REL: 03/17/17

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2016-2017

CR-15-1319

Demario Ladell Keith

v.

State of Alabama

Appeal from Jefferson Circuit Court
(CC-14-4369; CC-14-4370)

BURKE, Judge.

Demario Ladell Keith pleaded guilty to unlawful possession of a controlled substance, see § 13A-12-212, Ala. Code 1975, and first-degree unlawful possession of marijuana, see § 13A-12-213, Ala. Code 1975. Pursuant to a plea

agreement with the State, Keith was sentenced to 130 months' imprisonment for each conviction, to be served concurrently; those sentences were split, and he was ordered to serve 24 months. Before entering his guilty plea, Keith filed a motion to suppress the evidence that formed the basis of the charges against him. After a hearing on the matter, the trial court denied Keith's motion. Keith subsequently reserved that issue for appellate review during his guilty-plea colloquy. (R. 14.)

At the hearing on Keith's motion to suppress, Nathan Elmore, an officer with the Birmingham Police Department, testified that he pulled Keith over after he determined that the license plate on Keith's vehicle was registered to a different vehicle. Officer Elmore stated that, after he executed the traffic stop, he approached Keith and asked for his identification. When Officer Elmore ran Keith's information through dispatch, it was determined that Keith had outstanding warrants for driving with a revoked license, disregarding a stop sign, and "one other charge" related to a traffic violation. (R1. 19.)[1] After confirming that the

[1]"R1" denotes the record from the hearing on Keith's motion to suppress from case CR-15-0851, a pro se appeal that

warrants were valid, Officer Elmore placed Keith under arrest. Officer Elmore testified that Keith was not violating any traffic laws before he decided to run Keith's license plate number and that, when he frisked Keith, he found no contraband, nor was any contraband in plain view inside of Keith's vehicle. According to Officer Elmore, he conducted an inventory search of Keith's vehicle only after a decision was made to have the vehicle towed and impounded. During the inventory search, Officer Elmore discovered marijuana and other controlled substances underneath the passenger's seat.

In his motion to suppress the evidence seized during the inventory search, Keith argued that the search was unconstitutional because it was conducted without a warrant and because none of the recognized exceptions to the warrant requirement existed. The State argued that the evidence discovered in Keith's vehicle was admissible because it was discovered during an inventory search, a well recognized exception to the warrant requirement.

In State v. Landrum, 18 So. 3d 424 (Ala. Crim. App. 2009), this Court explained:

---

was dismissed for lack of ripeness. This Court took judicial notice of the record in that case.

> "'This Court reviews de novo a circuit court's decision on a motion to suppress evidence when the facts are not in dispute. See State v. Hill, 690 So. 2d 1201, 1203 (Ala. 1996); State v. Otwell, 733 So. 2d 950, 952 (Ala. Crim. App. 1999).' State v. Skaggs, 903 So. 2d 180, 181 (Ala. Crim. App. 2004). In State v. Hill, 690 So. 2d 1201 (Ala. 1996), the trial court granted a motion to suppress following a hearing at which it heard only the testimony of one police officer. Regarding the applicable standard of review, the Alabama Supreme Court stated, in pertinent part, as follows:
>
> > "'"Where the evidence before the trial court was undisputed the ore tenus rule is inapplicable, and the Supreme Court will sit in judgment on the evidence de novo, indulging no presumption in favor of the trial court's application of the law to those facts." Stiles v. Brown, 380 So. 2d 792, 794 (Ala. 1980)(citations omitted). The trial judge's ruling in this case was based upon his interpretation of the term "reasonable suspicion" as applied to an undisputed set of facts; the proper interpretation is a question of law.'
>
> "State v. Hill, 690 So. 2d at 1203-04."

18 So. 3d at 426. Because the evidence presented at the suppression hearing is not in dispute, the only issue before this Court is whether the trial court correctly applied the law to the facts presented at the suppression hearing, and we afford no presumption in favor of the trial court's ruling.

I.

It is well settled that "warrantless searches are per se unreasonable, unless they fall within one of the recognized exceptions to the warrant requirement." Hinkle v. State, 86 So. 3d 441, 451 (Ala. Crim. App. 2011)(internal citations omitted). Those exceptions are: "(1) plain view; (2) consent; (3) incident to a lawful arrest; (4) hot pursuit or emergency; (5) probable cause coupled with exigent circumstances; (6) stop and frisk situations; and (7) inventory searches." Id.

