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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2020-001388

THE STATE,

Respondent,

vs.

GARY MARTIN WIRTZ,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases:

United States Supreme Court Cases:

Other Federal Cases:

Constitutional Provisions and Statutes:

STATEMENT OF ISSUE ON APPEAL

"Whether the trial court erred in denying Appellant's pre-trial motion to suppress the contraband discovered during the search of Appellant's vehicle where there was a clear investigatory motive on the part of the police rendering the inventory a violation of Appellant's rights under the United States and South Carolina Constitutions?"

COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the trial judge somehow err by denying Appellant's pre-trial motion to suppress the methamphetamine and gun found during the search of a car Appellant had recently been driving when: (1) Appellant was lawfully arrested, including on an outstanding arrest warrant, during the course of an encounter with a law enforcement officer; (2) the car, which did not belong to Appellant and was parked directly in front of the entrance to a private business, had to be impounded and towed pursuant to constitutionally-appropriate policies and procedures due to Appellant's arrest; and (3) Appellant's contraband was found during the course of a valid inventory search that was properly conducted pursuant to the applicable policies and procedures and for legitimate caretaking purposes, which rendered the search constitutionally reasonable?

STATEMENT OF THE CASE

In February of 2020, the Oconee County Grand Jury indicted Appellant Gary Martin Wirtz for one count of trafficking in methamphetamine along with one count of possession of a weapon during the commission of a violent crime. On October 12, 2020, a jury trial was commenced in the Oconee County Court of General Sessions with the Honorable Letitia H. Verdin, circuit court judge, presiding. At the conclusion of the two-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of twenty-five years for trafficking in methamphetamine and five years for possession of a weapon during the commission of a violent crime. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

Around 4:40 p.m. on the afternoon of July 31, 2019, Sergeant Justin Pelfrey of the Oconee County Sheriff's Office was on patrol in his law enforcement vehicle and positioned in the parking lot of a church when he observed a car with a cracked windshield drive by his location. (R. pp. 29-30). As soon as the car passed his position, its driver rapidly sped up, which Sergeant Pelfrey perceived as an unusual reaction to the presence of a law enforcement vehicle. (R. p. 30). In response, Sergeant Pelfrey moved to follow the car, and, by the time he caught up to it, its driver had parked it directly under an awning in front of the door to Oakway Tractor, a tractor dealership located in Westminster, South Carolina.[1] (R. pp. 29-31; Court's Ex. # 3 (Bodycam Recording)).

After catching up to the car, Sergeant Pelfrey parked nearby, exited his vehicle, and approached Appellant, who had been the car's driver and was already out of the vehicle by that time. (R. pp. 30-31; Court's Ex. # 3). Upon doing so, Sergeant Pelfrey asked Appellant, who was holding a small black bag, about having taken off after passing the officer's vehicle, and Appellant denied doing so while contending he was simply going to the store. (R. p. 31; p. 44; Court's Ex. # 3). Sergeant Pelfrey then asked Appellant if he had any identification, and Appellant indicated he did not. (R. pp. 30-32). However, Appellant proceeded to verbally identify himself—falsely—as "Jeremy" Wirtz, provided a supposed address, and claimed his birthdate was August 25, 1985. (R. pp. 31-32; p. 52; Court's Ex. # 3).

Following that, Sergeant Pelfrey relayed the information Appellant had provided to dispatch in order to verify it along with information that had been provided by the car's

[1] Based on the car's positioning, a person later attempting to leave the business at approximately 5:13 p.m. had to ask an officer standing directly next to the car to move so he could get by. (Court's Ex. # 3).

passenger, who identified herself as Virginia Rowland. (R. p. 32; Court's Ex. # 3). While waiting to hear back from dispatch, Sergeant Pelfrey asked Appellant if there was any contraband like alcohol, guns, or drugs in the vehicle, and Appellant denied any was present. (Court's Ex. # 3). Sergeant Pelfrey then requested the insurance and registration information for the car, and Appellant began looking for that paperwork while asserting the car was registered to his uncle. (Court's Ex. # 3). As he searched, Appellant attempted to call his uncle to find out where the requested documentation was located inside the car, but the passenger was eventually able to locate the registration and insurance information before Appellant was able to get into contact with his uncle. (Court's Ex. # 3).

At roughly 4:46 p.m., dispatch reported Jeremy Wirtz's information was all clear while Rowland's driver's license was suspended. (R. p. 32; Court's Ex. # 3). After receiving that information, Sergeant Pelfrey asked Appellant for the last four digits of his social security number in order to verify his identity, and Appellant responded he did not know those numbers. (R. p. 33; Court's Ex. # 3). Appellant's inability to provide even a portion of his own social security number despite being an adult raised the officer's suspicions, so Sergeant Pelfry posed another basic question by asking Appellant how old he was at the time. (R. p. 33; p. 48; Court's Ex. # 3). In response to that simple query, Appellant paused for a moment and then—while not yet providing an answer—asked the officer if he thought he was lying. (Court's Ex. # 3).

At that point, Sergeant Pelfrey handcuffed Appellant for safety purposes, and Appellant continued to insist—falsely—his real name was Jeremy.[2] (R. p. 33; Court's Ex. # 3). Appellant

[2] Notwithstanding the concerning nature of Appellant's evasiveness, Sergeant Pelfrey had noticed Appellant was behaving in a "very fidgety" manner up to that point and appeared to be having difficulty maintaining his train of thought. (R. p. 34; Court's Ex. # 3). Later on, the sergeant explained Appellant's mannerisms were consistent in his experience with being under the influence of drugs. (R. p. 58).

also finally provided an answer concerning his age and claimed to be twenty-five years old. (R. p. 33; Court's Ex. # 3). However, since Appellant had previously asserted he was born in 1985, that information could not have been accurate if Appellant's earlier assertion was true, so Sergeant Pelfrey asked dispatch to send him photographs of Jeremy Wirtz and Rowland in order for him to be able to verify their identities. (R. p. 33; Court's Ex. # 3). He then secured Appellant in his law enforcement vehicle while he waited for that information and advised Appellant he believed he was lying about his name. (R. p. 34; Court's Ex. # 3).

At approximately 4:50 p.m., Appellant—after apparently giving the matter more thought—advised the officer he was actually thirty-two years old and now indicated he was born on April 25, which Sergeant Pelfrey noted was again inconsistent with the information he had previously provided.[3] (Court's Ex. # 3). The officer then approached Rowland and twice asked her if there was anything in the car he needed to know about it. (R. p. 34; Court's Ex. # 3). In response, Rowland indicated she did not know of anything and insisted she had only obtained a ride home from Appellant, whom she claimed she knew as Jeremy. (Court's Ex. # 3).

