



Police Law Bulletin



City Attorneys' Office

Toni M. Smith, Senior Assistant City Attorney

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NORTH CAROLINA APPELLATE COURT DECISIONS



Officer Had Reasonable Suspicion to Stop Defendant's Vehicle For DWI

State v. Wainwright, No. COA 14-1036 (17 March 2015).

On August 12, 2007, at approximately 2:37 a.m., Officer Edwards with the East Carolina University (ECU) Police Department was standing beside his patrol vehicle in the driveway of the Chancellor's residence. The Chancellor's residence is directly across the street from the ECU campus, primarily surrounded by student residences, and about three-four blocks from downtown Greenville. There are numerous bars and nightclubs in the downtown area.

Officer Edwards observed a Jeep traveling toward downtown. The jeep swerved to the right, crossed the white line marking the outside lane of travel, and almost hit the curb. Officer Edwards testified that he was concerned the vehicle would swerve again and strike a pedestrian. He stated pedestrian traffic in this area was much heavier than normal because students had moved back onto campus but had not resumed classes, and the bars and nightclubs stopped serving alcohol at 2:00. Officer Edwards testified that one of the nightclubs located downtown has a capacity of 800 patrons, and it generally operated at full capacity on Saturday night. About a dozen other establishments in the area serve alcohol. Many pedestrians were walking along the sidewalks on their way home from the bars and nightclubs, some pedestrians were walking in the bicycle lane, and it was not unusual to observe some pedestrians walking in the road.

Officer Edwards left the Chancellor's residence, pulled into the roadway behind the Jeep, and initiated a traffic stop. Officer Edwards determined the driver was impaired and arrested him. An Intoxilyzer test showed a blood alcohol concentration of .011.

Defendant was convicted of DWI. He appealed to Superior Court. Prior to trial, the Superior Court denied defendant's motion to suppress evidence obtained as a result of the stop. A jury convicted defendant of DWI. Due to a prior DWI conviction within the past seven years, and having driven with a revoked license at the time of his arrest, defendant was sentenced to 18 months supervised probation and

30 days in prison. Defendant appealed arguing, in part, that his motion to suppress was improperly denied because Officer Edwards lacked reasonable suspicion that defendant was impaired.

Officer Edwards stopped defendant's vehicle based upon his observation of defendant swerving on a single occasion. The Court has determined that weaving within the lane of travel, standing alone, is generally insufficient to justify a traffic stop without additional factors. However, the Court has also found that weaving, standing alone, can be sufficient to arouse a reasonable suspicion of criminal activity when it is particularly erratic and dangerous to other drivers. Officer Edwards observed defendant's vehicle at approximately 2:37 a.m. on a Sunday morning. Defendant was driving in an area comprised mainly of student housing, three to four blocks from downtown where numerous bars and nightclubs were located. Those establishments stopped serving alcohol at 2:00 a.m. Pedestrian traffic was heavy. Officer Edwards estimated that 100 or more students were walking back to their dormitories or residences; some walking on the sidewalks and others walking on the paved portion of the street. Under the totality of the circumstances, the Court concluded that Officer Edwards had reasonable suspicion that defendant was driving while impaired.

Defendant's Act of Stopping His Vehicle In the Middle of the Roadway and Turning Away From a License Checkpoint Gave Rise to Reasonable Suspicion for a Vehicle Stop

State v. Griffin, __ N.C. __, __ S.E.2d __ (April 12, 2013).

On the night of January 5, 2009, Trooper Casner of the North Carolina Highway Patrol was conducting a license checkpoint on Highway 306. The checkpoint was marked by activated blue lights of patrol cars. At approximately 9:55 p.m. Trooper Casner observed a vehicle approaching the checkpoint from the west on Seafarer Road. Then the vehicle, although not at an intersection, stopped in the middle of the road and appeared to initiate a three-point turn by beginning to turn left and continuing onto the shoulder of the road. Trooper Casner testified that these actions caused him to suspect that the driver was attempting to avoid the checkpoint. Trooper Casner stopped the driver before he could complete the turn and leave the area. Trooper Casner approached the vehicle and asked for the driver's operator's license, at which time the trooper detected the odor of alcohol on defendant, the driver. Trooper Casner subsequently charged defendant with driving while impaired.

On 4 June 2010, defendant moved to suppress the evidence from the stop, arguing that the checkpoint was unconstitutional. The trial court concluded that the checkpoint was valid and that Trooper Casner clearly had reasonable suspicion to stop the defendant. As a result, the trial court denied defendant's motion to suppress. Defendant pled no contest to driving while impaired, preserving his right to appeal. On appeal, the Court of Appeals reversed, holding the checkpoint to be unconstitutional. The Court of Appeals, however, did not comment on whether reasonable suspicion for the stop existed. The North Carolina Supreme Court granted the State's petition for review to determine whether there was reasonable suspicion to initiate a stop of defendant's vehicle. The State argued that, regardless of the checkpoint's constitutionality, defendant's attempt to evade the checkpoint gave Trooper Casner the requisite level of suspicion to further investigate the situation. As such, the State contended that the trial court was correct in denying defendant's motion to suppress the evidence from the stop. Defendant, on the other hand, argued that there was nothing unusual about his turn and therefore, there was no independent basis for making the stop.

