

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

COMMONWEALTH OF PENNSYLVANIA,
Appellee

v.

MICHAEL THOMPSON,
Appellant

**BRIEF FOR *AMICUS CURIAE*
PENNSYLVANIA DISTRICT ATTORNEYS ASSOCIATION
IN SUPPORT OF THE COMMONWEALTH OF PENNSYLVANIA**

Appeal from the Order dated February 7, 2023, of the Superior Court, No. 2632 EDA 2021, affirming the Judgment of Sentence Imposed on December 13, 2021, by the Court of Common Pleas of Delaware County, Trial Division, Criminal Section, at CP-23-CR-0002233-2020.

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STATEMENT OF AMICUS CURIAE

The Pennsylvania District Attorneys Association is the only organization representing the interests of its member District Attorneys and their assistants in the various counties in the Commonwealth of Pennsylvania. This Court's review of issues involving determinations related to probable cause, the suppression of evidence and the propriety of vehicle searches is of special interest to district attorneys throughout Pennsylvania.

CERTIFICATION PURSUANT TO Pa.R.A.P. 531(b)(2)

No other person or entity has authored any portion of the within brief, in whole or in part, nor have any funds been expended by any person or entity in the preparation and filing of this brief outside of the Association.

STATEMENT OF THE QUESTIONS PRESENTED

(1) Did the Superior Court err when it determined that this Honorable Court's holding in *Commonwealth v. Alexander*, 243 A.3d 177 (Pa. 2020) was not applicable to inventory searches, where this Honorable Court and prior Superior Court opinions have historically held that inventory searches of a vehicle are not subject to the warrant requirement?

STATEMENT OF THE CASE

The Commonwealth has set forth the facts and relevant procedural history and *Amicus* joins in those recitations.

SUMMARY OF ARGUMENT

The Superior Court correctly held that *Alexander* did not eliminate inventory searches and Appellant is not entitled to relief.

Properly executed inventory searches of a vehicle have, in the Commonwealth of Pennsylvania, historically been exempt from the warrant requirement. This Honorable Court's holding in *Alexander* does not alter the landscape. Prior to *Commonwealth v. Gary*, 91 A.3d 102 (Pa. 2014), during the *Gary* time-period, and now under *Alexander*, inventory searches were, and remain, valid. Inventory searches serve to protect both parties. Such searches are not subject to probable cause analysis, nor should they be.

ARGUMENT

The Superior Court appropriately affirmed the denial of suppression by the lower court as properly executed inventory searches of a vehicle have, in the Commonwealth of Pennsylvania, historically been exempt from the warrant requirement. This Honorable Court's holding in *Alexander* does not alter the landscape. Prior to *Gary*, during the *Gary* time-period, and now under *Alexander*, inventory searches were, and remain, valid. As such, Appellant is not entitled to relief.

Inventory searches find their roots in the caretaking function of our police departments. *See South Dakota v. Opperman*, 428 U.S. 364, 96 S. Ct. 3092, 49 L.Ed.2d 1000 (1976); *see also Commonwealth v. Daniels*, 474 Pa. 173 (Pa. 1977). This Honorable Court has on multiple occasions upheld the propriety of inventory searches, vehicle related or otherwise. *See Commonwealth v. Scott*, 469 Pa. 258 (Pa. 1976); *Commonwealth v. Nace*, 524 Pa. 323 (Pa. 1990); *Commonwealth v. Zook*, 532 Pa. 79 (Pa. 1992); *see also Commonwealth v. Lagenella*, 623 Pa. 434 (Pa. 2013).

As this Honorable Court has recognized, the objective of inventory searches is not to find criminal evidence. Rather, inventory searches serve to protect items that come into temporary police custody and

benefits police and the person whose items are police are holding.

Langenella, 623 Pa. at 447, *see also Nace*, 524 Pa. at 327. “Warrantless inventory searches are permitted because a private citizen's property is temporarily in the possession of the police, a circumstance that generates legitimate concerns by both parties.” *Commonwealth v. Wilmer*, 648 Pa. 577 (Pa. 2018).

“In the seminal case of *Opperman*...the high Court observed that inventory searches of impounded vehicles serve several purposes, including (1) protection of the owner's property while it remains in police custody; (2) protection of the police against claims or disputes over lost or stolen property; (3) protection of the police from potential danger; and (4) assisting the police in determining whether the vehicle was stolen and then abandoned.” *Lagenella*, 623 Pa. at 447, *citing Opperman*, 428 U.S. at 369; *see also Nace*, 524 Pa. at 327 (noting that the inventory search is a well-defined exception to the warrant requirement and setting forth goals of such a search). Police cannot, however, just conduct an inventory search of any vehicle. Inventory searches are only permitted 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.”

Lagenella, 623 Pa. at 447, citing *Opperman*, 428 U.S. at 375.

In determining whether a proper inventory search has occurred, the first inquiry is whether the police have lawfully impounded the automobile, i.e., have lawful custody of the automobile. The authority of the police to impound vehicles derives from the police's reasonable community care-taking functions. Such functions include 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.

The second inquiry is whether the police have conducted a reasonable inventory search. 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.

