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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

APPELLANT'S BRIEF

Appeal from the order of the Superior Court at No. 2632 EDA 2021 dated February 7, 2023 affirming the Judgment of Sentence of the Delaware County Court of Common Pleas at No. CP-23-CR-0002233-2020 dated December 13, 2021.

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QUESTIONS INVOLVED

1. Did the Superior Court of Pennsylvania err in affirming the lower court's denial of Appellant's motion to suppress when it determined Article 1, Section 8 of the Pennsylvania Constitution and the Supreme Court Decision in *Commonwealth v. Alexander*, 243 A.3d 177 (Pa. 2020) did not apply to an inventory search? Specifically, did the superior court err in ruling that the constitutional protections against unreasonable searches and seizures set forth in *Alexander* are not applicable to an inventory search, nor is an inventory search subject to the requirements that a warrantless search must have specific exigent circumstances as set forth in *Alexander*?

2. Did the Superior Court of Pennsylvania err in determining that neither a search warrant nor exigent circumstances for a warrantless search are required to conduct an inventory search of an individual's vehicle and as such, the Pennsylvania Supreme Court decision in *Alexander* does not apply in Appellant's case?

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STATEMENT OF THE STANDARD AND SCOPE OF REVIEW

The standard of review that an appellate court must employ when evaluating a Commonwealth appeal from an order suppressing evidence is well settled:

> When the Commonwealth appeals a suppression order, we consider only the evidence from the defendant's witnesses together with the portion of the Commonwealth's evidence which is uncontroverted. Our standard of review is limited to determining whether the suppression court's factual findings are supported by the record, but we exercise *de novo* review over the suppression court's conclusions of law.

Commonwealth v. Nester, 709 A.2d 879, 880-81 (Pa.1998).

Scope of Review

The scope of review regarding a decision to grant or deny a motion to suppress evidence is limited to considering only the evidence which was presented at the suppression hearing. *See* in re: L.J., 622 Pa. 126, 79 A.3d 1073, 1085-87 (2013); *Commonwealth v Moser*, 188 A.3d 478, 482 (Pa. Super. 2018).

ORDER IN QUESTION

Judgement of Superior Court of Pennsylvania on February 7, 2020 affirming the sentence of the lower court and the trial court's denial of Appellant's motion to suppress.

TABLE OF AUTHORITIES

Cases

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STATEMENT OF JURISDICTION

Jurisdiction is inferred upon this court by Pa.R.A.P.1112 and 42 Pa. C.S. 724(a) by order of this Court granting Petition for Allowance of appeal on August 8, 2023, from a decision of the Superior Court of Pennsylvania rendered on February 7, 2023.

STATEMENT OF THE CASE

On July 1, 2020, Appellant, Mr. Thompson was observed sleeping in the driver's seat of his car which was parked in a commercial parking lot. A call for an unconscious person was placed to EMT personnel and the police. EMT personnel responded first to the scene where they began to render medical assistance to Mr. Thompson. Soon thereafter, Officer Vavaracalli of Marple Township Police Department responded to the scene. (RR. 10, L 180-81)

Officer Vavaracalli observed Thompson being treated by EMT and observed Mr. Thompson to be lethargic, speaking with slurred speech and exhibiting restricted pupils. The officer ran a check of Mr. Thompson driver's license and discovered he was operating his vehicle on a DUI suspended license. A further check by the officer determined that Mr. Thompson had an outstanding arrest warrant from Philadelphia on a charge of larceny. (RR. 26, L 204-10).

Appellant Thompson was then arrested on the outstanding warrant and suspicion of Driving Under the Influence. Thompson's vehicle was still parked in the commercial parking lot. While no one from the commercial parking lot called for a tow truck to have the vehicle removed from the lot, the officer called a private towing company for a tow truck to tow Mr. Thompson's car.

Prior to the towing company towing the vehicle, the officer performed what he described as an inventory search of Mr. Thompson's vehicle. He did not request Mr. Thompson's consent to search the vehicle, nor did he take any steps to secure a search warrant.

Upon conducting the inventory search, the officer seized an unloaded 28-caliber revolver among Mr. Thompson's belongings. Thompson was then charged with Driving with Suspended License DUI related, Possession of a Firearm, and Firearms Not to be Carried without a License.

In the Court of Common Pleas of Delaware County, Mr. Thompson's case was assigned to the Honorable Judge Margaret Amoroso. Mr. Thompson filed a timely Motion to Suppress alleging that the officer's inventory search of his vehicle was in violation of Article 1, Section 8 of the Pennsylvania Constitution as determined by the Pennsylvania Supreme Court in *Commonwealth of Pennsylvania v. Alexander,* 243 A.3d 177 (Pa. 2020). More specifically, Mr. Thompson asserted that the officer, pursuant to *Alexander*, was required at a minimum to secure the

vehicle and request an independent magistrate to determine if there was sufficient probable cause to issue a search warrant to search Mr. Thompson's vehicle. Mr. Thompson argued in his motion that an inventory search is a warrantless search and, per *Alexander*, lacks the exigent circumstances to justify a warrantless search of his vehicle. A suppression hearing was held on Appellant's Motion to Suppress on June 22, 2021. Judge Amoroso denied that motion on September 7, 2021.

Appellant proceeded to a stipulated non-jury trial on October 22, 2021. Judge Amoroso found Appellant guilty of Possession of Firearm on October 29, 2021. Appellant was sentenced by the court on October 29, 2021. Appellant filed a Motion to Reconsider Sentence before the court on November 5, 2021, which was granted on December 14, 2021. Appellant was then resentenced to no less than 66 months to a maximum of 132 months on December 13, 2021. Appellant filed a timely appeal for the Superior Court of Pennsylvania on December 15, 2021. The superior court denied Appellant's appeal on February 7, 2023. Appellant then filed a timely petition for allowance of appeal to the Pennsylvania Supreme Court on March 6, 2023. The Pennsylvania Supreme Court granted allowance on August 8, 2023.

SUMMARY OF ARGUMENT

The Superior Court of Pennsylvania erred in affirming the trial court's denial of Appellant's Motion to Suppress on the grounds that an inventory search of an individual's vehicle is not subject to the protections of Article 1, Section 8 of the Pennsylvania Constitution and this Court's decision in *Commonwealth of Pennsylvania v. Alexander*, 243 A.3d 177 (Pa. 2020).

ARGUMENT FOR APPELLANT

I. In order to conduct a constitutionally valid inventory search of a vehicle, this Court's decision in *Commonwealth v. Alexander*, 243 A.3d 177 (Pa. 2020), requires that the police possess either a valid search warrant or both an exigent circumstance and probable cause to justify a warrantless search.

In *Commonwealth v. Alexander*, the Pennsylvania Supreme Court determined that, absent a valid search warrant or sufficient exigent circumstances, a search of a vehicle is no longer legally justified under Article 1, Section 8 of our Pennsylvania Constitution. A warrantless inventory search that lacks a exigent circumstances or a search warrant is merely a police officer's unilateral decision to circumvent the law established by *Alexander* and is in violation of the protections of Article 1, Section 8 of the Pennsylvania Constitution.

