Received 12/1/2023 2:30:55 PM Supreme Court Middle District

Filed 12/1/2023 2:30:00 PM Supreme Court Middle District
85 MAP 2023

NO. 85 MAP 2023

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,
Appellee,

V.

MICHAEL THOMPSON,
Appellant.

COMMONWEALTH'S BRIEF FOR APPELLEE

Defense Appeal from the February 7, 2023 Decision of the Superior Court, at No. 2362 EDA 2021, Affirming the Judgment of Sentence Imposed by the Court of Common Pleas of Delaware County, Trial Division, Criminal Section, at No. CP-23-CR-0002233-2020.

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COUNTER-STATEMENT OF THE QUESTION INVOLVED

Did this Court's decision in Commonwealth v. Alexander, 243 A.3d 177 (Pa. 2020), which rejected the federal automobile exception – an exception that necessarily assumes the police are looking for evidence of a crime – bar inventory searches given that inventory searches, by definition, are not investigatory, and were recognized as an exception to the warrant requirement long before Alexander or the case Alexander overruled?[1]

(Answered in the negative by the court below.)

[1] Although this Court granted *allocatur* on a single issue, Commonwealth v. Thompson, 2023 WL 5028963, at *1 (Pa. 2023), defendant presents two questions involved (Appellant's Brief, i). Since there is no meaningful difference between the two questions, the Commonwealth will follow the Court's *allocatur* order instead.

COUNTER-STATEMENT OF THE CASE

Defendant appeals from the order denying his motion to suppress the gun recovered during an inventory search of his car. He claims that inventory searches are now illegal under Commonwealth v. Alexander, 243 A.3d 177 (Pa. 2020) (overturning a case that allowed police to conduct an investigatory search of a car without a warrant based solely on probable cause). The Superior Court properly rejected that claim. Since Alexander and the case it overruled both assumed the presence of probable cause, the Superior Court correctly found that Alexander applies only to investigatory searches.

Facts and Procedural History

On July 1, 2020, police received a report of an unconscious person in a car outside an AAMCO auto repair shop in Delaware County. When an officer arrived, defendant was being evaluated outside his car by a paramedic. The paramedic reported that defendant had been unconscious behind the wheel and could not immediately be roused. The officer also observed that defendant was slurring his speech, appeared lethargic, and had constricted pupils. When the officer ran defendant's driver's license through the NCIC, he learned that the license had been suspended due to a DUI and that defendant had a warrant out for his arrest in Philadelphia for larceny (N.T. 6/22/21, 9-11, 17-18).

The officer then called a company to tow defendant's car. At the time, defendant's car was blocking the entrance to AAMCO and penning in two or three cars that were parked perpendicular to his vehicle. An AAMCO mechanic told the officer that they did not want the car to remain there. Before the tow, the officer conducted an inventory search of the car. He later explained that any time he called for a car to be impounded or seized, police department policy required him to search the car for valuables to ensure that any valuables would be returned to the car's owner. During that search, the officer found a gun[2] (N.T. 6/22/21, 4, 11-13).

Defendant later filed a motion to suppress his gun on the ground that the car search violated Alexander. After hearing testimony in June from the arresting officer, the Honorable Margaret J. Amoroso denied the motion on September 7, 2021.[3] Defendant filed a motion for reconsideration, which was also denied.

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[2] The officer did not specify at the suppression hearing where he found the gun.

[3] As the Superior Court pointed out, the order denying suppression referenced oral argument presented on August 18, 2021, but the notes of testimony from that date are not in the certified record. Commonwealth v. Thompson, 289 A.3d 1104, 1106 n.3 (Pa. Super. 2023). Defendant also requested an opportunity to submit a brief after the suppression hearing (N.T. 6/22/21, 8, 24), but there is no such brief in the certified record and no brief mentioned on the docket. Thompson, 289 A.3d at 1106 n.3. The notes of testimony from defendant's trial and sentencing are also missing from the certified record. To

On October 29, 2021, following a bench trial, the trial court found defendant guilty of possessing a firearm while prohibited from doing so. That same day, the trial court sentenced him to 81 to 162 months in prison. However, after defendant filed a post-sentence motion, the trial court reduced his sentence to 66 to 132 months in prison.

