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85 MAP 2023

**IN THE**
**SUPREME COURT OF PENNSYLVANIA**
**MIDDLE DISTRICT**

**No. 85 MAP 2023**

**COMMONWEALTH OF PENNSYLVANIA,**
Appellee

**v.**

**MICHAEL THOMPSON,**
Appellant

# BRIEF OF AMICUS CURIAE OFFICE OF THE ATTORNEY GENERAL OF PENNSYLVANIA IN SUPPORT OF THE COMMONWEALTH

Appeal from the February 7, 2023 order of the Superior Court at 289 A.3d 1104, 2632 EDA 2021, affirming the December 13, 2021 Judgment of Sentence of the Delaware County Court of Common Pleas at CP-23-CR-0002233-2020.

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## COUNTER-STATEMENT OF QUESTION PRESENTED

Did *Commonwealth v. Alexander*, which rejected the federal automobile exception and reaffirmed Pennsylvania's limited automobile exception, abolish the warrant exception for car inventory searches previously established by this Court under Article I, § 8?

(Answered in the negative by the Superior Court).

## INTEREST OF AMICUS CURIAE

The Attorney General of Pennsylvania has a special interest in the ongoing development of the criminal law of the Commonwealth, including constitutional issues of search and seizure affecting the conduct of law enforcement officers and officials throughout this Commonwealth. The Attorney General is "the chief law enforcement officer of the Commonwealth," and is authorized "to investigate any criminal offense which he has the power to prosecute," as well as to "convene and conduct investigating grand juries." 71 Pa.C.S. § 732-206. In addition to directly investigating and prosecuting certain crimes, the Office of the Attorney General provides assistance and support to local District Attorneys upon request. Such assistance may include representation of the Commonwealth in any and all stages of criminal proceedings.

**Certification pursuant to Pa.R.A.P. 531(b)(2):**

No person or entity other than the amicus paid in whole or in part for the preparation of this brief, or authored this brief, in whole or in part.

## STATEMENT OF THE CASE

Police impounded defendant's car because it was obstructing traffic and parking. Pursuant to established procedure they conducted an inventory search. Defendant argued that the gun found in that search had to be suppressed because, in his view, this Court abrogated the inventory search exception with respect to automobiles in 2020 when it decided *Commonwealth v. Alexander*. The Superior Court correctly rejected that claim and it should be affirmed.

The Superior Court set forth the facts (footnote 2 and record citations omitted) as follows:

> On July 1, 2020, police and medical personnel were dispatched to an Aamco station at approximately 1:30 p.m., due to an unconscious person in a vehicle. When Officer Joseph Vavaracalli of the Marple Township Police Department arrived, EMT personnel were speaking to Appellant, whose vehicle was blocking two or three other cars. Officer Vavaracalli spoke to Appellant, who appeared lethargic, stumbled as he walked, and was slurring his speech. As Appellant was incapable of operating the vehicle, Officer Vavaracalli decided that it would be towed. Per departmental policy, Officer Vavaracalli performed an inventory search of the vehicle to record its contents.

The trial court's opinion additionally noted that the officers consulted NCIC, which indicated that defendant's driver's license had been suspended for a DUI offense and that he had an open Philadelphia arrest warrant for larceny. As defendant acknowledges (defendant's brief, 7), the inventory search recovered a gun from his car, which led to his being charged with a firearms offense. He moved to suppress the gun before the Honorable Margaret Amoroso, citing the Fourth Amendment and Article I, § 8 of the Pennsylvania Constitution. He argued that this Court's decision in *Commonwealth v. Alexander*, 243 A.3d 177 (Pa. 2020), had abolished the inventory search exception as applied to cars.

Judge Amoroso denied the motion. The court rejected defendant's claim that *Alexander* abolished the inventory search exception, and found that defendant's car had to be moved because it was blocking the entrance to a business as well as several parked cars. It credited Officer Vavaracalli's testimony that he was carrying out department policy requiring an inventory search whenever a vehicle is impounded (Opinion, Amoroso, J., 2-3). In the ensuing non-jury trial Judge Amoroso convicted defendant of violating 18 Pa.C.S. § 6105(a)(1) (persons convicted of certain offenses prohibited from possessing firearms), and sentenced him to 66 to 132 months of incarceration.