A few minutes later, one of Sergeant Pelfrey's fellow officers arrived at the scene to provide support. (R. pp. 61-62; Court's Ex. # 3). Just after that, Sergeant Pelfrey received a photograph of Jeremy Wirtz from dispatch, showed it to Appellant, and advised him the photograph was not of him. (Court's Ex. # 3). In response, Appellant insisted he was the person depicted in the photograph while claiming it was taken before he got tattoos. (Court's Ex. # 3). Sergeant Pelfrey then asked Appellant if he should look up the information for Gary Wirtz, and Appellant asserted Gary Wirtz was his brother. (Court's Ex. # 3). Shortly after that, Sergeant Pelfrey pulled up Gary Wirtz's photograph and information, showed it to Appellant, and advised

[3] Later on, Appellant, who was actually born in April, strenuously denied ever stating he was born in April despite having unmistakably done so. (Court's Ex. # 3).

him it was, in fact, a picture of him.[4] (Court's Ex. # 3). Nevertheless, Appellant continued to deny he was Gary Wirtz and now claimed to be thirty-five years old.[5] (Court's Ex. # 3).

At that point, Sergeant Pelfrey asked Appellant what was in the vehicle, advised him he was going to be taken to jail and fingerprinted, and noted his driver's license was suspended. (R. p. 35; Court's Ex. # 3). When confronted with that information, Appellant claimed he had not actually been driving the car, but the officer quickly pointed out he had personally observed Appellant doing so. (Court's Ex. # 3). Appellant then signaled for the sergeant to come speak with him on the other side of the law enforcement vehicle, which was farther away from where Rowland was positioned at the time, and indicated he was supposed to be going to pick "something" up for someone. (R. p. 35; Court's Ex. # 3). In response, Sergeant Pelfrey again asked Appellant for his true identity, and Appellant finally confirmed he was actually Gary Wirtz. (R. p. 35; pp. 48-49; Court's Ex. # 3).

Following that, Sergeant Pelfrey asked Appellant one more time if there was anything in the car, and Appellant responded "there was about to be" if the officer would "work" with him. (Court's Ex. # 3). Sergeant Pelfrey then advised Appellant they were going to search the car, Appellant stated they would not do so, and Sergeant Pelfrey responded by explaining they had to search it because they were going to be inventorying and towing it. (R. p. 36; p. 49; Court's Ex. # 3). Upon hearing that, Appellant continued to protest to any search being conducted but responded: "Well, they can tow it." (R. p. 36; Court's Ex. # 3).

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[4] As can be seen on the recording of the incident, the information Sergeant Pelfrey received concerning Gary Wirtz reflected both his license was suspended and his birthdate was in April. (R. p. 35; Court's Ex. # 3).

[5] Notably, Appellant's third guess at his age, which came nearly ten minutes after Sergeant Pelfrey asked him to provide that basic information, was still not consistent with the birthdate he initially provided. (R. p. 32; Court's Ex. # 3).

Shortly thereafter, Sergeant Pelfrey informed the other officers Appellant was going to be taken to jail for driving on a suspended license and the car would be inventoried prior to towing.[6] (R. p. 49; Court's Ex. # 3). The sergeant then asked dispatch to check Appellant's information, and dispatch quickly confirmed Appellant had an outstanding arrest warrant at that time. (Court's Ex. # 3). Upon learning of that information, Sergeant Pelfrey alerted Appellant of the warrant's existence, advised him of his rights, and again asked him if there was anything in the car. (Court's Ex. # 3). Once again, Appellant claimed there was nothing inside it. (Court's Ex. # 3). Sergeant Pelfrey then again advised Appellant the car was going to be inventoried and asked Appellant who he wanted to tow it. (R. p. 36; Court's Ex. # 3). In response, Appellant stated: "Whoever." (R. p. 36; Court's Ex. # 3).

As Sergeant Pelfrey began to prepare for the inventory search, Appellant asked him if he was willing to make a deal and claimed he could get them someone they "really want[ed]." (R. p. 35; Court's Ex. # 3). In response, Sergeant Pelfrey—while retrieving a blank inventory form from his vehicle—explained to Appellant he had to arrest him due to the outstanding warrant. (Court's Ex. # 3). The sergeant then headed toward the car to begin an inventory search at approximately 5:04 p.m., and, as he did, Appellant insisted there was nothing in the vehicle that needed to be inventoried while requesting the sergeant's supervisor be summoned to the scene.[7] (Court's Ex. # 3).

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[6] While Sergeant Pelfrey was speaking with Appellant, a third officer had arrived at the scene to assist. (Court's Ex. # 3).

[7] On the recording of the incident, a substantial crack is plainly visible on the car's windshield when Sergeant Pelfrey approached it at approximately 5:04 p.m., and that crack appears to extend to a portion of the windshield that would be directly in the driver's line of sight. (Court's Ex. # 3). Later on during the recording, the large crack is again plainly visible at approximately 5:13 p.m. (Court's Ex. # 3).

At that time, the Oconee Sheriff's Office had a written policy governing the agency's procedures for vehicle impoundment and inventory searches. (R. pp. 135-137). Pursuant to that policy, the following procedure was applicable to a situation in which the driver of a vehicle was arrested:

> All vehicles shall be towed when the driver of that vehicle has been arrested, or charged with an offense that does not allow them to operate that vehicle. Except when the driver/owner of the vehicle designates another person within the vehicle (or close by at the discretion of the deputy) to take possession of the vehicle. The designated person must be of responsible age and possess a valid driver's license. In such cases the deputy shall record that person[']s name[,] address, telephone number and driver's license number in their incident report.

(R. p. 36; pp. 135-137). Additionally, the policy specified an officer was to request towing services from a company identified by the vehicle's "driver/owner" so long as a wrecker could arrive at the scene within forty-five minutes, from the closest available company, or from the next company in the agency's rotation for such services. (R. p. 36; pp. 135-137). The policy further dictated an inventory search be performed on "all vehicles towed." (R. pp. 135-137). Likewise, as to the documentation required when an inventory search was conducted, the policy stated:

> Deputies will fill out an inventory form <u>completely</u> on all tows, taking special care to note the following:
>
> i. Vehicle Identification Number (VIN)
> ii. Name and address of the registered owner
> iii. Name and address of the lien holder(s)
> iv. Incident report number
> v. Any damage, defects, etc., with the wrecker operator before the vehicle is towed.

(R. pp. 135-137). Furthermore, the policy stated:

> Any time a vehicle is directed to be towed by this agency, a towing information only incident report will be filed, regardless of whether the reason for the tow is criminal or civil. If the tow is

> due to a situation where an incident report will be filed, a separate towing information only report is not necessary, the appropriate information may be included in the original incident report.

