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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CR-21-501

	Opinion Delivered October 5, 2022
HAROLD MATHEW ATHERTON APPELLANT	APPEAL FROM THE HOT SPRING COUNTY CIRCUIT COURT [NO. 30CR-19-238]
V.	
STATE OF ARKANSAS APPELLEE	HONORABLE STEPHEN L. SHIRRON, JUDGE
	AFFIRMED

N. MARK KLAPPENBACH, Judge

Harold Atherton appeals following his conditional plea of guilty to the charge of possession of methamphetamine with the purpose to deliver. Pursuant to Rule 24.3(b) of the Arkansas Rules of Criminal Procedure, Atherton reserved the right to challenge on appeal the Hot Spring County Circuit Court's denial of his motion to suppress evidence. We affirm.

Atherton was charged with possession of methamphetamine with the purpose to deliver after a traffic stop in which the officer conducted an inventory search to prepare for having the vehicle towed. Atherton filed a motion to suppress the evidence seized during the search. He alleged that the vehicle was, in fact, never towed, and the officer made a false statement as to the basis for the search.

At the suppression hearing, Rockport police officer Rick Dunn testified that he conducted a traffic stop on Atherton because he saw that the vehicle's tags were expired. Dunn then determined that Atherton had no proof of insurance and that the vehicle had not been registered in months; therefore, he decided to tow the vehicle. Dunn said that he called for a wrecker to tow the vehicle and told Atherton he was going to do an inventory of the vehicle. In the dash-cam video of the stop played on cross-examination, Atherton refused permission to search the vehicle prior to the inventory search. Dunn testified that his department's policy is to inventory a vehicle before having it towed, but when a vehicle is released at the scene to a third party at the request of the owner or operator, an inventory is not necessary.[1]

During the inventory, Dunn found suspected methamphetamine, suspected marijuana, a glass pipe, scales, and small baggies. The items were listed on an evidence receipt that was admitted into evidence at the hearing. Dunn testified that when he conducted the inventory, he did not know the vehicle would ultimately not be towed and that he was already done with the inventory search when the wrecker service arrived on the scene. He said that the wrecker service took possession of the vehicle but subsequently worked it out with Atherton's passenger to release the vehicle to a third party. Danny Lamb testified that his son was a passenger in Atherton's vehicle at the time of the traffic stop. Lamb said that his son called to ask if Lamb could come get him and the vehicle because his

[1]A document detailing the Rockport Police Department's policies and procedures for vehicle inventories was admitted into evidence.

son did not have a valid license. Lamb testified that he picked up the vehicle that evening and that Atherton was already gone.

The circuit court denied the motion to suppress upon finding that Officer Dunn had complied with the police department's policy in conducting the inventory search. Atherton later entered a conditional plea of guilty in exchange for a sentence of six years' probation while reserving his right to appeal the denial of his motion.

When reviewing a circuit court's denial of a motion to suppress evidence, we conduct a de novo review based on the totality of the circumstances, reviewing findings of historical facts for clear error and determining whether those facts give rise to reasonable suspicion or probable cause, giving due weight to the inferences drawn by the circuit court. *Cagle v. State*, 2019 Ark. App. 69, 571 S.W.3d 47. A finding is clearly erroneous when, even if there is evidence to support it, the appellate court, after reviewing the entire evidence, is left with the definite and firm conviction that a mistake has been made. *Id.* We defer to the circuit court's superior position in determining the credibility of the witnesses and resolving any conflicts in the testimony. *Id.*

All warrantless searches are unreasonable unless shown to be within one of the exceptions to the rule that a search must rest on a valid warrant. *Fricks v. State*, 2016 Ark. App. 415, 501 S.W.3d 853. An inventory search is recognized as an exception. *Id.* Pursuant to this exception, police officers may conduct a warrantless inventory search of a vehicle that is being impounded in order to protect an owner's property while it is in the custody of the police, to ensure against claims of lost, stolen, or vandalized property, and to guard the police from danger. *Id.* An inventory search, however, may not be used as a guise for

general rummaging to discover incriminating evidence. *Id.* The police may impound a vehicle and inventory its contents only if the actions are taken in good faith and in accordance with standard police procedures or policies. *Id.*

Atherton argues that the inventory search was improper because Dunn failed to follow his department's policies and procedures in two ways. First, he argues that an inventory should not have been done because the vehicle was released to a third party and not towed. Second, he argues that Dunn failed to produce the required inventory report. The policies and procedures admitted into evidence provide that the officer should complete a "vehicle tow report" that lists, among other things, the condition of the vehicle, a description of the property located, and the location in the vehicle where items were found. Atherton argues that the evidence receipt Officer Dunn prepared listing the seized items does not comply with the requirements for a vehicle tow report. Atherton also argues that the inventory search was merely a sham to cover a purely investigative search as evidenced by the officer's failure to follow procedure and the fact that no items were inventoried other than the seized evidence.

Regarding Dunn's decision to conduct an inventory search, he clearly testified that the search began after the wrecker service had been called and was completed before the wrecker arrived. Dunn intended for the vehicle to be towed, and it was not until after the wrecker service took possession of it that other arrangements were made between the wrecker service and a third party. Accordingly, we find no merit in Atherton's argument that it was improper for Dunn to conduct an inventory search. As for Atherton's arguments regarding Dunn's failure to complete a vehicle tow report and to inventory nonevidence

items found in the vehicle, we hold that his arguments are not preserved. Atherton's argument below was only that an inventory search should not have been conducted because the vehicle was not towed. He did not make any arguments regarding a vehicle tow report or the inventory of nonevidence items. Because Atherton did not make these arguments below and the circuit court did not rule on them, his arguments are not preserved for our review. *See Cagle*, *supra*. We find no error in the circuit court's denial of Atherton's motion to suppress.

Affirmed.

VIRDEN and WHITEAKER, JJ., agree.

Lisa-Marie Norris, for appellant.

Leslie Rutledge, Att'y Gen., by: *Jacob H. Jones*, Ass't Att'y Gen., for appellee.