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NO. 87104-3

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SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

LARRY DEAN TYLER, Petitioner.

BRIEF OF AMICUS CURIAE
TOWING AND RECOVERY ASSOCIATION OF WASHINGTON

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OTHER AUTHORITIES

Andrew Waite, "Gruesome discovery in trunk of car at Oxon Hill impound lot," Gazette.net, Mar 15, 2011, Article available at http://ww2.gazette.net/stories/03152011/prinnew180146_32577.php (last accessed 8/30/2012). 8

Aaron Vaughn and Meredith Forrest Kulwicki, "Man arrested in connection with pipe bombs found in truck" Fox 13 News, Jul 12, 2012, available at <http://fox13now.com/2012/07/17/repo-company-finds-pipe-bombs-inside-reclaimed-truck/> (last accessed 8/30/2012) 7

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"5-year-old child towed away in mother's unattended car" KSL TV, Aug. 6, 2011, available at <http://www.ksl.com/?nid=148&sid=16698202> (last accessed 8/30/2012) 7

“Children Found Inside Towed Vehicle After OUI Arrest,” CBS Boston, Oct 18, 2011, available at <http://boston.cbslocal.com/2011/10/18/children-found-inside-towed-vehicle-after-oui-arrest/> (last accessed 8/30/2012) . . 7

“Police identify body found at police department impound lot,” WMC TV.com. Dec 9, 2007, Article available at <http://www.wmctv.com/story/7471711/update-police-identify-body-found-at-police-department-impound-lot> (last accessed 8/30/2012) 8

“Police: Explosive found inside car towed from apartment,” WCNC.com, Mar 15, 2011, Article available at <http://www.wcnc.com/news/local/Police-Explosive-chemicals-found-inside-towed-vehicle-118010384.html> (last accessed 8/30/2012) 8

I. IDENTITY OF AMICI

Towing and Recovery Association of Washington (TRAW) was organized in 2005 to represent the interests of the towing industry. Its membership is made up of over 150 owners and operators of vehicle towing, recovery and storage businesses. The member companies range in size from single truck operations to larger towing companies. TRAW advocates on behalf of its membership in addition to providing continuing education and training.

II. ISSUE ADDRESSED BY AMICI

Should this court continue to allow an inventory of an impounded vehicle in order to protect the rights of both the vehicle owner and the tow truck operator and company?

III. STATEMENT OF THE CASE

TRAW is satisfied with, and adopts the statement of the case provided by the State in its brief.

IV. ARGUMENT

A. **Towing Industry Regulations Require an Inventory of the Contents of the Vehicle upon Impound.**

The business of impounding vehicles is highly regulated under Washington state law. Under Chapter 46.55 RCW an operator must comply with equipment, licensing, insurance and business practice regulations. These include a requirement that all drivers be identified to the Department of Licensing, that the company maintain a bond and

insurance in case of damages, and that each company identify the location of the impound lot used to retain impounded vehicles. RCW 46.55.030. The Washington Administrative Code provides further regulation of the towing industry. The normal hours of operation are set by WAC 308-61-125, and an attendant must be available by telephone 24 hours a day to release a vehicle. Under WAC 308-61-026(2) the impound lot must be secured, fenced according to the specifications, and sufficiently lit to provide for safekeeping of the vehicles.

Among these other regulations, a tow company must maintain “a tow impound record inventory or copy thereof made out by the trooper at the scene of the tow and signed by the operator” for three years after the tow. WAC 204-91A-180(16)(b). The tow truck operator is also required to “sign impound inventory made out by officer at the scene.” WAC 204-91A-180(17). These requirements presume that the officer is permitted to make such an inventory. Without the inventory, a tow company is unable to maintain compliance with the WAC regulations. Any complaints about a tow operator, including the operator’s failure to maintain such records of inventory are sent to the department of licensing, and can trigger hearings and discipline or loss of license. WAC 204-91A-110.

In addition to the WAC regulations requiring an inventory, RCW 46.55.075 provides:

(1) The Washington state patrol shall provide by rule for a uniform impound authorization *and inventory form*. All law enforcement agencies must use this form for all vehicle impounds after June 30, 2001. [Emphasis added.]

(2) By January 1, 2003, the Washington state patrol shall develop uniform impound procedures, which must include but are not limited to defining an impound and a visual inspection. Local law enforcement agencies shall adopt the procedures by July 1, 2003.

While this regulation refers to the practices of the law enforcement agencies, it is nestled into the towing regulations, and the regulations presume that such an inventory will be completed. This inventory is a part of what a tow operator is expected to be provided with when taking custody of a vehicle during a law enforcement impound.