Defendant appealed, challenging the denial of his suppression motion. On February 7, 2023, the Superior Court issued a published opinion affirming the judgment of sentence. The Superior Court found, in relevant part, that Alexander "does not eliminate the inventory search exception." Commonwealth v. Thompson, 289 A.3d 1104, 1110 (Pa. Super. 2023).[4] Alexander rejected the federal automobile exception, an exception that necessarily assumes "the officers are searching for evidence of a crime." Id. at 1109. Since an inventory search falls instead under the police's "community caretaking" responsibilities, the Superior Court found that Alexander did not apply. Id. The Superior Court also pointed out that reading Alexander as

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the extent that the absence of these documents hampers this Court's review, it was defendant's responsibility, as appellant, to ensure that the certified record is complete. Commonwealth v. Saranchak, 675 A.2d 268, 275 (Pa. 1996).

[4] The Superior Court also rejected defendant's argument that "this was not a 'true' inventory search." Thompson, 289 A.3d at 1110. That argument appears to be outside the scope of the *allocatur* grant. Commonwealth v. Thompson, 2023 WL 5028963, at *1 (Pa. 2023).

governing "every search of a car, including non-investigatory searches like this one, produces absurd results." Id. at 1109 n.4. Defendant's theory would also make consent searches unconstitutional, since "a consent search is a warrantless search." Id.

The Superior Court acknowledged that Alexander could theoretically "support some limitations on the inventory search exception," but found that defendant had not preserved that argument. Thompson, 289 A.3d at 1111. Instead, he had argued only that "Alexander simply eliminated the inventory search exception in total." Id.

On August 8, 2023, this Court granted allowance of appeal to consider one issue: whether "an inventory search of an automobile by law enforcement is an exception" to Alexander. Commonwealth v. Thompson, 2023 WL 5028963, at *1 (Pa. 2023).

SUMMARY OF ARGUMENT

Defendant claims that Alexander eliminated the inventory search exception. In that case, this Court overturned its own decision in Commonwealth v. Gary, 91 A.3d 102 (Pa. 2014) (plurality), which had temporarily adopted the federal automobile exception.

But the Superior Court properly found that Alexander addressed only investigatory searches and "therefore does not eliminate the inventory search exception" at issue here. Thompson, 289 A.3d at 1110. Although Alexander does not specifically use the word "investigatory," the federal automobile exception necessarily "involves a fact pattern wherein the officers are searching for evidence of a crime." Id. at 1109. The federal automobile exception relieves the police of the burden of showing exigent circumstances to search a car; a burden that the police never had to meet for an inventory search. In rejecting the federal automobile exception, Alexander also mentioned the comparative ease today of obtaining a search warrant, a point relevant to investigatory searches, but meaningless in the context of inventory searches, which, by definition, are not grounds for a warrant.

By the express terms of Alexander, this Court merely returned Pennsylvania "to the pre-Gary" case law. Alexander, 243 A.3d at 207. Pre-Gary case law consistently recognized the propriety of inventory searches.

Regardless of whether or not defendant now believes the inventory search exception should survive, Alexander did *not* eliminate that exception, and that is the sole issue on review.

ARGUMENT

The Superior Court properly found that Commonwealth v. Alexander, 243 A.3d 177 (Pa. 2020), did not eliminate the inventory search exception.

Defendant claims that the trial court erred in denying his motion to suppress the gun recovered from his car because the search supposedly violated Alexander. The Superior Court properly rejected this claim. In a published opinion, the Superior Court found that Alexander addressed only investigatory searches and "therefore does not eliminate the inventory search exception" at issue here. Thompson, 289 A.3d at 1110. Although the Superior Court acknowledged that the principles behind Alexander could theoretically "support some limitations on the inventory search exception," the Superior Court correctly found that defendant had not preserved that argument. Id. at 1111. Instead, he had argued that "Alexander simply eliminated the inventory search exception in total[,]" and that is the sole argument preserved for review. Id. Since Alexander and the case it overruled both assumed the presence of probable cause, Alexander does not affect the caretaking search the police conducted here, a search that does not require probable cause.