(R. pp. 135-137).

In addition to that, the Oconee County Sheriff's Office also had a procedural manual directing inventory searches be conducted of the entire vehicle, including "the trunk and all containers therein consistent with the caretaker purpose[,]" while expressly delineating the interests such searches serve. (R. pp. 138-139). The procedural manual further directed:

> When expedient and practical the inventory should be conducted by two officers (deputy sheriffs), and the interior and exterior of the vehicle photographed when necessary. Non-evidentiary items of significant value found in the vehicle should be removed for safekeeping and afforded adequate security. Contraband for evidence found in the vehicle should be immediately seized and preserved in accordance with existing procedures governing the seizure of physical evidence. A receipt should be given for all items removed from the vehicle. If the doors, the glove compartment, the trunk, or any other containers therein are locked or otherwise sealed, great care should be taken to minimize damage to property while gaining access to conduct the inventory[.]

(R. pp. 138-139). Likewise, the procedural manual stated the inventory search should be "recorded" as directed by the agency's inventory policy. (R. pp. 138-139).

Pursuant to those delineated policies and procedures, Sergeant Pelfrey began conducting the inventory search of the car along with another officer. (R. p. 37; p. 49; p. 62; Court's Ex. # 3). Shortly after he did, Sergeant Pelfrey found the black bag Appellant had previously been carrying on the car's driver's seat.[8] (R. p. 37; p. 55; Court's Ex. # 3). Upon looking inside it, he

[8] Almost immediately after looking inside the car, Sergeant Pelfrey also located an open can of beer. (R. p. 37; Court's Ex. # 3).

discovered several bags of a crystalline substance, cash, a digital scale, and other items.[9] (R. p. 37; p. 46; Court's Ex. # 3). At that point, Sergeant Pelfrey detained Rowland and then continued on with inventory search while another officer who had arrived at the scene to provide support proceeded with filling out the inventory form. (Court's Ex. # 3). During the course of that renewed inventory search, Sergeant Pelfrey found a loaded pistol hidden underneath the driver's seat. (R. pp. 37-38; p. 40; p. 50; Court's Ex. # 3). He then finished fully searching the interior of the car before examining its trunk, which contained a tattooing kit.[10] (R. pp. 37-38; p. 65; Court's Ex. # 3). Shortly after that, he finished the inventory search and, at approximately 5:11 p.m., asked for the next towing company "in rotation" to be dispatched to the scene to tow the vehicle. (Court's Ex. # 3).

A few minutes later, Sergeant Pelfrey examined the evidence discovered during the search and gathered the currency that had been stored with the drugs. (Court's Ex. # 3). He then brought the money to Appellant and asked him if it belonged to him, and Appellant promptly claimed ownership of it.[11] (R. p. 38; Court's Ex. # 3). At that point, the sergeant advised Appellant the cash had been located with drugs, and Appellant quickly asserted the money was not supposed to be with "the drugs." (R. p. 38; Court's Ex. # 3). Perhaps realizing the incriminating nature of that remark, Appellant then rapidly pivoted and stated: "What drugs?" (R. p. 38; Court's Ex. # 3).

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[9] Meanwhile, one of the other officers looked inside Rowland's bag and found several pills concealed within it. (R. pp. 60-63; Court's Ex. # 3). The pills were later confirmed to be buprenorphine, a controlled substance. (Court's Ex. # 3; State's Ex. # 5 (Analysis Report)).

[10] Significantly, the tattooing kit was the only item of significant value found inside the car aside from the contraband. (R. pp. 64-65; Court's Ex. # 3).

[11] When asked about how much cash he had, Appellant indicated it should be approximately $80 to $90. (R. p. 38; Court's Ex. # 3). In total, the cash found in the bag with the drugs equaled $82. (R. p. 38; Court's Ex. # 3).

Following that, Sergeant Pelfrey spoke with Rowland for a few moments and then discussed the inventory form with the officer who was in the process of completing it.[12] (Court's Ex. # 3). During the discussion, Sergeant Pelfrey indicated a tattooing kit was the only item of value found during the search, instructed him to note that on the form, indicated he would also put it in his report, confirmed there was no radio in the car, and asked the officer to also note on the form the inventory search was recorded on his body camera. (Court's Ex. # 3). Sergeant Pelfrey then personally reviewed the inventory form to ensure it was properly filled out, made some edits, and asked the other officer to make sure he signed it. (Court's Ex. # 3).

Thereafter, upon completing his responsibilities at the scene, Sergeant Pelfrey began to transport Appellant to jail at roughly 5:25 p.m., and, when he did so, Appellant instructed him he needed to be taken to the hospital. (R. pp. 38-39; p. 51; Court's Ex. # 3). When asked why, Appellant asserted he had swallowed a "baggie" just before the officer arrived at the scene. (R. pp. 38-36; p. 51; Court's Ex. # 3). In response, Sergeant Pelfrey immediately took Appellant to the hospital. (R. p. 52; Court's Ex. # 3).

Subsequently, the drugs recovered during the inventory search were submitted to the Anderson Oconee Regional Forensics Laboratory for analysis. (R. pp. 75-78). At the lab, one of the recovered bags was tested, and the crystalline substance inside was determined to constitute a little over eleven grams of methamphetamine. (R. pp. 79-80; pp. 184-150). Based on that, Appellant was indicted for trafficking in methamphetamine and possession of a weapon during the commission of a violent crime. (R. p. 4; pp. 151-152; pp. 155-156).

[12] Around that time, Sergeant Pelfrey also directed another officer to put the bags of crystalline substance into a BEST evidence kit. (Court's Ex. # 3). When the drugs were later delivered to an evidence technician for safekeeping until they could be transported for analysis, they were inside a sealed BEST evidence kit. (R. pp. 68-69).

Shortly before Appellant's trial on those charges, defense counsel submitted a written suppression motion challenging the lawfulness of the vehicle search that led to the discovery of Appellant's methamphetamine and gun. (R. pp. 5-6; pp. 129-130). Through that motion, defense counsel contended the search was unlawful for two distinct reasons: (1) it was supposedly pretextual in nature based on the fact the officer asked Appellant several times about what would be found in the car prior to the search; and (2) the Oconee County Sheriff's Office's written procedures purportedly did not contain any provisions "regarding the opening of containers inside the vehicle pursuant to an inventory search."[13] (R. pp. 129-130). Based on those two claims, defense counsel maintained the evidence recovered was the fruit of an unconstitutional search and had to be suppressed. (R. p. 130).