In *Alexander*, this Court conducted an exhaustive review of the history of the automobile exception and its impact on the requirement of a search warrant that

has been applied and implemented in the state of Pennsylvania for decades. This Court ruled:

> For the reasons discussed in this opinion, we hold Article 1, Section 8 affords greater protection to our citizens than the Fourth Amendment and reaffirms our prior decisions; the Pennsylvania Constitution requires both showing of probable cause and exigent circumstances to justify a warrantless search of a vehicle.

Alexander, 243 A.3d at 181.

The Superior Court of Pennsylvania, in its opinion affirming the lower court's denial of Appellant's motion to suppress, devoted the majority of its argument to the discussion of inapplicable pre-*Alexander* federal case law that relied solely upon the federal Fourth Amendment and the now defunct automobile exception. This Court, however, made clear that Article 1, Section 8 of our Pennsylvania Constitution grants greater protection to its citizens against warrantless searches than the Fourth Amendment of the U.S. Constitution.

In its review of federal case law, the superior court cited *Cady v. Dombrowski*, 413 U.S. 433 (1973), which recognized that police officers frequently perform tasks unrelated to criminal investigation. For example, police officers often investigate vehicle accidents in which there is no claim of criminal liability and they engage in what the *Cady* court referred to as "community caretaking functions." This community caretaking function is supposedly totally

"divorced from detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Id.* at 441.

In *Cady*, a drunk off-duty Chicago police officer crashed his rented vehicle into a bridge in the state of Wisconsin. *Id.* at 434. The vehicle was disabled on the side of the highway when police approached, then it was towed to a privately-owned garage. *Id.* Local police officers then went to the garage to search the vehicle based on their belief that Chicago officers are required to always carry their service firearm. *Id.* In searching for the firearm, the officers discovered evidence that ultimately led to a murder conviction. *Id.*

In *Cady*, the Court stated that the warrantless search was justified because police reasonably believed "the officer's service revolver would be a hazard if left in the trunk of the abandoned car" and the police have a duty "to protect the public from the possibility that a revolver would fall into untrained, malicious hands." *Id.* at 446-47. However, the mere fact that the individual in the rented vehicle is a police officer does not exclude him from the protection set forth by this Court in *Alexander*. *Alexander* applies a totally different standard for the search of an automobile, regardless of the operator, which is the requirement of a search warrant or exigent circumstances.

In *Cady*, there were no exigent circumstances to justify the warrantless search of the rented automobile. The police did not return to search for the revolver

until 2-1/2 hours after the automobile had been left in the custody of a private garage, and the police never even asked the accused whether he was carrying a firearm, and, if so, where it was located, or if he would consent to the search. These exact facts assessed through an *Alexander* lens would compel the court to reach a different conclusion (i.e., the Pennsylvania Constitution imposes the requirement to apply for a search warrant).

Not only is *Cady* not legally applicable here, but it is also factually incompatible with Appellant's case: Appellant is not a police officer; his vehicle was parked in a private parking lot, his vehicle was not disabled on a highway; officers did not reasonably believe that he had a gun in the vehicle prior to searching it; and there was no valid greater concern of "protecting the public" from anything in his vehicle or on his person based on the officer's knowledge at the time of searching his car.

The superior court's opinion further relied upon the United States Supreme Court case *South Dakota v. Opperman*, 428 U.S. 364 (1976) affirming the automobile exception. The Court held that an inventory search is reasonable "where the process is aimed at securing or protecting the car and its contents." *Id.* at 373. In justifying its reasoning, *Opperman* cited *Cady*'s rationale regarding searches. In *Opperman*, the police impounded and towed a vehicle that was parked illegally in a restricted zone after it received multiple parking tickets. *Id.* at 365.

The officer, in plain-view, observed many items of personal property throughout the vehicle; he then decided to conduct an inventory search of the vehicle. *Id.* at 366. Upon conducting the inventory search, the officer found marijuana contained in a plastic bag. *Id.* When the defendant appeared at the police station to claim his vehicle, he was arrested on charges of marijuana possession. *Id.* The Court concluded that the search was reasonable as the police were "indisputably engaged in a caretaking search of a lawfully impounded automobile." *Id.*

Cady and *Opperman* are inapplicable cases for a multitude of reasons. Primarily, it is clear *Alexander* has declared that Article 1, Section 8 of the Pennsylvania Constitution affords greater protections to its citizens than the federal Fourth Amendment, thus the Fourth Amendment standard used in both *Cady* and *Opperman* to justify the search of a vehicle simply does not apply to this case. Further, as 1973 and 1976 cases, *Cady* and *Opperman*, respectively, reflect a rather anachronistic perspective that fails to take into account the modern implications that have ultimately led to the this Court's holding in *Alexander* in 2020, such as an individual's standard use of today's automobiles.

Since the implementation of *Cady* and *Opperman*, Pennsylvania courts have chosen not to follow federal law, but rather to "chart an independent course in our jurisprudence under Article 1, Section 8 of our own Constitution." *Alexander,* 243 A.3d at 190 (citing *Edmunds*, 586 A.2d at 141). Since Article 1, Section 8 of the

Pennsylvania Constitution affords greater protections to its citizens than its federal counterpart, it is relatively trivial to rely upon the federal application from half a century ago, rather than Article 1, Section 8 of the Pennsylvania Constitution as applied in *Alexander*.

The superior court's opinion further discussed factors that were pertinent to *Opperman*'s "reasonableness" analysis. One of these factors were that "the inherent mobility of automobiles creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible." *Id.* at 367 (citing *Carroll v. United States*, 267 U.S. 132, 153-54 (1925)). In citing *Opperman*, the superior court continued, "less rigorous warrant requirements govern because the expectation of privacy with respect to one's vehicle is significantly less than that relating to one's home or office." *Id.* This is exactly the opposite of what this Court dictated in *Alexander*. This reduced expectation of privacy, according to the *Opperman* Court, is due to the fact that "vehicles are subjected to pervasive and continuing governmental regulation and control." *Id.* at 368. The superior court stated that these factors eventually morphed together to justify the federal "automobile exception." *Id.*

This Court, in *Alexander*, definitively rejected the aforementioned rationale stated in *Opperman* and adopted by the superior court in affirming the lower court's denial of Appellant's motion to suppress. The superior court simply chose

to ignore that the issue regarding the "inherent mobility" of a vehicle had already been overturned by *Alexander*:

> Article 1, Section 8 'was intended to protect an individual's privacy interest in **all** of his or her possessions or things in **any** place they may be,' including a vehicle.

243 A.3d at 190.

This Court, in rendering its *Alexander* opinion, adopted Justice Todd's compelling analysis in her dissent in *Commonwealth v. Edmunds,* 586 A.2d 887 (Pa. 1991) as their own. *Id.* at 202. Justice Todd stated that Article 1, Section 8 recognizes a "robust individual right of privacy in one's papers and possessions, and protects that privacy right through its warrant requirements for searches of 'any place' such items may be found." *Id.*

Justice Todd further concluded that it is a "plain fact that today's automobile is not just used to transport persons, but, also, to store and transport a myriad of their private belongings. *Id.* Nor is a car just a car; most Americans view their vehicle "as something more than just a means of transportation." *Id.*

Just as law enforcement could not remove a person who has an active arrest warrant from inside or outside of their home and then, before securing the residence, conduct an "inventory search" of the home to protect the police from a potential civil claim of missing items, they cannot search a person's vehicle, either

as a search incident to an arrest or an inventory search. The law is to protect an individual's rights towards "***all***" of his possessions in "***any***" place they may be. There can be no inventory search of a home, nor can there be an inventory search of a citizen's vehicle.

