a "substantial likelihood" or "fair probability" that the police will find evidence of the crime inside the home. Id.; State v. Ball, 164 N.H. 204, 207 (2012). That standard was satisfied here well before the forced entry. Before the officers even entered the enclosed area to knock on the door, Sergeant Torch's own observations had already strongly corroborated the informant's tip that there was marijuana growing in the trailer. Not only had Sergeant Torch smelled the odor of fresh marijuana coming from the trailer, but he also

had recognized the piping and electrical wiring protruding from the trailer as signs consistent with an indoor marijuana grow. Without more, the totality of the foregoing information provided probable cause to search the trailer. Cf. United States v. Kilgore, No. 1:11-cr-00518-CAP-RGV, 2012 U.S. Dist. LEXIS 154148, at *15–16 (N.D. Ga. Sept. 13, 2012) (citing eleven cases as support for observation that "courts have routinely found probable cause existed to search a residence based on a marijuana odor detected by law enforcement officers"); United States v. Yarbrough, 272 Fed. Appx. 438, 443 (6th Cir. 2007) ("When the smell of marijuana is coupled with an anonymous tip of drug activity, probable cause exists for a search warrant."). However, there was more, as when the officers entered the enclosed area to knock on the interior door they made additional corroborating observations—i.e., the sound of fans running inside trailer, the person inside going silent upon learning that it was the police at the door, and the unusual noises consistent with evidence destruction that began as soon as the officers appeared to be leaving the property. Accordingly, the court finds that the officers had probable cause to search the trailer when they entered through the interior door. See Letoile, 166 N.H. at 273; Robinson, 158 N.H. at 798.

The officers also encountered exigent circumstances at that time. "Exigent circumstances exist where police face a compelling need for immediate official action and a risk that the delay inherent in obtaining a warrant will present a substantial threat of imminent danger to life or public safety or create a likelihood that evidence will be destroyed." Robinson, 158 N.H. at 798. Whether "exigency" exists depends on the totality of the circumstances, including "the overall reasonableness of the officers' conduct prior to the entry." Id. Thus, one of the critical factors in any exigency analysis is the reason why the purportedly exigent circumstances arose, as "the police may not create the exigency in order to justify their warrantless entry." State v.

Rodriguez, 157 N.H. 100, 108 (2008). Whether the police "created" an exigency turns largely on "[t]he presence or absence of an ample opportunity for getting a search warrant" prior to the search and "the degree to which the exigency . . . was foreseeable." Id.

Here, immediately prior to forcing entry, the officers were faced with circumstances under which it was reasonable to believe that delaying entry would likely result in the destruction of evidence. Such a belief was reasonable based on the following circumstances. For one, as discussed above, the officers had strong reason to believe that marijuana was being cultivated inside the trailer. Then, after knocking on the door and telling the person who responded that it was the police, the officers were met with complete silence for the remainder of time they were at the door. After this prolonged period of silence in response to police presence, loud crashing and banging sounds began emanating from the trailer as soon as the officers appeared to be leaving the property. Based on the totality of these circumstances, the officers had reason to believe not only that there was a marijuana grow operation in the trailer, but also that there was a person inside the trailer who wanted to avoid police detection and who began to destroy evidence of the grow upon seeing the officers begin to leave the area. Cf. United States v. Leveringston, 397 F.2d 1112, 1115–16 (8th Cir. 2005) (explaining that loud sounds inside hotel suite after police knocked and announced their presence reasonably raised inference that occupants were destroying evidence); United States v. Gomez, 652 F.Supp. 715, 717 (S.D.N.Y. 1987) (holding exigency exception applied where officers heard suspect "scurrying about his apartment" and the "sound of glass crashing" after they announced their presence).

Further, although the officers may have set these circumstances into motion by going to the trailer and knocking on the door, their conduct prior to the forced entry was reasonable and therefore did not "create" the exigency in a legal sense. See Rodriguez, 157 N.H. at 108

(recognizing that "[t]he boundary between an exigency which naturally arises and an exigency which is created is unclear"); see also Kentucky v. King, 563 U.S. 452, 461–62 (2011) (noting that "in some sense the police always create the exigent circumstances" and that "[c]onsequently, a rule that precludes the police from making a warrantless entry to prevent the destruction of evidence whenever their conduct causes the exigency would unreasonably shrink the reach of this well-established exception to the warrant requirement").

For one, when the officers went to the residence and knocked on the door, they were lawfully seeking to pursue their investigation through voluntary cooperation. See Johnston, 150 N.H. at 454–56 (2004) (explaining that "knock and talk" procedure is a lawful means of investigation and does not circumvent the warrant requirement absent a showing that the police used the procedure deceptively or coercively). They also never threatened to engage in unlawful conduct. See King, 563 U.S. at 462 ("Where . . . the police did not create the exigency by engaging or threatening to engage in conduct that violates the Fourth Amendment, warrantless entry to prevent the destruction of evidence is reasonable and thus allowed.").