Toward the outset of Appellant's trial, the trial judge conducted an in limine hearing on defense counsel's motion. (R. p. 5). During that hearing, defense counsel began by indicating she had received supplemental information from the State that contained "the magic language required by the two cases" she had cited to in her written motion. (R. pp. 5-6). As a result, defense counsel indicated she was going to "pivot [her] argument slightly." (R. p. 6). Following that, defense counsel solely contended the drugs should be suppressed because the inventory search was pretextual in nature in light of the motives she believed were reflected by Sergeant Pelfrey asking Appellant several times what would be found in the car before first mentioning the word "inventory." (R. pp. 6-7). However, in making that argument, defense counsel conceded the officers "did eventually do an inventory" and further conceded "they ha[d] a policy

[13] In the suppression motion, defense counsel summarized what occurred by asserting Appellant was "pulled over" for driving with a cracked windshield, Appellant was arrested for driving under suspension during "the course of the traffic stop," and the officer followed the arrest by conducting an "alleged" inventory search of the vehicle Appellant had been driving, which led to the discovery of the methamphetamine in a small black bag found on the vehicle's driver's seat. (R. pp. 129-130).

governing it." (R. p. 6). In rebuttal, the solicitor asserted the officers conducted an inventory search after Appellant was arrested for driving under suspension, on an outstanding arrest warrant, and for providing false information to an officer. (R. pp. 7-8). Furthermore, the solicitor argued the inventory search conducted was proper because it was consistent with the Oconee County Sheriff's Office's policies and procedures on such searches. (R. p. 8).

After considering the arguments of counsel and reviewing the recording of the incident, the trial judge denied the suppression motion. (R. pp. 9-11). In doing so, the trial judge ruled: (1) Sergeant Pelfrey acted in full accordance with the applicable agency policy; (2) the policy was constitutionally proper; (3) the decision to tow the car was proper in light of Appellant's arrest and because the car necessarily needed to be towed from the scene under the circumstances involved; (4) the officers "acted in accordance with the policy and did not act in a pretextual manner in inventorying" the car; and (5) the bag in which the drugs were found "necessarily need[ed] to be inventoried" in order to protect Appellant and his property, to protect the officers from allegations of theft, and to protect the officers from anything dangerous that could have been inside it. (R. pp. 9-10).

Following the trial judge's ruling, the trial proceeded forward. (R. p. 13). During the course of trial, Sergeant Pelfrey recounted the details of the incident leading to Appellant's arrest and the discovery of the incriminating evidence. (R. pp. 29-59). As part of his testimony, Sergeant Pelfrey also specifically confirmed he "was going to have to" arrest Appellant and take him to jail once he learned Appellant's true identity and discovered he had both a suspended driver's license and an outstanding arrest warrant, which occurred prior to the inventory search being conducted. (R. pp. 35-36). Likewise, Sergeant Pelfrey explained he conducted a full front-and-back inventory search of the car prior to it being towed pursuant to agency policy,

which led to the discovery of Appellant's methamphetamine and hidden pistol. (R. pp. 36-38). Furthermore, Sergeant Pelfrey explained inventory searches like the one he conducted were performed for the purposes of: (1) protecting property in the vehicle; (2) protecting against claims something was removed from it; and (3) protecting against harm that could be caused by anything dangerous inside it. (R. p. 36).

After that testimony was presented, the solicitor moved to admit the pistol into evidence, and defense counsel responded: "No objection, Your Honor." (R. pp. 39-40). Hearing that, the trial judge replied: "All right. Then it's admitted without objection." (R. p. 40). Thereafter, similar colloquies occurred when the State sought to admit photographs, including of Appellant's gun and methamphetamine, along with the recording of the incident, and the trial judge admitted that evidence without objection after defense counsel specifically stated she had no objections to those items. (R. pp. 41-42; p. 47; pp. 140-147).

In addition to that, several other witnesses offered testimony related to the incident, including the forensic drug chemist who had confirmed the identity of the methamphetamine. (R. pp. 60-71; pp. 80). Once that testimony was admitted, the State moved to admit both the drugs and the chemist's report into evidence, and, once again, the trial judge admitted that evidence "[w]ithout objection" after speaking with and confirming the lack of objections from defense counsel. (R. pp. 81-83).

Following the introduction of that evidence, both the State and the defense rested their cases, and the case was later submitted to the jury after the parties presented their closing arguments and the trial judge instructed the jury on the applicable law. (R. pp. 85-86; pp. 88-119; p. 121). Subsequently, after deliberating on the matter for just under forty minutes, the jury unanimously convicted Appellant as indicted. (R. pp. 121-122).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In a search and seizure case, an appellate court in South Carolina is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) ("[W]e will review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling."). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court must affirm the trial court if there is any evidence supporting the ruling. See State v. Moore, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016) ("[A]ppellate courts must affirm if there is any evidence to support the trial court's ruling."); State v. Morris, 411 S.C. 571, 578, 769 S.E.2d 854, 858 (2015) ("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling." (citation and internal quotations omitted)). Meanwhile, the appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009); see Khingratsaiphon, 352 S.C. at 70, 572 S.E.2d at 459 ("In State v. Brockman, . . . [w]e concluded the appellate court would not review the trial judge's ultimate determination de novo but, rather, would apply a deferential standard of review.").

ARGUMENT

The trial judge correctly denied Appellant's pre-trial motion to suppress the methamphetamine and gun found during the search of a car Appellant had recently been driving because: (1) Appellant was lawfully arrested, including on an outstanding arrest warrant, during the course of an encounter with a law enforcement officer; (2) the car, which did not belong to Appellant and was parked directly in front of the entrance to a private business, had to be impounded and towed pursuant to constitutionally-appropriate policies and procedures due to Appellant's arrest; and (3) Appellant's contraband was found during the course of a valid inventory search that was properly conducted pursuant to the applicable policies and procedures and for legitimate caretaking purposes, which rendered the search constitutionally reasonable.

