IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-805

Filed: 6 March 2018

Rockingham County, Nos. 16 CRS 50479-80, 701243

STATE OF NORTH CAROLINA

v.

GEORGE E. HARRISON

Appeal by defendant from judgments entered 7 February 2017 by Judge Michael D. Duncan in Rockingham County Superior Court. Heard in the Court of Appeals 24 January 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General J. Aldean Webster III, for the State.

Mark L. Hayes for defendant.

ARROWOOD, Judge.

George E. Harrison ("defendant") appeals the denial of his motion to suppress following entry of judgments on his guilty pleas to felony possession of cocaine, possession of marijuana paraphernalia, simple possession of a Schedule VI controlled substance, and impaired driving. For the following reasons, we affirm.

I. Background

On 27 February 2016, defendant was stopped at a checkpoint conducted by the Reidsville Police Department. During the stop, police noticed two open containers of alcohol in the center console and asked defendant to step out of the vehicle. Police smelled a strong odor of alcohol coming from defendant's breath and asked him to blow into an Alco Sensor device. Defendant's breath sample tested positive and field sobriety tests were administered. Police searched defendant's vehicle and discovered cocaine, marijuana, and rolling papers. Defendant was arrested and taken to the police department where defendant provided a breath sample into an Intox EC/IR-II for chemical analysis. The chemical analysis of defendant's breath indicated an alcohol concentration of 0.15.

A Rockingham County Grand Jury returned indictments against defendant. On 13 July 2016, defendant filed a motion to suppress with a supporting affidavit seeking the suppression of all evidence seized as a result of the checkpoint stop on the basis that the checkpoint was illegal. Defendant's motion to suppress came on for hearing in Rockingham County Superior Court before the Honorable Jerry Cash Martin on 7 December 2016. On 20 December 2016, the trial court entered an order denying defendant's motion to suppress.

While preserving his right to appeal the denial of his motion to suppress, on 7 February 2017, defendant entered guilty pleas to felony possession of cocaine, possession of marijuana paraphernalia, simple possession of a Schedule VI controlled

substance, and impaired driving. The trial court entered two judgments as follows: First, the trial court consolidated the drug charges and sentenced defendant to a term of 4 to 14 months imprisonment, suspended on condition that defendant complete 18 months supervised probation. Second, the trial court sentenced defendant to a term of 120 days for impaired driving, suspended on condition that defendant complete 12 months of supervised probation. Defendant gave notice of appeal in open court.

II. Discussion

In the sole issue raised on appeal, defendant contends the trial court erred in denying his motion to suppress because the checkpoint was unconstitutional.

Our review of a trial court's denial of a motion to suppress is "strictly limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law." *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). "The trial court's conclusions of law . . . are fully reviewable on appeal." *State v. Hughes*, 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000).

The relevant law on checkpoints is almost entirely set forth in this Court's decision in *State v. Veazey*, 191 N.C. App. 181, 662 S.E.2d 683 (2008). In that case, we explained as follows:

> The United States Supreme Court has long held that the Fourth Amendment reasonableness standard usually

requires that a search or seizure be based on either consent or individualized suspicion of the person to be searched or seized. *See, e.g., Terry v. Ohio,* 392 U.S. 1, 20-21, 20 L. Ed. 2d 889, 905-06 & n. 18 (1968). However, the Supreme Court also has held that "the Fourth Amendment imposes no irreducible requirement of such suspicion," and has recognized certain limited exceptions to the general rule requiring individualized suspicion. *United States v. Martinez-Fuerte,* 428 U.S. 543, 561, 49 L. Ed. 2d 1116, 1130 (1976). 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. *See id.* at 561-62, 49 L. Ed. 2d at 1130-31 (upholding the constitutionality of a checkpoint located near the United States-Mexico border and designed to locate undocumented persons); *see also Illinois v. Lidster,* 540 U.S. 419, 427-28, 157 L. Ed. 2d 843, 852-53 (2004) (holding that police did not violate the Fourth Amendment by conducting a checkpoint aimed at gathering information regarding an earlier crime); *Michigan State Police v. Sitz,* 496 U.S. 444, 455, 110 L. Ed. 2d 412, 423 (1990) (holding that police complied with constitutional requirements in conducting a checkpoint designed to find intoxicated drivers).

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. *City of Indianapolis v. Edmond,* 531 U.S. 32, 40-42, 148 L. Ed. 2d 333, 343 (2000). . . .

. . . .