Moreover, it is unlikely that the officers could have obtained a search warrant prior to arriving at the property based on the confidential informant's tip alone, and they were not required to turn back and apply for a warrant at the moment probable cause developed. Rodriguez, 157 N.H. at 108 (explaining that "an officer does not have to obtain a search warrant at the point probable cause is established" and that "an officer's failure to avail himself of an early opportunity to obtain a warrant will not automatically preclude him from relying on exigent circumstances"). Further, to the extent it was foreseeable that a person would indiscreetly destroy evidence in response to nothing more than police presence, it was only minimally so. See id. (stressing that "the extent to which exigency was foreseeable at the time the decision was

made to forego or postpone obtaining a warrant does not, by itself, control the legality of a subsequent warrantless search triggered by that exigency"); cf. Gomez, 652 F.Supp. at 717–19 (rejecting defendant's argument that police created exigency by knocking on door where "defendant has made no credible showing to support his assertions of the agents' bad faith")

For all of these reasons, the court finds that the officers did not "create" the exigent circumstances they encountered for purposes of the exigency exception to the warrant requirement. Accordingly, because probable cause and exigent circumstances existed when the officers forced entry through the interior door, their warrantless entry was justified. See Robinson, 158 N.H. at 798. Thus, to the extent Mr. Davis attacks the warrant's validity on the grounds that the officers unlawfully entered the trailer through the interior door, his motion is DENIED.

CONCLUSION

For the reasons set forth herein, Mr. Davis's motion to suppress is DENIED.

So Ordered.

December 11, 2019

Amy L. Ignatius
Presiding Justice

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Carroll Superior Court
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Ossipee NH 03864

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RETURN FROM SUPERIOR COURT – STATE PRISON SENTENCE

Case Name: **State v. Daniel Davis**
Case Number: **212-2019-CR-00083**

Name: **Daniel Davis, 75 Winter Street Rochester NH 03867**
DOB: **December 20, 1968**

Charging document: Indictment

Offense:	GOC:	Charge ID:	RSA:	Date of Offense:
Cntrl Drug: Acts Prohibited		1614249C	318-B:2,I	April 06, 2019

Disposition: Guilty/Chargeable By: Plea

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Felony

Sentence: see attached

February 19, 2020
Date

Hon. Amy L Ignatius
Presiding Justice

Abigail Albee
Clerk of Court

J-ONE: ☒ State Police ☐ DMV

C: ☒ Dept. of Corrections ☒ Offender Records ☐ Sheriff ☐ Office of Cost Containment
☒ Prosecutor Thomas Daniel Palermo, ESQ ☐ Defendant ☒ Defense AttorneyStephen Thomas Jeffco, ESQ
☐ Sentence Review Board ☐ Sex Offender Registry ☐ Other _____ ☐ _____ Dist Div. _____

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: Carroll Superior Court

Case Name: STATE v. DANIEL DAVIS

Case Number: 212-2019-CR-00083 (if known) Charge ID Number: 1614249C

STATE PRISON SENTENCE

Plea/Verdict: **Guilty**	Clerk:
Crime: **Possession C/D with Intent to Sell**	Date of Crime: **04/06/2019**
Monitor:	Judge: **Ignatius**

A finding of GUILTY/TRUE is entered.

CONVICTION AND CONFINEMENT

☐ A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.

☑ B. The defendant is sentenced to the New Hampshire State Prison for not more than

3 years, nor less than 1.5 years

There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year.

Pretrial confinement credit: _____ days.

☑ C. This sentence is to be served as follows:

☐ Stand committed ☐ Commencing _____

☑ All of the minimum sentence and all of the maximum sentence is suspended.

Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing at the request of the State. The suspended sentence begins today and ends 2 years from ☒ today or ☐ release on _____

☐ _____ of the sentence is deferred for a period of _____ year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____ year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.

☐ D. The sentence is ☐ consecutive to case number and charge ID _____

☐ concurrent with case number and charge ID _____

☐ E. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment.

☐ F. See Addendum to State Prison Sentence Substance Use Disorder Assessment and Treatment.

☐ G. The Court recommends to the Department of Corrections:

☐ Screen and/or assess for drug and alcohol treatment needs.

☐ Sentence to be served at House of Corrections

☐ _____

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

Case Name: STATE v. DANIEL DAVIS
Case Number: 212-2019-CR-00083
STATE PRISON SENTENCE

PROBATION

☑ A. The defendant is placed on probation for a period of 2 year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.
Effective: ☑ Forthwith ☐ Upon release from _____
☒ The defendant is ordered to report immediately to the nearest Probation/Parole Field Office.

☑ B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

FINANCIAL OBLIGATIONS

☐ A. **Fines and Fees:**
Fine of $ _____, plus a statutory penalty assessment of $ 0.00 to be paid:
☐ Today
☐ By _____
☐ Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.
☐ $ _____ of the fine and $ _____ of the penalty assessment is suspended for _____ year(s).
A $25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

☐ B. **Restitution:**
The defendant shall pay restitution of $ _____ to _____
☐ Restitution shall be paid through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
☐ At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
☐ Restitution is not ordered because: _____

OTHER CONDITIONS

☑ A. The defendant is to participate meaningfully in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.

☒ B. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.

☐ C. Under the direction of the Probation/Parole Officer, the defendant shall tour the
☐ New Hampshire State Prison ☐ House of Corrections

☐ D. The defendant shall perform _____ hours of community service and provide proof to _____ within _____ _____ of today's date.

☐ E. The defendant is ordered to have no contact with _____ either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.

☑ F. Law enforcement agencies may ☑ destroy the evidence ☑ return evidence to its rightful owner.

☐ G. The defendant and the State have waived sentence review in writing or on the record.

☑ H. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.

☒ I. Other:
Imposition of this sentence is stayed to allow appeal of the court's ruling on the motion to suppress.

February 19, 2020
Date

Amy Ignatius
Presiding Justice
Honorable Amy L. Ignatius