IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	
Plaintiff- Appellant,	:	Case No. 2022-1203
	:	
v.	:	Appeal from the Hamilton
	:	County Court of Appeals,
JAMIE TORAN,	:	First Appellate District
	:	Case No. C-210431
Defendant-Appellee.		

SECOND AMENDED BRIEF OF AMICUS CURIAE HAMILTON COUNTY PUBLIC DEFENDER, AMICUS CURIAE CUYAHOGA COUNTY PUBLIC DEFENDER, AND AMICUS CURIAE OFFICE OF THE OHIO PUBLIC DEFENDER IN SUPPORT OF APPELLEE JAMIE TORAN

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STATEMENT OF INTEREST OF AMICI CURIAE

The Law Office of the Hamilton County Public Defender (HCPD) represents indigent adult and juvenile criminal defendants on misdemeanor and felony offenses, at the trial level and on appeal, in Hamilton County, Ohio. The HCPD also provides guardian ad litem services in juvenile court dependency actions in Hamilton County. The mission of the HCPD is to defend the life and liberty of its clients and to protect their statutory and constitutional rights, by providing zealous, effective, and ethical representation. Our intention is to preserve our clients' dignity and give them hope, while ensuring justice is done.

The Office of the Cuyahoga County Public Defender (CCPD) was created in 1977 to provide legal services to indigent adults and children charged with violations of the Ohio Revised Code and is currently responsible for representing approximately one-third of all indigent felony defendants in Cuyahoga County (the remaining are represented by appointed counsel). The Office's responsibilities now also include the representation of almost all indigent defendants in the Cleveland Municipal Court charged with misdemeanor offenses punishable by incarceration. The Office's Appellate and Post-Conviction Division represents defendants in state and federal courts, particularly in the Eighth District Court of Appeals and this court.

The attorneys of the HCPD and CCPD are experienced practitioners who frequently handle cases implicating the Fourth Amendment. They recognize the damage that would be done to the personal liberty and privacy interests of individuals should Ohio courts sanction unjustified inventory searches of vehicles such as the search underscoring the case at bar.

The Office of the Ohio Public Defender is a state agency that represents indigent criminal defendants and coordinates criminal-defense efforts throughout Ohio. The Ohio Public Defender also plays a key role in the promulgation of Ohio statutory law and procedural rules. A primary focus of the office is on the appellate phase of criminal cases, including direct appeals and collateral attacks on convictions. The OPD's primary mission is to protect and defend the rights of indigent persons by providing and supporting superior representation in the criminal and juvenile justice systems. As amicus curiae, the OPD offers this court the perspective of experienced practitioners who routinely handle criminal cases in Ohio courts. This work includes representation at both the trial and appellate levels. The OPD has an interest in the present case because it involves an attempt to weaken Fourth Amendment protections.

STATEMENT OF THE CASE AND FACTS

Amici adopt the statements of the Appellee.

INTRODUCTION

The state must provide more than an officer's conclusory assertions to meet its burden to prove that the officer acted pursuant to established department policy when impounding, towing, and conducting a warrantless search of a car under the "community caretaking" rule.

The purpose of the community caretaking exception to the warrant requirement is to protect the community from the dangers posed by a car that cannot otherwise be moved. See *e.g.*, *Cady v. Dombrowski*, 413 U.S. 433, 441-443, 93 S.Ct 2523, 37 L.Ed.2d 706 (1973). When officers impound a car, they may inventory the contents to make sure that all items are accounted for when it is returned—but the officers may only do so if their department has a policy that prescribes when and how they can do so. *See*, *e.g.*,

State v. Leak, 145 Ohio St.3d 165, 2016-Ohio-154, 47 N.E.3d 821, at ¶ 22, citing *Blue Ash v. Kavanagh*, 113 Ohio St.3d 67, 2007-Ohio-1103, 862 N.E.2d 810, ¶ 11.

Here, the state introduced only the conclusory assertions from a deputy who claimed he acted according to policy, including his personal policy. To prevail, the state must show both that the decision to tow and the subsequent search were reasonable and performed pursuant to department policy. The state has shown neither.

