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25-P-1082

Appeals Court

COMMONWEALTH vs. LORENZO BEECHMAN.

No. 25-P-1082.

Suffolk. April 7, 2026. - September 21, 2026.

Present: All the Justices.¹

Constitutional Law, Search and seizure. Search and Seizure, Motor vehicle, Impoundment of vehicle, Inventory, Fruits of illegal search. Practice, Criminal, Motion to suppress.

Indictments found and returned in the Superior Court Department on October 23, 2024.

A pretrial motion to suppress evidence was heard by Ira L. Gant, J.

An application for leave to prosecute an interlocutory appeal was allowed by Serge Georges, Jr., J., in the Supreme Judicial Court for the county of Suffolk, and the appeal was reported by him to the Appeals Court.

¹ This case initially was heard by a panel comprised of Justices Meade, D'Angelo, and Tan. After circulation of a majority and dissenting opinion to the other justices of the Appeals Court, the justices decided to all participate in deciding the case after reviewing the briefs and record and listening to the recording of the oral argument. See G. L. c. 211A, § 11. Justices Vuono, Ditkoff, and Hershfang took no part in the decision. Justice Brennan participated in the deliberation on this case prior to his retirement.

Paul B. Linn, Assistant District Attorney (Gregory J. Galizio, Assistant District Attorney, also present) for the Commonwealth.

Haylie Jacobson, Committee for Public Counsel Services, for the defendant.

BY THE COURT. The order allowing the motion to suppress entered by a judge of the Superior Court is affirmed by an equally divided court.

D'ANGELO, J. (concurring, with whom Rubin, Massing, Henry, Sacks, Shin, Hand, Smyth, Toone, Tan, and Wood, JJ., join).

1. Synopsis. After an evidentiary hearing, a Superior Court judge (motion judge) allowed the defendant's motion to suppress evidence found in a car he had been driving. A single justice of the Supreme Judicial Court granted the Commonwealth's request for leave to pursue this interlocutory appeal.

2. Background. We recite the facts as found by the motion judge, supplemented occasionally with uncontested facts not inconsistent with the motion judge's findings. See Commonwealth v. Jessup, 471 Mass. 121, 127-128 (2015). "When reviewing a ruling on a motion to suppress, we adopt the motion judge's subsidiary findings of fact absent clear error, but we independently determine the correctness of the judge's application of constitutional principles to the facts as found" (quotation and citation omitted). Commonwealth v. Arias, 497 Mass. 425, 429 (2026).

On September 2, 2024, at about 1 A.M., the defendant was driving his girlfriend's Acura sport utility vehicle (SUV) in the Dorchester neighborhood of Boston. The defendant was the sole occupant of the SUV. Boston police officers on patrol saw from the sticker on the back of the license plate that the SUV's registration had expired. The officers confirmed through their mobile database that the SUV's registration was "expired, non-renewable." As a result, the officers activated their lights and sirens, and the defendant "quickly and appropriately stopped the [SUV] as directed by police, pulling off the roadway and into a gas[oline] station."

One of the officers testified that he intended to tow the SUV the moment he pulled it over because it had an expired registration and because he had been instructed by his commanding officer that, in all situations involving an expired registration or revoked driver's license, he must impound the vehicle, tow it, and perform an inventory search. At the evidentiary hearing, when shown the Boston police department's policies on "Motor Vehicle Inventory Search" and "the responsibilities of patrol officers," the officer "acknowledged" that there is no policy dictating the impoundment, towing, and inventorying of a car as he testified, and that to his knowledge

it is not in any documents or policies.²

When asked for his license and registration, the defendant provided his driver's license. The defendant initially had some difficulty locating the SUV's registration, so he asked the police if he could get out of the SUV to locate the registration, and the officer agreed.³ Throughout the encounter, the defendant was calm, polite, and compliant.

The officers instructed the defendant, who was on the phone with his girlfriend, to stand near the rear of the SUV. At this point, the defendant was "clearly confused and nervous" and asked "if he did anything wrong." One officer explained that the defendant had "not done anything wrong." At no point did the officers ever inform the defendant that the SUV was going to be impounded and towed. The officers immediately began to search the SUV when the defendant stood at the rear of the SUV. The defendant asked again if he had done anything wrong. The

² The relevant Boston police department policies were entered in evidence at the hearing.

³ The defendant was pat frisked after he got out of the SUV, but no contraband or weapons were discovered. The motion judge determined that the patfrisk was not justified by safety concerns or a reasonable suspicion that the defendant was armed and dangerous. The Commonwealth does not challenge these conclusions but properly notes that the patfrisk did not produce any evidence or otherwise contribute to the justification for the inventory search of the unregistered vehicle.

defendant never consented to have the police take custody of the SUV.

The search of the SUV revealed a firearm under the front passenger seat, "near where a rear passenger would place their feet." After the search and arrest of the defendant, the police called for a tow of the SUV.

The motion judge concluded that the impoundment of the SUV was not reasonably necessary and that the police action "violate[d] their own inventory policy."