Appellant contends the trial judge reversibly erred by denying his *pre-trial* motion to suppress the evidence discovered during the course of an inventory search.[14] In support of that contention, Appellant maintains the officers who conducted the search possessed a clear investigatory motive and, thus, the search was constitutionally invalid. To the contrary, the

[14] Notably, there is a telling and critical reason Appellant has elected to frame the issue on appeal as alleging error in the trial judge's denial of a "pre-trial" suppression motion. (App. Br. p. 1). Although defense counsel moved for the evidence discovered during the inventory search to be suppressed during a pre-trial in limine hearing in which no testimony was presented, defense counsel indicated to the judge she had no objections to the evidence when it was subsequently introduced during trial following the presentation of actual testimony from the officers involved in the search, and, resultantly, the trial judge admitted that evidence without objection. (R. pp. 5-7; pp. 39-42; p. 47; pp. 81-83; pp. 129-130). Under such circumstances, defense counsel's earlier objection was *abandoned* instead of simply not renewed, and any issue concerning the admission of the evidence found during the inventory search was not properly preserved for appellate review due to the fact that evidence was expressly admitted without objection during trial. See Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) ("When a party states to the trial court that it has no objection to the introduction of evidence, even though the party previously made a motion to exclude the evidence, the issue raised in the previous motion is not preserved for appellate review."); State v. Dicapua, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) ("Dicapua's sole objection to the videotape came in the form of a motion in limine to suppress the videotape because of its lack of audio. Once the State moved to enter the videotape into evidence and publish it to the jury, however, Dicapua's counsel specifically stated he had 'no objection.' We find this amounted to a waiver of any issue Dicapua had with the videotape."); see also State v. Jones, 435 S.C. 138, 144, 866 S.E.2d 558, 561 (2021) ("[A] different approach is warranted where a court rules after a[n in limine] hearing on a constitutional issue. Under those circumstances, the ruling is final and, unless something changes during trial that may reasonably cause the trial judge to alter the pretrial ruling, no further objection is required to preserve the issue for appellate review.").

inventory search conducted in Appellant's case was not—just as the trial judge found—improperly pretextual and, instead, was validly conducted pursuant to standardized policies and procedures for legitimate caretaking purposes only after Appellant was lawfully arrested, which triggered a need for the car he had been driving to be impounded and towed from the scene under the circumstances involved. Therefore, the search that resulted in the discovery of Appellant's methamphetamine and gun was constitutionally reasonable, the trial judge properly denied Appellant's suppression motion prior to the trial getting underway, and that ruling was fully supported by the evidence and testimony. Accordingly, there is no proper basis upon which to disturb the trial judge's ruling on appeal. Appellant's convictions should be affirmed.

The Fourth Amendment of the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Similarly, the South Carolina Constitution provides its own protections to the state's citizens against unreasonable searches and seizures. State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001); see S.C. Const. art. I, § 10 ("The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated[.]"). Furthermore, primarily in order to guard against invasive technological advancements, the South Carolina Constitution also includes additional language protecting our citizens from "unreasonable invasions of privacy." S.C. Const. art. I, § 10; see Forrester, 343 S.C. at 647, 541 S.E.2d at 842 ("[T]he drafters of our state constitution's right to privacy provision were principally concerned with the emergence of new electronic technologies that increased the government's ability to conduct searches.").

Importantly, based on the express language of the United States Constitution and the South Carolina Constitution, only *unreasonable* searches, seizures, and invasions of privacy are constitutionally forbidden. S.C. Const. art. I, § 10; see State v. Weaver, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (2007) (explaining the "focus in the state constitution is on whether the invasion of privacy is reasonable"); State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977) ("It is only unreasonable searches and seizures that are prohibited."); see also Maryland v. Buie, 494 U.S. 325, 331 (1990) ("It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]"). As a result, the touchstone of the search and seizure protections afforded by both the federal constitution and state constitution is reasonableness. See Florida v. Jimeno, 500 U.S. 248, 250 (1991) ("The touchstone of the Fourth Amendment is reasonableness."); see also Heien v. North Carolina, 574 U.S. 54, 60-61 (2014) ("To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them 'fair leeway for enforcing the law in the community's protection.' " (citation omitted)); Illinois v. Rodriguez, 497 U.S. 177, 185 (1990) ("[W]hat is generally demanded of the many factual determinations that must regularly be made by agents of the government . . . is not that they always be correct, but that they always be reasonable.").

Generally speaking, warrantless searches are considered to be unreasonable per se unless they fall under an exception to the warrant requirement, and any evidence seized as the result of an unreasonable search typically must be excluded from trial. Weaver, 374 S.C. at 319, 649 S.E.2d at 482; see State v. Peters, 271 S.C. 498, 501, 248 S.E.2d 475, 476 (1978) (instructing searches conducted without a warrant are per se unreasonable unless an exception to the warrant requirement is applicable). However, "warrantless searches are allowed when the circumstances make it reasonable . . . to dispense with the warrant requirement." Kentucky v. King, 563 U.S.

452, 462 (2011). Regarding the situations where a warrantless search is considered to be constitutionally reasonable, South Carolina courts have recognized several exceptions to the warrant requirement, including: (1) the search incident to lawful arrest exception; (2) the hot pursuit exception; (3) the stop and frisk exception; (4) the automobile exception; (5) the plain view exception; (6) the consent exception; (7) the abandonment exception; (8) the exigent circumstances exception; and (9) the inventory search exception. State v. Miller, 423 S.C. 95, 100, 814 S.E.2d 166, 169 (2018); State v. Brown, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012); State v. Herring, 387 S.C. 201, 209, 692 S.E.2d 490, 494 (2009); see State v. Lemacks, 275 S.C. 181, 183-184, 268 S.E.2d 285, 286 (1980) (rejecting a constitutional challenge to a routine inventory search of a vehicle that was raised pursuant to both the federal constitution and the state constitution).

Of those exceptions, the inventory search exception is a "well-defined" one. Illinois v. Lafayette, 462 U.S. 640, 643 (1983). In order for a warrantless search of a vehicle to be valid pursuant to that exception, the vehicle must be in the lawful custody of police officers, which involves determining whether the officers' decision to impound the vehicle was reasonable under the particular circumstances involved. Miller, 423 S.C. at 100, 814 S.E.2d at 169. If a vehicle has been properly impounded, officers are constitutionally permitted to conduct an inventory search of it for the legitimate caretaking purposes of: (1) protecting the vehicle's owner's property while it is in the custody of the police; (2) providing protection against claims of lost, stolen, or vandalized property; and (3) guarding against any dangers that could be posed by the items concealed within the vehicle. Colorado v. Bertine, 479 U.S. 367, 372 (1987); see Whren v. United States, 517 U.S. 806, 812 n. 1 (1996) ("An inventory search is the search of property lawfully seized and detained, in order to ensure that it is harmless, to secure valuable items (such