The state is correct that a sheriff's deputy testified that he followed policy, but it was only an undefined and unarticulated policy. *See*, *e.g.*, Tr. 21 ("I am going to follow *my policy*") (emphasis added); Tr. 23 (the tow was in line with "*my policy*") (emphasis added). The state argues that the deputy's testimony was sufficient evidence to meet its burden of proof at the suppression hearing. The Court of Appeals correctly disagreed, finding that proof of the contents of a law enforcement department's tow and inventory search policy is necessary for courts to adjudicate whether the policy was followed.

The purpose of the community caretaking doctrine is not to generate an opportunity to search a car for evidence of criminality—it is to ensure that unattended cars do not obstruct traffic or otherwise pose a danger to the community. Adopting the state's Proposition of Law would give law enforcement room to stray further and further from adherence to the principle that inventory searches are reasonable under the Fourth Amendment only when they are conducted in accordance with standard procedures. *See e.g.*, *Leak*, 145 Ohio St. 3d 165, 2016-Ohio-154, 47 N.E.3d 821, at ¶ 22. But even more fundamentally, reversing the judgment below would send a message that when conducting a warrantless seizure of an individual's private property, law enforcement can substitute compliance with an officer's individual judgment—or, in the light most favorable to the state, compliance with departmental policy—for compliance with the

Constitution. This court should affirm the judgment below, or, in the alternative, dismiss the state's appeal as improvidently accepted.

ARGUMENT

The State's Proposition of Law:

> **Where the stop and impoundment of a vehicle is lawful, the subsequent inventory search of the vehicle in accordance with Sheriff Department procedure is not rendered constitutionally unreasonable by the State's failure to introduce the actual written policy into evidence or the deputy's failure to testify as to specific details of the policy at the suppression hearing.**

Amici's Proposition of Law:

> **In order to meet its burden of proof to show that a warrantless search is lawful under the inventory-search exception, mere conclusory assertions that officers followed departmental policy are insufficient. The state must introduce evidence—testimonial or in writing—sufficient for reviewing courts to determine whether the purported policy complies with the Fourth Amendment, and whether officers followed that policy.**

I. The decision below is correct, and its rationale is sound.

The Court of Appeals did not err by requiring evidence of a standard tow and inventory search procedure be presented at a suppression hearing. The state argues that the deputy's conclusory testimony was sufficient. But Hamilton County Sheriff's Deputy Kevin Singleton did not consistently testify that he was following a departmental policy, and he did not say what that policy was.

Here, at most, the deputy's testimony showed that he believed that he conducted the warrantless search according to what he believed was department policy. There is no evidence as to what that policy was. Without the introduction of a policy, or at least detailed testimony or some other evidence sufficient for courts to determine what the policy actually prescribes, the state has not met its burden to show that the deputy's

search fell within that policy. *See Leak*, 145 Ohio St. 3d 165, 2016-Ohio-154, 47 N.E.3d 821, at ¶ 22, citing *Blue Ash*, 113 Ohio St.3d 67, 2007-Ohio-1103, 862 N.E.2d 810, at ¶ 11 ("This court has noted that inventory searches of lawfully impounded vehicles are reasonable under the Fourth Amendment *when performed in accordance with standard police procedure* and when the evidence does not demonstrate that the procedure involved is merely a pretext for an evidentiary search of the impounded vehicle.") (emphasis added). Indeed, while Deputy Singleton repeatedly asserted that the tow in this case was conducted in compliance with his department's policy (or, at times, with his personal policy—i.e., "my policy") (Tr. 21, 23), he never articulated what policy or standard he relied upon in ordering the tow.

Deputy Singleton offered testimony that the truck was towed due to Mr. Toran's "status" as a suspended driver, and because of "extensive history." Tr. 10-11, 23. But even in the light most favorable to the state, all that testimony tells us is that Deputy Singleton believed that initiating a tow on this basis was consistent with a policy. What is missing is any testimony as to what is the policy that Deputy Singleton relied upon. Without that, there was no way for the trial or appellate courts to evaluate the accuracy of Deputy Singleton's purported compliance, and no court can evaluate whether the policy was constitutionally sufficient in the first place.