In South Dakota v. Opperman, 428 U.S. 364, 376 (1976), the United States Supreme Court held that inventory searches conducted by police were not unreasonable under the Fourth Amendment and thus created an exception to the warrant requirement. The Court stated that the inventory search was "developed in response to three distinct needs: [1] the protection of the owner's property while it remains in police custody; [2] the protection of the police against claims or disputes over lost or stolen property; [3] and the protection of the police from potential danger." 428 U.S. at 369. In Colorado v. Bertine, 479 U.S. 367, 376 (1987), the Court held that the existence of police discretion in conducting inventory searches did not render the inventory-search

exception unconstitutional "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."

In Ex parte Boyd, 542 So. 2d 1276, 1281 (Ala. 1989), the Alabama Supreme Court, in addressing the issue of inventory searches, considered the following question: "[W]hat constitutes evidence that the police complied with reasonable or standardized police regulations or procedures relating to automobile inventory practices?" In Boyd, the appellant objected at trial "to the admission of testimony concerning evidence obtained from the inventory on the ground that no testimony or other evidence established what the policies or procedures of the Anniston Police Department relating to inventory searches were." The Court held:

> "Throughout the majority, concurring, and dissenting opinions of Bertine are references to and quotations from the written procedures followed by the Boulder, Colorado, police department in conducting inventories. Accompanying that evidence was the testimony of officers concerning the manner in which inventories were accomplished. Upon review of that evidence, the Supreme Court was able to conclude that 'reasonable police regulations relating to inventory procedures administered in good faith satisfy the Fourth Amendment,' Bertine, 479 U.S. at 374, 107 S.Ct. at 742, and that police

> procedures were satisfactory so long as conducted "according to standard criteria.' Id. at 375, 107 S.Ct. at 743.
>
> "Here, we can not determine whether the regulations of the Anniston Police Department relating to inventory searches are 'reasonable,' or whether the police acted in accord with 'standard criteria.' Sergeant Watson testified that the inventory was done 'in compliance with the policies of the police department.' Officer Bradley added that he 'usually' took photographs of the subject automobile when a 'major crime' was involved. Neither officer knew where the policy was recorded. Furthermore, there was no testimony whatsoever that provided the particulars of the policy. Without more, we can not possibly conclude that the police department's inventory policy was reasonable. Proving the reasonableness of a warrantless search is a burden borne by the State. Teat v. State, 409 So. 2d 940 (Ala. Crim. App. 1981). Without such proof, the search is constitutionally defective. In this case, the issue was properly preserved, and we conclude that the search can not be upheld as an inventory."

Boyd, 542 So. 2d at 1281-82.

The Court in Boyd also held "that a police officer's conclusory testimony that the inventory was done in compliance with departmental regulations" does not, of itself, satisfy the Fourth Amendment. 542 So. 2d at 1282. Finally, the Court noted that no inventory list was contained in the record on appeal. Despite testimony that a list was created, the Court held that "the State's failure to provide evidence of the

inventory list implanted one more impermissible chink in the petitioner's Fourth Amendment armor." 542 So. 2d at 1283. In conclusion, the Court held:

> "We are not, by our holding herein, imposing new, strange, or unwarranted burdens on Alabama law enforcement agencies. Indeed, Opperman and Bertine created a narrow Fourth Amendment exception that renders admissible otherwise excludable evidence; however, for such evidence to pass constitutional muster, the record must sufficiently reflect what that policy is, describe the policy in such a way that its reasonableness can be reviewed, and present adequate evidence of what the employed criteria were."

542 So. 2d at 1283

The record in the present case contains the same defects that rendered the search in Boyd unconstitutional. Although the State elicited testimony from Officer Elmore regarding the police department's inventory-search policy, that testimony was limited. Officer Elmore testified that it was the department's policy to inventory a vehicle before it is towed "[t]o make sure that everything that [the arrestee] says is in the vehicle is still in there." (R1. 8.) Elmore testified that he completed the inventory and created an inventory list; however, he did not have the list with him at the hearing and it is not contained in the record before this Court. The

State did not elicit any testimony regarding where a copy of the department's policy could be found, the particular criteria for conducting an inventory search contained in the policy, and whether Officer Elmore followed that criteria when he conducted the search of Keith's vehicle. Similar to Boyd, the lack of evidence presented by the State at the suppression hearing prevents us from being able to review the reasonableness of the officer's search. Accordingly, we hold that the purported inventory search of Keith's vehicle violated the Fourth Amendment and cannot be upheld.