as might be kept in a towed car), and to protect against false claims of loss or damage."). However, any such search must be conducted pursuant to standardized criteria, and those criteria must serve the legitimate caretaking purposes that justify inventory searches while also limiting the discretion of individual officers such that officers are not allowed "so much latitude that inventory searches are turned into a purposeful and general means of discovering evidence of crime." Florida v. Wells, 495 U.S. 1, 3-4 (1990) (citation and internal quotations omitted); see United States v. Banks, 482 F.3d 733, 739 (4th Cir. 2007) ("For [an inventory] policy to be valid, it must curtail the discretion of the searching officer so as to prevent searches from becoming a ruse for a general rummaging in order to discover incriminating evidence. Otherwise, the policy might devolve into a purposeful and general means of discovering evidence of a crime. Nevertheless, an inventory-search policy may leave the inspecting officer sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search and characteristics of the container itself." (citations and internal quotations omitted)). Furthermore, the officers must not act in bad faith in carrying out the inventory search and are not permitted to conduct one for "the *sole* purpose of investigation." Bertine, 479 U.S. at 372 (emphasis added). Importantly though, the mere fact an officer suspects contraband may be present prior to searching a vehicle is *not* alone sufficient to render an otherwise valid inventory search unreasonable or constitutionally improper unless an investigatory motive is the officer's sole reason for carrying out the search. See United States v. Magdirila, 962 F.3d 1152, 1157 (9th Cir. 2020) (explaining the mere presence of an investigatory motive or a dual motive—one legitimate and one improper—does not render an inventory search invalid and explaining a pretext analysis involves looking to whether the search would have occurred in the absence of an impermissible reason); United States v. Evans, 781 F.3d 433, 437 (8th Cir. 2015) ("An

investigatory motive does not render an inventory search invalid unless that motive is the officers' sole motivation in carrying out the search.").

In the case sub judice, Sergeant Pelfrey—within just a few minutes of initiating contact with Appellant after observing him driving a car with a noticeable crack in its windshield and speeding up suspiciously in response to the officer's presence—discovered Appellant: (1) had committed the offense of driving on a suspended license; (2) was currently wanted on an outstanding arrest warrant; and (3) had unlawfully provided false information to the officer about his identity.[15] See S.C. Code Ann. § 16-17-725(B) ("It is unlawful for a person to misrepresent

[15] In challenging the trial judge's ruling denying the suppression motion on appeal, Appellant—for the first time—contends Sergeant Pelfrey had no lawful basis to initiate the encounter with Appellant while insisting a cracked windshield does not constitute a violation of law in South Carolina. (App. Br. pp. 14-15; p. 19). Importantly though, defense counsel did not raise such a contention to the trial judge, and the trial judge did not rule upon such a contention when addressing the narrow argument actually presented to her in support of the suppression motion. (R. pp. 5-7; pp. 9-11; pp. 129-130). Therefore, because Appellant's current appellate contention concerning the validity of Sergeant Pelfrey's encounter with him was neither raised to nor ruled upon by the trial judge, that particular contention was not properly preserved for appellate review and cannot appropriately be considered or addressed for the first time on appeal. See State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (instructing a defendant cannot raise one argument in support of an issue at trial and then raise a different argument in support of that issue to the appellate court); see also State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."). However, even assuming it could somehow properly be considered for the first time on appeal, Appellant's newly-conceived contention regarding the propriety of his encounter with the officer is nonetheless flawed for a couple of different reasons. First, the fact Appellant was driving a vehicle with a large crack in its windshield did, in fact, give Sergeant Pelfrey a legitimate basis to believe a criminal offense was occurring because the existence of such a crack supported a conclusion the vehicle was being driven in an unsafe condition due to the crack's potential to obstruct the driver's view. See S.C. Code Ann. § 56-5-730 ("It is unlawful and, unless otherwise declared in [the Uniform Act Regulating Traffic on Highways] with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or to fail to perform any act required in this chapter."); S.C. Code Ann. § 56-5-4410 ("It shall be unlawful for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles *which is in such an unsafe condition as to endanger any person or property* or which does not contain those parts or is not at all times equipped with lights, brakes, steering and other equipment in proper condition and adjustment as required in this article or which is equipped in any manner in violation of this article or for any person to do any act forbidden or fail to perform

his identification to a law enforcement officer during a traffic stop or for the purpose of avoiding arrest or criminal charges."); S.C. Code Ann. § 56-1-460(A) (making it unlawful to drive on a South Carolina public highway with a suspended driver's license). As a result, Sergeant Pelfrey decided—prudently—to arrest Appellant instead of to simply ignore both Appellant's freshly-committed crimes *and* the judicially-issued warrant calling for Appellant's arrest, and the officer's decision to do so under such circumstances was plainly constitutionally reasonable.[16] See Atwater v. City of Lago Vista, 532 U.S. 318, 354 (2001) ("If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender."); see also S.C. Code Ann. §

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any act required under this article." (emphasis added)); S.C. Code Ann. § 56-5-5310 ("No person shall drive or move on any highway any vehicle unless the equipment thereon is in good working order and adjustment as required in this chapter and the vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway."); see also Delaware v. Prouse, 440 U.S. 648, 660 (1979) ("Many violations of minimum vehicle-safety requirements are observable, and something can be done about them by the observing officer, directly and immediately."); Knight v. State, 284 S.C. 138, 141, 325 S.E.2d 535, 537 (1985) ("[A] police officer may stop an automobile and briefly detain its occupants, even without probable cause to arrest, if he has a reasonable suspicion that the occupants are involved in criminal activity."). Second, even assuming the crack was not sufficiently substantial to actually constitute an offense, Sergeant Pelfrey's belief that it did was reasonable under the circumstance, and, thus, it would have been constitutionally proper for the officer to initiate a traffic stop based on that belief. See Heien, 574 U.S. at 61 ("Reasonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of the relevant law. The officer may be reasonably mistaken on either ground. Whether the facts turn out to be not what was thought, or the law turns out to be not what was thought, the result is the same: The facts are outside the scope of the law. There is no reason, under the text of the Fourth Amendment or our precedents, why this same result should be acceptable when reached by way of a reasonable mistake of fact, but not when reached by way of a similarly reasonable mistake of law."); see also State v. Provet, 405 S.C. 101, 108, 747 S.E.2d 453, 457 (2013) ("The test whether reasonable suspicion exists is an objective assessment of the circumstances; the officer's subjective motivations are irrelevant."); State v. Williams, 351 S.C. 591, 600, 571 S.E.2d 703, 708 (Ct. App. 2002) ("Reasonableness 'is measured in objective terms by examining the totality of the circumstances.' " (quoting Ohio v. Robinette, 519 U.S. 33 (1996)).

[16] Notably, before the inventory search was conducted, Sergeant Pelfrey even explicitly explained to Appellant he *had* to arrest him based on the outstanding warrant. (Court's Ex. # 3).

17-13-30 ("The sheriffs and deputy sheriffs of this State may arrest without warrant any and all persons who, within their view, violate any of the criminal laws of this State if such arrest be made at the time of such violation of law or immediately thereafter.").