A primary concern of amici is what is lost if police departments and prosecutors are told they no longer have to prove the existence of a standard, lawful policy to meet their burden. If the state's proposition of law is adopted, there is a risk that law enforcement impoundment decisions will stray progressively further from the community caretaking function that impoundments are purported to fulfill in the first place. Indeed, as the facts of the instant case show, there is already a significant gap

between the rationale underlying the community caretaking doctrine, the procedural requirements of *Colorado v. Bertine*, 479 U.S. 367, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987), *et al.* and the doctrine's real-world application.

Notably, although Deputy Singleton suggested that his policy left no discretion as to whether to order a tow due to Mr. Toran's suspended license, his comments at the scene to both Mr. Toran and his mother directly contradict this suggestion. *See* Traffic-Stop-6 (State's Exhibit) at 37:45-37:50[1] (stating that the truck "will be towed, because there's a felony arrest attached to it, I'm not releasing it to you"); *id.* at 38:35-39:20 (stating that he was not going to release the truck to Ms. Toran's mother, as "there's a felony arrest with it" and that he "ha[d] to follow procedure because now we have a criminal offense attached to it"); *id.* at 49:10-49:20 ("if there was no arrest or anything like that I would have some discretion to the vehicle owner" but "not when I take a gun out"). Furthermore, the tow was not even ordered until well after the car was searched and the firearm was found. *Id.* at 37:30-37:45; *see also* Traffic-Stop-5 (State's Exhibit) at 36:25-37:05 (backup officer calls for a tow more than twenty minutes after the search and after the owner of the truck arrived on the scene, stating that the "reason for tow is" the "driver's under arrest" with no mention of driver's "status" or "extensive history").

This record makes abundantly clear why testimony of the nature given by Deputy Singleton is insufficient to sustain a finding of reasonableness. Perhaps Deputy Singleton complied with his department's standard tow and inventory policy; perhaps not. Perhaps his department's policy allows for officer discretion regarding whether to initiate a tow under the circumstances of this case; perhaps not. Perhaps his

[1] All body camera timestamp references are close approximations.

department's policy is compliant with the Fourth Amendment; perhaps not. We do not know the answers to these questions, because the state failed to meet its burden to introduce any particularized details about the policy purportedly relied upon by Deputy Singleton.

But the record suggests that the policy itself is constitutionally deficient. Assuming compliance with policy, Deputy Singleton's bald assertion that he chose to tow the truck because of Mr. Toran's "extensive history" suggests that the policy authorizes law enforcement to make impoundment decisions based on suspicion of criminal activity. *See Leak*, 145 Ohio St. 3d 165, 2016-Ohio-154, 47 N.E.3d 821, at ¶ 28, quoting *Bertine*, 479 U.S. at 375, 107 S.Ct. 738, 93 L.Ed.2d 739 (impoundment pursuant to department policy may be lawful if policy is based on "something other than suspicion of evidence of criminal activity"); Section III, *infra*; Tr. 21. And the comments by Deputy Singleton and his fellow officer at the scene, indicating that the tow was initiated due to the presence of the firearm and Mr. Toran's arrest, are even more damning, strongly suggesting that the purported "inventory" purpose was merely a pretext for an unlawful investigatory search. *See Leak* at ¶ 23 ("[W]e must determine whether the car was lawfully impounded or whether the impoundment was merely a pretext for an evidentiary search of the impounded car.").

But this court need not go that far. To resolve this case, it is enough to recognize that the unanswered questions are a result of the state's failure to provide sufficient evidence of the contents of its inventory and tow policies, and that accordingly, the state failed to meet its burden of proving that the warrantless search was reasonable.

II. Numerous courts within and outside Ohio have held the state must introduce more than conclusory assertions that officers followed departmental policy.