3. Discussion. "The Commonwealth bears the burden of proving that a warrantless inventory search is lawful." Commonwealth v. Goncalves-Mendez, 484 Mass. 80, 83 (2020). The lawfulness of the inventory search "is contingent on the propriety of the impoundment of the [vehicle]." Id., quoting Commonwealth v. Oliveira, 474 Mass. 10, 13 (2016). To be proper, "[i]mpoundment must be undertaken for a legitimate, noninvestigative purpose, and must be reasonably necessary based on the totality of the evidence" (emphasis added; quotations and citation omitted). Goncalves-Mendez, supra. See Commonwealth v. Eddington, 459 Mass. 102, 108 (2011) ("guiding touchstone of '[r]easonableness'" is "the overriding concern" [citation omitted]). We agree with the motion judge's conclusion that this impoundment was not reasonably necessary; however, prior to getting to that analysis, we also conclude that there was no

legitimate, noninvestigative purpose for the impoundment. The inventory search was therefore improper, and we would affirm the order of suppression.

a. Legitimate, noninvestigative purpose. Our courts have primarily considered four legitimate purposes in evaluating the reasonableness of impounding a vehicle: (1) to protect the vehicle and its contents from theft or vandalism; (2) to protect the public from dangerous items that might be in the vehicle; (3) to protect public safety where the vehicle, as parked, creates a dangerous condition; or (4) where the vehicle is parked on private property without the permission of the property owner as a result of a police stop, to spare the property owner the burden of having to deal with a vehicle when the motorist has been arrested. See Oliveira, 474 Mass. at 13-14. We acknowledge that these purposes are typically relied on to justify impoundment when the defendant has been placed under arrest, and we note that the defendant in this case was not under arrest at the time of impoundment, a distinction we shall address infra. On the facts before us, the Commonwealth failed to meet its burden to justify impoundment based on any of these purposes.

i. Protecting vehicle and its contents. While "protect[ing] the vehicle and its contents from theft or vandalism" can be a legitimate reason for impoundment, Oliveira,

474 Mass. at 13, this purpose is only legitimate when the vehicle will be "left unattended," Commonwealth v. Ellerbe, 430 Mass. 769, 775 (2000), quoting Commonwealth v. Daley, 423 Mass. 747, 750 (1996). The need to impound arises from the "danger that the vehicle left unattended . . . might be vandalized or stolen," coupled with "the need to protect the police from false claims of loss" (quotations and citation omitted). Ellerbe, supra.

Here, the police did not need to take "custody" of the SUV because the defendant was not under arrest, and he therefore could have stayed with the SUV. Accordingly, this purpose does not apply.

ii. Protecting public from dangerous items.

"[P]rotect[ing] the public from dangerous items that might be in the vehicle," Oliveira, 474 Mass. at 13, citing United States v. Coccia, 446 F.3d 233, 240 (1st Cir. 2006), cert. denied, 549 U.S. 1149 (2007), justifies impoundment "to take possession of dangerous material that is not within anyone's control" (emphasis added), Coccia, supra. The evidence in this case failed to demonstrate impoundment was necessary to protect the public from any dangerous items that might have been in the SUV. As we have discussed, the defendant was not under arrest and could have remained with the SUV to wait for his own tow.

Moreover, the judge found that the defendant was calm,

polite, and compliant throughout the interaction with police and that "[h]is disposition was, objectively, agreeable." The police agreed to his request to step out of the SUV to look for the registration, and an officer performed a patfrisk of the defendant, which produced no weapons or contraband. At that point, there was only evidence that the defendant was driving an unregistered SUV; there was no evidence or legitimate concern that there were any dangerous items in the SUV or that the defendant was a suspect in any criminal activity.⁴ Therefore, this purpose does not apply.

iii. Removal of dangerous condition. There was no evidence that the SUV, parked at a gasoline station (gas station), was positioned as to "create[] a dangerous condition" warranting removal. Oliveira, 474 Mass. at 13, citing Commonwealth v. Brinson, 440 Mass. 609, 615-616 (2003). The motion judge found that the SUV "was not obstructing traffic, was not in any public way, and could easily be parked to await a tow truck in numerous locations."

The dissent's argument that the impoundment of an unregistered car parked in a gas station lot was justified by a legitimate, noninvestigative purpose rests on the notion that "[i]n general, the police have the authority to impound an

⁴ The judge found that there was no evidence of any recent shootings in the area or that it was a high crime area.

unregistered vehicle" on a "public way." This premise arises from Daley, 423 Mass. at 750, and was expressly explained by the Supreme Judicial Court as a form of public safety concern:

"The impoundment of a vehicle for noninvestigatory reasons is generally justified if supported by public safety concerns or by the danger of theft or vandalism to a vehicle left unattended. Here, the fact that the defendant was not under arrest is irrelevant to the propriety of the impoundment because the vehicle at issue was unregistered, uninsured, and had attached plates belonging to another vehicle. Thus, the officers could not permit the continued operation of this illegal vehicle on the public roadways, nor could they leave the vehicle unattended on the shoulder of a busy main road" (emphasis added). (Citations omitted.)