Second, if a court finds that police had a legitimate primary programmatic purpose for conducting a checkpoint, "[t]hat 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." *Lidste*r, 540 U.S. at 426, 157 L. Ed. 2d at 852. . . .

Veazey, 191 N.C. App. at 184-86, 662 S.E.2d at 686-87.

In this case, defendant's primary argument is that the checkpoint was unconstitutional because it was conducted for the purpose of general crime control. Defendant, however, further argues that even if we presume a proper purpose, the checkpoint is still unconstitutional because it was unreasonable.

1. Purpose

In regard to the first step in the checkpoint inquiry, this Court explained the primary programmatic purpose analysis as follows:

> In *Edmond*, the United States Supreme Court distinguished between checkpoints with a primary purpose related to roadway safety and checkpoints with a primary purpose related to general crime control. According to the Court, checkpoints primarily aimed at addressing immediate highway safety threats can justify the intrusions on drivers' Fourth Amendment privacy interests occasioned by suspicionless stops. *Id.* at 41-43, 148 L. Ed. 2d at 343-44; *see, e.g., Sitz,* 496 U.S. at 455, 110 L. Ed. 2d at 423 (upholding a checkpoint with a primary purpose of finding intoxicated drivers); *Delaware v. Prouse,* 440 U.S. 648, 663, 59 L. Ed. 2d 660, 673-74 (1979) (suggesting that a checkpoint with a primary purpose of checking drivers' licenses and vehicle registrations would be permissible under the Fourth Amendment). However, the *Edmond* Court also held that police must have individualized suspicion to detain a vehicle for general crime control purposes, and therefore a checkpoint with a primary purpose of general crime control contravenes the Fourth Amendment. *Edmond,* 531 U.S. at 41-42, 148 L. Ed. 2d at 343-44 (finding unconstitutional a checkpoint with a

> primary purpose of interdicting illegal narcotics and stating that "[w]ithout drawing the line at roadblocks designed primarily to serve the general interest in crime control, the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of American life").
>
> The Supreme Court in *Edmond* also noted that a checkpoint with an invalid primary purpose, such as checking for illegal narcotics, cannot be saved by adding a lawful secondary purpose to the checkpoint, such as checking for intoxicated drivers. *Id.* at 46, 148 L. Ed. 2d at 346-47. Otherwise, according to the Court, "law enforcement authorities would be able to establish checkpoints for virtually any purpose so long as they also included a license or sobriety check. For this reason, [courts must] examine the available evidence to determine the primary purpose of the checkpoint program." *Id.* at 46, 148 L. Ed. 2d at 347.

Veazey, 191 N.C. App. at 185, 662 S.E.2d at 686. This Court further explained that

> [o]ur Court has previously held that 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 police officer's assertion of a legitimate primary purpose. *State v. Burroughs,* 185 N.C. App. 496, 499-500, 648 S.E.2d 561, 565-66 (2007). However, where 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. *Id.* at 499, 648 S.E.2d at 565. In such cases, the trial court "may not 'simply accept the State's invocation' of a proper purpose, but instead must 'carr[y] out a close review of the scheme at issue.' " *Rose,* 170 N.C. App. at 289, 612 S.E.2d at 339 (quoting *Ferguson v. City of Charleston,* 532 U.S. 67, 81, 149 L. Ed. 2d 205, 218 (2001)). 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[.]" *Id.* at 290, 612 S.E.2d at

> 340 (quotation omitted); *see Edmond,* 531 U.S. at 46, 148 L. Ed. 2d at 346-47.

Veazey, 191 N.C. App. at 187, 662 S.E.2d at 687-88. The court is "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." *Id*. at 190, 662 S.E.2d at 689.

Defendant argues the trial court erred in this case in concluding the primary programmatic purpose of the checkpoint was lawful because the evidence and the court's findings show that the primary programmatic purpose of the checkpoint was general crime control.

A review of the evidence introduced at the suppression hearing reveals contradictory evidence as to the purpose of the checkpoint at issue. The following findings by the court illustrate the contradictory evidence.

> 4. That the operation of the checking station was done according to the policy of the Reidsville Police Department in its Departmental Order. The Reidsville Police Department had created a community task force by reason of there being a lot of violent crimes and also shootings and drug activity in the area, and that Sergeant Mike Austin selected this particular location by reason of that information because of the violent crimes, numerous shootings, and drug activity.
>
> 5. The police department had developed peak hours for this part of the community in which these activities occurred.
>
> 6. Sergeant Mike Austin testified specifically that the

checking station was to do a license check for Chapter 20 violations, and the Court finds that this was a typical checking station with the police vehicles being marked with the blue lights flashing, officers in uniform wearing reflective vests, and using flashlights. As a vehicle would approach the checking point, an officer would step forward using a flashlight, direct the driver to bring the vehicle to a stop.