When reviewing the denial of a motion to suppress, an appellate court considers all the evidence for the prosecution, as well as any evidence for the defense that "remains uncontradicted when read in the context of the record

as a whole."[5] Commonwealth v. Wilmer, 194 A.3d 564, 583 (Pa. 2018) (citation omitted). The record must be viewed in the light most favorable to the Commonwealth as the prevailing party. Commonwealth v. Mathis, 173 A.3d 699, 706 (Pa. 2017). When the record supports the trial court's findings, the reviewing court may reverse only if the trial court's legal conclusions are erroneous and there is no other legitimate basis for admitting the challenged evidence. Commonwealth v. Latch, 661 A.2d 1365, 1367 (Pa. 1995).

I. The Inventory Search Exception

Ordinarily, the police may not search a person's car without a warrant. Commonwealth v. Lagenella, 83 A.3d 94, 102 (Pa. 2013). An inventory search is one exception to that rule. Id. "An inventory search is not designed to uncover criminal evidence." Commonwealth v. Nace, 571 A.2d 1389, 1391

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[5] Defendant presents the wrong standard of review (Appellant's Brief, iii), an error that he also made in his brief below (Appellant's Super. Ct. Brief, 2).

This is not the only error made in defendant's brief. Defendant offers two questions involved, but condenses those questions into a single argument section (Appellant's Brief, i, 9-26), in violation of Pa.R.A.P. 2119(a) ("The argument shall be divided into as many parts as there are questions to be argued"). He also inconsistently paginates his brief and does not properly order the first four sections (Appellant's Brief, i-6), in violation of Pa.R.A.P. 2111(a) (requiring appellants to present "in the following order" a statement of jurisdiction, the order in question, a statement of the scope and standard of review, and then a statement of the questions involved), and Pa.R.A.P. 2173 (requiring the pages of briefs to be numbered in "Arabic figures and not in Roman numerals").

(Pa. 1990). Instead, an inventory search is an exercise of "the caretaking functions of the police department." Id. An inventory search seeks to "protect the defendant's property while he is in custody" and protect the police against claims of theft. Id. An inventory search may also prevent "potential danger" from the contents of the car. South Dakota v. Opperman, 428 U.S. 364, 369 (1976).

The police may conduct an inventory search of a car when: (1) the police have lawfully impounded the vehicle; and (2) their search is reasonable. Lagenella, 83 A.3d at 102. "An inventory search is reasonable if it is conducted pursuant to reasonable standard police procedures and in good faith and not for the sole purpose of investigation." Id. (citation omitted).

Here, the police towed defendant's car because it was "impeding the flow of traffic and obstructing a commercial business" (Opinion, Amoroso, J., 8). The car was blocking the entrance to AAMCO and penning in multiple vehicles that were parked perpendicular to his car (N.T. 6/22/21, 11). A mechanic at AAMCO expressed a desire for the car to be moved (id. at 16). Defendant, however, was not in a position to move the car. He had been unconscious when the paramedics arrived, appeared to be under the influence of drugs or alcohol, and had a suspended driver's license (id. at 10-11, 17-18). Therefore, the officer ordered a tow. A written police department policy

required officers to search "the entire vehicle[,] including the trunk and any compartments within the vehicle," before a tow, and document anything they removed from the vehicle (id. at 12, 13, 24). The officer here testified that he had no reason to believe he would find anything incriminating inside the car (id. at 13). Under these circumstances, the trial court properly determined that the officer had the authority to conduct an inventory search (Opinion, Amoroso, J., 6-7).[6]

While defendant is quick to minimize the need for a tow here, it is important to remember that his interpretation of Alexander – discussed below – would not just apply to this particular inventory search. A car abandoned in the middle of the highway – a circumstance that would unquestionably jeopardize public safety – would be equally immune from an inventory search under defendant's theory. This is not without consequence. Under that scenario, the police would be exposing themselves to a lawsuit if the owner of the towed car falsely claimed that his belongings were stolen.[7] See

[6] This determination of the propriety of the inventory search is not the subject of the instant appeal.