This Court stated in *Alexander*, that Article 1, Section 8 requires the Court to ask whether the violation of privacy interests inherent in allowing widespread warrantless searches is compatible with the Pennsylvania Constitution. *Id.* at 204. This Court solidified its position on this matter in answering "no" to the aforementioned question. *Id.* Rather, as declared in *Alexander*, the Pennsylvania Constitution prioritizes the protection of privacy rights caused by unreasonable searches above the need to present incriminating evidence in court and to assist law enforcement efforts. *Id.*

In her analysis of warrantless searches of automobiles, Justice Todd noted: "Pennsylvania has long been at the constitutional forefront in recognizing the vital necessity of prior judicial approval of searches conducted by government officials obtained through the warrant process in order to maintain the fundamental right of security from unlawful search and seizures." *Id.* at 198. Justice Todd acknowledged the fact that in today's day and age, obtaining a search warrant is much easier and simpler than it used to be. In fact, Pennsylvania has "purposefully sought to

encourage the use of warrants to conduct searches by making them far easier for police officers to obtain in conducting field investigations." *Id.* at 190.

Further, "many of the precedents that found it impracticable for officers to obtain warrants could not account for later technological developments that have significantly eased that burden." *Id. Alexander* notes that while warrants took considerably longer to obtain in the 1920s, the United States Supreme Court in *Carroll* still, even then, expressed a preference for warrants: "I consider police officers eminently capable as trained professionals of making the basic assessment of whether it is reasonably practicable for them to seek a warrant, under all the circumstances existing at the time they wish to search the automobile." *Id.* at 191 (citing *Carroll*, 267 U.S. at 159). The general rule is that a warrant is required to search a vehicle. *Id.* at 185 (citing *Olin Mathieson C. Corp v. White C. Stores*, 199 A.2d 266, 268 (Pa. 1964)).

Alexander, in citing *Commonwealth v. Hernandez*, 935 A.2d 1275, 1280 (Pa. 2007), noted that Pennsylvania had not fully adopted the federal automobile exception: "under the federal Constitution, law enforcement personnel may conduct a warrantless search of an automobile as long as probable cause exists...we have not adopted the full federal automobile exception." *Alexander*, 243 A.3d at 160. *Hernandez* further states that the "dual requirement of probable

cause plus exigency is an established part of our state constitutional jurisprudence." *Id.*

Alexander, in expressing the full requirement of a search warrant or exigent circumstances, notes that even the good faith of a police officer cannot override the constitutional protections awarded to the Citizens of Pennsylvania:

> This presumes we are free to ignore the Pennsylvania Constitution simply because it makes the law enforcement more difficult or, worse, that we are able to determine the law based on what we think is good for the law and order in society. We are not a policy branch; we cannot ignore constitutional commands even if they make the work of police and prosecutors hard.
>
> Deterrence is not the focus in determining reasons for violations of Article 1, Section 8, citizens possess such rights, even where a police officer in 'good faith' carrying out his or her duties inadvertently invades the privacy or circumvents the strictures of probable cause.

Id. at 204, 214 n.2 (citing *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 325 (2009)).

In the instant case, there was a private towing company called by law enforcement who decided to search the vehicle before it was towed by the private tow company. The towing company, as bailee, would have locked and secured the

vehicle in order not to incur liability for allegations of missing items from the vehicle. They certainly would not have searched it. There was nothing that gave the officer the right to go into that vehicle and search the vehicle without a search warrant.

Alexander, in upholding the citizens' rights to be protected by the constitutional rights guaranteed to the citizens noted, "suppression cases only arise when incriminating evidence is found. By definition, courts will rarely encounter the countless number of cases in which an officer unjustifiably concludes that probable cause was present, but the search turns up nothing." *Id.* at 190. Article 1, Section 8 recognizes a person's individual right to privacy in one's papers and possessions and protects that primary right through its warrant requirement for the search of "any place" such item may be found. *Id.*

The Commonwealth's argument before the superior court was that an inventory search is somehow not a search, rather it's a right given to law enforcement to protect itself from a civil claim of missing items in the vehicle. That a potential civil claim against the police for the mere act of calling a private company to tow a vehicle overrides an individual's constitutional rights as set forth in Article 1, Section 8 of the Pennsylvania Constitution.

In reality, by undertaking a warrantless inventory search, the officer is shifting legal responsibility for any missing item onto the truck company. The

vehicle owner would claim the personal property he had in the car was missing when he picked up the vehicle. The tow company, being the responsible party for the contents in the vehicle as bailee, is now subject to potential legal liability for the missing items, even though they never entered the vehicle.

Alexander goes forth to say "our Constitution prioritizes the protection of privacy caused by unreasonable search above the need to present incriminating evidence in the court to assist law enforcement efforts." *Id.* at 204. This Court, in its conclusion, ruled "obtaining a search warrant is the *default rule*. If an officer proceeds to conduct a "warrantless search," a reviewing court will be required to determine whether exigent circumstances existed to justify the officer's judgement that obtaining a warrant was not reasonably practical. *Id.* at 208. (emphasis added).

In this instance, the superior court's opinion made no mention of any evidence that, (1) there was probable cause, (2) there were exigent circumstances and, (3) obtaining a warrant was not reasonably practical.

The very crux of the superior court's opinion is that *Alexander* only applies to investigatory searches, not inventory searches and therefore are not subject to the aforementioned constitutional protections. The court claims that inventory searches fall under "community caretaking," and thus do not involve probable cause...which is the very same position that *Cady* argues in support of the automobile exception under the Fourth Amendment. However, the superior court

fails to mention any Pennsylvania case law that justifies that argument. Furthermore, not once in the 33-page-long *Alexander* opinion is the word "investigatory" even mentioned; rather, throughout its opinion, *Alexander* continuously reiterates that it applies to "searches."

In arguing that *Alexander* only applies to investigatory searches, the superior court fails to recognize that there is no difference in the result between a warrantless investigatory search and a warrantless inventory search—both aim to first search the contents of a person's vehicle and if, in either type of search, the officer finds contraband, the suspect will be arrested for the possession of that contraband and subjected to the resulting criminal consequences. Thus, under both the superior court's and Commonwealth's theory, even in the clear absence of probable cause or a valid search warrant or sufficient exigent circumstances, an officer has the 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, by calling for a towing company to tow the individual's car. The superior court's and Commonwealth's theory go against the very tenets of the law as shaped by *Alexander*, and more broadly Article 1, Section 8 of our Pennsylvania Constitution.

In focusing almost solely on federal case law in its rendering opinion, the superior court makes only a slight mention of two Pennsylvania cases that actually pertain to an inventory search. *Commonwealth v. Heidelberg*, 267 A.3d 492 (Pa.

Super. 2021) was the first case the superior court mentioned in regards to an inventory search. In *Heidelberg*, the appellant was arrested after his vehicle was towed and inventory searched due to it being illegally parked on a city street with clear bags of crack cocaine in plain view. *Id.* at 505. The arrest occurred before *Alexander* was decided, and thus the court refused to retroactively apply such case law on appeal. *Id.* at 503. The *Heidelberg* court further stated that the appellant had "not cited *Alexander* in his appellate briefs, which he filed months after *Alexander* was decided. Accordingly, we do not apply *Alexander*." *Id.* After admittedly refusing to apply *Alexander*, the court claimed that the bags of cocaine found in the vehicle would have been lawfully and inevitably discovered through an inventory search. *Id.* at 505.