Appellate courts throughout Ohio have consistently held that the "bare conclusory assertion" of compliance with departmental policy is insufficient to justify an inventory search, and that the state must present evidence of a "standardized, routine policy, what that policy is, and [ ] how the officer's conduct conformed to that standardized policy." *State v. Perry*, 11th Dist. Lake No. 2011-L-125, 2012-Ohio-4888, ¶ 35, citing *State v. Wilcoxson*, 2d Dist. No. 15928, 1997 Ohio App. LEXIS 3566, *9-10 (July 25, 1997); *see also State v. Allen*, 2d Dist. Montgomery No. 28450, 2020-Ohio-947, ¶ 13, citing *State v. Wilcoxson*, 2d Dist. Montgomery No. 15928, 1997 Ohio App. LEXIS 3566, 1997 WL 452011, *4 (July 25, 1997); *State v. Flynn*, 3d Dist. Seneca No. 13-06-11, 2006-Ohio-6683, ¶ 17, quoting *State v. Bozeman*, 2d Dist. No. 19155, 2002 WL 1041847, 2002 Ohio 2588; *State v. Greeno*, 5th Dist. Morgan No. 14AP002, 2014-Ohio-4718, ¶ 21. So too have other state supreme courts. *See, e.g., State v. Briggs*, 308 Neb. 84, 101-102, 953 N.W.2d 41 (2021); *Wilford v. State*, 50 N.E.3d 371, 376-378 (Ind. 2016):

> While the State is correct that we do not require evidence of written procedures, we do require more than conclusory testimony from officers. * * *
>
> [W]hile written policies are not necessary to show established departmental routine or regulation, "absent such [a] writing the burden is on the department through the testimony of its officers to show that there is a 'standardized impoundment procedure.'" 3 Wayne R. LaFave, Search & Seizure§ 7.3(c), at 825-26 (5th ed. 2012); * * *.
>
> Officer testimony provides adequate evidence of departmental impound policy if it outlines the department's standard impound procedure and specifically describes how the decision to impound adhered to departmental policy or procedure—as opposed to "an officer's generalized assertion[.]"

In *Wilford*, the officer testified that he ordered a tow because of the unsafe condition of the car, that the defendant did not own the car, and that he was being placed under arrest. *Id.* at 377. Although the officer testified that "our procedures in that [s]ituation" led to the tow, the Indiana Supreme Court found that the officer's failure to "provide[ ] the particulars of the policy" prevented it from "evaluat[ing] whether this impoundment was a reasonable exercise of the community-caretaking function and not merely pre text for an inventory search." *Id.*, quoting *Fair v. State*, 627 N.E.2d 427, 436 (Ind. 1993).

Similarly to the officer in *Wilford*, Deputy Singleton testified that it was in line with his policy to conduct a tow on the basis of Mr. Toran's "status" and "extensive history" but offered no details regarding the particulars of the policy. Even assuming this testimony is fully credible, and setting aside the fact that Deputy Singleton's testimony on this point is inconsistent with what he told both Mr. Toran and his mother at the scene, as in *Wilford*, the testimony is insufficient to enable a reviewing court to evaluate whether the impoundment was reasonable.

Further, neither *Leak* nor *State v. Banks-Harvey*, 152 Ohio St.3d 368, 2018-Ohio-201, 96 N.E.3d 262, support the proposition that conclusory testimony such as that offered in this case is sufficient to justify a tow and subsequent search. In *Leak*, the Court "note[d] that the U.S. Supreme Court has left open the possibility that an impoundment may be lawful if it is pursuant to a police department policy based on 'standard criteria and on the basis of something other than suspicion of evidence of criminal activity.'" *Leak*, supra, at ¶ 28, quoting *Bertine*, supra, at 375. The *Leak* Court did not, however, hold that a conclusory assertion of compliance with policy would be sufficient for the state to meet its burden in this regard—in fact, it rejected the state's

argument that the arresting officer's testimony of compliance with departmental policy was sufficient. *Leak*, supra, at ¶ 28; Merit-Brief of Plaintiff-Appellee, State of Ohio in *Leak*, Case No. 2014-1273, p. 3. *Banks-Harvey*, in turn, held that the search in that case was unreasonable "[e]ven assuming" the existence of a written policy as asserted by the state; it did not hold that the testimony offered by the state was sufficient in that regard. *Banks-Harvey*, supra, at ¶ 36. Unlike in *Banks-Harvey*, where this Court did not "question the trooper's assertion that there was a standard policy to take a purse along with an arrestee to jail[,]" *see id.* (DeWine, J., dissenting), at ¶ 69, here, Deputy Singleton never articulated the policy that he relied upon—he simply asserted that the tow based on Mr. Toran's status complied with policy.