Significantly, at the time of Appellant's lawful arrest, the car Appellant had just been driving was parked directly in front of the entrance to a private business, Appellant—who was *not* the car's owner—was obviously no longer able to move it from its location by virtue of his arrest, the only other occupant of the car could also not drive it because she—like Appellant—did not possess a valid driver's license, and there was no one else present at the scene who had any connection to the car. Cf. United States v. Brown, 787 F.2d 929, 932 (4th Cir. 1986) ("[T]he police officer in this case could reasonably have impounded Brown's vehicle either because there was no known individual immediately available to take custody of the car, or because the car could have constituted a nuisance in the area in which it was parked."). Under such circumstances, it was necessary for Sergeant Pelfrey to take temporary custody of the car, and, in fact, the Oconee County Sheriff's Office's standardized policy required *all* vehicles to be impounded and towed upon the arrest of the driver unless the "driver/owner"—which was a designation that did not appear to apply to Appellant since he did not personally own the car—identified a person within the vehicle or close by to take possession of it. See United States v. Martin, 982 F.2d 1236, 1240 (8th Cir. 1993) ("Police may take protective custody of a vehicle when they have arrested its occupants . . . even if it is lawfully parked and poses no public safety hazard." (citation omitted)). Therefore, Sergeant Pelfrey's act of impounding the car for towing was constitutionally reasonable and proper under the circumstances involved. See South Dakota v. Opperman, 428 U.S. 364, 376 (1976) ("[I]n following standard police procedures, prevailing throughout the country and approved by the overwhelming majority of courts, the conduct of the

police was not 'unreasonable' under the Fourth Amendment."); cf. Miller, 423 S.C. at 103, 814 S.E.2d at 170 (concluding the officers' decision to impound a vehicle was constitutionally reasonable where all the requirements for impoundment in the governing policy were met).

Additionally, because the properly-impounded car needed to be towed from the scene to both secure it and prevent it from serving as a nuisance by simply being abandoned directly in front of the tractor dealership's entrance, Sergeant Pelfrey was constitutionally permitted to inventory the car prior to it being towed based on the Oconee County Sheriff's Office's standardized policies and procedures governing inventory searches, which were constitutionally appropriate since they: (1) were expressly designed to serve the legitimate caretaking purposes of such searches; (2) would result in an inventory being completed when followed; (3) were sufficiently limited such that an officer like Sergeant Pelfrey would *not* be afforded excessive discretion that would permit the officer to conduct an inventory search in any manner desired and only when the officer wanted to do so for purely investigative purposes; and (4) specifically required the entire vehicle, including containers like the one that contained Appellant's methamphetamine, to be searched. See Wells, 495 U.S. at 4 ("The policy or practice governing inventory searches should be designed to produce an inventory."); Bertine, 479 U.S. at 375 ("Nothing . . . prohibits the exercise of police discretion 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."). And, since those standardized policies and procedures were constitutionally proper, the inventory search conducted pursuant to them was likewise constitutionally reasonable regardless of whether someone—such as a defendant who wished his methamphetamine and gun had not been found—could conceive of some *other* way in which the policies and procedures

could have been written that would be more narrow or refined.[17] See Bertine, 479 U.S. at 373-374 (instructing "reasonable police regulations relating to inventory procedures administered in good faith satisfy the Fourth Amendment even though courts might as a matter of hindsight be able to devise equally reasonable rules requiring a different procedure"); Lafayette, 462 U.S. at

[17] On appeal, Appellant maintains the South Carolina Constitution should be interpreted to only permit inventory searches if the driver is first afforded an opportunity to make alternative arrangements or refuse the inventory search altogether. (App. Br. p. 16). Once again, that particular argument was neither raised to nor ruled upon by the trial judge. (R. pp. 5-7; pp. 9-11; pp. 129-130). Accordingly, it simply cannot properly be considered or addressed for the first time on appeal pursuant to our state's well-established issue preservation rules. See State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal."); cf. State v. Baker, 390 S.C. 56, 65, 700 S.E.2d 440, 444 (Ct. App. 2010) ("Baker cannot now add a constitutional claim on appeal because he cannot raise one ground to the trial court and a different ground on appeal."). However, even if that freshly-raised argument could somehow properly be considered for the first time on appeal, Appellant's suggestion regarding the need for an opportunity to make alternative arrangements has already been directly considered and rejected by the United States Supreme Court, which constitutes a compelling reason for it to be rejected once again due to its incompatibility with what is meant by a standard of reasonableness. See Bertine, 479 U.S. at 373-374 (concluding the inventory search conducted in Bertine's case was constitutionally reasonable even though "giving Bertine an opportunity to make alternative arrangements would undoubtedly have been possible" in light of what is meant by the term "reasonable" in a constitutional sense); see also Lafayette, 462 U.S. at 647-648 ("The reasonableness of any particular governmental activity does not necessarily or invariably turn on the existence of alternative 'less intrusive' means. . . . We are hardly in a position to second-guess police departments as to what practical administrative method will best deter theft by and false claims against its employees and preserve the security of the stationhouse. It is evident that a stationhouse search of every item carried on or by a person who has lawfully been taken into custody by the police will amply serve the important and legitimate governmental interests involved."); cf. United States v. Trujillo, 993 F.3d 859, 870 (10th Cir. 2021) ("The deputies were not required to allow [Trujillo] to call someone to come pick up the Mustang and then, assuming he was successful, wait around for the new driver to arrive."). Similarly, Appellant's suggestion regarding a right to refuse an inventory search should likewise be rejected because it is incompatible with the legitimate caretaking purposes underlying such searches, including due to the fact someone like Appellant—who was not the car's owner—could refuse to consent to an inventory search simply because he did not personally care whether a vehicle that was not his—along with any property inside it that did not belong to him—was lost, stolen, damaged, or vandalized. See Opperman, 428 U.S. at 376 n. 10 ("The 'consent' theory advanced by the dissent rests on the assumption that the inventory is exclusively for the protection of the car owner. It is not. The protection of municipality and public officers from claims of lost or stolen property and the protection of the public vandals who might find a firearm . . . or as here, contraband drugs, are crucial.").

647 (acknowledging there perhaps could have been less intrusive means for achieving the aims of an inventory search than the means set out in the applicable inventory policy but nevertheless explaining "the real question is not what 'could have been achieved,' but whether the Fourth Amendment *requires* such steps; it is not our function to write a manual on administering routine, neutral procedures of the stationhouse").

Furthermore, just as the trial judge found, Sergeant Pelfrey's inventory search of the vehicle was conducted in good faith and not improperly pretextual. Supporting such a finding, Sergeant Pelfrey lawfully arrested Appellant for multiple reasons, including due to an outstanding arrest warrant the officer could not simply ignore, *prior to* any search being conducted, and the officer carried out the inventory search along with other officers in compliance with standardized policies and procedures that required him to act just as he did to achieve the legitimate caretaking purposes connected to securing the car and the property within it before it was towed from the scene.[18] Cf. United States v. Snoddy, 976 F.3d 630, 636 (6th Cir.