[7] Defendant's claim that the people will sue only the tow company for lost items, and not the police, defies common sense. If the police are the ones ordering a tow, then the police are just as likely as the tow company to be included in a lawsuit. Defendant's argument also ignores the prospect of a police department being the ones conducting the tow. The mere fact that

Opperman, 428 U.S. at 378 (Powell, J., concurring) (recognizing that society has an "important interest in minimizing the number of false claims filed against police since they may diminish the community's respect for law enforcement generally and lower department morale, thereby impairing the effectiveness of the police"). And the defendant's belongings are left to the mercy of the tow company, which risks theft. It is hardly unusual for car owners to "leave values in their automobile temporarily that they would not leave there unattended for the several days that police custody may last." Opperman, 428 U.S. at 379 (Powell, J., concurring). Indeed, Alexander itself recognized the myriad of personal belongings people now keep in their cars, Alexander, 243 A.3d at 190, a point that undermines warrantless *investigatory* searches, but supports the continued necessity of *inventory* searches, like the one conducted here.

There is also risk of damage to the officer or tow company moving the car. Common items like gasoline could hypothetically become a hazard if a car is towed by a driver not aware of their presence. The Supreme Court also noted that inventory searches may protect "the public from vandals who might find a firearm . . . or contraband drugs" in a towed car. Opperman, 428 U.S.

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police in Marple Township use private tow companies does not mean that other departments with different resources follow the same practice.

at 376 n.10 Although those situations may be rare, the danger "cannot be discounted entirely. The harmful consequences in those rare cases may be great, and there does not appear to be any effective way of identifying in advance those circumstances or classes of automobile impoundments which represent a greater risk." Opperman, 428 U.S. at 378 (Powell, J., concurring). Therefore, inventory searches serve an important caretaking function that should be preserved.

II. The Implications of Alexander

Defendant now claims that Alexander barred the inventory search. In that case, this Court overturned its own decision in Commonwealth v. Gary, 91 A.3d 102 (Pa. 2014) (plurality), which had temporarily relaxed the standards for an investigatory car search.

In Gary, the police searched a car without a warrant because they had reason to believe that the car contained marijuana. Id. at 104. On appeal, this Court found no Fourth Amendment violation because the police had probable cause. Id. Although searching a car generally requires a warrant, exigent circumstances are one exception to that rule. Adopting the federal automobile exception, Gary held that, where the police have probable cause, the "inherent mobility of a motor vehicle" is itself an exigent circumstance permitting the police to search a car. Id. at 138.

Alexander disagreed. The defendant in that case had requested *allocatur* to answer the narrow question of whether Gary was wrongly decided. Alexander, 243 A.3d at 181. This Court noted that "Gary did not settle" the question of whether the federal automobile exception is consistent with Article I, Section 8 of the Pennsylvania Constitution. Id.[8] After looking closer at that provision, this Court "return[ed] to the pre-Gary" standard, which "require[d] both a showing of probable cause and exigent circumstances to justify a warrantless" car search. Id. at 181, 207.

Defendant now takes the fifth sentence of Alexander, reproduced above, out of context. He interprets Alexander as requiring both probable cause and exigent circumstances anytime the police search a car without a warrant (Brief for Appellant, 9). But accepting that argument would require this Court to ignore Gary and the limited question the Alexander Court was asked to resolve. As the Superior Court found, "the limited automobile exception" at issue in Alexander is "doctrinally distinct from the inventory search exception" at issue here. Thompson, 289 A.3d at 1109. An inventory

[8] Thus, this Court in Alexander was not making a sweeping review of all warrantless car searches. By its own words, the Alexander Court was reviewing a narrow question of whether this Court should "overrule or limit [Gary], a plurality result announcing that, without limitation, the federal automobile exception to the warrant requirement of the Fourth Amendment to the United States Constitution applies it Pennsylvania." Alexander, 243 A.3d at 180.

