



Police Law Bulletin



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In this issue:

Additional Findings and Conclusions of Law Regarding Constitutionality of Checkpoint Required – Pgs. 1-4
Reasonable Suspicion is Standard for Stopping Motor Vehicle for Any Traffic Violation; Court Disavows Prior Contrary Statements; Officer Had Reasonable Suspicion to Stop Driver for Changing Lanes Without Signaling – Pgs. 4-5



North Carolina Court of Appeals

**Court Requires Additional Findings and Conclusions of Law on Constitutionality of Checkpoint;****Assuming Without Deciding That Checkpoint Was Constitutional, Officer Had Reasonable Suspicion at Checkpoint to Detain Driver for Additional Investigation****State v. Veazey, No. COA07-1569 (July 1, 2008)**

Around 5:00 p.m. on January 1, 2006, two troopers with the North Carolina State Highway Patrol set up a drivers' license checkpoint. At approximately 5:40, a vehicle driven by Veazey approached the checkpoint. One of the troopers asked Veazey for his license and registration. Veazey produced an out-of-state license, although his vehicle was registered in North Carolina. During the encounter, the trooper noticed a strong smell of alcohol coming from Veazey's vehicle and saw that his eyes were red and glassy. The trooper performed a sobriety test on Veazey and after determining that he was impaired, arrested him.

Prior to trial, defendant filed a motion to suppress all evidence obtained as a result of the checkpoint arguing that the checkpoint, and his continued detention at it, was unconstitutional. The trial court denied the motion. Defendant pleaded no contest to driving while impaired but preserved his right to appeal. Defendant then filed notice of appeal to the North Carolina Court of Appeals.

The United States Supreme Court has long held that the Fourth Amendment requires that a search or seizure be based upon either consent or individualized suspicion of the person to be searched or seized. However, the Supreme Court has recognized certain limited exceptions to this general rule. For example, police may briefly detain vehicles at a roadblock checkpoint without individualized suspicion so long as the purpose of the checkpoint is legitimate and the checkpoint itself is reasonable. 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 programmatic purpose of the checkpoint. According to the United States Supreme Court, checkpoints primarily aimed at addressing immediate highway safety threats can justify the intrusions on drivers' Fourth Amendment privacy interests occasioned by suspicionless stops. On the other hand, the United States Supreme Court has also held that a checkpoint

with a primary purpose of general crime control violates the Fourth Amendment. The Court went on to note that a checkpoint with an invalid primary purpose cannot be saved by adding a lawful secondary purpose to the checkpoint. Otherwise, according to the Court, "law enforcement authorities would be able to establish checkpoints for virtually any purpose so long as they also include a license or sobriety check. For this reason, courts must examine the available evidence to determine the primary purpose of the checkpoint program."

Second, if a court finds that police had a legitimate primary programmatic purpose for conducting a checkpoint," that does not mean the stop is automatically, or even presumptively, constitutional. It simply means that the court must judge its reasonableness, hence its constitutionality, on the basis of the individual circumstances." To determine whether a checkpoint was reasonable under the Fourth Amendment, a court must weigh the public's interest in the checkpoint against the individual's Fourth Amendment privacy interest. The United States Supreme Court has held that when conducting this balancing inquiry, a court must weigh: "1) the gravity of the public concerns served by the seizure; 2) the degree to which the seizure advances the public interest; and 3) the severity of the interference with individual liberty." If, on balance, these factors weigh in favor of the public interest, the checkpoint is reasonable and therefore constitutional.

In this case, the North Carolina Court of Appeals began its analysis by focusing on the primary programmatic purpose of the checkpoint. When 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 unlawful purpose, a trial court cannot rely solely on an officer's bare statements as to a checkpoint's purpose. The trial court must carry out a close review of the plan at issue. This type of searching inquiry is necessary to ensure that "an illegal multi-purpose checkpoint is not made legal by the simple device of assigning 'the primary purpose' to one objective instead of the other." The record in this case contains conflicting evidence regarding the State's primary purpose in conducting the checkpoint. The trooper's initial explanation of the primary purpose of the checkpoint was that it was designed "to enforce any kind of motor vehicle law violations." The trooper asserted this purpose multiple times throughout the hearing. However, on two occasions, the trooper suggested that the checkpoint's purpose was even more broad, including finding any and all criminal violations. The United States Supreme Court has previously suggested that checking for drivers' license and vehicle registration violations is a lawful primary purpose for a checkpoint. However, it is also clear that a checkpoint whose primary purpose is to find any and all criminal violations is unlawful, even if police have secondary objectives related to highway safety. Further, it is unclear whether a primary purpose of finding any and *all motor vehicle violations* is a lawful primary purpose. One reason that a checkpoint is an appropriate tool for helping police discover certain types of motor vehicle violations is that police cannot discover such violations simply by observing a vehicle during normal road travel. The United States Supreme Court has previously expressed concern with allowing suspicionless stops to enforce motor vehicle violations that are readily observable. Many violations of North Carolina's motor vehicle laws are readily observable and can be adequately addressed by roving patrols when officer's develop individualized suspicion of a certain vehicle.