Id. The vehicle in Daley was stopped on the side of a "busy main road," id.; as such, the safety risk posed by leaving it on a busy public road while awaiting its removal was a legitimate, noninvestigative purpose justifying impoundment.

Here, there is no evidence in the record that the SUV posed any public safety risk, and the judge found that it was not parked in a public way and was not obstructing traffic.⁵

Similarly, our decision in Commonwealth v. Horton, 63 Mass. App. Ct. 571 (2005), does not compel the conclusion urged by the

⁵ The dissent cites cases where we have held the location of the vehicle to be a consistent differentiator. Commonwealth v. Nicoleau, 90 Mass. App. Ct. 518, 520 (2016) (impoundment necessary where "[t]he vehicle could not be left on a public roadway"); Commonwealth v. Ubilez, 88 Mass. App. Ct. 814, 818 (2016) (impoundment necessary where police could not "leave the vehicle unattended on the shoulder of a busy main road" [citation omitted]).

dissent. In Horton, officers saw a vehicle pull into a gas station, discovered that the vehicle's license plate "could not legally be attached" to the vehicle, and pulled it over. Id. at 573. During the stop, the officers became concerned by the movements of a passenger. See id. at 573-574. They removed the passenger from the vehicle, found a firearm within the vehicle near where that passenger had been, removed all other occupants from the vehicle, and executed an inventory search. See id. at 574.

The legality of the search in Horton turned on whether it was pretextual in nature. See id. at 576. In a footnote in Horton, we cited to Daley for the proposition that "[i]mpoundment of uninsured, unregistered vehicles with attached plates is typically proper." Horton, supra at 576 n.4, citing Daley, 423 Mass. at 750. However, where the vehicle here was stopped in a parking lot, there is no reason to expand the holding in Daley because public safety was not a legitimate concern.

Here, the evidence failed to demonstrate that there was any safety concern in leaving the SUV with the defendant in the gas station parking lot. No other vehicles or the public were at risk. Thus, the reasoning in Daley is inapplicable.

iv. Burden on property owner. There is no evidence that the impoundment in this case was conducted to "spare the [gas

station] owner the burden of having to deal with the vehicle's presence when the driver has been arrested." Ellerbe, 430 Mass. at 776. Again, the defendant was not under arrest and could have stayed with the SUV. There was no evidence that the gas station was closed to the public or that parking in the lot was restricted in any way. Cf. Commonwealth v. Dunn, 34 Mass. App. Ct. 702, 706 (1993) (affirming impoundment of vehicle left in private lot not open "for general public use" after defendant's arrest). Moreover, the motion judge found that the police were aware that "[the defendant] or his girlfriend had lawful custody of the [SUV] and could have had the [SUV] towed."⁶ In the absence of any evidence that the police knew or reasonably could have concluded the SUV was not permitted to be on the gas station's lot, the SUV could not have been impounded for this purpose. Cf. Ellerbe, supra at 776 n.13 (permitting impoundment "from a private parking lot whose owner place[d] the public on notice that vehicles may not remain on the property").

For the reasons set forth above, the impoundment lacked a legitimate, noninvestigative purpose supported by the facts in the record. Therefore, we conclude the impoundment was improper.

⁶ General Laws c. 90, § 9, permits unregistered vehicles to be towed by appropriate vehicles.

b. Reasonably necessary. "The propriety of an impoundment turns on whether police reasonably could have concluded they had no lawful, practical alternative." Goncalves-Mendez, 484 Mass. at 83. Here, the record does not support a conclusion that the police considered a reasonable alternative. There was no evidence demonstrating why it would have been unreasonable to leave the SUV at the gas station where the defendant parked it while he waited for a private tow. The SUV was not obstructing traffic and was not in a public way, and there was no evidence that it was obstructing any egress into the station or blocking gasoline pumps. Additionally, there was no evidence that the police would have had to wait with the defendant as there was nothing to suggest he would drive the SUV away.

Furthermore, the facts in this case demonstrate that the officers did not consider whether reasonable alternatives existed. One officer testified during the suppression hearing that he decided to tow the SUV before even pulling it over. This decision was consistent with the officers' actions -- as soon as the defendant got out of the SUV he was directed to stand with one officer behind the SUV and the other officer immediately began to search the vehicle.⁷

⁷ The officer who searched the SUV testified that he intended to impound and tow the SUV "from the moment he pulled the car over."

Although there is no affirmative duty on law enforcement to offer alternatives to the impoundment process, see Commonwealth v. Ferrara, 496 Mass. 483, 486 (2025); Commonwealth v. Caceres, 413 Mass. 749, 751 & n.1 (1992) (suggesting no general obligation on police to ask defendant if he wishes to propose alternative to impoundment), it stands to reason that the police must allow for motorists to have an opportunity to provide the police with a reasonable alternative to impoundment, see Eddington, 459 Mass. at 108 (determinations regarding impoundment "are fact driven, with the overriding concern being the guiding touchstone of [r]easonableness" [quotation and citation omitted]).