search of an automobile occurs only when the police have impounded the defendant's vehicle. Lagenella, 83 A.3d at 102. An inventory search protects both the police and the defendant: from theft, Nace, 571 A.2d at 1391, from "false claims of loss or damage," Whren v. United States, 517 U.S. 806, 811 n.1 (1996), and from "potential danger" from the contents of the car, Opperman, 428 UI.S. at 369. By contrast, the federal automobile exception assumes that the police are conducting an investigatory search, aimed at uncovering evidence of a crime. Gary, 91 A.3d at 104 (adopting the federal automobile exception, which allows warrantless car searches "when there is probable cause").

Gary addressed only the latter. It relieved the police of the burden of showing exigent circumstances; a burden that the police never had to meet for an inventory search. See Lagenella, 83 A.3d at 102 n.6 ("The requirements for a valid inventory search are distinct from those which must be established to justify a warrantless *investigatory* search of an automobile – namely, probable cause to search and exigent circumstances") (emphasis in original);[9]

[9] Defendant's attempt to distinguish Lagenella is misplaced. He claims that the Superior Court overlooked "an important point" made in Lagenella that a vehicle "need not be towed" if it "does not pose a public safety risk" (Appellant's Brief, 24). But this argument goes only to the *propriety* of the tow here, not to the continued existence of inventory searches, which is the sole question presented for review (Appellant's Brief, i). Lagenella is relevant

see also Commonwealth v. Hennigan, 753 A.2d 245, 255 (Pa. Super. 2000) (distinguishing warrantless inventory and investigatory searches on the ground that the latter requires, *inter alia*, exigent circumstances).

Accordingly, Alexander did not invent new law. By the express terms of the decision, this Court merely "return[ed] to the pre-Gary" case law, Alexander, 243 A.3d at 207; case law that recognized the propriety of inventory searches, see, e.g., Lagenella, 83 A.3d at 102 (permitting inventory searches where the police have lawfully impounded the vehicle and their search is reasonable); Nace, 571 A.2d at 1391 ("inventory searches are a well-defined exception to the warrant requirement of the Fourth Amendment"); Commonwealth v. White, 669 A.2d 896, 903 (Pa. 1995) ("an inventory search is permissible when the vehicle is lawfully in the custody of the police and when police are able to show that the search was in fact a search conducted for" the three caretaking purposes of an inventory search); Commonwealth v. Scott, 365 A.2d 140, 144 (Pa. 1976) (permitting inventory search of a car

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to defendant's claim because it shows that this Court recognized the inventory search exception before Gary was decided.

Nevertheless, the officer could reasonably conclude here that it *was* in the interests of public safety to tow defendant's car as it was blocking the entrance to a business and penning in multiple vehicles parked in the lot, and a mechanic at the AAMCO had told the officer that they did not want the vehicle to stay there (N.T. 6/22/21, 11, 16).

where "the inventory procedure was standard practice when a car had been impounded" by police). Therefore, the Superior Court reasonably concluded that Alexander did not bar the inventory search conducted here. Thompson, 289 A.3d at 1110.

The panel here was not alone. Since Alexander was decided, other Superior Court panels have continued to recognize the inventory search exception. See Commonwealth v. Davis, 2022 WL 1604826, at *6 (Pa. Super. 2022) (non-precedential) (trial court properly denied a motion to suppress marijuana found in a car, even though Alexander precluded an investigatory search, as the marijuana would have inevitably been discovered during an inventory search); Commonwealth v. Ferguson, 2022 WL 1087177, at *4-7 (Pa. Super. 2022) (non-precedential) (applying the inventory search exception post-Alexander, but finding, under the narrow facts of the case, that police did not have a basis to tow the car); Commonwealth v. Curry, 2022 WL 1053283, at *8 (Pa. Super. 2022) (non-precedential) (finding post-Alexander that there was no basis for suppression; "had [the officer] refrained from conducting the unlawful search, police would have nonetheless" found the contraband "during a routine inventory search" of Curry's car).