To comply with the rule of every Ohio court (and other state supreme courts) that has required more than mere conclusory statements about department policy, the state must introduce specific evidence as to what that policy requires. Of course, oral testimony can be adequate if it is sufficiently clear, but here, the state did not meet that burden.

III. The decision below can also be affirmed on the ground that the impoundment in this case was not justified by the community caretaking exception to the warrant clause.

The state's proposition of law presupposes that the state's impoundment of the truck in this case was justified by the community caretaking exception to the warrant requirement. *See*, *e.g.*, Merit Brief of Plaintiff-Appellant, p. 6. Whether this court should affirm on an alternative ground, dismiss as improvidently allow, or remand to the First District for further proceedings, Amici defer to Mr. Toran as to the proper resolution of the remaining claims.

A. *The state's claim of error is premised on the assumption that the impoundment of Mr. Toran's truck was justified by the community caretaking exception to the warrant requirement.*

A law enforcement impoundment policy cannot by itself justify a search—it can only justify a search when *the tow itself* is already justified by the community caretaking exception. *Leak*, 145 Ohio St.3d 165, 2016-Ohio-154, 47 N.E.3d 821, at ¶ 29 ("[T]estimony about the police procedure for conducting the inventory is insufficient to establish the reasonableness of the search under the Fourth Amendment if the impoundment of the vehicle is not itself lawful."). The seizure of a car for reasons beyond the scope of law enforcement's community caretaking function means that the inventory search is not a purely administrative act exempt from the warrant requirement.

B. *The community caretaking exception to the warrant requirement under some circumstances permits the impoundment of cars posing a safety hazard but does not permit the seizure of cars arbitrarily or on the basis of suspicion of criminal activity.*

Under certain circumstances, inventory searches following the seizure of cars can be exempt from the warrant requirement when conducted by the government as part of a "community caretaking function[ ], totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Cady,* 413 U.S. at 441, 93 S.Ct 2523, 37 L.Ed.2d 706. The Court, in upholding the warrantless seizure and search at issue in *Cady*—the foundational case in the canon of community caretaking jurisprudence—emphasized two factors. First, law enforcement was justified in towing the car, which posed a hazard on the highway after its involvement in an accident by an intoxicated driver. *Id.* at 442-443. Under the particular circumstances of that case, an impoundment was necessary because the "disabled" car was a "nuisance" on the highway, and the driver "could not make arrangements to have the vehicle towed

and stored" due to being drunk and later comatose. *Id.* at 443. Second, the search at issue occurred pursuant to standard procedure. *Id. See also Leak*, 145 Ohio St. 3d 165, 2016-Ohio-154, 47 N.E.3d 821, at ¶ 20 ("The authority of police to seize and remove from the street vehicles *that impede traffic or threaten public safety* and convenience is beyond challenge.") (emphasis added).

Police may constitutionally exercise discretion in determining whether to impound a car for community caretaking purposes "*so long as* that discretion is exercised according to standard criteria and *on the basis of something other than suspicion of evidence of criminal activity*." *Bertine*, 479 U.S. at 375, 107 S.Ct. 738, 93 L.Ed.2d 739 (emphasis added). Conversely, police may *not* exercise discretion as to whether to impound a car for community caretaking purposes arbitrarily in the absence of standard criteria, or based upon suspicion of criminal activity. *See id.*

C. *The seizure of Mr. Toran's truck was manifestly unreasonable because it was based on Deputy Singleton's suspicion of criminal activity and because the truck posed no safety hazard justifying its impoundment.*

Applying any of the varying approaches this court might adopt to evaluate community caretaking exception claims, the seizure of Mr. Toran's truck was manifestly unreasonable.