Given the above concerns and the variations in the trooper's testimony, the Court of Appeals concluded that the trial court was required to make findings regarding the actual primary purpose of the checkpoint and it was required to reach a conclusion regarding whether this purpose was lawful. Because the trial court failed to do so, the North Carolina Court of Appeals remanded the case back to the trial court to issue new findings and conclusions regarding the primary programmatic purpose of the checkpoint.

The Court of Appeals went on to explain that even if the trial court had determined that the primary programmatic purpose of the checkpoint was lawful, it was required to then apply the three-prong inquiry set forth above to determine if the checkpoint itself was reasonable. Although the trial court made findings on the first prong, it failed to make adequate findings on the latter two. Therefore, its findings could not support a conclusion that the checkpoint was reasonable. If the trial court determines on remand that the State's primary programmatic purpose for the checkpoint was lawful, then the Court of Appeals held that it must also issue new findings and conclusions regarding the reasonableness of the checkpoint.

Finally, the defendant had argued that if the primary purpose of the checkpoint was to check for a valid driver's license, he should have been allowed to proceed through the checkpoint after he presented a valid driver's license. According to defendant, the trooper's decision to further detain him was merely a "fishing expedition" that allowed him to investigate for evidence of any general criminal activity which was a violation of the Fourth Amendment. The Court of Appeals noted that while individualized suspicion is not required for police to briefly detain a driver at a lawful checkpoint, any further detention or search must be based upon consent or reasonable suspicion. In this case, the trooper testified that when defendant presented his license, the trooper detected a strong odor of alcohol and also observed that defendant's eyes were red and glassy. These facts provided sufficient reasonable suspicion to permit the trooper to pursue further investigation and detention of defendant.

**Case Remanded to Trial Court for Additional Findings and Conclusions of Law on
Constitutionality of Checkpoint**

State v. Gabriel, No. COA08-59 (2 September 2008).

Members of the North Carolina Highway Patrol established a driver's license checkpoint in an area in which several armed robberies had occurred the preceding week. Following the most recent robbery, the suspects were last seen driving a stolen sports utility vehicle in the vicinity of the checkpoint's location. At approximately 11:00 p.m., defendant approached the checkpoint. A trooper asked that he produce his driver's license and vehicle registration. The trooper testified that he detected a strong odor of alcohol emanating from defendant's vehicle. The trooper observed that defendant's eyes were red and glassy, and that his speech was slurred. Defendant was directed to place his vehicle in park and exit the vehicle. Defendant exited his vehicle with its transmission still in drive. The trooper testified that the defendant was unsteady on his feet and used the vehicle for support. Defendant was subsequently issued citations for driving while impaired and driving while license revoked.

Defendant pled guilty, but gave notice of appeal. Defendant then filed a motion to suppress the evidence obtained at the checkpoint arguing that the checkpoint was unconstitutional. The trial court denied defendant's motion. Defendant appealed again.

Defendant asserted that the primary purpose of the driver's license checkpoint was unconstitutional and therefore, any seizure that occurred when his vehicle was stopped pursuant to the checkpoint was unlawful.