The dissent contends that the present case is distinguishable from Boyd "in significant respects." ___ So. 3d ___ at ___ (Joiner, J., dissenting). First, the dissent points out that "unlike the defendant in Boyd, Keith, once the officer testified that he had performed the search in accordance with the department's policy, did not object to any 'further testimony concerning the inventory or its fruits unless proof was made as to what the policies or procedures were.'" Id. Keith did not object to any further testimony regarding the department's policy because there was no further testimony regarding the department's policy. That deficiency

is the basis for the holding in the present case. We also note that the relevant objection in Boyd was made during trial. In the present case, Keith's argument was made during a hearing on his motion to suppress, immediately after the State's witness testified in an attempt to justify his warrantless search of Keith's vehicle. To say that this argument did not "put the trial court on timely and adequate notice that Keith was challenging the reasonableness of the policy of the Birmingham Police Department regarding inventory searches" defies common sense.

Second, the dissent points to the Boyd Court's holding regarding the delay between the impoundment of Boyd's vehicle and the subsequent inventory search and correctly asserts that "nothing in the record indicates that any significant length of time elapsed between impoundment and the search [in the present case]." Id. However, the length of time between the search and the impoundment is irrelevant in the present case. The holding in Boyd regarding the temporal proximity between the impoundment and the search was mutually exclusive from the holding regarding the lack of evidence as to the police department's inventory policy. See Boyd, 542 So. 2d at 1281

("We also point out another basis for our conclusion that this search cannot be upheld as a constitutional inventory." (emphasis added)).

Next, the dissent states: "Officer Elmore's testimony, albeit brief, was sufficient to indicate what the policy was (to perform an inventory search on every vehicle that is towed) and why the inventory-search policy existed ('[t]o make sure that everything that he says is in the vehicle is still in there')." We agree. However, Boyd also requires the State to "describe the policy in such a way that its reasonableness can be reviewed, and present adequate evidence of what the employed criteria were." 542 So. 2d at 1283. Nothing in Officer Elmore's testimony allows this Court to determine, for example, whether the department's policy would allow an officer to search a container found inside a vehicle. The fact that all impounded vehicles are inventoried says nothing about the specific criteria that are employed when conducting those inventories. Accordingly, we are unable to determine whether those criteria are reasonable.

Finally, the dissent attempts to distinguish Boyd by noting that Officer Elmore's testimony suggested that the

department's policy gives officers no discretion in deciding which vehicles to inventory. According to the dissent, the evidence in Boyd "included testimony indicating, among other things, that an inventory search was performed in some cases but not others...." ___ So. 3d at ___. However, no such testimony was elicited in Boyd. In fact, the testimony in Boyd was nearly identical to the testimony in the present case. The officer in Boyd stated: "Whenever a vehicle is impounded, this vehicle has to be inventoried thoroughly in order to determine and document anything that may be contained therein." Although another officer went on to state that officers sometimes used a camera when conducting inventory searches, there was absolutely no testimony that officers had discretion in determining whether to perform an inventory search on a vehicle once it was impounded.

Thus, Boyd is not distinguishable from the present case in any meaningful way, and the search in the present case suffers from the same constitutional defects.

II.

In its brief on appeal, the State alternatively argues that the search was justified as a search incident to a lawful

arrest. In support of that argument, the State cites Sheffield v. State, 606 So. 2d 183, 187 (Ala. Crim. App. 1982), in which this Court held:

> "After arresting the driver of an automobile, an officer may, as a contemporaneous incident of that arrest, search the passenger compartment' of that car, including 'the contents of any containers found within the passenger compartment.' New York v. Belton, 453 U.S. 454, 460, 101 S.Ct. 2860, 2864, 69 L.Ed.2d 768 (1981); Daniels v. State, 416 So.2d 760, 763 (Ala. Cr. App. 1982). See also, State v. Calhoun, 502 So. 2d 808 (Ala. 1986)."

However, the above-quoted passage from Sheffield relies on New York v. Belton, 453 U.S. 454 (1981), in support of the broad rule that police may search the passenger compartment of a vehicle after arresting the driver. In Arizona v. Gant, 556 U.S. 332, 351 (2009), the United States Supreme Court narrowed the search-incident-to-arrest exception announced in Belton and held that "[p]olice may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be

unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies."