[18] As support for his position the search was truly pretextual in nature, Appellant maintains on appeal Sergeant Pelfrey did not actually conduct the inventory search pursuant to the applicable policies and procedures because he purportedly did not carry out the search in an appropriate manner or properly complete the required inventory form. (App. Br. pp. 17-18). Yet again, those arguments were neither raised to nor ruled upon by the trial judge, and, in fact, the inventory form itself was not introduced to make it a part of the record in Appellant's case. (R. pp. 5-7; pp. 9-11; pp. 129-130). Under such circumstances, Appellant's current arguments in that regard were not properly preserved for appellate review and cannot be meaningfully reviewed on appeal in the absence of the form he now claims—for the first time—was not properly filled out. See State v. Gee, 262 S.C. 373, 379, 204 S.E.2d 727, 729 (1974) ("Only matter that has been ruled on below can be reviewed[.]"); State v. Serrette, 375 S.C. 650, 652, 654 S.E.2d 554, 555 (Ct. App. 2007) ("[T]he burden is on the appellant to provide the appellate court with an adequate record for review."); see also State v. Cabbagestalk, 281 S.C. 35, 36, 314 S.E.2d 10, 11 (1984) ("Failure to make an offer of proof precludes the appellant from raising the issue on appeal."); cf. State v. Adams, 332 S.C. 139, 144, 504 S.E.2d 124, 126 (Ct. App. 1998) ("This precise argument was neither raised to nor ruled upon by the trial court. Appellant argued only that the evidence did not rise to the 'level of a reasonable doubt as to counts 1, 2, and 3.' . . . Adams's argument, therefore, is not preserved for our review."). However, even if those arguments could somehow properly be addressed on appeal without being raised during trial and

2020) ("The problem for Snoddy is that, regardless of Trooper Malone's motivations and beliefs, Trooper Malone was going to have the car towed no matter what."); Magdirilla, 962 F.3d at 1158 ("Department Policy required the officers to impound the vehicle upon determining that Magdirila was unlicensed. Robinson established that fact during his initial questioning of Magdirila and decided to impound the vehicle *before* discovering methamphetamine in the glove compartment. Given the early stage at which Robinson decided to impound the vehicle, it is a 'reasonable view' of the evidence that Robinson's intent at the time the vehicle was impounded was administrative rather than investigatory." (citation omitted)); United States v. Matthews, 591 F.3d 230, 235 n. 7 (4th Cir. 2009) ("[T]he facts in this case support the conclusion that the inventory search was performed in good faith. After placing Matthews under arrest, Deputy Clark reasoned that the car would need to be towed because it was on private property and there

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assuming for the sake of argument Sergeant Pelfrey did not fully complete the inventory form, such a deviation from the applicable policies and procedures would not necessarily establish the inventory search was unconstitutional. Cf. United States v. Morris, 995 F.3d 665, 670 (8th Cir. 2021) (explaining "a failure to follow standard procedures does not ineluctably render a search unreasonable" and rejecting a claim a deputy's failure to complete the required reports after conducting an inventory search rendered the search improperly pretextual); United States v. Stanley, 4 F. App'x 148, 150 (4th Cir. 2001) ("Stanley was subject to arrest under the outstanding New Jersey warrant and upon his arrest the car he was driving, which was registered to another who was not presented, would have been impounded and searched under written police policy. An inventory search, even if not thorough and complete, satisfies the Fourth Amendment if administered in good faith. Any omissions from the inventory list created from the search of Stanley's car were not sufficient to create an inference of bad faith on the part of the police." (citation omitted)). Moreover, Sergeant Pelfrey's discovery of Appellant's drugs almost immediately after beginning the inventory search gave him a valid and independent basis to search the vehicle pursuant to the automobile exception from that point going forward, and, thus, what began as an inventory search in Appellant's case was lawfully permitted to shift to another type of warrantless search once the methamphetamine was found without becoming constitutionally unreasonable even assuming the things Sergeant Pelfrey did from that point going forward did not fully comply with the applicable inventory search policies and procedures. See Michigan v. Thomas, 458 U.S. 259, 261-262 (1982) (explaining the discovery of contraband during a valid inventory search can establish a probable cause basis to believe there was contraband elsewhere in the vehicle, which would justify a warrantless search pursuant to the automobile exception).

was no other driver at that time to take the vehicle away. Only after making such a determination did Deputy Clark begin the inventory search of the vehicle, and he performed this search because the department policy at the time stated that he had to take full inventory of the vehicle. Under these circumstances, it is entirely reasonable for an officer to perform an inventory search, . . . and Matthews has presented no evidence to either contradict or impeach Deputy Clark's testimony." (citations, brackets, and internal quotations omitted)). Under such circumstances, the trial judge could and did validly find Sergeant Pelfrey's motive for the search was not an improper one, and that factual finding was not rendered incorrect or unsupported as a matter of law simply because Sergeant Pelfrey may have *also* harbored a belief drugs or other contraband might be located in the vehicle prior to beginning the inventory search. See Cady v. Dombrowski, 413 U.S. 433, 443 (1973) (explaining a determination concerning an individual officer's motivation in carrying out a vehicle search constituted a fact finding and instructing the particular fact finding made in that regard in Dombrowski's case should not have been disregarded by a reviewing court in light of the fact "enforcement of the traffic laws and supervision of vehicle traffic may be a large part of a police officer's job"); cf. United States v. Lewis, 3 F.3d 252, 254 (8th Cir. 1993) ("Having conducted the search of Lewis's van according to standardized inventory procedures, the officers' *coexistent* suspicions that incriminating evidence might be discovered did not invalidate their lawful inventory search." (emphasis added)).

Accordingly, because Appellant's methamphetamine and gun were found during the course of legitimate inventory search that was not conducted in bad faith or for sole purpose of criminal investigation, the trial judge properly declined to suppress the evidence discovered during that constitutionally-reasonable search, and there are no legitimate grounds upon which to

reverse that ruling—including the trial judge's factual finding concerning an absence of pretext—on appeal as the ruling was fully supported by testimony and evidence presented during trial. See Moore, 415 S.C. at 251, 781 S.E.2d at 900 (explaining an appellate court reviewing a trial judge's ruling on a search and seizure issue must affirm "if there is any evidence to support the trial court's ruling"); Brockman, 339 S.C. at 66, 528 S.E.2d at 666 ("[W]e will review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling."). Appellant's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

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March 10, 2022

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County
Honorable Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2020-001388

THE STATE,

Respondent,

vs.

GARY MARTIN WIRTZ,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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