Our Court has held that reasonable suspicion is the necessary standard for traffic stops. Reasonable suspicion requires that the stop be based on specific and articulable facts, as well as the rational inferences from those facts, as viewed through the eyes of a reasonable, cautious officer, guided by his experience and training. A court must consider the totality of the circumstances in determining whether a reasonable suspicion exists. A legal turn, by itself, is *not* sufficient to establish a reasonable, articulable suspicion, however, a legal turn in conjunction with other circumstances, such as the time, place and manner in which it is made, *may* constitute a reasonable, articulable suspicion which could justify an investigatory stop. In the case at hand, defendant approached a checkpoint marked with blue flashing lights. Once the patrol car lights became visible, defendant stopped in the middle of the road, even though he was not at an intersection, and appeared to attempt a three-point turn by beginning to turn left and continuing onto the shoulder. Trooper Casner observed defendant's actions and suspected defendant was attempting to evade the checkpoint. Given the place and manner of defendant's turn in conjunction with his proximity to the checkpoint, the Court held that there was reasonable suspicion that defendant was violating the law; thus, the stop was constitutional. Therefore, because the trooper had sufficient grounds to stop defendant's vehicle based on reasonable suspicion, it was unnecessary for the Court to address the constitutionality of the driver's license checkpoint.

Driver's License Checkpoint Was Valid Under Fourth Amendment; Officer Had Reasonable Suspicion to Detain Defendant for Further Investigation

***State v. Jarrett*, No. COA 09-1036 (4 May 2010).**

On the evening of March 28, 2008, members of the Forsyth County Sheriff's Department conducted a driver's license checkpoint. The checkpoint was performed pursuant to a written Sheriff's Department policy; six officers with flashlights, two in each lane of traffic, stopped every car coming through the checkpoint to determine if the drivers possessed valid licenses and registrations; a supervisor was present; all participating officers wore uniforms and traffic vests; and all Sheriff's Department vehicles at the checkpoint had activated their blue lights.

At approximately 11:16 p.m., defendant, accompanied by a passenger, approached the checkpoint driving his Honda Accord. As one of the deputies approached the driver's side to request the defendant's license and registration, he noticed an aluminum can located between the driver's and passenger's seats. The can was open and a light liquid residue was evident on the top of the can. The deputy then observed the driver leaning over towards the passenger as if he were trying to conceal the can from view.

Defendant provided the deputy with a valid license and registration. The license indicated defendant was 18-years-old. Before returning defendant's documentation, the deputy asked the occupants "What is in the can?" Neither responded. When the deputy asked again, the passenger raised the can, revealing that it was a Busch Ice beer.

The deputy directed defendant into a nearby gas station parking lot and ordered him to exit the vehicle. Upon exiting, defendant admitted he had been drinking. The deputy then performed a series of field sobriety tests which defendant failed. Consequently, defendant was arrested for driving while impaired and driving by a person less than 21-years-old after consuming alcohol.

Defendant filed a motion to suppress which was denied by both the district and superior courts. Defendant appealed.

Defendant first argued that the checkpoint violated his Fourth Amendment rights. When considering a challenge to a checkpoint, the reviewing court must undertake a two-part inquiry to determine whether the checkpoint meets constitutional requirements. First, the court must determine the primary purpose of the checkpoint. Second, if the court finds the police had a legitimate primary purpose for conducting the checkpoint, the court must then judge its reasonableness.

Where there is no evidence in the record to contradict the State's proffered purpose for a checkpoint, a trial court may rely on the testifying officer's assertion of a legitimate primary purpose. However, when there is evidence in the record that could support a finding of either a lawful or an unlawful purpose, the trial court cannot rely solely on an officer's bare statements as to the checkpoint's purpose. The trial court must carefully examine the checkpoint at issue to ensure that an illegal checkpoint is not attempted to be made legal by simply assigning the primary purpose to one objective instead of another.

In the instant case, the deputy testified that the purpose of the checkpoint was to "check the license and registration of every car coming through the checkpoint." However, on cross-examination, the deputy also admitted that officers were looking for "evidence that's in plain view of other crimes" and "any sign of criminal activity." Additionally, he testified that the location of the checkpoint was chosen in part because drivers in the area speed. Because variations existed in the deputy's testimony regarding the purpose of the checkpoint, the trial court was required to make findings of fact regarding what they believed to be its actual primary purpose. The trial court found, based upon the deputy's testimony and the fact that the checkpoint was conducted according to a department policy established to determine if drivers were complying with license and registration laws, that the primary purpose of the checkpoint was to check for licenses and registration. The United States Supreme Court and the North Carolina courts have suggested that checking for drivers' licenses and vehicle registrations is a lawful primary purpose for a checkpoint.

The trial court then had to determine that the checkpoint was reasonable. The court found that the seizure of vehicles at the checkpoint advanced the public interests since ensuring compliance with motor vehicle laws promotes safety on the roadways; the checkpoint was appropriately tailored to fit its primary purpose in that its establishment and duration was predetermined and that its location had been chosen because previous checkpoints in this area had resulted in license and DWI arrests; and finally, the checkpoint did not interfere any more than necessary with individual freedoms because officers utilized blue lights and uniforms to ensure visibility, all cars coming through the checkpoint were stopped, a supervisor was present, the checkpoint was conducted pursuant to a written and predetermined policy.

Defendant also argued that even if the checkpoint was constitutional, the deputy lacked reasonable suspicion to detain defendant after he had produced a valid license and registration. The trial court found that the deputy had seven years of experience; saw an aluminum can upon approaching the vehicle; and that the defendant then appeared to be trying to conceal the can. The Court of Appeals held that these circumstances gave the deputy reasonable suspicion to delay defendant by questioning him and his passenger about the contents of the can.

Therefore, the Court of Appeals affirmed the trial court's denial of defendant's motion to suppress.