In Gant, the appellant's vehicle was searched after he was "arrested for driving with a suspended license, handcuffed, and locked in the back of a patrol car." 556 U.S. at 335. The United States Supreme Court agreed with the Arizona Supreme Court's holding that the search-incident-to-arrest exception did not apply because "Gant could not have accessed his car to retrieve weapons or evidence at the time of the search." Id. The Court also found the search of Gant's vehicle unreasonable because, it said, police could not reasonably have believed that evidence of the crime for which Gant was arrested, i.e., driving with a suspended license, might have been found in the passenger compartment of Gant's car. Id. at 344.

In the present case, Officer Elmore testified that Keith's vehicle was searched after Keith was arrested. (R1. 9.) Thus, Keith could not have accessed any part of his vehicle at the time of the search.[2] Additionally, Keith was

[2]We note that Officer Elmore initially testified that he could not remember whether Keith had a passenger in his vehicle when he was arrested. On cross-examination, Officer Elmore was shown a transcript from a previous hearing in which

arrested for outstanding warrants involving traffic violations. Like the officers in Gant, Officer Elmore could not have reasonably expected to find evidence of those crimes inside of Keith's vehicle. Accordingly, under Gant, Officer Elmore's warrantless search of Keith's vehicle did not qualify as a search incident to arrest and, therefore, violated the Fourth Amendment.

Keith also argues that it was unconstitutionally pretextual for police to run his license-plate number without any reasonable suspicion that Keith was violating the law. Because we have determined that the subsequent search was unconstitutional, we need not address that issue.

For the foregoing reasons, the trial court erred by denying Keith's motion to suppress. Accordingly, the judgments of the trial court are reversed and these cases are remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

---

he had testified that his partner "was dealing with the passenger" while Officer Elmore was dealing with Keith. (R1. 23.) However, Officer Elmore could not remember any details about the passenger and Officer Elmore's partner did not testify at the hearing.

Welch and Kellum, JJ., concur. Windom, P.J., dissents. Joiner, J., dissents, with opinion.

JOINER, Judge, dissenting.

In reversing Demario Ladell Keith's convictions and sentences, the Court relies primarily on Ex parte Boyd, 542 So. 2d 1276 (Ala. 1989), in which the Alabama Supreme Court held an inventory search unconstitutional. The inventory search in Boyd was conducted by a Sergeant Watson and Officer Bradley of the Anniston Police Department four days after Boyd was arrested and his car was impounded. In describing the evidence regarding the inventory search, the Alabama Supreme Court stated:

> "Sergeant Watson agreed that the inventory was conducted in 'compliance with the policies of the police department.' Boyd objected to any further testimony concerning the inventory or its fruits unless proof was made as to what the policies or procedures were; his objection was overruled.
>
> "During Sergeant Watson's cross-examination, the following exchange occurred:
>
> "'Q. Let's go back to what you've referred to as an inventory search of a vehicle.
>
> "'Would you please tell this Court and this jury what the policy is with the City of Anniston concerning inventory searches?
>
> "'A. Whenever a vehicle is impounded, this vehicle has to be inventoried thoroughly in order to determine and document anything that may be contained therein.

> "'Q. Do you normally do those inventory searches?
>
> "'A. I haven't in a long time. I did for many years. I make very few arrests nor do I inventory many cars now.
>
> "'Q. When was the last time you inventoried a vehicle other than [Boyd's] car?
>
> "'A. I can't tell you, sir. I don't know.
>
> "'Q. A year or two?
>
> "'A. Possibly.'

"Sergeant Watson testified that he did not know where in the city's policy regarding inventory procedures the criteria for conducting inventories were located. He did not know where the list compiled as the result of the inventory was located, and no such list was introduced at trial.

"Officer Bradley was also pressed on cross-examination about the city's policies and procedures regarding inventorying impounded automobiles:

> "'Q. It's the standard policy of the police department of the City of Anniston to go out and get evidence whenever a car is impounded?
>
> "'A. No. You're always aware that evidence may be found when you're making an inventory.
>
> "'Q. And, of course, you always take a camera with you when you do an inventory?
>
> "'A. On some occasions, yes, sir, you do.

"'Q. Always?

"'A. Not always.

"'Q. What percentage of the time?

"'A. I beg your pardon?

"'Q. What percentage of the time is a camera used in making an inventory search of a vehicle at the police department of Anniston?