Defendant now disputes the Superior Court's interpretation of Alexander. Since Alexander does not explicitly mention the word

"investigatory," he claims that the decision applies broadly to any warrantless car search (Appellant's Brief, 21). But, as the Superior Court pointed out, accepting his sweeping reading of Alexander would lead to "absurd results." Thompson, 289 A.3d at 1109 n.4. Since "a consent search is a warrantless search," defendant's argument would also make consent searches unconstitutional, Id., even though consent searches do not implicate the same privacy concerns at issue in Alexander, see Commonwealth v. Cleckley, 738 A.2d 427, 433 (Pa. 1999) (the consent exception "adequately protects the privacy rights obtained under Article I, Section 8 of our state constitution").

Although Alexander does not specifically use the word "investigatory," both Alexander and Gary assume the presence of probable cause. See Gary, 91 A.3d at 104 (limiting its holding to a "warrantless search of a motor vehicle that is supported by probable cause"); Alexander, 243 A.3d at 195 (returning to "the pre-Gary" standard, which required exigent circumstances in addition to probable cause). Probable cause requires proof that a person of reasonable caution would be justified in believing the suspect has committed, or is committing, a crime. Commonwealth v. Martin, 101 A.3d 706, 721 (Pa. 2014). Thus, "[t]he standard of probable cause is peculiarly related to criminal investigations, not routine, noncriminal procedures." Opperman, 428 U.S. 370 n.5. There was no need for this Court to use the word "investigatory" in

Alexander because the limited automobile exception it struck down necessarily "involves a fact pattern wherein the officers are searching for evidence of a crime." Thompson, 289 A.3d at 1109.

It would be legally incoherent to say that an officer conducting an inventory search must have probable cause. If the officer here had been searching defendant's car to find evidence of a crime, then the officer, by definition, would not be conducting an inventory search. See Commonwealth v. Corbin, 469 A.2d 615, 616 (Pa. Super. 1983) (finding that the police did not conduct an inventory search where the search was conducted "for the specific purpose of locating potentially incriminating evidence against the driver-appellant, and, thus, was a pretext concealing an investigatory police motive") (citation and internal quotation marks omitted). Thus, it strains credulity to say a case that assumed the presence of probable cause, and made no mention whatsoever of inventory searches (an exception antithetical to probable cause), eliminated the inventory search exception.

For similar reasons, defendant's alleged concern about the "dangerous precedent" this Court would set by continuing to allow inventory searches (Appellant's Brief, 25), is specious. He claims that upholding inventory searches would allow an officer to tow a car and conduct an inventory search anytime he "wishes to search a vehicle for contraband," but lacks the requisite

exigency and probable cause (Appellant's, 25). But, again, if an officer is using an inventory search as a mere pretext to uncover evidence of a crime, then the officer is *not* conducting an inventory search. See Commonwealth v. White, 669 A.2d 896, 903 (Pa. 1995) ("If the search was conducted as part of a criminal investigation, it is not an inventory search."). Moreover, the requirement that the inventory search be pursuant to standard police policy minimizes the discretion of individual officers, which necessarily reduces the risk of an officer pretending that he is conducting an inventory search. See Florida v. Wells, 495 U.S. 1, 4 (1990) (requiring inventory searches to be conducted pursuant to standard police policy avoids giving individual officers "so much latitude that inventory searches are turned into 'a purposeful and general means of discovering evidence of crime").

Alexander also mentioned the comparative ease today of obtaining a search warrant, Alexander, 243 A.3d at 190 (citing Gary, 91 A.3d at 157 (Todd, J., dissenting)), a point relevant to investigatory searches, but meaningless in the context of inventory searches. To obtain a search warrant, the police must prove to a magistrate that there is "a fair probability that contraband or evidence of a crime will be found in a particular place." Commonwealth v. Jones, 988 A.2d 649, 655 (Pa. 2010). But, again, the purpose of an inventory search is *not* to uncover evidence of a crime.