The North Carolina Court of Appeals noted that 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 first determine the primary programmatic purpose of the checkpoint by examining the available evidence. When there is no evidence in the record to contradict the State's proffered purpose of 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 unlawful purpose, a trial court may not rely solely on an officer's bare statements as to a checkpoint's purpose. During the suppression hearing in this case, the trooper testified that "the reason for that particular checkpoint was we had several armed robberies within the area..they were all last seen or last sighting were in that approximate area." However, the trooper also testified that "there's no systematic plan of what we were particularly looking for...the purpose of the checkpoint was to issue citations for anything that came through." The Court of Appeals held that because the trooper's testimony varied regarding the primary programmatic purpose of the checkpoint, the trial court could not simply accept the State's invocation of a proper purpose, but instead was required to closely review the issue. Without having made any independent findings of fact regarding the actual primary purpose of the checkpoint, the trial court could not issue a conclusion regarding whether the checkpoint was lawful. The Court of Appeals vacated the trial court's order denying defendant's motion to suppress and sent the case back to the lower court to make further findings of fact and conclusions of law.

The Court went on to advise that if the trial court finds the primary programmatic purpose of the checkpoint was lawful, its inquiry does not end. The trial court must also determine whether the checkpoint was reasonable based upon the individual circumstances of the case. To determine whether the checkpoint was reasonable, the trial court must weigh the public's interest in the checkpoint against the individual's privacy interests. When conducting this inquiry, the court should examine: the gravity of the public concern served by the seizure; the degree to which the seizure advances the public interest; and the severity of the interference with individual liberty.



Court Rules That Reasonable Suspicion Is Standard to Stop Vehicle for Any Traffic Violation; Disavows Prior Statements That Probable Cause Is Standard to Stop Vehicle for Readily Observed Traffic Violation;



Officer Had Reasonable Suspicion to Stop Vehicle for Changing Lanes Without Signaling

State v. Styles, No. 442-A07 (27 August 2008).

Around 1:00 a.m., the defendant was operating a vehicle moving in the same direction and in front of an officer's patrol vehicle. After the defendant changed lanes without signaling, the officer stopped defendant's vehicle. Upon approaching the driver's side of the vehicle, the officer immediately detected the odor of marijuana. After defendant declined to consent to a search of his vehicle, the officer deployed a canine that was in his patrol car. When the dog alerted to the presence of narcotics, the officer initiated a search of the interior of defendant's vehicle, where he discovered marijuana and a pipe. The officer placed defendant under arrest. Methamphetamine was found on him when the officer conducted a frisk.

Defendant was indicted for possession of a Schedule II substance, drug paraphernalia and marijuana. Defendant filed a motion to suppress all evidence found as a result of the stop of his vehicle. The motion was denied. Defendant pled guilty to all six charges, but preserved his right to appeal the denial of his motion. The North Carolina Court of Appeals affirmed the trial court's denial of the motion. The majority held that the officer had probable cause to stop defendant's vehicle because the officer observed a traffic violation by defendant. Defendant appealed to the North Carolina Supreme Court.

The Court began by analyzing the proper standard for making a routine traffic stop. It noted that reasonable suspicion was for many years accepted as the standard. But, in 1996, dictum of the United

States Supreme Court in *Whren v. United States* caused some lower appellate courts to vary from this standard. In the years following *Whren*, the North Carolina Supreme Court occasionally discussed whether a traffic stop was constitutional in terms of whether or not the officer had probable cause. The North Carolina Court of Appeals even developed a rule requiring probable cause for traffic stops made on the basis of a readily observed traffic violation, but reasonable suspicion for all other suspected traffic violations. After reviewing the decisions from several federal circuit courts, the North Carolina Supreme Court held that reasonable suspicion is the necessary standard for traffic stops, regardless of whether the traffic violation was readily observable or not.

Having determined that reasonable suspicion is the appropriate standard, the Court then considered the facts of the case at hand. The officer stopped defendant's vehicle for failure to signal in violation of G.S. 20-154 (a), which states in pertinent part:

The driver of any vehicle upon a highway or public vehicular area before starting, stopping or turning from a direct line shall first see that such movement can be made in safety...and whenever the operation of any other vehicle may be affected by such movement, shall give a signal as required in this section, plainly visible to the driver of such other vehicle, of the intention to make such movement.

Defendant argued there was no evidence that the movement of his vehicle could have affected the operation of another vehicle. The Court disagreed. At the time defendant's vehicle changed lanes without signaling, it was immediately in front of the officer's vehicle. The Court found it clear that changing lanes in front of another vehicle may affect the operation of the trailing vehicle. Thus, it concluded that the officer's observation of defendant's traffic violation gave him the required reasonable suspicion to stop the vehicle. The North Carolina Supreme Court affirmed the decision of the North Carolina Court of Appeals affirming the trial court's denial of the defendant's motion to suppress.