"'A. Usually, when we're aware that there is a major case involved, we will take a camera as routine procedure to document what condition it's in or anything we discover and to aid us in later documenting what was inside the vehicle.

"'Q. Did you do any kind of recording while you were doing this inventory search?

"'A. No, sir. That wasn't my job.

"'Q. Did anybody?

"'A. Yes, sir.

"'Q. In whose possession is that recording?

"'A. I don't know where the report is.'

"No other testimony was adduced by either the State or Boyd relating what the inventory procedures of the City of Anniston Police Department were. No directive, general order, or evidence of a municipal code was introduced that would show what the policies were.

"....

> "We take notice that the State prosecuted its case with extensive testimony, nearly unfaltering, almost exclusively directed at the proposition that the warrantless search of Boyd's Camaro was valid as an inventory. Boyd's objections at trial and rulings in response thereto were directed at the validity of the city's inventory policies. The briefs to the Court of Criminal Appeals and to this Court primarily address the propriety of the search as an inventory. Only in passing did the Court of Criminal Appeals suggest that the search could have been valid as a 'vehicle search' based on probable cause."

542 So. 2d at 1277-78.

The Boyd Court held first that the search was unconstitutional because of the "insufficient temporal proximity between the impoundment and the search." 542 So. 2d at 1281. The Court specifically stated:

> "We are unaware of any case, federal or state, that presents the issue of whether a search can be valid as an inventory notwithstanding a four-day lapse of time between the impoundment and the inventory. We are of the opinion that the Fourth Amendment requires that, without a demonstrable justification based upon exigent circumstances other than the mere nature of automobiles, the inventory be conducted either contemporaneously with the impoundment or as soon thereafter as would be safe, practical, and satisfactory in light of the objectives for which this exception to the Fourth Amendment warrant requirement was created. In other words, to be valid, there must be a sufficient temporal proximity between the impoundment and the inventory. When the inventory must be postponed, each passing moment detracts from the full effectuation of the objectives of the inventory, and

> indeed, disserves those objectives; at some point, the passage of time requires, to uphold the validity of the inventory, proof of some immediate and exigent circumstances (other than the mere nature of automobiles) the attention to which is more important than protecting the arrestee's property and protecting the police from false claims or danger associated with that property."

542 So. 2d at 1279.

As an additional reason for its holding that the search was unconstitutional, the Boyd Court cited "Boyd's object[ion] at trial to the admission of testimony concerning evidence obtained from the inventory on the ground that no testimony or other evidence established what the policies or procedures of the Anniston Police Department relating to inventory searches were." 542 So. 2d at 1281. The Court stated:

> "Here, we can not determine whether the regulations of the Anniston Police Department relating to inventory searches are 'reasonable,' or whether the police acted in accord with 'standard criteria.' Sergeant Watson testified that the inventory was done 'in compliance with the policies of the police department.' Officer Bradley added that he 'usually' took photographs of the subject automobile when a 'major crime' was involved. Neither officer knew where the policy was recorded. Furthermore, there was no testimony whatsoever that provided the particulars of the policy. Without more, we can not possibly conclude that the police department's inventory policy was reasonable. Proving the reasonableness of a warrantless search is a burden borne by the State. Teat v. State, 409 So. 2d 940 (Ala. Crim. App. 1981). Without such

> proof, the search is constitutionally defective. In this case, the issue was properly preserved, and we conclude that the search can not be upheld as an inventory."

542 So. 2d at 1281.

In the instant case, as the Court notes in stating the standard of review, the evidence presented at the hearing was not in dispute. The only witness who testified at the hearing was Officer Nathan Elmore. On direct examination, the following exchange occurred:

> "A. And after arrest, we inventoried Mr. Keith's vehicle that he was driving, and we found --
>
> "Q. All right. Let me ask you this question: Why did you inventory the vehicle?
>
> "A. <u>It's part of our policy if we're going to tow the vehicle that we inventory it.</u>
>
> "Q. All right. So you were going to tow the vehicle. And did you, in fact, tow the vehicle?
>
> "A. Yes.
>
> "Q. You were going to tow it, so you do an inventory. What is the purpose of the inventory?
>
> "A. <u>To make sure that everything that he says is in the vehicle is still in there.</u>
>
> "Q. Now, did you complete the inventory?
>
> "A. Yes.

> "Q. All right. During the course of conducting inventory, did you find any contraband in the car?
>
> "A. Yes."