Lagenella, 83 A.3d at 102. Accordingly, even if an officer could obtain search warrants instantaneously (which of course is not the case), that ease would not affect the continued viability of the inventory search exception because an officer could never properly obtain a search warrant to conduct an inventory search.[10] See Opperman, 428 U.S. at 370 n.5 ("courts have held – and quite correctly – that search warrants are not required" for an inventory search, "linked as the warrant requirement textually is to the probable-cause concept"); Commonwealth v. Zook, 615 A.2d 1, 7 (Pa. 1992) ("The justification for [inventory] searches does not rest on probable cause, and hence the absence of a warrant is immaterial to the reasonableness of the search.").

Defendant's claim that "there is no difference in the result" of a warrantless investigatory search and a warrantless inventory search (Appellant's Brief, 21), misses the point. Any search that uncovers evidence of a crime will presumably lead to an arrest. A defendant consenting to a search, for instance, is also at risk of arrest. However, despite the risk, consent is a well-recognized exception to the warrant requirement. Commonwealth v.

[10] Alexander also critiqued Gary for permitting "warrantless searches even in scenarios where it is beyond question that police officers could have sought a warrant before the vehicle is searched." Alexander, 243 A.3d at 190. But the inventory search exception permits nothing of the sort. An officer conducting a proper inventory search, by definition, could not obtain a search warrant.

Bell, 211 A.3d 761, 769-70 (Pa. 2019). The Pennsylvania Constitution balances a defendant's right to privacy against the compelling interests of law enforcement. Commonwealth v. Petroll, 738 A.2d 993, 1003 (Pa. 1999). The critical questions are therefore the purpose of the search and the degree to which the search infringes on the defendant's privacy, Commonwealth v, Livingstone, 174 A.3d 609, 629 (Pa. 2017), not the mere prospect of arrest. There is a drastic difference between the purposes of an investigatory search and an inventory search. See Lagenella, 83 A.3d at 102 ("The purpose of an inventory search is not to uncover criminal evidence, but to safeguard items taken into police custody in order to benefit both the police *and the defendant.*") (emphasis added). Defendant's attempt to blur together the two exceptions should therefore be rejected. The caretaking purpose of inventory searches has nothing to do with Alexander and Gary, both of which assumed the presence of probable cause.[11]

[11] Defendant also argues that the police could not "conduct an 'inventory search'" of an arrestee's "home to protect the police from a potential civil claim of missing items" (Appellant's Brief, 15). But the police in that scenario are not towing the person's home. The police are not exposing the defendant's home to possible theft by transporting the home to another location, and the police are not exposing a tow company to a risk of harm from the contents of the home.

III. The Limits of Defendant's Argument

In his brief, defendant discusses the United States Supreme Court's decision in Opperman for the first time. He argues that Opperman is irrelevant because "[t]his Court, in Alexander, definitively rejected" one rationale Opperman offered for inventory searches (Appellant's Brief, 14).

A brief discussion of Opperman is necessary to understand this argument. There, the Supreme Court found that an inventory search is not "unreasonable" where the police are merely exercising their "community caretaking functions[.]" Opperman, 428 U.S. at 369, 376. "Given the benign noncriminal context of the intrusion," the Supreme Court noted that inventory searches are "overwhelmingly" supported by state courts. Id. at 370, 370 n.6. Although seemingly immaterial to inventory searches, the Supreme Court also mentioned that "the inherent mobility of automobiles creates circumstances of such exigency" that can make "rigorous enforcement of the warrant requirement . . . impossible." Id. at 367.

Defendant now claims that the Superior Court "simply chose to ignore that the issue regarding the 'inherent mobility' of a vehicle had already been overturned by Alexander" (Appellant's Brief, 15). But he overlooks the fact that the Superior Court quoted the very language that defendant cites. Based on that passage, the Superior Court acknowledged that, "to some degree, the

United States Supreme Court's adoption of the inventory search exception relied on views concerning the expectation of privacy in an automobile's contents that Alexander rejects." Thompson, 289 A.3d at 1108.[12] The Superior Court nevertheless correctly concluded that any similarity between the principles of Gary and Opperman did not entitle defendant to relief under the narrow claim that he had raised.