On appeal to the Superior Court defendant continued to argue that *Alexander* "eliminated the inventory search exception to the warrant requirement as applied to

automobiles." *Commonwealth v. Thompson*, 289 A.3d 1104, 1107 (Pa. Super. 2023). The Superior Court disagreed, noting that *Alexander* addressed only the federal and Pennsylvania automobile exceptions, and that these doctrines differ from the inventory search exception. Amplifying the latter point, the Court noted that reading references in *Alexander* to warrantless car searches as if they meant 'all warrant exceptions as applied to cars' would lead to absurd results, such as abolishing consent searches of cars. *Id*. at 1109 & n.4.

Defendant successfully sought allowance of appeal on the issue of whether the Superior Court erred by rejecting his claim that an inventory search of a car is an impermissible "exception" to *Alexander*. As shown below, however, the inventory search exception has been accepted by this Court under Article I, § 8 since as early as 1995. *Alexander* said nothing about inventory searches, nor does its reasoning extend to searches for which probable cause and a warrant are not required, such as consent searches, inventory searches, and protective frisks. Defendant's reading of *Alexander* would lead to extreme and absurd results, such as preventing *Terry* frisks during valid car stops.

The Superior Court should be affirmed.

## SUMMARY OF ARGUMENT

*Commonwealth v. Alexander* rejected the federal automobile exception in favor of Pennsylvania's limited automobile exception, because the former conflicts with Article I, § 8 and had never been accepted in a majority opinion. The inventory search exception, in contrast, has been recognized by majority decisions of this Court as consistent with Article I, § 8. The so-called "automobile exception" addresses a particular kind of search: searches for evidence of criminality based upon probable cause. It has nothing to do with non-probable-cause searches, which include not only inventory searches, but also consent searches, border searches, weapons frisks, checkpoints, *etc.* Nothing in *Alexander* suggests that its reasoning concerning probable cause searches was intended to extend to searches for which no warrant is required because probable cause is not required, such as consent searches. Defendant's reading of *Alexander* would not only invalidate inventory searches; it would also nullify consent searches of cars, and would prevent police from protecting themselves during lawful car stops under *Terry v. Ohio* and by search incident to arrest. That result would contradict this Court's long-settled precedent under Article I, § 8, which explicitly approves such searches.

*Alexander* did not abolish the inventory search exception as applied to cars. The Superior Court should be affirmed.

## ARGUMENT

### *Alexander* did not abolish the inventory search exception when it reaffirmed Pennsylvania's limited automobile exception.

In *Commonwealth v. Alexander*, 243 A.3d 177 (Pa. 2020), this Court resolved an ongoing jurisprudential conflict between the federal automobile exception and Pennsylvania's limited automobile exception. The federal rule found approval in *Commonwealth v. Gary*, 91 A.3d 102 (Pa. 2014), but with no majority opinion. In *Alexander*, a majority adopted the reasoning of Justice (now Chief Justice) Todd's dissent in *Gary*, which called for rejection of the federal doctrine in favor of Pennsylvania's "limited" automobile exception. *Alexander* reaffirmed the limited automobile exception as "an established part of our state constitutional jurisprudence." 243 A.3d at 207.

But *Alexander* never mentioned inventory searches, and for a simple reason. The "automobile exception," whether as a matter of federal or Pennsylvania law, is about *probable cause* searches – that is, searches for evidence of crime, based on probable cause. Normally, such searches require a warrant. The "automobile exception" addresses the need for such a warrant in the face of exigent circumstances. This Court's approach to that limited question differs from that of the United States Supreme Court. But, warrant or not, exigency or not, both courts,

when they talk about the "automobile exception," are talking about *probable cause searches*.

It is therefore obvious why *Alexander* did not refer to inventory searches, or car consent searches, or checkpoint stops, or *Terry* frisks, or searches incident to arrest: because none of these are probable cause searches. *Alexander* did not address any warrant exception other than the automobile exception for probable cause searches. Its reasoning has no bearing on searches that do not require a warrant because they do not require probable cause, such as protective frisks, consent searches, and inventory searches.