. . . .

17. The Court finds . . . that the Reidsville Police Department had a Departmental General Order: Checking Stations, and at 2.0, Standard Checking Station, and at 2.1, it directed that an officer may conduct a checking station to determine compliance with motor vehicle laws.

18. That the checking station authorization as shown in State's Exhibit 2 indicated that this was a standard checking station. The checking station authorization specifically states and directs that the officer shall ask for driver's license and registration.

19. The Court finds that Sergeant Wade approached the vehicle driven by [defendant] as it entered the checking station and specifically asked for driver's license and registration.

20. The Court finds that Sergeant Austin testified that he had chose [sic] this site . . . because of community complaints and numerous shootings and drug activity, and he also indicated that the checking station was used to do license checks for Chapter 20 violations.

21. The Court finds that the primary programmatic purpose of this checking station was for a safety check, that is to check license and registration and Chapter 20 violations. The secondary purpose was to maintain an enhanced police presence in the area.

Based on these findings, the court issued the following conclusions:

> 5. As indicated by the authorization form and as demonstrated by the officers' conduct, the primary programmatic purpose of the checkpoint was highway safety to check for licenses and vehicle registration, and not for the primary purpose of general crime control.
>
> . . . .
>
> 7. And further the Court concludes that the stop, detention, seizure, and arrest of the Defendant . . . were reasonable and not violative of the United States Constitution, North Carolina Constitution, nor involving a substantial violation of Chapter 15A of the North Carolina General Statutes.

Defendant does not challenge the findings from the evidence presented at the hearing, which are supported by the testimony of two officers that participated in the checkpoint. Defendant instead challenges the court's ultimate finding on the primary programmatic purpose and the court's conclusion that the checkpoint was lawful.

Unlike in *Veazey*, in which this Court held the trial court erred when, despite contradictory evidence, its findings "simply recite[d] [the trooper's] testimony regarding the checkpoint's purpose[,]" *Veazey*, 191 N.C. App. at 190, 662 S.E.2d at 689, it is evident from the trial court's order in this case that the court performed the "searching inquiry" envisioned in *Veazey* and made the requisite findings of fact and conclusions of law.

Although we acknowledge contradictory evidence was presented as to the purpose of the checkpoint, we cannot overrule the trial court's determination that

"the primary programmatic purpose of the checkpoint was highway safety to check for licenses and vehicle registration, and not for the primary purpose of general crime control." The court's findings of fact are supported by the evidence and support the court's conclusion that the primary programmatic purpose of the checkpoint was lawful. *See id.*, 191 N.C. App. at 189, 662 S.E.2d at 689 ("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. North Carolina Courts have also upheld checkpoints designed to uncover drivers' license and vehicle registration violations.") (internal citations omitted).

2. Reasonableness

Concerning reasonableness in the second part of the checkpoint inquiry, this Court has explained that:

> [t]o 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. *See, e.g., Martinez-Fuerte,* 428 U.S. at 555, 49 L. Ed. 2d at 1126. In *Brown v. Texas,* 443 U.S. 47, 61 L. Ed. 2d 357 (1979), the United States Supreme Court 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." *Id.* at 51, 61 L. Ed. 2d at 362. If, on balance, these factors weigh in favor of the public interest, the checkpoint is reasonable and therefore constitutional. *See, e.g., Lidster,* 540 U.S. at 427-28, 157 L. Ed. 2d at 852-53.

Veazey, 191 N.C. App. at 186, 662 S.E.2d at 687.

It appears from the record that the trial court carried out the proper analysis. Specifically, the court issued the following conclusion:

> 6. The Court concludes that the stop, detention, seizure, and arrest of the Defendant at this checkpoint was reasonable in consideration of the requirements of *Illinois versus Lidster* . . . and *Brown versus Texas* . . ., that is considering: (1) the gravity of the public concerns served by the seizure, (2) the degree to which the seizure promotes the public interest, and (3) the severity of individual interference with individual liberty.