The only reason the *Heidelberg* court refused to apply *Alexander* was because of a mere technicality involving the contents and timeliness of appellant's appeal. And since the court did not apply *Alexander*, it did not consider the lack of search warrant or exigent circumstances that would have otherwise had to have been present in order to justify an inventory search. Had the appellant not waived the *Alexander* issue, the court would have applied *Alexander* and would have been obliged to reach a different conclusion that is consistent with Article 1, Section 8 of the Pennsylvania Constitution.

The second case the superior court briefly mentioned was a pre-*Alexander* case, *Commonwealth v. Lagenella*, 83 A.3d 94 (Pa. 2013). In *Lagenella*, the appellant was pulled over for failing to use a turn signal and was subsequently arrested after the officer discovered appellant had a suspended driver's license and a myriad of contraband in the vehicle. *Id.* at 96. The vehicle was stopped at the side of the road, about two feet from the curb; it was not blocking traffic. *Id.* The officer informed appellant that the Department's towing policy requires the officer to set up the impoundment and towing of the vehicle, which would also require him to do an inventory search. *Id.* at 97. This Court ruled in appellant's favor, because there was no basis for the officer to tow appellant's vehicle, the inventory search of appellant's vehicle was improper, and the fact that the officer conducted the vehicle inventory search in accordance with standard inventory policy was immaterial. *Id.* at 106. This Court further held that because the vehicle did not pose a public safety risk, it was permitted that the vehicle be immobilized, but not impounded. *Id.* at 100. The vehicle was not disabled or damaged; there were no items of value in plain view; and the parked vehicle did not impede the flow of traffic. *Id.*

Lagenella states that an inventory search 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. *Id.* at 102. An inventory search based solely on

the immobilization of the vehicle is improper. *Id.* at 95. This Court has made clear that "if the search was conducted as part of a criminal investigation, it is not an inventory search." *Id.* (citing *Commonwealth v. White*, 669 A.2d 896, 903 (Pa. 1995)).

Indeed, while *Lagenella* predates *Alexander*, this Court made an important point that the superior court here overlooked: if the vehicle does not pose a public safety risk, it need not be towed and subjected to an inventory search. In the instance, such as in Appellant Thompson's case and in *Lagenella*, where there is no one to take physical control of the vehicle, an officer is faced with two options: immobilize the vehicle in place, or if it poses a public safety concern, have it towed and stored at an impound lot. *Id.* at 100. A vehicle is generally immobilized in place by means of a "boot" or other locking device; it is generally initiated by a judicial order. *Id.* at 103 n.8. When the vehicle is immobilized, no inventory search takes place. *Id.* Rather, the operator of the vehicle has 24-hours from the time of immobilization to appear before the appropriate judicial authority; furnish proof of registration and financial responsibility by the owner of the vehicle, as well as evidence that the operator of the vehicle has complied with the pertinent provisions of the Motor Vehicle Code; and obtain a certificate of release. *Id.* If a certificate of release is not obtained within 24-hours, then the vehicle will be towed and stored by the appropriate towing and storing agent. *Id.* This is referred to as the "24-hour

rule." *Id.* (citing 75 Pa.C.S.A. §6309.2(a)-(d)). As Appellant Thompson was parked in a private parking lot at the time of his arrest, there were no public safety concerns with regards to the location of the parked vehicle.

While an inventory search is supposed to be completely divorced from "criminal investigation," Officer Vacaracalli admitted that there was some indication of possible criminal activity occurring with Appellant and that there may be some evidence of illegal drugs inside the vehicle to support that position. In accepting the officer's actions as appropriate, both the trial court and the superior court asserted that the written inventory policy of Marple Township supersedes the constitutional protections afforded to Mr. Thompson as set forth in *Alexander*, and that the police are simply free to enter Thompson's vehicle and conduct a search of all his personal belongings within that vehicle.

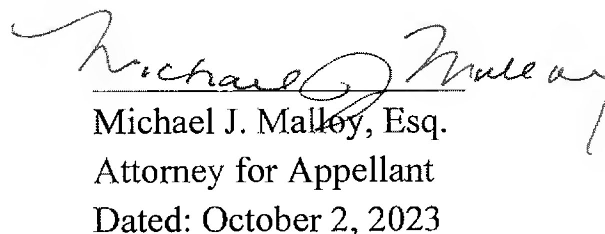
To assent to the superior court's argument would not only be unconstitutional, but it would set a dangerous precedent that would allow police to perform warrantless searches that negate the very protections established by this Court in *Alexander*. If an officer wishes to search a vehicle for contraband, but believes there is no probable cause or exigent circumstances, they could determine to tow the vehicle for a myriad of reasons and then, per his or her department policy, enter into the vehicle to search through all of the personal belongings of the driver, such as a purse, briefcases, suitcases, etc. To allow an officer to conduct a

warrantless search in the absence of an exigent circumstance is to circumvent an individual's rights under *Alexander,* and more broadly Article 1, Section 8 of our Pennsylvania Constitution. Ultimately, a search is a search, is a search, and *Alexander* has made clear that citizens are protected against warrantless searches, regardless of what title it is given.

CONCLUSION

For the foregoing reasons, the Superior Court of Pennsylvania was incorrect in affirming the trial court's denial of Appellant's Motion to Suppress. Article 1, Section 8 of our Pennsylvania Constitution, and more specifically this Court in *Alexander*, has made clear that a search is unconstitutional unless it arises from a search warrant or exigent circumstances. The superior court relied upon inapplicable federal case law and incompatible factual comparisons in making its erroneous decision that an inventory search in the absence of a search warrant or exigent circumstances is constitutional. Article 1, Section 8 of our Pennsylvania Constitution affords greater protection to our citizens than the Fourth Amendment of the U.S. Constitution. Thus, this Court should deny the superior court's holding that *Alexander* does not apply to inventory searches, because the violation of privacy interests inherent in allowing widespread warrantless searches is incompatible with this Court's decision in *Alexander* and Article 1, Section 8 of our Pennsylvania Constitution.

Respectfully Submitted,



Michael J. Malloy, Esq.
Attorney for Appellant
Dated: October 2, 2023

CERTIFICATE OF SERVICE

I, Michael J. Malloy, do hereby certify that, on this date, I did serve a true and correct copy of the foregoing document upon the following in conformity with the Pennsylvania Rules of Appellate Procedure.

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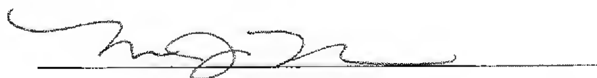

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2023 PA Super 16

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
	:	
v.	:	
MICHAEL THOMPSON	:	
	:	
Appellant	:	No. 2632 EDA 2021

Appeal from the Judgment of Sentence Entered December 13, 2021
In the Court of Common Pleas of Delaware County Criminal Division at No(s): CP-23-CR-0002233-2020

BEFORE: PANELLA, P.J., BENDER, P.J.E., and SULLIVAN, J.