**1. This Court has approved the inventory search exception under Article I, § 8, and that is consistent with *Alexander*.**

Twenty-eight years ago, in *Commonwealth v. White*, 669 A.2d 896 (Pa. 1995), this Court applied Article I, § 8 and cited with approval the Superior Court decision in *Commonwealth v. Brandt*, 366 A.2d 1238 (Pa. Super. 1976), holding that "an inventory search is permissible when the vehicle is lawfully in the custody of police" and the police are able to show that the search was not done to obtain evidence, *i.e.*, "a search conducted for the purposes of protection of the owner's property while it remains in police custody; protection of the police against claims of lost or stolen property; and protection of the police against danger." 669 A.2d at 903. Although *White* found that the search there did not satisfy the inventory search exception

because it was part of a criminal investigation, it accepted the validity of the exception itself under Article I, § 8.

In *Commonwealth v. Lagenella*, 83 A.3d 94 (Pa. 2013), this Court revisited the inventory search exception, again applying Article I, § 8. As in *White*, it held that the exception was not satisfied in that case—the car was safely parked and there was no reason to impound it—but it reaffirmed the validity of the exception itself. *Lagenella* explained that both the Fourth Amendment and Article I, § 8 permit exceptions to the warrant requirement and that "[o]ne such exception … is an inventory search." *Id.* at 102. Citing with approval *Commonwealth v. Henley*, 909 A.2d 352 (Pa. Super. 2006) (*en banc*), *Lagenella* states that "[a]n inventory search of an automobile is permissible when (1) the police have lawfully impounded the vehicle; and (2) the police have acted in accordance with a reasonable, standard policy of routinely securing and inventorying the contents of the impounded vehicle." This Court concluded that "[a] protective vehicle search conducted in accordance with standard police department procedures assures that the intrusion is limited in scope to the extent necessary to carry out the caretaking function." 83 A.3d at 102-103 (citations, brackets and internal quotation marks omitted); *see also*

*Commonwealth v. Fulton*, 179 A.3d 475, 487 n.16 (Pa. 2018) ("a caretaking inventory search must be conducted pursuant to a standard police procedure").[1]

The inventory search exception originated in *Cady v. Dombrowski*, 413 U.S. 433 (1973), which distinguished the federal automobile exception from the factual situation there in which police took custody of a car, moved it as "a nuisance on the highway," and searched it pursuant to departmental "standard procedure." 413 U.S. at 442-443. Viewing this as "one of the recurring practical situations that results from the operation of motor vehicles and with which local police officers must deal every day," the Court found that such inventory searches are reasonable, whether "to safeguard the owners property," "guarantee the safety of the custodians" or out of "concern for the safety of the general public" should the contents prove to be dangerous. Id. at 446-447.

[1] The police community caretaking function authorizes "removing disabled or damaged vehicles from the highway, impounding automobiles which violate parking ordinances (thereby jeopardizing public safety and efficient traffic flow), and protecting the community's safety." *Id*. "Pursuant to the community caretaking doctrine, certain warrantless actions of police officers do not offend constitutional principles because they are motivated by a desire to render aid or assistance, rather than the investigation of criminal activity." *Commonwealth v. Wilmer*, 194 A.3d 564, 565 (Pa. 2018) (citation omitted). Defendant argues that car inventory searches are inconsistent with *Alexander* because privacy interests exist in both cars and homes (defendant's brief, 15-16). But unlike homes, stopped cars may impede traffic, leading to the police having to move them and become responsible for them. This Court has never held that cars and homes are constitutionally identical.