Defendant concedes that "[g]enerally speaking, license checks serve a sufficiently significant interest." *See id.* at 191, 662 S.E.2d at 690 ("Both the United States Supreme Court as well as our Courts have suggested that 'license and registration checkpoints advance an important purpose[.]' ") (quoting *State v. Rose*, 170 N.C. App. 284, 294, 612 S.E.2d 336, 342 (2005); *see also Prouse*, 440 U.S. at 658, 59 L. Ed. 2d at 670 ("States have a vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles, that these vehicles are fit for safe operation, and hence that licensing, registration, and vehicle inspection requirements are being observed."). Thus, defendant does not contest the first *Brown* prong—the gravity of the public concerns served by the seizure. However, defendant argues that when balancing *Brown's* second and third prongs—the advancement of the public interest and the interference with individual liberty—the facts show that the checkpoint in this case was unreasonable.

"Under the second *Brown* prong—the degree to which the seizure advanced public interests—the trial court was required to determine 'whether "[t]he police appropriately tailored their checkpoint stops" to fit their primary purpose.' " *State v. Jarrett*, 203 N.C. App. 675, 680, 692 S.E.2d 420, 425 (2010) (quoting *Veazey*, 191 N.C. App. at 191, 662 S.E.2d at 690 (quoting *Lidster*, 540 U.S. at 427, 157 L. Ed. 2d at 852)).

> Our Court has previously identified a number of non-exclusive factors that courts should consider when determining whether a checkpoint is appropriately tailored, including: whether police spontaneously decided to set up the checkpoint on a whim; whether police offered any reason why a particular road or stretch of road was chosen for the checkpoint; whether the checkpoint had a predetermined starting or ending time; and whether police offered any reason why that particular time span was selected.

Veazey, 191 N.C. App. at 191, 662 S.E.2d at 690 (citing *Rose*, 170 N.C. App. at 295, 612 S.E.2d at 342-43.)

The following findings of fact made by the trial court in this case relate to these non-exclusive factors:

> 2. That the City of Reidsville had enacted a general order regarding setting up and conducting checking stations that would require written approval for the on-duty supervisor to authorize and direct a check station.
>
> 3. That Sergeant Mike Austin was the supervising officer on duty on the occasion, that he did grant a written approval as exhibited by State's Exhibit 2, and this approval is in written form and begun before the checking station was operated but completed after the

checking station was terminated.

. . . .

7. The Court finds there was not a lot of traffic on this particular occasion . . . .

. . . .

10. The Court finds that the checking station was operated on a Saturday from 9:00 until 11:00 pm . . . .

. . . .

17. The Court finds further that the Reidsville Police Department had a Departmental General Order: Checking Stations, and at 2.0, Standard Checking Station, and at 2.1 it directed that an officer may conduct a checking station to determine compliance with motor vehicle laws.

18. That the checking station authorization as shown in State's Exhibit 2 indicated that this was a standard checking station. The checking station authorization specifically states and directs that the officer shall ask for driver's license and registration.

19. The Court finds that Sergeant Wade approached the vehicle driven by [defendant] as it entered the checking station and specifically asked for driver's license and registration.

These findings demonstrate that police did not spontaneously decide to set up the checkpoint, but followed the requirements to get written approval prior to the start of the checkpoint. The findings further show that the checkpoint was conducted for a reasonable length of time, was narrowly tailored in the checkpoint authorization

to the primary programmatic purpose, and that officers conducting the checkpoint followed the plan for the checkpoint. We hold the findings support the court's ultimate finding in finding of fact number 22 that "the operation of this checking station was reasonable in all respects in length, matter, and execution."

Defendant does not challenge these findings, but instead argues that the evidence and other findings of fact made by the trial court show that the checkpoint was not tailored to the purpose of license and registration checks. In support of his argument, defendant points out that there was no evidence that this particular checkpoint discovered any unlicensed drivers. Defendant asserts this is because the location and time of the checkpoint were chosen for purposes of general crime control and not for checking licenses and registrations. Indeed, the court made the following findings of fact:

> 4. . . . . The Reidsville Police Department had created a community task force by reason of there being a lot of violent crimes and also shootings and drug activity in the area, and that Sergeant Mike Austin selected this particular location by reason of that information because of the violent crimes, numerous shootings, and drug activity.
>
> 5. The police department had developed peak hours for this part of the community in which these activities occurred.
>
> . . . .
>
> 20. The Court finds that Sergeant Austin testified that he had chose [sic] this site . . . because of community

> complaints and numerous shootings and drug activity, and he also indicated that the checking station was used to do license checks for Chapter 20 violations.