Here, the police never informed the defendant that they were going to impound or tow the SUV. In fact, even after the defendant asked if he had done anything wrong, the police responded that he had not, and then immediately began to search the SUV. The officers' conduct afforded the unarrested defendant, whom the police knew was on the phone with the owner of the car, no opportunity to suggest an alternative to impoundment prior to the SUV being searched.

The evidence shows that the police never considered whether any alternative to impoundment existed, as they believed impoundment was necessary.

Accordingly, on the facts before us, it was unreasonable for the police officers to determine that they had no lawful, practical alternative to impoundment and we therefore conclude that the impoundment was not reasonably necessary.⁸

4. Conclusion. The Commonwealth has failed to meet its burden to show a legitimate, noninvestigative purpose for the impoundment of the SUV and that the impoundment was reasonably necessary. As such, we agree with the motion judge that the impoundment was unreasonable and the inventory search was unlawful. We would affirm the order allowing the motion to suppress.⁹

⁸ The motion judge also concluded that the impoundment of the SUV was a violation of the police impoundment policy. The dissent argues that impoundment need not comport with a written policy. However, in dicta, the Supreme Judicial Court has stated, "The decision to impound a vehicle also must be made in accordance with standard, written police operating procedures in order to comply with art. 14 of the Massachusetts Declaration of Rights." Commonwealth v. Campbell, 475 Mass. 611, 615 n.4 (2016). Additionally, the Supreme Judicial Court, in a subsequent footnote in Campbell, concluded that it was unnecessary to reach the issue whether the impoundment in that case did comport with a written policy, because the impoundment and ensuing inventory search were constitutionally invalid on other grounds. See id. at 623 n.19. We too need not reach this issue for the same reason.

⁹ Because "an inventory search is lawful only if, first, the seizure (or impoundment) of the vehicle was reasonable," Oliveira, 474 Mass. at 13, citing Ellerbe, 430 Mass. at 776, we need not and do not address the inventory search in light of our holding that the impoundment was not reasonable.

MEADE, J. (dissenting, with whom Blake, C.J., Neyman, Desmond, Singh, Grant, Walsh, Brennan, Hodgins, Allen, and Hillman, JJ., join). By virtue of an equally divided court in this interlocutory appeal, we are constrained to affirm a Superior Court judge's order suppressing a loaded firearm, that the defendant is alleged to have possessed in violation of G. L. c. 269, §§ 10 (h) (1) and 10 (n), and because it would have been his third offense, in violation of G. L. c. 269, §§ 10 (a), and 10 (d).

Contrary to the motion judge's determination, which is shared by the concurrence, the impoundment and inventory search of the sport utility vehicle (SUV) were lawful because the impoundment was "reasonably necessary" in the circumstances presented here, and were undertaken for a legitimate, noninvestigatory purpose. I would further hold that impoundment decisions are not subject to written guidelines, and the inventory search of the SUV was properly conducted.

1. Motion judge's decision. The motion judge concluded that the police erred by failing to "ask [the defendant], or his girlfriend who was on the phone and available, to have their car towed, or, given [the defendant's] clear authority to assume control of the car, instruct [him] to park the car in an open parking space until a tow truck arrived." The motion judge also found fault in the police officers "violat[ing] their department

policies and the law on towing and inventory searches." Neither of these conclusions finds support in our case law.

2. Impoundment. "In general, in reviewing a ruling on a motion to suppress, we accept the judge's subsidiary findings of fact absent clear error but conduct an independent review of his ultimate findings and conclusions of law" (citation omitted). Commonwealth v. Tremblay, 480 Mass. 645, 652 (2018). The Commonwealth bears the burden of establishing the constitutionality of the impoundment and inventory search of a motor vehicle. Commonwealth v. Ehiabhi, 478 Mass. 154, 164-165 (2017). Commonwealth v. Rosario-Santiago, 96 Mass. App. Ct. 166, 175 (2019). An inventory search is lawful only if the impoundment of the vehicle was reasonable. See Commonwealth v. Eddington, 459 Mass. 102, 108 (2011) ("guiding touchstone" is reasonableness). In other words, "[i]mpoundment must be undertaken for a legitimate, noninvestigative purpose, and must be 'reasonably necessary based on the totality of the evidence.'" Commonwealth v. Goncalves-Mendez, 484 Mass. 80, 83 (2020), quoting Commonwealth v. Oliveira, 474 Mass. 10, 13-14 (2016).