The chief basis for the inventory search exception is that, because such searches are not conducted in order to look for evidence, "no purpose would be served by requiring a search warrant to conduct an inventory." Wayne R. LaFave, *Search & Seizure*, vol. 3 § 7.4(a) *Inventory of impounded vehicle* (6th ed. 2022). As explained in *South Dakota v. Opperman*, 428 U.S. 364 (1976), where vehicles are impounded for public safety the police "generally follow a routine practice … developed in response to three distinct needs," *viz*., "the protection of the owner's property while it remains in police custody, the protection of the police against claims or disputes over lost or stolen property, and the protection of the police from potential danger." 428 U.S. at 368-369 (citations omitted). In such circumstances a warrant is not required because probable cause is not required. "The standard of probable cause is peculiarly related to criminal investigations, not routine, noncriminal procedures." The ordinary search and seizure model is therefore "unhelpful when analysis centers upon the reasonableness of routine administrative caretaking functions, particularly when no claim is made that the protective procedures are a subterfuge for criminal investigations." Whereas the warrant requirement is linked to the need for a probable cause determination by a neutral magistrate, in the case of an inventory search "the policies underlying the warrant requirement … are inapplicable." 428 U.S. at 371 n.5 (citations omitted).

Elaborating upon the latter point, Justice Powell agreed that the interests protected by the probable-cause/warrant requirement are not implicated by an inventory search. He distinguished investigative searches for evidence, where the probable-cause/warrant requirement "protects the individual's legitimate expectation of privacy against the overzealous police officer," from inventory searches, which "are not conducted in order to discover evidence of crime." The warrant requirement protects privacy by requiring probable cause to evaluated "by a neutral and detached magistrate instead of … the officer engaged in the often competitive enterprise of ferreting out crime." Inventory searches are different. In conducting them an officer is not searching for evidence of a crime and "does not make a discretionary determination to search based on a judgment that certain conditions are present." To the contrary, where inventory searches "are conducted in accordance with established police department rules or policy and occur whenever an automobile is seized," there are "no special facts for a neutral magistrate to evaluate … no significant discretion is placed in the hands of the individual officer: he usually has no choice as to the subject of the search or its scope." 428 U.S. at 382-384 (Powell, J. concurring).

Defendant claims that this crucial distinction doesn't matter. He contends that inventory searches are just an application of the federal "automobile exception," and that the Supreme Court applied that "automobile exception" to uphold an inventory

search in *Cady* (defendant's brief, 20). That is incorrect. *Cady* did not apply the federal "automobile exception," which, as explained above, is an exception not to *all* searches of cars, but only to searches requiring probable cause to search for evidence of criminality. *Cady* thus held that the search there was reasonable "based on two factual considerations": (1) the police had taken "a form of custody or control" over the car by towing it to a private garage "for elemental reasons of safety," and (2) searching it was their "standard procedure." Those factors, not the federal "automobile exception," are what justified the inventory search in *Cady*. 413 U.S. at 442-443.

Defendant also claims the inventory exception grants officers "sole discretion to search a vehicle regardless of the driver's ability to drive or even if the vehicle was removed for a snow emergency" (defendant's brief, 21). To the contrary, as this Court explained in *Lagenella*, police discretion is limited. Officers must follow "a reasonable, standard policy," which assures "that the intrusion is limited in scope to the extent necessary to carry out the caretaking function." 83 A.3d at 102-103.[2]

[2] Defendant complains that such an approach would allow police to search every car that must be towed because it is blocking a snow emergency route. But the record fails to establish that any police department in Pennsylvania has a policy of searching cars during snow emergencies, a situation in which time and resources would be highly limited. Were such a policy ever to be applied, this Court would be free to consider whether the policy is reasonable – an essential component of the inventory search exception that the Court has recognized for over a quarter century.

The inventory exception is therefore consistent with the reasoning of *Alexander*. That case recognized that the premise of the federal automobile exception for probable cause searches is its rejection of a valid privacy interest in automobiles, which is incompatible with "[t]he long history of Article I, Section 8 and its heightened privacy protections." 243 A.3d at 208; *see id*. at 199 ("*Gary* is questionable precisely because it did not decide the Article I, Section 8 question").