Take *Blue Ash*, for example. There, the defendant was pulled over on the interstate with an expired license and tags; the car could not be legally driven, nor could it be moved to a safe location on the highway. 113 Ohio St.3d 67, 2007-Ohio-1103, 862 N.E.2d 810, at ¶ 3. Under these circumstances, law enforcement's decision to impound and tow the car—which posed an immediate safety hazard to others and could not be

immediately driven away by the defendant—fell squarely within the realm of "community caretaking" as articulated by the United States Supreme Court in *Cady*. In stark contrast, the instant case involves a registered truck that was legally parked, with the validly licensed, registered owner of the truck on scene, willing and able to take custody of the truck. *See*, *e.g.*, *United State v. Sanders*, 796 F.3d 1241, 1250 (10th Cir. 2015) (listing factors to consider in evaluating applicability of the community caretaking doctrine including "whether an alternative to impoundment exists (especially another person capable of driving the vehicle)").

Deputy Singleton's purported concern that Mr. Toran might drive the seized truck on another occasion does not exempt the seizure from the warrant requirement. There is simply no authority for the proposition that a police officer's judgment that the warrantless seizure of private property might avoid a future harm or criminal act makes such a presumptively unreasonable seizure permissible. The "community caretaking" exception to the warrant clause cannot be expanded and contorted so as to authorize the warrantless seizure of property in matters such as the instant case, where there was simply no legitimate community caretaking function accomplished by the seizure. *See Collins v. Virginia*, ___ U.S. ___, 138 S. Ct. 1663, 1672-1673, 201 L.Ed.2d 9 (2018) (cautioning that courts must not "unmoor [warrant] exception[s] from [their] justifications * * * and transform what was meant to be an exception into a tool with far broader application"); *Arizona v. Gant*, 556 U.S. 332, 343, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009) (affirming that exceptions to the warrant requirement must remain "tether[ed]" to "the justifications underlying the * * * exception"); *Banks-Harvey*, 152 Ohio St.3d 368, 2018-Ohio-201, 96 N.E.3d 262, at ¶ 63; (Kennedy, J., concurring)

(*citing Bertine*, 479 U.S at 372, 107 S.Ct. 738, 93 L.Ed.2d 739; other internal quotations omitted):

> As guardians of the Constitution, the judiciary must protect the people's right to live free from unconstitutional government intrusions by carefully applying the Supreme Court's jealously and carefully drawn exceptions to the warrant requirement, * * * and by carefully reviewing administrative searches to ensure that they were executed in good faith and in line with the community-caretaking function[.]

The seizure in this case was not conducted in line with law enforcement's community caretaking function. Deputy Singleton's purported adherence to policy cannot legitimize an inventory search when the seizure giving rise to the need for an inventory search was never justified in the first place.

D. *R.C. 4513.61 cannot rescue the impoundment from its Constitutional infirmity.*

In its briefing to this court, the state cites R.C. 4513.61 as an additional justification for Deputy Singleton's impoundment decision. R.C. 4513.61 cannot rescue the impoundment from its constitutional infirmity.

The state cites two clauses of R.C. 4513.61 that purportedly justify the tow in this case. First, the state cites the portion of R.C. 4513.61 that permits the impoundment of cars that have "been left on a public street or other property open to the public for purposes of vehicular travel * * *." The state, however, omits reference to a crucial portion of that clause which renders it plainly irrelevant here:

> [Law enforcement] * * * may order into storage any motor vehicle * * * that has been left on a public street or other property open to the public for purposes of vehicular travel * * * for forty-eight hours or longer without notification to [law enforcement] of the reasons for leaving the motor vehicle in place. However, when such a motor vehicle constitutes an obstruction to traffic it may be ordered into storage immediately [in the absence of certain exceptions].

R.C. 4513.61(A)(2). Mr. Toran's truck was left on a public street for only minutes, and there is no plausible argument that it was obstructing traffic.