(R1. 7-8 (emphasis added).)

On cross-examination, Officer Elmore was asked one question about the department's inventory policy. Specifically, the following exchange occurred:

> "Q. Is it procedure for the Birmingham Police Department, when you conduct an inventory search, that you're supposed to create an inventory list?
>
> "A. Yes."

(R1. 21.) This question and answer occurred in a brief line of questioning about whether Officer Elmore had brought a copy of the inventory list to the suppression hearing; he had not.

Following Officer Elmore's testimony, Keith's counsel made the following argument regarding the inventory search:

> "The witness indicated that this was an inventory search. Well, the law says that when you conduct an inventory search there are proper procedures that have to be followed procedurally by your police department. And then, if proper procedures are implemented, you have to actually create the list for the inventory search.
>
> "He says he's done one, but he has not presented it here, which would be the proper time to show us that he actually followed the proper rules and procedures of this search."

(R1. 26.)

The instant case is distinguishable in significant respects from Boyd. First, unlike the defendant in Boyd, Keith, once the officer testified that he had performed the search in accordance with the department's policy, did not object to any "further testimony concerning the inventory or its fruits unless proof was made as to what the policies or procedures were." Nor did Keith, through questioning or otherwise, offer anything that would call into question the stated policy of searching every vehicle that is towed. Rather, Keith waited until the officer's testimony was completed and then argued that the officer's failure to bring a copy of the inventory list meant that the search was unreasonable. This late objection to the failure to introduce a copy of the inventory list is insufficient to put the trial court on timely and adequate notice that Keith was challenging the reasonableness of the policy of the Birmingham Police Department regarding inventory searches.

Second, nothing in the record indicates that any significant length of time elapsed between impoundment and the search; indeed, it is reasonable to infer that the inventory

search occurred immediately or not long after Keith's arrest. Thus, this case does not implicate any concerns over "temporal proximity between the impoundment and the search."

Third, Officer Elmore's testimony, albeit brief, was sufficient to indicate what the policy was (to perform an inventory search on every vehicle that is towed) and why the inventory-search policy existed ("[t]o make sure that everything that he says is in the vehicle is still in there").[3]

---

[3]The main opinion asserts:

> "Nothing in Officer Elmore's testimony allows this Court to determine, for example, whether the department's policy would allow an officer to search a container found inside a vehicle. The fact that all impounded vehicles are inventoried says nothing about the specific criteria that are employed when those inventories are conducted. Accordingly, we are unable to determine whether those criteria are reasonable."

___ So. 3d at ___. I fail to see what difference this speculative objection by the majority makes in terms of evaluating reasonableness under the facts of this case. A policy permitting or not permitting an officer conducting an inventory search to search a container found in a vehicle would not offend the Constitution and thus could be reasonable. Cf. Colorado v. Bertine, 479 U.S. 367 (1987) (holding that police performing an inventory search may open closed containers).

Certainly, the State has the burden of justifying an

Fourth, Officer Elmore's testimony that the police-department policy was to perform an inventory search on every car it towed indicates that the policy gave officers no discretion to refuse to perform an inventory search after a decision was made to tow a vehicle. This lack of discretion is distinguishable from the evidence regarding the policy at issue in Boyd; that evidence, as noted, included testimony indicating, among other things, that an inventory search was performed in some cases but not others[4] and that photographs were taken in some cases but not others.

---

inventory search, and, certainly, the State in this case could have introduced more evidence regarding the department's inventory procedures. At the same time, the Constitution does not require the State to put on an ideal case, and Keith could have asked additional questions if he had any serious question about the reasonableness of the inventory-search procedures utilized in this case.

In my view, there simply is nothing in this case--save speculative second-guessing from this Court--that calls into question Officer Elmore's undisputed testimony that the department's policy was to perform an inventory search on every vehicle that was towed.

[4]The main opinion asserts that "no such testimony was elicited in Boyd." As quoted above, Officer Bradley in Boyd answered "No" to the question "'It's the standard policy of the police department of the City of Anniston to go out and get evidence whenever a car is impounded?" (Emphasis added.)

In sum, this case simply does not involve the vast array of constitutional problems that were present in Boyd. Unlike the extensive testimony regarding the inventory search at issue in Boyd, this case involved relatively straightforward and uncontested evidence regarding the inventory search.

In my opinion, the State met its burden to establish that the inventory search was constitutional. I respectfully dissent.