In contrast, this Court has historically accepted the inventory exception under Article I, § 8 for reasons that do not conflict with the state constitution. The warrant process, which "protects the individual's legitimate expectation of privacy," is inapplicable to inventory searches which "are not conducted in order to discover evidence of crime." An inventory search is instead a "routine, noncriminal procedure" that protects the owner's property, as well as protecting the police from possible danger or lost property claims. *Opperman*, 428 U.S. at 371 n.5; 382-384 (Powell, J. concurring). This Court has frequently acknowledged that reasonable searches and seizures that do not require probable cause, do not require a warrant. *E.g., Commonwealth v. Yastrop*, 768 A.2d 318, 322-323 (Pa. 2001) (permitting warrantless DUI roadblocks under Article I, § 8 because primary purpose is not to detect evidence of crime but to "reduc[e] the immediate hazard posed by the presence of drunk drivers on the highways") (citation omitted); *Commonwealth v. Tarbert*, 535 A.2d 1035, 1042 (Pa. 1987) (same; observing that while "the privacy

interest guaranteed by Article I, section 8 must be accorded great weight … our government is charged with the responsibility of protecting the safety of its citizens"); *Commonwealth v. Petroll*, 738 A.2d 993, 998, 1000 (1999) (under Article I, § 8 "an administrative search does not always require a showing of probable cause" and "certain closely regulated businesses" are "subject to warrantless administrative searches"); *Commonwealth v. Cleckley*, 738 A.2d 427, 429 (Pa. 1999) (under Article I, § 8 warrant not required for search with voluntary consent); *Commonwealth v. Cass*, 709 A.2d 350, 364-365 (Pa. 1998) (warrantless searches and seizures without probable cause allowed in schools under Article I, § 8 when "carried out based upon neutral, clearly articulated guidelines" because intrusion is intended to "locate and remove from the school illegal contraband that is dangerous, not just to the individual student, but to the entire student body").

Defendant argues that "a search is a search" and complains that there is "no difference in the result between a warrantless investigatory search and a warrantless inventory search" where contraband is found (defendant's brief, 21, 26), as if results determined constitutionality. Of course the opposite is true—that a proper search can find the same evidence as an improper one does not somehow invalidate both. All of the types of searches and seizures noted above, in which probable cause is not required, do not require a warrant. All of them are proper under Article I, § 8. The

rationale for inventory searches is equally valid, and does not conflict with *Alexander*.

**2. *Alexander* did not abolish various unmentioned warrant exceptions**

*Alexander* does not mention the inventory exception, let alone abolish it. Indeed, defendant never explains his conclusion that *Alexander* abolished any unmentioned warrant exception. His view that *Alexander* categorically bars warrantless vehicle searches absent exigent circumstances (*e.g.*, defendant's brief, 9) appears to be based on a sentence fragment: "warrantless vehicle searches require both probable cause and exigent circumstances[.]" 243 A.3d at 207. But when read in context, this passage merely describes the limited "automobile exception," *i.e.*, probable cause searches for evidence of a crime—not inventories, roadblocks, consent, *etc.*, for which probable cause is not an issue. *Id*. ("As a result of today's decision, we return to … our limited automobile exception … *pursuant to which* warrantless vehicle searches require both probable cause and exigent circumstances") (citations omitted, emphasis added).

As the Superior Court noted, defendant's counter-textual reading of *Alexander* would lead to absurd results, such as barring car searches based on consent. 289 A.3d at 1109 n.4. *Alexander* stresses privacy interests under Article I, § 8, yet defendant's reading would paradoxically bar inventory searches of cars but

not of personal possessions. *E.g., Commonwealth v. Zook*, 615 A.2d 1, 7 (1992) (holding it is "reasonable for police to search the personal effects of a person" pursuant to routine booking procedure).