The fact that no evidence was introduced to show that this checkpoint stopped an unlicensed driver or an unregistered vehicle is irrelevant, as the results of checkpoints will vary. Moreover, defendant's assertion that this checkpoint was conducted on a "low-traffic street" is not supported by the evidence. Testimony provided at the suppression hearing was that there was not "a lot of traffic *that night*." (Emphasis added.) The trial court's finding of fact number seven, that "there was not a lot of traffic on this particular occasion," echoes the testimony. There was no testimony as to traffic at other times. In fact, testimony indicated that officers were prepared for more traffic and had plans to prevent traffic congestion. Although we acknowledge the court's findings show that the location and timing of the checkpoint were chosen at least in part to increase police presence in a problem area, we are not convinced those findings outweigh the other findings that show the stop was sufficiently tailored to license and registration checks. The trial court's findings indicate that it considered all of the evidence in making its determination.

In *Jarrett*, even though the trial court failed to make findings addressing all of the factors suggested by *Veazey*, this Court held the second *Brown* prong was satisfied because the findings "indicate that the trial court considered appropriate factors to determine whether the checkpoint was sufficiently tailored to fit its primary purpose[.]" *Jarrett*, 203 N.C. App. at 680-81, 692 S.E.2d at 425. Here, the trial court

considered the appropriate factors under the second *Brown* prong and issued findings. Overall, those findings show the stop was sufficiently tailored to the primary programmatic purpose.

"With respect to the third factor—the severity of the interference with individual liberty—the Supreme Court has focused on how the officers conducted the checkpoint, including the amount of discretion afforded the field officers." *Rose*, 170 N.C. App. at 295, 612 S.E.2d at 343. Specifically,

> [c]ourts have previously identified a number of non-exclusive factors relevant to officer discretion and individual privacy, including: the checkpoint's potential interference with legitimate traffic, *see Martinez-Fuerte*, 428 U.S. at 559, 49 L. Ed. 2d at 1129; whether police took steps to put drivers on notice of an approaching checkpoint, *see id.*; whether the location of the checkpoint was selected by a supervising official, rather than by officers in the field, *see id.*; whether police stopped every vehicle that passed through the checkpoint, or stopped vehicles pursuant to a set pattern, *see Lidster*, 540 U.S. at 428, 157 L. Ed. 2d at 853; *Sitz*, 496 U.S. at 453, 110 L. Ed. 2d at 422; whether drivers could see visible signs of the officers' authority, *see id.*; whether police operated the checkpoint pursuant to any oral or written guidelines, *see Rose*, 170 N.C. App. at 296, 612 S.E.2d at 344; whether the officers were subject to any form of supervision, *see id.*; and whether the officers received permission from their supervising officer to conduct the checkpoint, *see Mitchell*, 358 N.C. at 68, 592 S.E.2d at 546. Our Court has held that these and other factors are not " 'lynchpin[s],' but instead [are] circumstance[s] to be considered as part of the totality of the circumstances in examining the reasonableness of a checkpoint." *Rose*, 170 N.C. App. at 298, 612 S.E.2d at 345.

Veazey, 191 N.C. App. at 193, 662 S.E.2d at 691.

It is clear from the trial court's order that it adequately addressed the relevant factors under the third *Brown* prong. In addition to the trial court's findings addressed above indicating that the City of Reidsville required prior written approval of checkpoints, that a supervising officer granted written approval in this instance, and that the checkpoint was conducted in accordance with the authorization providing that officers shall ask for driver's license and registration, the trial court made the following additional findings of fact:

> 4. That the operation of the checking station was done according to the policy of the Reidsville Police Department in its Departmental Order. . . .
>
> . . . .
>
> 6. . . . the Court finds that this was a typical checking station with the police vehicles being marked with the blue lights flashing, officers in uniform wearing reflective vests, and using flashlights. As a vehicle would approach the checking point, an officer would step forward using a flashlight, direct the driver to bring the vehicle to a stop.

There is no evidence showing that the officers exercised wide discretion in conducting the checkpoint.

The trial court's findings in this case show that it performed the proper analysis under *Brown* and support its conclusions that the stop, detention, seizure, and arrest of defendant at this checkpoint was reasonable and not violative of the United States Constitution, North Carolina Constitution, or Chapter 15A of our general statutes.

III. Conclusion

For the reasons discussed, the trial court did not err in upholding the checkpoint and denying defendant's motion to suppress. Thus, defendant's guilty plea is upheld.

AFFIRMED.

Judges CALABRIA and ZACHARY concur.

Report per Rule 30(e).