Lagenella, 623 Pa. at 448, citing *Commonwealth v. Henley*, 909 A.2d 352, 359 (Pa. Super. 2006)(*en banc*). “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.’” *Lagenella*, 623 Pa. at 448, citing *Opperman*, 428 U.S. at 375.

Of course, inventory searches are not an unlimited means by which police can search any and every car. Cases addressing inventory searches from this Honorable Court and the Superior Court make clear the limitations, which is why the warrant requirement is not applicable for this limited exception. For example, in *Lagenella*, this Honorable

Court found that cars that are merely immobilized, and not impounded, cannot be subject to an inventory search. “[A] warrantless inventory search of a vehicle is permissible only when the police have lawfully towed and stored, or impounded the vehicle.” *Lagenella*, 623 Pa. 452-453.

The Superior Court has had the opportunity to address more specific instances of inventory searches, finding proper searches: “...(1) in the interests of public safety and efficient movement of traffic; (2) where no one claimed ownership of the automobile; (3) where items of value were observed by the police in plain view and the automobile was located in a high-crime area; and (4) pending the obtaining of a search warrant.” *Commonwealth v. Hennigan*, 753 A.2d 245, 256 (Pa. Super. 2000)(listing cases). Cases where inventory searches have not been upheld have turned on whether the search was, in fact, investigatory or beyond a search necessary to inventory contents. *Id.* at 256-257; *see Commonwealth v. White*, 543 Pa. 45 (Pa. 1995); *Commonwealth v. Anderl*, 477 A.2d 1356 (Pa. Super. 1984). A key element to whether a search truly qualifies as an inventory search has often been whether the police are acting pursuant to a policy or regulations (inventory policy) promulgated by their department to effectuate the search. *See Colorado v. Bertine*, 479 U.S. 367, 374, 107 S. Ct. 738, 93 L.Ed.2d 739 (1987)(“...reasonable police

regulations relating to inventory procedures administered in good faith satisfy the Fourth Amendment, even though courts might as a matter of hindsight be able to devise equally reasonable rules requiring a different procedure.”). Outside of Pennsylvania, other jurisdictions also recognize the limited inventory exception to the warrant requirement. *See State v. Ramos*, 536 P.3d 876 (Idaho 2023); *State v. Banks-Harvey*, 152 Ohio St.3d 368 (2018); *People v. Brown*, 415 P.3d 815 (Colo. 2018); *Cobb v. Commonwealth*, 509 S.W.3d 705 (Ky. 2017); *State v. Paynter*, 234 Md. App. 252 (2017); *State v. Stallings*, 60 A.3d 1119 (Del. Super. 2012); *Commonwealth v. Ellerbe*, 430 Mass. 769 (2000); *People v. Toohey*, 438 Mich. 265 (1991).

Given the established history of the inventory search exception to the warrant requirement in Pennsylvania and around the country, Appellant’s contention the *Alexander* somehow alters the landscape holds no weight. Prior to this Honorable’s Court’s decision in *Gary*, police needed a warrant to search a vehicle unless an exception to the warrant requirement applied, and the inventory search was one such exception. Appellant has provided no case law to support a contention that when *Gary* was relied upon in Pennsylvania that inventory searches were no longer valid or used, because that is simply not the case. While *Gary*

allowed for officers to dispense with the need to obtain a warrant when searching a vehicle, that applied in cases where probable cause existed for the search. Probable cause is not the standard in cases where an inventory search was performed. Rather the focus is on the caretaking nature of the police action and compliance with reasonable standard police procedures/policies. Other than Appellant's protestations, he has offered no real legal support for a finding that under *Alexander*, some different standard applies when considering the propriety of inventory searches or that inventory searches are no longer viable. There is nothing in this Honorable Court's decision in *Alexander* which leads to the conclusion that the exceptions to the warrant requirement that have been recognized by this Honorable Court, of which inventory searches are one, no longer exist.

Proper inventory searches are divorced from a criminal search – the focus is on securing property for a period and safeguarding it for the person involved and ensuring that the police are also protected from any claims of malfeasance. Of course, as can be seen from the need for the exception, there are times when evidence of criminal activity is found. There are also times when no evidence of criminal activity is found. The point of these types of searches, however, is not centered around what

police might find. It is centered on protecting the parties and safeguarding property for a period of time. Inventory searches serve a vital purpose which is why probable cause is not the law that governs. While case law makes clear that such searches are not a substitute for getting a warrant if one is required, the ability to perform an inventory search should not be taken away from police. The plethora of cases on inventory searches provide police with ample guidance on how to properly conduct said searches. *Alexander* does not stand for the proposition that the law governing inventory searches is no longer viable.

CONCLUSION

WHEREFORE, the Pennsylvania District Attorneys Association, *amicus curiae*, respectfully requests that the Superior Court's Judgment and Order be affirmed.

Respectfully submitted,

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Certification

I hereby certify pursuant to Pa.R.A.P. 531 (b)(3) that this amicus brief does not exceed the 7,000-word count limit.

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

 /s/ Maureen Flannery Spang
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Date: December 1, 2023

PROOF OF SERVICE

I, Maureen Flannery Spang, hereby certifies that on December 1, 2023, the foregoing amicus brief was filed through this Court's PACFILE electronic filing system and thereby served the following parties:

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