OPINION BY BENDER, P.J.E.: **FILED FEBRUARY 7, 2023** Appellant, Michael Thompson, appeals from the judgment of sentence of 66 to 132 months' incarceration [1] entered following his stipulated non-jury trial conviction of one count of person not to possess a firearm. His appellate issues both relate to the trial court's denial of his motion to suppress a firearm, which was recovered during an inventory search prior to towing Appellant's vehicle. Appellant argues that our Supreme Court's decision in

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[1] Appellant was initially sentenced on October 29, 2021, to 81 to 162 months of incarceration. Appellant filed a post-sentence motion for relief on November 5, 2021, and on December 13, 2021, the court entered an order amending the sentence to 66 to 132 months of incarceration. While the trial court entered an order on December 14, 2021, granting Appellant's postsentence motion and vacating judgment of sentence, this Court has amended the docket to reflect the resentencing date.

Commonwealth v. Alexander, 243 A.3d 177 (Pa. 2020) (holding that Article I, Section 8 does not recognize the full federal "automobile exception" to the

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warrant requirement), eliminated the inventory search exception. We disagree and affirm the judgment of sentence.

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. N.T. Suppression, 6/22/21, at 9. 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. ***Id.*** at 15. Officer Vavaracalli spoke to Appellant, who appeared lethargic, stumbled as he walked, and was slurring his speech. ***Id.*** at 17, 19. 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.[2]

On April 7, 2021, Appellant filed a motion to suppress the evidence, generically arguing that the search violated Appellant's rights under both the Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution. Motion to Suppress, 4/7/21, at 1, ¶6.

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[2] The Commonwealth's brief cites the affidavit of probable cause, which was not entered into the record, as establishing a firearm was recovered. There is nothing in the record indicating from where in the vehicle the firearm was recovered.

Following a suppression hearing, the court denied the motion on September

7, 2021,[3] and Appellant proceeded to a stipulated non-jury trial to preserve the issue for appeal. Appellant filed a timely notice of appeal and complied with the trial court's order to file a concise statement of matters complained of on appeal. Appellant raises two issues for our review:

> 1. Did the trial court err in denying [A]ppellant[']s motion to suppress when it determined Article 1, Section [8] of the Pennsylvania Constitution and the Supreme Court Decision in ***Commonwealth of Alexander*** [*sic*], 243 A[.]3d 177 ([Pa.] 2020) does not apply to an inventory search[?] Specifically[,] did the trial court err in ruling that the constitutional protections cited in ***Alexander*** are not applicable to an inventory search nor is an inventory search subject to the requirements that a warrantless search must have specific exigent circumstances as set forth in ***Commonwealth v. Alexander, [s]upra***[?]
>
> 2. Did the trial court err in determining that neither a search warrant [n]or exigent circumstances for a warrantless search are not [*sic*] required to conduct an inventory search of an individual's vehicle and as such the Pennsylvania Supreme Court['s decision] in ***Commonwealth v. Alexander, [s]upra*** does not apply in [A]ppellant's case[?]

Appellant's Brief at 4-5.

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[3] Appellant requested permission to file a brief "within a week," and the trial court set a due date of July 7, 2021, with the Commonwealth having ten days to reply. N.T. Suppression, 6/22/21, at 24-25. The certified record does not contain any such briefs and the docket does not show any corresponding entries. The trial court's order of September 7, 2021 denying the motion referenced "oral argument on August 18, 2021[.]" Order, 9/7/21. The transcript of that proceeding was not ordered.

Appellant's core argument is that because ***Alexander*** held that the federal automobile exception is incompatible with Article I, Section 8 of the Pennsylvania Constitution, the Court necessarily eliminated the inventory search exception to the warrant requirement as applied to automobiles. The

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Commonwealth submits that ***Alexander*** concerned only investigatory searches for evidence of crime and therefore the inventory search exception remains good law. Whether ***Alexander*** eliminated the exception presents a pure question of law, and our standard of review is *de novo*. ***See Commonwealth v. Pacheco***, 227 A.3d 358, 366 (Pa. Super. 2020), *aff'd*, 263 A.3d 626 (Pa. 2021). An examination of Appellant's argument and ***Alexander's*** impact, if any, on inventory searches requires a brief discussion of federal law.

Both the Fourth Amendment and Article I, Section 8 prohibit unreasonable searches. Pa. Const. art. I, § 8 ("The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizure[.]"); U.S. Const. amend. 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[.]"). The text of each "does not specify when a search warrant must be obtained." ***Kentucky v. King***, 563 U.S. 452, 459 (2011). The law is replete with exceptions to the warrant requirement, *i.e.*, a recognition that certain searches may be constitutionally reasonable without a warrant issued by a neutral magistrate.

The inventory search that occurred in this case is one of those exceptions. It is rooted in ***Cady v. Dombrowski***, 413 U.S. 433 (1973), which recognized that police officers frequently perform tasks unrelated to criminal investigation.

> Local police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.

Id. at 441.

Cady involved a drunk off-duty Chicago police officer who crashed his vehicle in Wisconsin. The vehicle was towed to a privately-owned garage. The local authorities went to the garage to search the vehicle based on their belief that Chicago officers were required to always carry their service revolvers. Officers searched the vehicle for the firearm and discovered evidence that ultimately led to a murder conviction.

In determining whether the warrantless search was reasonable, the ***Cady*** Court deemed two facts significant. The first was that the vehicle "constituted a nuisance along the highway," thus justifying a tow. ***Id.*** at 443. The second was that the lower courts had made a factual finding that the search was a standard procedure by that police department "to protect the public from the possibility that a revolver would fall into untrained or perhaps malicious hands." ***Id.*** That was important because it established that the officer's motivation was not to look for evidence of a crime; the governmental interest of "concern for the safety of the general public who might be

endangered if an intruder removed a revolver from the trunk of the vehicle" was constitutionally reasonable. ***Id.*** at 447.

In ***South Dakota v. Opperman***, 428 U.S. 364 (1976), the United States Supreme Court announced the inventory search exception relied upon by the Commonwealth in this case and cited ***Cady's*** rationale. In that case, the police lawfully impounded a vehicle that was illegally parked. At the impound lot, an officer observed personal items in various parts of the car. The officer had lot personnel unlock the door and, using a standard inventory form, began recording the contents, including what was in the unlocked glove compartment. The officer found marijuana in the glove compartment and Opperman was charged with possession. The ***Opperman*** Court concluded that the search was reasonable as the police "were indisputably engaged in a caretaking search of a lawfully impounded automobile." ***Id.*** at 375. Like ***Cady***, "there [was] no suggestion whatever that this standard procedure ... was a pretext concerning an investigatory police motive." ***Id.*** at 376. Based on ***Cady*** and other cases involving searches of vehicles that were impounded or otherwise in police custody, the Court determined that these types of searches are reasonable "where the process is aimed at securing or protecting the car and its contents." ***Id.*** at 373.

Opperman discussed two factors that were pertinent to its reasonableness analysis: the "inherent mobility" of a vehicle makes "rigorous enforcement of the warrant requirement ... impossible." ***Id.*** at 367. Additionally, "less rigorous warrant requirements govern because the expectation of privacy with respect to one's vehicle is significantly less than

that relating to one's home or office." ***Id.*** This reduced expectation of privacy is due to the fact vehicles "are subjected to pervasive and continuing governmental regulation and control[.]" ***Id.*** at 368. Over time, these two rationales combined to justify the federal "automobile exception." ***See Collins v. Virginia***, --- U.S. ----, 138 S. Ct. 1663, 1669–70 (2018) ("The 'ready mobility' of vehicles served as the core justification for the automobile exception for many years. Later cases then introduced an additional rationale based on the pervasive regulation of vehicles capable of traveling on the public highways.") (quotation marks and citations omitted).