B. The Towing Agency May Be Held Liable under a False Claim of Loss or Damage If No Inventory Is Performed.

An inventory upon the impound of a vehicle is a search performed for purposes of cataloging an individual's belongings. State v. Houser, 95 Wn.2d 143, 154, 622 P.2d 1218 (1980). Because the primary purpose of an inventory search is to protect a person's valuables, this Court has indicated that the owner of the vehicle, if present at the scene, may waive this protection in favor of maintaining his or her right to privacy. State v. White, 135 Wn.2d 761, 771, 958 P.2d 982 (1998); State v. Williams, 102

Wn.2d 733, 743, 689 P.2d 1065 (1984). However, in circumstances where the owner is not available, because the inventory is the opportunity for all parties involved to protect their interests by cataloguing the contents and condition of the vehicle. Allowing a party with no apparent authority to contract on behalf of the owner to refuse the inventory would not waive the liability for loss or damage.

The towing companies are subject to RCW 46.55.090, which states:

(2) All vehicles shall be handled and returned in substantially the same condition as they existed before being towed.

(3) All personal belongings and contents in the vehicle... shall be kept intact, and shall be returned to the vehicle's owner or agent during normal business hours upon request and presentation of a driver's license or other sufficient identification...

Without any sort of inventory log upon accepting custody of the vehicle, the tow operator is unable to establish what personal belongings were in the vehicle, and what condition the vehicle was in at that time. This leaves the company susceptible to false claims of theft or loss.

A tow truck operator and the tow company are "common carriers" and are charged with maintaining the highest degree of care in the maintenance and operation of the vehicles they transport. Conger v. Cordes Towing Service, Inc., 58 Wn.2d 876, 878, 365 P.2d 20 (1961). An inventory search of an automobile is performed for the purposes of (1)

finding, listing, and securing from loss during detention property belonging to a detained person; and (2) protecting police and temporary storage bailees from liability due to dishonest claims of theft. State v. Gluck, 83 Wn.2d 424, 518 P.2d 703 (1974); State v. Montague, 73 Wn. 381, 385-87, 438 P.2d 571 (1968). The use of an inventory log of the condition and contents of the vehicle at the time the towing service provider takes control of it protects both the towing service provider and the vehicle's owner. This inventory provides the base line for the condition of the vehicle, allowing the tow service to protect itself from false claims of damage to the vehicle, or of loss or theft of personal belongings. Such an inventory also protects the owner of the vehicle by creating documentary evidence of the initial condition or contents of the vehicle in the case of actual sustained damage or loss of belongings. Disallowing such an inventory log at the time the vehicle is towed prevents the participation of the owner if present, as well as preventing a pre-towing log from being created.

C. A Waiver of Liability along with the Refusal of an Inventory by a Vehicle Operator Does Not Protect the Towing Agency from Claims by the Owner for Loss or Damage.

A waiver by the owner of the car to release the tow company from liability for damage to the vehicle or personal property in the vehicle when it is not inventoried may allow the companies to protect their interests against false claims of loss, damage or theft. However, in cases such as

this, where the driver of the vehicle has no authority to waive liability on behalf of the owner, and the owner is unavailable to either retrieve the vehicle or release the company from liability, no such waiver can be obtained. The Washington courts have held that a waiver of liability signed by a parent on behalf of their minor child does not prevent suit by the child for later injury. Scott v. Pacific West Mountain Resort, 119 Wash.2d 484, 492, 834 P.2d 6 (1992). The court reasoned that because a parent could not release a cause of action on behalf of the child after the injury, such parent could not waive liability before the injury. Id. at 494. Similarly, here the driver would have no authority even to claim the car from impound, let alone release a claim against the tower. RCW 46.55.120.¹ The driver is unlikely then have authority to deny an inventory meant to protect the belongings of the owner of the vehicle.

¹ RCW 46.55.120 provides in relevant part:

(1) Vehicles or other items of personal property registered or titled with the department that are impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, 46.55.113, or 9A.88.140 may be redeemed only under the following circumstances:

(a) Only the legal owner, the registered owner, a person authorized in writing by the registered owner or the vehicle's insurer, a person who is determined and verified by the operator to have the permission of the registered owner of the vehicle or other item of personal property registered or titled with the department, or one who has purchased a vehicle or item of personal property registered or titled with the department from the registered owner who produces proof of ownership or written authorization and signs a receipt there for, may redeem an impounded vehicle or items of personal property registered or titled with the department...

D. An Inventory of the Contents of a Vehicle Lessens the Risk of Danger Associated with Impoundment.

While not routine, there are occasions on which an inventory of the contents of the car could have prevented dangerous situations from developing. For instance, in Utah, a 5-year-old child was asleep in an illegally parked vehicle when it was towed. "5-year-old child towed away in mother's unattended car" KSL TV, Aug. 6, 2011.² In Rhode Island, a man was arrested for Driving Under the Influence when he passed out behind the wheel of his idling vehicle in the fast lane of the freeway. His car was towed from the location and in the impound lot before anyone found his 4-year-old and 3-month-old daughters in the back seat of the van. "Children Found Inside Towed Vehicle After OUI Arrest," CBS Boston, Oct 18, 2011.³ In both cases, it is unclear why the children could not be seen in the car, but simply opening the vehicles' doors to conduct an inventory of the interior would have alerted the tow truck operator to the presence of the children.