Here, it is undisputed that the stop of the SUV was lawful based on its expired registration. See Commonwealth v. Ubilez, 88 Mass. App. Ct. 814, 818 (2016) (stop of vehicle that had revoked registration lawful). See also G. L. c. 90, § 9 ("No

person shall operate . . . any motor vehicle . . . unless such vehicle is registered . . ."). In general, the police have the authority to impound an unregistered vehicle. See Commonwealth v. Daley, 423 Mass. 747, 750 (1996); Commonwealth v. Nicoleau, 90 Mass. App. Ct. 518, 519 (2016); Ubilez, supra; Commonwealth v. Horton, 63 Mass. App. Ct. 571, 576-577 & n.4 (2005).¹ But "[t]he propriety of an impoundment turns on whether police reasonably could have concluded they had no lawful, practical alternative." Goncalves-Mendez, 484 Mass. at 83. Here, the defendant claimed, and the motion judge held, that there was a practical alternative. I disagree.

First, the motion judge held that because the police officers were aware that the defendant or his girlfriend had lawful custody of the car, and could have arranged to have the car towed, the officers should have asked the defendant if he

¹ The concurrence suggests that the language in Horton, 63 Mass. App. Ct. at 576 n.4, stating that "[i]mpoundment of uninsured, unregistered vehicles with attached plates is typically proper" cannot be interpreted as applying to circumstances where public safety is not a legitimate concern. See ante at . In fact, Horton relies on Daley, 423 Mass. at 750, for this language, and the actual language in Daley states that "[t]he impoundment of a vehicle for noninvestigatory reasons is generally justified if supported by public safety concerns or by the danger of theft or vandalism to a vehicle left unattended" (emphasis added). The court in Daley further held that "the fact that the defendant was not under arrest is irrelevant to the propriety of the impoundment because the vehicle at issue was unregistered, uninsured, and had attached plates belonging to another vehicle." Id. The circumstances of this case fit within the parameters set by Daley.

wished to do so. Having failed to make such an inquiry, the motion judge concluded the impoundment was not reasonably necessary. This is contrary to our case law.

In general, the Supreme Judicial Court has held that there is no affirmative duty on law enforcement to offer alternatives to the impoundment process. Commonwealth v. Ferrara, 496 Mass. 483, 486 (2025). See Commonwealth v. Caceres, 413 Mass. 749, 751 n.1 (1992) (suggesting no general obligation on police to ask defendant if he wishes to propose alternative to impoundment). See also Eddington, 459 Mass. at 109 n.12 ("some State courts have . . . placed the burden on the police to initiate consideration of obvious reasonable alternatives. In our view, adopting any per se rule whether such a rule applies to an owner or a driver contravenes the proper constitutional analysis" [quotation and citation omitted]). However, if an operator requests an alternative to impoundment, "the police must allow it if it is reasonable and practical." Commonwealth v. Lek, 99 Mass. App. Ct. 199, 204 (2021).

Here, the police neither offered an alternative nor did the defendant request one. Despite this, the motion judge concluded that because the officers were aware that the defendant or his girlfriend had lawful custody of the car and could have had it

towed,² there was a reasonable and practical alternative to impoundment. The motion judge held that rather than make an inquiry of the defendant or his girlfriend if either wished to employ an alternative, the police decided to impound and tow the car without providing that opportunity. Relying on Goncalves-Mendez, 484 Mass. at 85, the motion judge held that absent such an inquiry, the impoundment was not "reasonably necessary." This is incorrect.

In Goncalves-Mendez, 484 Mass. at 84-85, the court determined that in certain circumstances, "an entirely new obligation overlays the reasonably necessary/no practical legal alternative determination." J.A. Grasso, Jr., *Suppression Matters Under Massachusetts Law* § 15-3, at 15-10 (2025 ed.). The specific circumstance animating the new obligation occurs "where officers are aware that a passenger lawfully could assume

² The concurrence contends that because the police intended to impound the SUV from the moment it was stopped, they deprived the defendant of the ability to request an alternative to impoundment. See ante at . Putting aside the irrelevance of the officers' subjective intent, see Commonwealth v. Arias, 497 Mass. 425, 430 (2026), there was no evidence in the record that the police conduct deprived the defendant of the ability to speak. Short of the limited circumstances discussed below, the police are not required to offer an alternative to impoundment at all, let alone to provide a certain amount of time for the defendant to suggest one. See infra at . In any event, as I conclude, there was no practical alternative to impoundment. See United States v. Roberson, 897 F.2d 1092, 1096 (11th Cir. 1990) (upholding inventory search of impounded car in parking lot where there was no one present to whom police could have given possession of car).

custody of a vehicle, [such that] it is improper to impound the vehicle without first offering this option to the driver.

Absent such an inquiry, the police cannot conclude that impoundment is 'reasonably necessary.'" (Footnote omitted.)

Goncalves-Mendez, supra at 85. The court noted that its "holding applies only where police are aware that a passenger lawfully could assume custody" (emphasis added). Id. at 85 n.8.