Of far greater concern, defendant's misreading of *Alexander* would prevent the police from protecting themselves from armed suspects during lawful car stops under the reasonable suspicion standard. Defendant appears to believe that, after *Alexander*, police can *never* lawfully acquire evidence from a car except with a warrant based on probable cause. Yet, even aside from the suspicionless seizures mentioned above (*e..g.*, consent and checkpoints), this Court has consistently held under Article I, § 8 that police can conduct a "frisk," including in a car, upon less than probable cause if there is reasonable suspicion to believe the suspect has ready access to weapons. *E.g., Interest of T.W.*, 261 A.3d 409, 417-418, 421 (Pa. 2021) (rejecting probable cause standard for *Terry* frisks under Article I, § 8; "while the protection against unreasonable searches and seizures afforded by the Pennsylvania Constitution is broader than that under the federal constitution, Pennsylvania has always followed *Terry* in stop and frisk cases") (internal quotation marks, brackets and citations omitted); *Commonwealth v. Morris*, 644 A.2d 721, 724 (Pa. 1994) (applying *Terry v. Ohio* and *Michigan v. Long* under Article I, § 8, and holding that if the officer had not searched a bag inside the suspect's car "he would have been taking a grave risk that appellant would remove a weapon from the bag and use it.

Our constitutional safeguards do not require an officer to gamble with his life").[3]

Defendant's view of *Alexander* would also eliminate the search incident to arrest exception where cars are concerned, even though lawful car stops may be the most dangerous of common police duties. Again, this Court has ruled to the contrary under Article I, § 8. *Commonwealth v. White*, 669 A.2d at 902 & n.5 ("Certainly, a police officer may search the arrestee's person and the area in which the person is detained in order to prevent the arrestee from obtaining weapons … We do not

[3] *Terry v. Ohio*, 392 U.S. 1, 23-24 (1968) (allowing police to frisk suspects based on reasonable suspicion given "the need for law enforcement officers to protect themselves"); *Adams v. Williams*, 407 U.S. 143, 148 n.3 (1972) (applying *Terry*; "According to one study, approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile"); *Michigan v. Long*, 463 U.S. 1032 (1983) (*Terry* allows a limited search for weapons in the interior of a car, not just the suspect's person); *Commonwealth v. Hicks*, 208 A.3d 916, 925 (Pa. 2019) ("Although it is beyond cavil that Article I, Section 8, of the Pennsylvania Constitution provides broader protection from unreasonable searches and seizures than its federal counterpart, this Court long has held that the *Terry* doctrine sets forth the reasonableness standard for Article I, § 8 of the Pennsylvania Constitution") (internal quotation marks and citations omitted); *Commonwealth v. Brown*, 996 A.2d 473, 476 (2010) (*Terry* "sets forth the reasonableness standard for Article I, § 8 of the Pennsylvania Constitution. … both constitutions provide equivalent protections for purposes of an investigative detention analysis"). That a gun may be lawfully carried by a suspect makes it no less dangerous. *Adams v. Williams*, 407 U.S. at 146 (need to "allow the officer to pursue his investigation without fear of violence" governs "whether or not carrying a concealed weapon violated any applicable state law"); *United States v. Robinson*, 846 F.3d 694, 696 (4th Cir. 2017) (*en banc*) ("The danger justifying a protective frisk arises from the combination of a forced police encounter and the presence of a weapon, not from any illegality of the weapon's possession") (citations omitted); *see also* Matthew J. Wilkins, *Armed and Not Dangerous? A Mistaken Treatment of Firearms in Terry Analyses*, 95 Tex. L. Rev. 1165, 1167, 1186 (2017) (contending that to construe state carry laws as if they negated danger to police is "a horrible mistake").

propose to invalidate warrantless searches of vehicles where the police must search in order to avoid danger"); *Commonwealth v. Timko*, 417 A.2d 620, 622 (Pa. 1980) ("A police officer may conduct a search of an arrestee's person and the area within an arrestee's immediate control as a matter of course because of the ever-present risk in an arrest situation that an arrestee may seek to use a weapon").

Defendant argues that the inventory search exception "negate[s] the very protections established … in *Alexander*" because officers who "wish to search a vehicle for contraband" could invent "a myriad of reasons" to impound cars in order to search (defendant's brief, 25-26). In other words, he posits that officers will fabricate pretexts to falsely invoke the exception. Here, however, as the Superior Court noted, the trial court "credited the testimony that the tow was conducted pursuant to standard police procedures and was not a subterfuge for investigating criminal activity." 289 A.3d at 1110. There is nothing in the record to suggest that the inventory exception is generally being abused by the police. The safeguard against pretexts—which are possible even in *warranted* searches—is fact-finding by the trial court, not rejection of sound constitutional rules.