In some cases, the problems associated with not conducting the search endanger more than the people inside the vehicle. Explosives have been found during the inventory log of the vehicles contents. Aaron Vaughn and Meredith Forrest Kulwicki, "Man arrested in connection with

² Article available at <http://www.ksl.com/?nid=148&sid=16698202> (last accessed 8/30/2012).

³ Article available at <http://boston.cbslocal.com/2011/10/18/children-found-inside-towed-vehicle-after-oui-arrest/> (last accessed 8/30/2012).

pipe bombs found in truck” Fox 13 News, Jul 12, 2012;⁴ “Police: Explosive found inside car towed from apartment,” WCNC.com, Mar 15, 2011.⁵ Additionally, there are a number of cases in which human remains were found in vehicles after they were impounded. Carol Robinson, “Body found in burned car at Birmingham impound lot identified as Leroy Langlais of Missouri, Texas,” The Birmingham News. Jan 14, 2009;⁶ Andrew Waite, “Gruesome discovery in trunk of car at Oxon Hill impound lot,” Gazette.net, Mar 15, 2011;⁷ Scott McCabe, “Body found in trunk at D.C. police impound lot,” The Examiner. Jul 23, 2010;⁸ “Police identify body found at police department impound lot,” WMC TV.com. Dec 9, 2007.⁹ Allowing explosives and decomposing human remains to stay in the impounded vehicle without anyone’s knowledge creates a hazard to the employees of the impound lot, as well as people and property in the area on en route to the lot.

⁴ Article available at <http://fox13now.com/2012/07/17/repo-company-finds-pipe-bombs-inside-reclaimed-truck/> (last accessed 8/30/2012).

⁵ Article available at <http://www.wcnc.com/news/local/Police-Explosive-chemicals-found-inside-towed-vehicle-118010384.html> (last accessed 8/30/2012).

⁶ A r t i c l e a v a i l a b l e a t <http://www.al.com/news/birminghamnews/metro.ssf?/base/news/1231924672135720.xml&coll=2> (last accessed 8/30/2012).

⁷ A r t i c l e a v a i l a b l e a t http://ww2.gazette.net/stories/03152011/prinnew180146_32577.php (last accessed 8/30/2012).

⁸ A r t i c l e a v a i l a b l e a t <http://washingtonexaminer.com/article/11911#.UD7SB9ZmRcR> (last accessed 8/30/2012).

⁹ Article available at <http://www.wmctv.com/story/7471711/update-police-identify-body-found-at-police-department-impound-lot> (last accessed 8/30/2012).

V. Conclusion

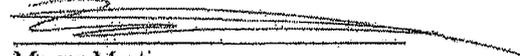
The inventory of a vehicle serves to protect the owner of the vehicle from loss or damage, to protect the towing agency from claims of loss or damage, and to protect employees and the public from hazardous conditions in impounded vehicles. As such, this court should affirm the use of the standard form inventory.

Dated this 31st day of August, 2012.

Respectfully Submitted,



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LARRY DEAN TYLER,

Petitioner.

NO. 87104-3

PROOF OF SERVICE

I, Stuart A. Halsan, declare that I have personal knowledge of the matters set forth below and that I am competent to testify to the matters stated herein.

On August 31, 2012, I deposited in the mails of the United States of America, postage prepaid, an envelop containing a copy of the Brief of Amicus Curiae Towing and Recovery Association of Washington, a copy of a motion for leave to file brief of amicus curiae, and a copy of this proof of service addressed to:

PROOF OF SERVICE -- 1

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On August 31, 2012, electronic copies of the Brief of Amicus Curiae Towing and Recovery Association of Washington, the motion for leave to file brief of amicus curiae, and this proof of service were sent via e-mail to

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Signed under the penalty of perjury under the laws of the state of
Washington this 31st day of August, 2012, at Olympia, Washington.

A handwritten signature in black ink, appearing to read 'Stuart A. Halsan', written over a horizontal line.

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Rec. 8-31-12

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Subject: State v. Tyler, No. 87104-3

Dear Clerk and Counsel:

Attached for filing is the Motion for Leave to File Amicus Curiae Brief, the Brief of Amicus Curiae Towing and Recovery Association of Washington, and a Proof of Service. A "hard copy" of these pleadings will also be mailed to counsel for Mr. Tyler, counsel for the ACLU, counsel for WACDL, and counsel for the Washington State Patrol.

Please let me know if you should encounter any difficulty in opening the documents.

Sincerely,

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