Suffice it to say, the circumstances of this case do not resemble those in Goncalves-Mendez. There, the defendant's car was stopped for a motor vehicle violation, and because the defendant had an outstanding warrant, he was arrested. See id. at 81-82. Importantly, unlike this case, in Goncalves-Mendez there was a passenger who had a valid driver's license, and nothing prevented that passenger from operating the car. See id. Here, the motion judge elided these facts to reach his conclusion. Indeed, the defendant was the sole occupant of the SUV, and no person (present or not) could lawfully operate it, as it was unregistered. See Ubilez, 88 Mass. App. Ct. at 818. See also G. L. c. 90, § 9. Given this, the new obligation announced in Goncalves-Mendez does not apply to this defendant. See Caceres, 413 Mass. at 751-752 (where no person present is authorized to operate motor vehicle, police had no alternative but to seize vehicle and conduct inventory search).

That the police were aware that the SUV belonged to the defendant's girlfriend, and that she was on the phone with him at one point, does not negate the fact that she was not a passenger of the car, nor present to arrange for the SUV to be towed to a place of her choosing. In those circumstances, including the fact that it was 1 A.M., it would not be reasonable to require the police to offer that alternative. See Eddington, 459 Mass. at 109. See also Commonwealth v. Ellerbe, 430 Mass. 769, 776 (2000) ("Reasonableness did not require police officers to guard the vehicle or to wait with the unlicensed passenger until a licensed driver could be produced to take control of it"); Commonwealth v. Henley, 63 Mass. App. Ct. 1, 6 (2005), overruled on other grounds by Commonwealth v. Campbell, 475 Mass. 611, 617 n.9 (2016) (no constitutional obligation for police to contact authorized driver who was not present at stop).³

Furthermore, the fact that the SUV was parked in a gasoline station (gas station) parking lot, and not on a busy street,

³ Similarly, there is no merit to the defendant's claim that the police should have let the defendant or his girlfriend, who both had authority over the SUV, arrange to have it towed to a place of private property. To do so would have required the police to remain on the scene, which would not be reasonable, and they had no obligation to do so. See Oliveira, 474 Mass. at 15; Ellerbe, 430 Mass. at 776.

does not change the reasonableness calculus.⁴ In general, a vehicle may be impounded for a noninvestigatory purpose when it has been stopped on a busy street based on public safety concerns. See Ellerbe, 430 Mass. at 775. However, there are other noninvestigatory justifications for impoundment, including "to protect the vehicle and its contents from the threat of theft or vandalism; to protect the police and the tow company from false claims; and to protect the public from dangerous items that might have been left in a vehicle." Commonwealth v. Davis, 481 Mass. 210, 218 (2019).⁵ See United States v. Kornegay, 885 F.2d 713, 716 (10th Cir. 1989), cert. denied, 495 U.S. 935 (1990) (impoundment reasonable where arrestee's car parked in private lot but leaving car there could have subjected it to vandalism due to lot being open to public); United States v. Staller, 616 F.2d 1284, 1290 (5th Cir.), cert. denied, 449

⁴ The concurrence notes the lack of evidence that the gas station was closed. See ante at . Given that the events here took place at 1 A.M., it is a fair inference that the business was most likely not open. In any event, whether the gas station was open or closed does not alter the analysis, as addressed herein.

⁵ The concurrence suggests that protecting a car and its contents from theft or vandalism is a legitimate purpose only when the car will be left unattended, and that here the SUV would not be left unattended because the defendant was not under arrest. See ante at . However, while the defendant was not under arrest, there was no evidence in the record that the defendant intended to remain with the SUV at 1 A.M. to make sure it was not left unattended.

U.S. 869 (1980) (impoundment legitimate where arrestee's car parked at shopping mall lot but leaving car there overnight would run risk of vandalism or theft). See also Commonwealth v. Dunn, 34 Mass. App. Ct. 702, 706 (1993) (impoundment proper where police officer, "responsible for pursuing the vehicle to a stop," wanted to spare owner of commercial parking lot "burden of dealing with the vehicle's presence" and officer was concerned about exposing vehicle to theft).⁶ Given these circumstances, it was reasonable for police to conclude that they had "no lawful, practical alternative" but to impound the vehicle.⁷

⁶ While these cases involve circumstances where the driver was arrested prior to impoundment of the car, they do not suggest that these justifications for impoundment cease to exist when the impoundment occurs prior to an arrest.

⁷ To the extent the concurrence relies on Commonwealth v. Brinson, 440 Mass. 609, 614-615 (2003), to support its conclusion that the impoundment was improper, see ante at , that reliance is misplaced. The concurrence fails to address how the impoundment analysis is different when the subject car was already parked in a lot before police happened upon it, as opposed to when the police directed the car to pull over into the lot. In Brinson, supra, the defendant's car was impounded at a commercial lot in a location different from where the defendant was arrested, and the impoundment and search of his car were invalid because the arrest was unrelated to the use of the car. Relevant to the analysis was the fact that, there, the police did not direct the driver to stop in the lot, but instead found the car already parked there. See id. at 613. Nothing of the kind occurred here where the SUV was impounded at the place of the stop and for reason of the stop, i.e., the SUV being unregistered. Furthermore, there was nothing even remotely attenuating as occurred in Brinson, as the defendant here only parked in the gas station parking lot when he was stopped by the