In ***Commonwealth v. Gary***, 91 A.3d 102 (Pa. 2014) (OAJC), a plurality of our Supreme Court determined that the federal automobile exception applied in this Commonwealth. ***Alexander*** overruled ***Gary***, holding that the federal automobile exception is incompatible with the protections afforded by Article I, Section 8. As that decision explained, the pre-***Gary*** law "recognized an automobile exception, but unlike its federal counterpart, ours was 'limited' in application." ***Alexander***, 243 A.3d at 187-88. Following ***Alexander***, our state constitution recognizes a limited automobile exception, which "requires both a showing of probable cause and exigent circumstances to justify a warrantless search of an automobile." ***Id.*** at 181.

Appellant maintains that this quoted language is "clear, ... concise and unequivocal." Appellant's Brief at 10. He argues that following ***Alexander*** a vehicle is to be treated identically to a home and thus no inventory search is permitted.

> Just as law enforcement could not remove a person from inside or outside of their home who has an active arrest warrant and then before securing the home, conduct an "inventory search" of the home to protect the police from a potential civil claim of missing items, they cannot search a person's vehicle whether as a search incident to an arrest or an inventory search. The law is to protect an individual's rights towards "all" of his possessions and "any" place they may be. There can be no inventory search of a home and there can be no inventory search of a citizen's vehicle.

Id. at 13.

Appellant's argument overlooks that the limited automobile exception is doctrinally distinct from the inventory search exception. It is true 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. But the specific federal automobile exception rejected in ***Alexander*** requires the presence of probable cause as a baseline requirement; an officer cannot perform a vehicular search under either constitution if probable cause is absent. The "automobile exception" therefore involves a fact pattern wherein the officers are searching for evidence of a crime. As the ***Opperman*** Court explained, "[t]he standard of probable cause is peculiarly related to criminal investigations, not routine, noncriminal procedures." ***Opperman***, 428 U.S. at 370 n.5. Thus, while ***Gary*** and ***Alexander*** both discuss warrantless searches of a vehicle, the context of the case involves probable cause supporting an investigatory search for evidence of a crime. An inventory search falls under "community caretaking" and thus does not involve probable cause.

While no reported decision of this Court has squarely addressed the inventory search exception's viability following ***Alexander***, other cases have

recognized the fundamental point that ***Alexander*** does not explicitly address other exceptions to the warrant requirement. ***See Commonwealth v. McMahon***, 280 A.3d 1069, 1073 (Pa. Super. 2022) ("[The a]ppellant points to nothing in ***Alexander*** which modified the plain view exception, and we decline to apply ***Alexander***."); ***Commonwealth v. Lutz***, 270 A.3d 571, 576 (Pa. Super. 2022) ("***Alexander*** did not impact its ruling because its decision did not rest upon the analytical underpinnings of the automobile exception to the warrant requirement, but rather upon an application of the plain view and search incident to arrest exceptions to the warrant requirement.") (internal quotation marks and citation to trial court opinion omitted). ***See also Commonwealth v. Heidelberg***, 267 A.3d 492, 505 (Pa. Super. 2021) (concluding that any ***Alexander*** claim was waived due to failure to preserve the argument but concluding in the alternative that "the bags of crack cocaine would have been lawfully – and inevitably – discovered during an inventory search"). Our courts recognize the "axiom that the holding of a judicial decision is to be read against its facts." ***Oliver v. City of Pittsburgh***, 11 A.3d 960, 966 (Pa. 2011). The relevant factual context in ***Alexander*** and ***Gary*** was a search for evidence of a crime and the corresponding need to establish probable cause to search.[4] The case therefore does not eliminate the inventory search exception.

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[4] We add that reading the references in ***Alexander*** to "warrantless searches of a car" to govern every search of a car, including non-investigatory searches like this one, produces absurd results. For example, a consent search is a warrantless search. "It is equally well settled that one of the specifically

We note that Appellant appears to suggest that this was not a "true" inventory search. ***Opperman*** recognized that a "probable-cause approach is 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." ***Opperman***, 428 U.S. at 370 n.5. Appellant's argument alludes to this possibility. Appellant's Brief at 15 ("It's clear from the Officer's testimony that he suspected criminal activity [by Appellant] and he was being arrested on an outstanding warrant."). The trial court did not make explicit credibility findings in this regard, but its opinion implicitly rejected Appellant's theory.

The trial court stated:

> Officer Vavaracalli testified that ... Appellant's car in the instant matter, was blocking both the AAMCO Auto's entrance and blocking multiple cars into their parking spots. Officer Vavaracalli had the authority to impound ... Appellant's vehicle because, as he testified, ... Appellant's vehicle was stopped in such a way that it was impeding the flow of traffic and obstructing a commercial business. Officer Vavaracalli was permitted to conduct an inventory search of [Appellant]'s vehicle.

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established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent." ***Schneckloth v. Bustamonte***, 412 U.S. 218, 219 (1973). Appellant's logic would have us conclude that a consent search of a vehicle is no longer permitted following ***Alexander***.

Trial Court Opinion, 2/1/22, at 8. The trial court implicitly credited the testimony that the tow was conducted pursuant to standard police procedures and was not a subterfuge for investigating criminal activity. ***See Commonwealth v. Lagenella***, 83 A.3d 94, 102 (Pa. 2013) ("An 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."). Both conditions were met and thus the search was lawful.

Finally, it may be the case that some of the analysis in ***Alexander*** regarding a citizen's privacy interests in his or her vehicle undermines the categorical applicability of the inventory search exception. Appellant argues that, following ***Alexander***, a car is on equal footing with a home, and because a home inventory search could not be conducted an automobile inventory search cannot, either. We are not persuaded by this argument. First, the cited example of serving an active arrest warrant serves a criminal purpose and does not fall under the "community caretaking" rationale that supports the inventory search exception. ***Cf. Caniglia v. Strom***, --- U.S. ----, 141 S. Ct. 1596, 1598 (2021) (warrantless search of home was not justified on basis that resident may have been suicidal and a risk to himself or others; "***Cady's*** acknowledgment of these 'caretaking' duties" does not "create[ ] a standalone doctrine that justifies warrantless searches and seizures in the home"). Second, the inventory search exception does not solely rely on protecting the police from claims against the police. ***See Opperman***, 428 U.S. at 378

(Powell, J., concurring) (observing that "three interests generally have been advanced in support of inventory searches: (i) protection of the police from danger; (ii) protection of the police against claims and disputes over lost or stolen property; and (iii) protection of the owner's property while it remains in police custody.").