Second, the state cites the portion of R.C. 4513.61 that permits the impoundment of cars that have "come into possession of [law enforcement] as a result of the performance of [law enforcement's] duties." But relying on this clause of R.C. 4513.61 to justify the impoundment decision in this case is putting the cart before the horse. All this clause dictates is that impoundment may be appropriate when law enforcement takes possession of, or seizes, a car. It does not answer the question of under what circumstances such a seizure is constitutionally reasonable.

Finally, even if R.C. 4513.61 could be read as a statutory authorization for the tow in this case, it has long been established that "a search authorized by state law may be an unreasonable one under [the Fourth Amendment]." *Sibron v. New York*, 392 U.S. 40, 61, 88 S.Ct. 1889, 20 L.Ed.2d 917 (1968), quoting *Cooper v. California*, 386 U.S. 58, 61, 87 S.Ct. 788, 17 L.Ed.2d 730 (1967). Even if the impoundment of Mr. Toran's truck was consistent with R.C. 4513.61—which it was not—that would not render the seizure reasonable under the Fourth Amendment.

E. *Even if this court agrees with the state's proposition of law, it should remand to the Court of Appeals for further consideration or affirm on the alternate grounds herein.*

Although the Court of Appeals' opinion states that an inventory search is an exception to the rule that warrantless searches are *per se* unreasonable, it did not comprehensively address the constitutionality of the underlying impoundment decision. *State v. Toran*, 1st Dist. Hamilton No. C-210431, 2022-Ohio-2796, ¶25. Instead, the Court of Appeals concluded that the absence of sufficient evidence to demonstrate compliance with a standard tow and inventory search policy rendered the search

unconstitutional. *Id.* at ¶ 28. Thus, there was no need for the Court of Appeals to address Mr. Toran's argument that the tow was never justified in the first place. *See* Merit Brief of Plaintiff-Appellant, p. 2 (quoting trial counsel's argument at Tr. 28-29); Defendant-Appellant's Brief and Assignments of Error, pp. 12-13 (citing Tr. 14, 17, 21-23) (arguing that truck was legally parked, and the licensed, verified registered owner of the truck had arrived on scene and offered to take the truck prior to the tow).

In the event this court agrees with the state's proposition of law, it should still affirm the judgment below. *See*, *e.g.*, *State v. Rue*, 164 Ohio St.3d 270, 2020-Ohio-6707, 172 N.E.3d 917, ¶ 86 (Dewine, J., dissenting) ("We have consistently held that a reviewing court is not authorized to reverse a correct judgment merely because erroneous reasons were assigned as the basis therefore.") (internal quotations omitted). Indeed, just this month, this court accepted jurisdiction over a Proposition of Law seeking reversal of a lower judgment on grounds never addressed by the Court of Appeals in the first instance. *See 03/14/2023 Case* Announcements, 2023-Ohio-758 (wherein this court accepted jurisdiction over Proposition II in 2023-0004). If this court has jurisdiction to reverse a judgment and reach grounds that were never addressed by a lower court, surely it can affirm the judgment below on alternative grounds in this case.

Alternatively, this court could dismiss the state's appeal as improvidently allowed or remand the case to the Court of Appeals to address the alternative grounds for affirmance presented herein in the first instance. *See State v. Brooks*, Slip Opinion No. 2022-Ohio-2478, ¶ 22.

CONCLUSION

This court should affirm the First District's decision or dismiss this case as improvidently allowed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March, 2023, the foregoing Brief of *Amicus Curiae* the Office of the Hamilton County Public Defender, *Amicus Curiae* the Office of the Cuyahoga County Public Defender, and *Amicus Curiae* the Office of the Ohio Public Defender in Support Of Appellee Jamie Toran was served by email to Philip R. Cummings, Hamilton County Prosecuting Attorney's Office, at Phil.Cummings@hcpros.org; and to Brian A. Smith, counsel for Defendant-Appellee, at attybsmith@gmail.com.

/s/ Jonathan Sidney

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