Finally, the concurrence notes that impoundments of unregistered vehicles are generally approved when the vehicle in question is on a public way, and highlights the fact that the judge here found the SUV was not parked on a public way. See ante at . Whether an area constitutes a public way is a question of law which we consider independently. See Commonwealth v. Tsonis, 96 Mass. App. Ct. 214, 217 (2019). To the extent it matters to the reasonableness analysis,⁸ parking lots are often treated as public ways for the purposes of G. L. c. 90. This is true because a public way is "any way or . . . any place to which the public has a right of access, or . . . any place to which members of the public have access as invitees or licensees." Tsonis, supra, quoting G. L. c. 90, § 24 (1) (a) (1). This would include a gas station parking lot, like the one here, to which the public, including the defendant,

police. In Oliveira, the Supreme Judicial Court noted these very differences in Brinson. See Oliveira, 474 Mass. at 14 ("An important factor here is whether the driver chose where to park the vehicle or whether the police stopped a moving vehicle and caused it to be parked at a location the driver otherwise would not have chosen. . . . [W]here the vehicle was stopped by the police and the driver arrested, the police are responsible both for the location of the vehicle and for depriving the vehicle of its driver, and therefore might be held responsible if the vehicle's location created a risk to public safety or left the vehicle vulnerable to vandalism or theft" [emphasis added]).

⁸ Contrary to the concurrence's characterization, my conclusion that the impoundment was proper does not merely rest on the notion that a parking lot may be considered a public way. See ante at .

had access and could elect to park in. This is consistent with our understanding of a public way in the context of criminal convictions of operating while under the influence of alcohol, where the Commonwealth must prove the element of public way beyond a reasonable doubt. See Commonwealth v. Gallagher, 91 Mass. App. Ct. 385, 392 (2017). We have had no trouble concluding that a parking lot may be a public way if it is open and accessible to the public. See, e.g., Commonwealth v. Wurtzberger, 104 Mass. App. Ct. 558, 564-565 (2024), S.C., 496 Mass. 203 (2025) (parking lot restricted to those with permit was public way); Tsonis, 96 Mass. App. Ct. at 217-218 (business parking lot accessible to public was public way); Commonwealth v. Kiss, 59 Mass. App. Ct. 247, 250 (2003) (mall parking lot was public way even when stores were closed). It would make little sense that there is a stricter standard for determining what constitutes a public way for impoundment purposes than there is for a criminal conviction. In the same measure, the defendant should not achieve amnesty from impoundment of the unregistered SUV simply by having pulled over into a parking lot that is accessible to the public, as opposed to the shoulder of the road. In the end, in addition to the other noninvestigatory justifications, because the gas station parking lot was a public way, or even if it were not, the SUV had to be impounded. See Ubilez, 88 Mass. App. Ct. at 818 ("Under G. L. c. 90, § 9, an

unregistered vehicle cannot be operated, nor can it be allowed to remain on any way" [emphasis added]).

3. Written guidelines. The defendant also claims that the impoundment of the SUV was unreasonable because it was not authorized by a standard written policy. However, this claim was not made in the defendant's motion to suppress or in his affidavit, and, understandably, was not a basis for the motion judge's decision. In this posture, the claim is waived. See Commonwealth v. Delossantos, 492 Mass. 242, 246 (2023); Mass. R. Crim. P. 13 (a) (2), as appearing in 442 Mass. 1516 (2004) ("Grounds not stated which reasonably could have been known at the time a [pretrial] motion is filed shall be deemed to have been waived . . ."). See also Commonwealth v. Silva, 440 Mass. 772, 782 (2004) ("waiver doctrine precludes defendant who did not properly alert motion judge to issue from raising it on appeal"); Commonwealth v. Piard, 105 Mass. App. Ct. 428, 438 (2025) (same).⁹

⁹ The waiver doctrine "serves two practical purposes" in the suppression context: "It alerts the judge and the Commonwealth to the suppression theories at issue, and allows the Commonwealth to limit its evidence to these theories" (quotation and citation omitted). Delossantos, 492 Mass. at 248. The late blooming nature of this claim deprived the Commonwealth of the opportunity to provide a proper record regarding the existence vel non of impoundment guidelines as well as the motion judge the ability to review it.

However, even if the claim is not waived, the basis for it is chimerical. As a leading commentator on Massachusetts search and seizure law has noted, "To date, the Supreme Judicial Court has declined to hold that standard written procedures are required to determine when a vehicle may be impounded." J.A. Grasso, Jr., *Suppression Matters Under Massachusetts Law* § 15-3, at 15-11 (2025 ed.). See Daley, 423 Mass. at 749-750. See also Lek, 99 Mass. App. Ct. at 204 ("At least to date, our courts have not held that the decision when to impound a vehicle must be made pursuant to a standardized written policy . . ."). Rather, as discussed above, the validity of an impoundment is determined based on an assessment of whether impoundment was reasonably necessary based on the totality of the circumstances.