*Alexander* said nothing that would effectuate the wholesale abrogation of substantial and well-established constitutional rules, such as the inventory exception, that were not mentioned in its analysis. Defendant's claim that *Alexander* rescinded the inventory search exception for automobiles should be rejected.

**3. Defendant waived his new case-specific arguments.**

In the Superior Court defendant claimed *Alexander* "eliminated the inventory search exception to the warrant requirement as applied to automobiles." *Commonwealth v. Thompson*, 289 A.3d at 1107. This Court granted allowance of appeal on that issue, but he now raises arguments unrelated to that supposed categorical abolition, contending that the exception did not apply in his specific case. These arguments are waived. *Commonwealth v. Cobbs*, 256 A.3d 1192, 1208-1209 (Pa. 2021) (rejecting Commonwealth argument that claim was not cognizable where "[t]his Court did not grant allowance of appeal on that issue") (citation omitted).[4]

Defendant first argues that the inventory exception should not have applied in his case because the police used a private towing company (defendant's brief, 18-19). But impoundment makes police responsible for a car regardless of how it was moved. Defendant's assertion, that a towing company "would not" search, is both unsubstantiated and irrelevant. This Court has established that a police inventory

[4] *Commonwealth v. Coleman*, 230 A.3d 1042, 1048 (Pa. 2020) (refusing to address arguments "outside the scope of the issues that this Court granted allowance of appeal to consider") (citation omitted); *Commonwealth v. Bell*, 211 A.3d 761, 769 (Pa. 2019) ("As appellant failed to preserve his Article I, Section 8 claim we decline to consider it"); *Commonwealth v. Watts*, 23 A.3d 980, 983 n.2 (Pa. 2011) (declining Commonwealth request to address "topics that are outside the scope of our grant of allowance of appeal"); *Commonwealth v. Tilghman*, 673 A.2d 898, 903 n.7 (Pa. 1996) ("These issues are not before this Court, as allowance of appeal was not granted as to them") (citation omitted).

search is permitted because it serves the caretaking function, *Lagenella*, 83 A.3d at 103, which is a public interest.

Next defendant argues that the police should have immobilized his car instead of impounding it (defendant's brief, 24-25), even though it was blocking parked cars and the entrance to a business. While he describes the site as a "private parking lot," such that there supposedly were "no public safety concerns" (*id.*), the trial court found otherwise. While privately owned, the lot was open to the public so that customers could access the business. Immobilizing defendant's car would have continued to block that access while denying owners of the blocked vehicles the use of their cars. That would not have been reasonable.

Finally, defendant contends that the inventory search in his case was a pretext for the real purpose of looking for evidence of a crime, because Officer Vavaracalli thought there might be illegal drugs in his car (defendant's brief, 25). But as already noted, the trial court credited the police testimony that the search was not pretextual. This Court has never held that an inventory search is invalidated by speculative or subjective police suspicion of criminal activity. Rather, the question is whether the search was "in fact" an inventory search rather than one "conducted as part of a criminal investigation." *Commonwealth v. White*, 669 A.2d at 903. That question was decided by the finder of fact. The search was valid and no relief is due.

## CONCLUSION

For these reasons, the order of the Superior Court should be affirmed.

Respectfully submitted,

/s/ Hugh Burns

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Senior Deputy Attorney General

## CERTIFICATE OF COMPLIANCE WITH RULE 531

This amicus brief complies with Pa.R.App.P. 531(b)(3) (length of amicus briefs), as it contains fewer than 7,000 words. *See* Pa.R.A.P. 2135(b) ("the cover of the brief and pages containing the table of contents, tables of citations, proof of service and any addendum containing opinions, signature blocks or any other similar supplementary matter … shall not count against the word count limitations").

## CERTIFICATE OF COMPLIANCE WITH RULE 127

This brief complies with Pa. R. App. P. 127(a) and the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*, which require that confidential information and documents be filed differently than non-confidential information and documents.

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