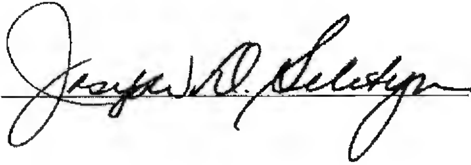
That said, ***Alexander*** may well support some limitations on the inventory search exception, as expressed by the dissenting Justices in ***Opperman***. ***See id.*** at 392 (Marshall, J. dissenting) (arguing that, at minimum, an inventory search cannot take place if the car owner declines; "It is at least clear that any owner might prohibit the police from executing a protective search of his impounded car, since by hypothesis the inventory is conducted for the owner's benefit."); ***see also Colorado v. Bertine***, 479 U.S. 367, 385 (1987) (Marshall, J., dissenting) (noting that in ***Opperman*** the vehicle's owner was not present when the vehicle was towed; "In this case, however, the owner was present to make other arrangements for the safekeeping of his belongings[.]") (quotation marks and citation omitted). The ***Alexander*** Court's rejection of the United States Supreme Court's views on the privacy interests involved in an automobile may well support some limitations on the inventory search doctrine. ***See Bertine***, 479 U.S. at 386 ("Not only are the government's interests weaker here than in ***Opperman*** ... but respondent's privacy interest is greater.") (Marshall, J., dissenting). Here, however, Appellant argues that ***Alexander*** simply eliminated the inventory search exception in total. We thus have no occasion to address these types of arguments.

Judgment of sentence affirmed.

President Judge Panella joins this opinion.

Judge Sullivan concurs in the result.

Judgment Entered.



Joseph D. Seletyn, Esq.

Prothonotary

Date: 2/7/2023

IN COURT OF cowa0N PLEAS OF DELAWARE COUNTY, PENNSYLVANIA
CRIMINAL mus10N

COMMONWEALTH OF PENNSYLVANIANO, | 2233-20

2632 EDA 2021

MICHAEL THOMPSON

OPINION

Amoroso, J.

Appellant, Michael Thompson, appeals to the Superior Court from the Judgment of Sentence entered by this Court on December 13, 2021, following a bench trial. The nature and history of the case are as follows:

1. Nature and History of the Case

Following a bench trial on October 29, 2021, Appellant was found guilty of Possession of Firearm Prohibited (18 Pa.CS.A. §6105(a)(1)). On tha•t same day he was sentenced to a tern of eighty-one (81) months to one hundred sixty-two (162) months incarceration. Appellant filed a post-sentence motion and on December 13, 2021, a new sentence of sixty-six (66) to one hundred thirty-two (132) months incarceration was imposed and the previous sentence was vacated.

Prior to trial, Appellant, through counsel, filed a Motion to Suppress Evidence alleging the search ofAppellant's vehicle was done so without a warrant, in violation ofthe Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution. A hearing was held on said motion on June 22, 2021. At the hearing, the Commonwealth presented the testimony of Offcer Joseph Vavaracalli. Officer Vavaracalli testified that he works as a police officer for Marple Township and was on duty at 1:30 P.M. on July 1, 2020 when the incident in this case took place. (N.T., 6/22/21, p.8) He was dispatched to the AAMCO Auto for reports of an unconscious person in a vehicle. N.T., 6/22/21, p.9) When the officer arrived on the scene, the Appellant was being evaluated outside of his vehicle by the Chief of the ambulance company.

(N.T., 6/22/21, p.9) The Chief informed Officer Vavaracalli that the Appellant was unconscious behind that wheel of his vehicle and it took a period of time to wake him. (N.T., 6/22/21, p. 10) Upon making contact with the Appellant, Officer Vavaracalli noted that the he appeared lethargic, spoke with slurred speech, and had constricted pupils. (N.T., 6/22/21, p. 17) He ran a search of the Appellant's license through NCIC and discovered that his license was suspended from an earlier DUI and that he also had a warrant out of Philadelphia for larceny. (N.T., 6/22/21, p. i O)
The Officer testified that the car had to be towed. 6/22/21 , p. 11) It was blocking the entrance to the AAMCO Auto and it was also blocking two or three cars in the parking spaces, perpendicular to the Defendant's car. (N.T., 6/22/21, p. 11) Officer Vavaracalli stated that, per department policy, he conducted an inventory search for valuables ofthe Defendant's vehicle; a practice that he stated was done every time a vehicle is impounded or seized. (N.T., 6/22/21, p. I l)

Following the hearing, this court entered an order denying Appellant's Motion to Suppress and the matter proceeded to trial and to sentencing. On December 15, 2021, Appellant filed a Notice of Appeal from this court's amended sentence entered on December 13, 2021. On December 17, 2021, the court entered an Order requiring a 1925 Statement of Matters Complained of on Appeal, which was filed on December 22, 2021 and amended on December 23, 2021. Appellant's 1925(b) statement raises four allegations of error: 1) This court erred in denying Appellant's Motion to Suppress determining that Commonwealth v. Alexander, 243 A.3d 177 (Pa. 2020) does not apply the instant matter. Specifically, that Alexander is not relevant to an inventory search and/or that an inventory search is not a warrantless search requiring the exigent circumstances; and 2) This court erred in denying Appellant's Motion to Suppress determining that Commonwealth v. Alexander, 243 A.3d 177 (Pa. 2020) does not apply to an inventory search.
Specifically, the court erred in determining that the Constitutional protections are not applicable to an inventory search and therefore not subject to standard criteria for the warrantless search as set forth in Alexander; 3) this court erred in determining that probable cause and the criteria for a warrantless search set forth in Alexander do not apply in the instant matter, Rather, the court erred

in determining that Commonwealth v. Runyan, 160 A3d. 831 (Pa. Super. 2017) applies; and 4) this court erred in determining that Alexander was not applicable to this case and that the case law applicable to facts herein is Commonwealth v. Laganella, 83 A.3d 94 (Pa. 2013) and Commonwealth v. Peak, 230 A.3d 1220 (Pa. super. 2020)

Discussion

This court believes that the crux of Appellant's argument on appeal is that in a post-Alexander world, an inventory search, one of the long-standing exceptions to the warrant requirement, does not exist in the same way it did in a pre-Alexander world. More specifically, that prior to an inventory search, a warrant is required, or probable cause and exigent circumstances are required. The court believes this is incorrect and recent, postAlexander case law, as well as common sense, supports the court's belief.

It is well established in this Commonwealth that "a warrantless search or seizure is per se unreasonable unless it falls within a specifically enumerated exception. An inventory search is one such exception to the warrant requirement." Commonwealth v. King, 2021 PA super 162, 259 A.3d 511, 521 (Pa. super. 2021) (see, Commonwealth v. Lagenella, 623 Pa. 434, 83 A.3d 94, 102 (2013)). Other such exceptions include the consent exception, the plain view exception, the automobile exception as articulated in Alexander, the stop and frisk exception, and the search incident to arrest exception. (See,

Commonwealth v. Simonson, 148 A.3d 792 (Pa. super. 2016)

In Commonwealth v. Alexander, 243 A.3d 177 (Pa. 2020), the Supreme Court of Pennsylvania held that jurisprudence in our Commonwealth would "return to the preGary application of our limited automobile exception under Article I, Section 8 of our Constitution, pursuant to which warrantless vehicle searches require both probable cause and exigent circumstances." The issue presented in Alexander was limited in nature.

Appellant Alexander asked the Supreme Court "to overrule or limit Commonwealth v. Gary, 625 Pa. 183, 91 A.3d 102 (2014), 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 in Pennsylvania." Alexander at 180 The Supreme Court accepted the appeal to decide whether the federal automobile exception is consistent with Article I, Section 8 of the Pennsylvania Constitution, as Gary did not settle that issue. Id. at 181 The Supreme Court did not go further to require that probable cause and exigent circumstances are required despite the application of another recognized exception to the warrant requirement, such as the inventory search at issue in the instant matter.