Defendant now asks this Court to ignore Opperman. Since this Court granted *allocatur* to resolve the narrow question of whether an inventory search is "an exception" to Alexander, Thompson, 2023 WL 5028963, at *1, the Commonwealth agrees with defendant that reviewing Opperman is not necessary to his claim. However, in the interests of thoroughness, the Commonwealth must acknowledge that the Superior Court hinted at another argument someone in defendant's position could have drawn from that case. Even if Alexander did not eliminate inventory searches, the Superior Court suggested that Alexander's "rejection of the United States Supreme Court's views on the privacy interests involved in an automobile" might support "some limitations on the inventory search doctrine." Thompson, 289 A.3d at 1111. But the Superior Court correctly found that defendant had *not* raised or

[12] Given that defendant did not reference this language in his own Superior Court brief, it is ironic that defendant is accusing the Superior Court of ignoring an issue that the Superior Court was the first to mention.

preserved that argument. Defendant's written motion gave only generic grounds for suppression (Suppression Mot., ¶¶ 5-6). At the suppression hearing, he clarified that he was raising an Alexander issue, but did not further elaborate on his claim (N.T. 6/22/21, 7-8). The trial court hearing this argument had no reason to look at Opperman. Instead, the trial court reasonably assumed that defendant was requesting a straightforward application of the holding of Alexander (an argument that is meritless for the reasons set forth above) (Trial Court Opinion, 6). If defendant believed that the trial court had taken an improperly narrow view of his claim, he could have articulated that argument in his Superior Court brief. And yet, he did not. Since defendant's claim was not an Opperman claim, and by his own acknowledgement, is not now (Appellant's Brief, 15), the Superior Court correctly narrowed its holding and this Court should do the same.

But even looking at Opperman, the inventory search exception should be upheld. Although Opperman did consider the inherent mobility of an automobile in adopting the inventory search exception, that was only one part of their analysis. Apparently more important to Pennsylvania adopting that exception was the "benevolent purpose" of an inventory search. Commonwealth v. Brandt, 366 A.2d 1238, 1241 (Pa. Super. 1976). The Superior Court in Brandt found that the state Constitution prohibits "only

'unreasonable' searches and seizures." Id. at 1242. Where an inventory search is conducted for the caretaking purposes outlined in Opperman, the Superior Court concluded that an inventory is a "reasonable" search. Id. Not once in that opinion did the Superior Court reference Opperman's discussion of the "inherent mobility" of a car. And this Court's own discussion of Opperman in two inventory search cases similarly focused on the caretaking nature of an inventory search, with no mention of the "inherent mobility" of a car. Lagenella, 83 A.3d at 447-48; Scott, 365 A.2d at 144.

It is also important to remember that inventory searches do not just take place in the context of cars. The police also conduct inventory searches during booking – a search that implicates the same caretaking purposes articulated in Opperman, but with none of the questioned language concerning cars. Nace, 571 A.2d at 1391 ("Intrusions into impounded vehicles or personal effects taken as part of the booking process are reasonable where the purpose is to identify and protect the seized items."). Therefore, even if defendant had relied on Opperman (instead of asking this Court explicitly to disregard it, as defendant as done), Pennsylvania's adoption of the inventory search exception is not tied to any principles Alexander rejected.

Defendant's claim should therefore be rejected. Looking at the lone issue he raised, the Superior Court correctly concluded that Alexander did not

eliminate the inventory search exception. Since Alexander and the case it overruled both assumed the presence of probable cause, it is illogical to suggest that Alexander eliminated inventory searches (an exception that has nothing to do with probable cause). By its express terms, Alexander merely returned the Commonwealth to pre-Gary case law; case law that consistently recognized the propriety of inventory searches. Regardless of whether or not defendant now believes the inventory search exception should survive, Alexander did *not* eliminate that exception, and that is the sole issue preserved for review.

CONCLUSION

For the foregoing reasons, and those stated in the lower courts' opinions, the Commonwealth requests that this Court affirm the judgment of sentence.

Respectfully submitted,

/s/ Kelly Wear

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