

**[J-120-2012] [MO: Todd, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA, : No. 14 MAP 2012

Appellee

v.

FRANCIS PATRICK LAGENELLA, JR.,

Appellant

:
: Appeal from the order of the Superior Court
: at No. 255 MDA 2010 dated 04-05-2011
: affirming the Judgment of Sentence of the
: Dauphin County Court of Common Pleas,
: Criminal Division, at No.
: CP-22-CR-540-2009 dated 01-11-2010.
:
: ARGUED: October 16, 2012
:

DISSENTING OPINION

MR. JUSTICE EAKIN

DECIDED: December 27, 2013

The majority resolves this case on the basis that the officer had no authority to “impound” the vehicle. Majority Slip Op., at 17-18. There were two initial citations issued here — one for the accused driving with a suspended license, and one because the car had no emissions sticker. These facts are not challenged; thus, appellant could not drive the car away, and in fact the car itself could not be driven away as it was not in compliance with the requirements of the law. See 75 Pa.C.S. § 4706(c)(5) (“It is unlawful to operate a subject vehicle without evidence of emission inspection or certification by an authorized agent[.]”). Apparently, the majority would require the car to sit there for 24 hours before the officer could remove it from the street via tow truck, at which time it could be searched. See Majority Slip Op., at 17.

In parlance of Fifth Amendment cases, this car was no longer free to go. While appellant claims it was not in custody of the police, this car was seized and in police

possession. The distinctions between being immobilized and impounded seem in this case as unavailing in Fourth Amendment analysis as in Fifth Amendment jurisprudence.

As such, the policy of the department applied, and I would find the search was lawful.