Contrary to a reasonableness analysis, and in support of the premise that both the impoundment and the inventory search must be conducted in accordance with written guidelines, the defendant relies on Campbell, 475 Mass. at 615 n.4.¹⁰ In footnote 4, the court wrote,

"The decision to impound a vehicle also must be made in accordance with standard written police operating procedures in order to comply with art. 14 of the Massachusetts Declaration of Rights. Commonwealth v.

¹⁰ Although the motion judge held that the impoundment and towing of the SUV violated the written inventory policy, he did not rely on Campbell, and instead analyzed the issue primarily based on reasonableness.

Eddington, 459 Mass. 102, 108 n.11 (2011), citing Commonwealth v. Ellerbe, 430 Mass. 769, 773 n.8 (2000)."

However, there are three problems with the defendant's reliance on this footnote. First, in the cases Campbell relies on, Eddington and Ellerbe, the court held only that inventory searches, not impoundment decisions, require written procedures. See Eddington, 459 Mass. at 108 n.11 ("Under both the Federal and State Constitutions, inventory searches must be done in accordance with standard police operating procedures, and under art. 14, those standard procedures must be in writing"); Ellerbe, 430 Mass. at 773 n.8 ("inventory searches must be done in accordance with standard police operating procedures . . . [and] those procedures must be in writing").

Second, the purported premise at issue, that impoundment orders need written guidance, was obiter dictum in Campbell, and not controlling precedent. See Commonwealth v. Godin, 374 Mass. 120, 127 (1977), cert. denied, 436 U.S. 917 (1978) ("obiter dictum" has "no force of precedent"). In Campbell, the court did not affirm the suppression order based on the lack of written procedures for impoundments. Instead, the court found that the impoundment of a rental vehicle was not proper because it was based on the police's incorrect determination that they had probable cause to believe that the driver, whose name was not listed as an authorized driver on the rental agreement, was

using the vehicle without authority in violation of G. L. c. 90, § 24 (2) (a). See Campbell, 475 Mass. at 621-622. In fact, the court analyzed the validity of the impoundment based on whether it was reasonable in the circumstances. Id. at 615-622.

Finally, it is unlikely, at best, that the Supreme Judicial Court would announce a new rule of State constitutional law in a footnote that was not the basis for its decision. Accordingly, the validity of impoundment orders is not controlled by written guidelines. As I conclude above, the impoundment order was reasonable.

4. Inventory search. Relative to the inventory search itself, as explained above, there is no merit to the defendant's claim that the impoundment of the SUV was not in accordance with written procedures. However, the motion judge also held that the inventory search was contrary to the Boston police department's written inventory policy because the defendant was not under arrest. To the extent it can be separated from his impoundment argument, the defendant makes the same claim. That claim also lacks merit.

An inventory search will meet the required constitutional strictures if the following four requirements are satisfied: (1) the vehicle is lawfully in police custody; (2) the search is conducted pursuant to standard, written police regulations that are administered in good faith; (3) the search is not a mere

pretext concealing an investigative motive; and (4) the search is reasonable in the circumstances. See Davis, 481 Mass. at 218; Ellerbe, 430 Mass. at 773-774; Caceres, 413 Mass. at 750-751; Commonwealth v. Bishop, 402 Mass. 449, 451 (1988).

In special order 05-013, supplementing the "Motor Vehicle Inventory Search Policy" (policy) for the Boston police department, par. 7 stated, "All motor vehicles secured by the Boston Police Department shall be inventoried." Given that the SUV was secured, i.e., impounded, the inventory search was conducted in accord with standard police written procedures. See Oliveira, 474 Mass. at 13; Eddington, 459 Mass. at 108 n.11; Ellerbe, 430 Mass. at 773 n.8. While par. 5 of that same order provided examples of when a vehicle may be secured for towing, e.g., when the operator has been arrested or when there has been an accident, there is no indication that securing was limited to those two circumstances. Furthermore, the order properly described the conduct permissible in the inventory search of the vehicle. See Eddington, supra at 112 (Gants, J., concurring) ("With respect to motor vehicles, the standard written procedures we have required for inventory searches focus solely on the conduct of the search of the motor vehicle . . .").

Additionally, par. 4 of the policy provided meaningful context. Paragraph 4 supplemented rule 103, § 31, of the Boston police department's rules and procedures, which applied only in

circumstances where an arrest occurs prior to the inventory search. Under this rule, the policy allowed the police to dispose of a car without an inventory search only if they could "leave it with a person having apparent authority to assume control of it." For the reasons discussed in part 2, supra, the police could not properly leave the unregistered vehicle in the control of anyone present at the scene, i.e., the defendant. From the language of the policy and order, it is apparent the inventory search conducted here was pursuant to written guidelines.

5. Conclusion. Because there was no valid basis to allow the motion to suppress, I respectfully dissent from the decision affirming the suppression order and from the reasons provided in the concurring opinion which support suppression.