In Commonwealth v. Williamson, 2022 WL 167485 (Pa. super. 2022), the Pennsylvania Superior Court found that Commonwealth v. Alexander, rather than Gary, applied to the matter in analyzing the issue of the automobile exception, but went on to address whether or not a proper plain view seizure was conducted in the matter as well. The analysis of the plain view exception did not contain any reference to the Alexander requirements of a warrant or probable cause and exigent circumstances; the analysis was a traditional pre-Alexander one evaluating the four prongs of the plain view exception test. While•the Court ultimately held that the plain view search of the vehicle was not justified on the facts of the case, it is important to note that the Superior Court acknowledged that the traditional, pre-Alexander plain view exception to the warrant requirement still exists post-Alexander.

In a case much more akin to the facts of the instant matter, the Superior Court in Commonwealth v. King, 259 A.3d 511 (Pa. Super. 2021), held that a proper inventory search was conducted of appellant King's vehicle and that, even if the inventory search was not conducted properly, the items seized would have been seized subject to the inevitable discovery doctrine. In King, the appellant was pulled over for speeding and came to a stop in front of a driveway providing access to an automobile dealership. During the stop, the

officer discovered appellant's license was suspended. As appellant was a Philadelphia resident and could not arrange to have anyone pick up his vehicle from where it was stopped in Tamaqua, officers had no choice but to tow King's vehicle. Prior to towing the vehicle, officers conducted an inventory search, and discovered a marijuana grinder and a loaded gun.

The importance of the King case is twofold. One, for the analysis of the inventory search exception to the warrant requirement based on similar facts as those herein, and 2) for the purpose of demonstrating that our Superior Court has recognized post-Alexander that a fraditional pre-Alexander analysis of the inventory search exception and inevitable discovery doctrine still exist. The Superior Court did not have to discuss the requirements of Alexander, a warrant or probable cause and exigent circumstances, in the analysis of the inventory search. They applied pre-Alexander case law to the facts of the case.

Another example of the Superior Court recognizing a traditional pre-Alexander application of the inventory search can be found in Commonwealth v. Parker, 248 A.3d 510 (Pa. Super. 2021). In that case, Appellant Parker was stopped for a vehicle code violation and brought his car to a stop in an illegal parking spot, Neither he nor his passenger had a valid license. The Court held first that a valid Terry search of the vehicle was conducted then held that "because the vehicle was parked illegally, and neither Appellant nor the passenger had a valid driver's license, the vehicle would have been towed and impounded. As such, the firearm in the vehicle would have been procured pursuant to a lawfully executed inventory search." Parker at *7. The Court went on to state in a footnote that, "Similarly, to the extent that the offcer's warrantless search could be viewed as not justified by an exigency under our Supreme Court's recent decision in Commonwealth v. Alexander, because the car was to be impounded and towed, the evidence would have been inevitably discovered." Parker fn.2. This is important because the Court is once again distinguishing the Alexander requirements of a warrantless search pursuant to the automobile exception

from the long-recognized exceptions of an inventory search and the inevitable discovery doctrine.

In the matter subjudice, the search of Appellant's vehicle was justified by a valid inventory search and the evidence ultimately would have been recovered under the inevitable discovery doctrine. As the court stated in its suppression order, Alexander is not applicable to this case, An inventory search is a warrantless search, but is also a valid exception to the warrant requirement and does not require exigent circumstances; as Appellant argues in his first allegation of error. With respect to Appellant's second allegation of error, an inventory search is not subject to standard criteria for the warrantless search as set forth in Alexander, as the criteria in Alexander is applicable to a warrantless search in the realm of the automobile exception. This proposition is supported by the above cited case law as well as the rationale for the existence of an inventory search: "it is designed to safeguard seized items in order to benefit both the police and the defendant." King at 521. This court does not read Alexander so broadly as to have extinguished the inventory search as an exception to the constitutional requirement of a search warrant in Pennsylvania. The purpose of the inventory search is very specific and separate from the police investigatory function. The law has heretofore not required exigent circumstances to conduct an inventory search. Nonetheless, the police must articulate a reason for the intended impoundment of the vehicle. Once doing so, the purpose of the search is for purposes other than investigatory. The inventory search is an exception to the requirement of a search warrant because it satisfies the public policy of safeguarding the defendant's property and limiting police liability for said property. It is the reason for the impoundment that determines the validity of the inventory search.

With respect to Appellant's third and fourth allegations of error, this court stands by its assertion that Commonwealth v. Laganella, 83 A.3d 94 (Pa. 2013) and Commonwealth v. Peak, 230 A.3d 1220 (Pa. Super. 2020) apply to the facts of this case, rather than Alexander]. Those cases involve valid inventory searches and valid inevitable discovery. Laganella explains that "An 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." Commonwealth v. Lagenella,

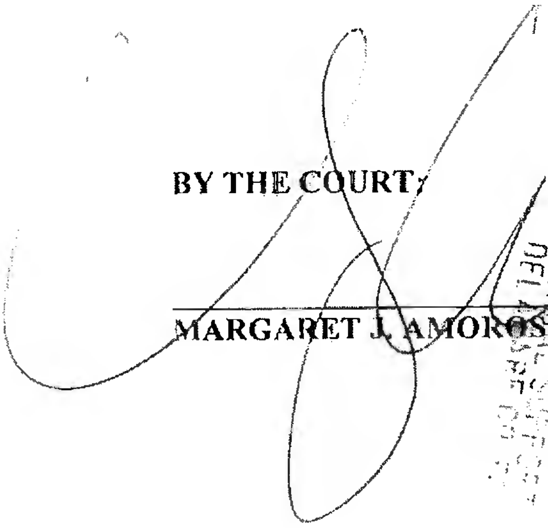
[1] Though this court cited Commonwealth v. Runyon, 160 A.3d 831, 837 (Pa. Super. 2017), it was done so to reference the pre-Alexander standard regarding warrantless searches pursuant to the automobile exception and not relied on substantively.

83 A.3d 94 (Pa. 2013) In the case of Commonwealth v. Peak, the Superior Court held that an officer had authority to impound a vehicle in the interest of public safety where the officer stopped that vehicle for a violation of the motor vehicle code and that vehicle stopped in front of a gas pump, obstructing the business therein. The Court went on to explain that "pursuant to Lagenella, the police could have towed Appellant's car if it was impeding the now of traffic or parked illegally on the street." [d. at 1227 Much like the facts in Peak. and consistent ith the holding of Lagenella, Officer Vavaracalli testified that the Appellant's car in the instant 'natter, was blocking both the AAMCO Auto's entrance and blocking multiple cars into their parking spots. Officer Vavaracalli had the authority to impound the Appellant's vehicle because, as he testified, the Appellant's vehicle was stopped in such a way that it was impeding the flow of traffic and obstructing a commercial business. Officer Vavaracalli was permitted to conduct an inventory search of Defendant's vehicle.

Conclusion

In light of the aforementioned, it is respectfully submitted that this court committed no error in denying Appellant's Motion to Suppress and the court's decision should be affirmed.

BY THE COURT:



MARGARET J. AMOROSO, JUDGE