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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-916

Filed 7 May 2024

Vance County, No. 17CRS53719

STATE OF NORTH CAROLINA

v.

DAVID WAYNE SAUNDERS, JR., Defendant.

Appeal by defendant from judgment entered 28 April 2023 by Judge John M. Dunlow in Vance County Superior Court. Heard in the Court of Appeals 19 March 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Liliana R. Lopez, for the State.*

*Phoebe W. Dee, for defendant-appellant.*

FLOOD, Judge.

David Wayne Saunders, Jr. ("Defendant") appeals from judgment entered 28 April 2023, arguing the trial court erred by denying his motion to suppress evidence obtained following the traffic stop at a license and registration checkpoint. After careful review, we conclude the trial court did not err by denying Defendant's motion to suppress because the findings of fact are supported by competent evidence and in

turn support the conclusions of law that the checkpoint was conducted in a constitutional manner.

## I. Factual and Procedural Background

On 31 December 2017, at approximately 2:00 a.m., the North Carolina State Highway Patrol ("NCSHP") and the Vance County Sheriff's Office set up a license and registration checkpoint on State Road 1295 ("SR 1295") in Vance County, North Carolina. The troopers set up the checkpoint at the bottom of a valley that was roughly half a mile away from the top of the hill on each side, giving approaching motorists opportunity to observe the checkpoint from a distance. SR 1295 contains two southbound lanes and two northbound lanes that are separated by a grassy median. NCSHP Trooper Harrah parked his patrol car in the median with his blue lights activated. NCSHP Trooper Lamancusa parked his patrol car on the shoulder of SR 1295, behind Trooper Harrah's. All the officers at the checkpoint had flashlights in their hands and were wearing their state-issued uniforms and bright yellow-green traffic vests.

Per the NCSHP checkpoint policy ("Directive K.04"), the officers stopped every vehicle that came through the checkpoint. When the officers stopped a vehicle, they asked for license and registration, verified them, checked the dates, and then, upon verification of vehicle and driver compliance with state laws, allowed the driver to proceed through the checkpoint.

Shortly after officers set up the checkpoint, Trooper Lamancusa was in the

southbound roadway when he observed a Ford truck driving down the hill towards the checkpoint. As the truck got close to the checkpoint, Trooper Lamancusa flashed his flashlight at the truck because the truck was not slowing down. Defendant, the driver of the truck, drove through the checkpoint at thirty-five to forty-five miles per hour, forcing Trooper Lamancusa to "move out of the way in the roadway." After multiple officers yelled at Defendant to stop, he finally came to a complete stop one hundred feet south of the checkpoint and reversed the truck a few feet, but did not reverse all the way to where the checkpoint was being conducted. Defendant's was the only vehicle that night to drive through the checkpoint without stopping.

Trooper Lamancusa approached Defendant's vehicle and asked Defendant for his driver's license and registration. Trooper Lamancusa further asked Defendant why he drove through the checkpoint. While Trooper Lamancusa was questioning Defendant, he noticed Defendant had a strong smell of alcohol and red glassy eyes. Trooper Lamancusa asked Defendant to step out of the truck. Defendant admitted to having a few drinks that night at a nearby bar. Trooper Lamancusa then performed standardized field sobriety tests on Defendant, including horizontal and vertical gaze nystagmus and portable breath tests. Defendant showed signs of impairment on the nystagmus tests and the portable breath tests were positive for alcohol. Following the positive tests, Trooper Lamancusa arrested Defendant for driving while impaired.

On 11 June 2019, Defendant was found guilty in district court of driving while

impaired and sentenced to six months' imprisonment suspended for twenty-four months' supervised probation. Defendant appealed the conviction and sentence to the superior court.

On 18 April 2023, Defendant, through counsel, filed a Motion to Suppress all evidence obtained during the traffic stop. In the motion, Defendant argued he was unlawfully seized at the checkpoint because the checkpoint was conducted in violation of the United States Constitution and state law.

On 26 April 2023, a suppression hearing was held in Vance County Superior Court. During the hearing, Trooper Lamancusa testified to the events that occurred in the early morning of 31 December 2017. When asked about the authorization for the checkpoint, Trooper Lamancusa testified that the officers received authorization for the checkpoint from their supervisor, Sergeant Darby Guy after one of the troopers sent him a text message seeking authorization. Trooper Lamancusa testified that he did not know who texted Sergeant Guy for approval, but represented that they "always got approval before we did a checking station." At the close of the hearing, the trial court orally denied Defendant's motion and entered a written order on 12 May 2023.

Defendant proceeded to a jury trial where he was found guilty. Defendant filed timely notice of appeal to this Court.

## II. Jurisdiction

This Court has jurisdiction to review this appeal from a final judgment from a

superior court pursuant to N.C. Gen. Stat. § 7A-27(b) (2023).

## III. Analysis

On appeal, Defendant's sole issue is whether the trial court erred in denying his motion to suppress. Alternatively, were we to find Defendant did not adequately preserve this issue, Defendant argues the trial court plainly erred in denying his motion to suppress.

### A. Preservation

We first consider whether Defendant preserved for appeal his argument that the trial court erred in denying his motion to suppress.

"To preserve an issue for appeal, the defendant must make an objection at the point during the trial when the State attempts to introduce the evidence. A defendant cannot rely on his pretrial motion to suppress to preserve an issue for appeal. His objection must be renewed at trial." *State v. Golphin*, 352 N.C. 364, 463, 533 S.E.2d 168, 232 (2000). Even if a defendant does not clearly state his grounds for the objection at trial, a motion to suppress is still preserved for appellate review if "it is clear from the context that he was renewing his earlier objections to the evidence for the reasons stated in his motion to suppress." *State v. Rayfield*, 231 N.C. App. 632, 637, 752 S.E.2d 745, 751 (2014).

Here, at the start of Trooper Lamancusa's testimony, Defendant objected to testimony regarding who gave the authorization for the checkpoint, and he requested a *voir dire* of Trooper Lamancusa outside of the jury's presence. During a discussion

with the trial court regarding the basis for the objection, Defendant's counsel stated, "[i]f Your Honor please, a motion to suppress must – that objection must be made, again, at trial to even be preserved." At the conclusion of Defendant's *voir dire* questioning of Trooper Lamancusa regarding the authorization, the trial court stated, "[n]ow, to the extent, Counsel, that your objection is to preserve the ruling, you know, your ability to appeal the Court's ruling on this motion to suppress, that is duly noted for the record and it is overruled."

We conclude Defendant's general objection regarding the admission of evidence contained in his motion to suppress was sufficient to preserve the issue for appellate review. *See Rayfield*, 231 N.C. App. at 637, 752 S.E.2d at 751.

**B. Motion to Suppress**

In challenging the denial of his motion to suppress, Defendant argues: (1) the trial court made multiple findings of fact that are unsupported by competent evidence, (2) the trial court erred when it found the checkpoint was lawfully conducted, and (3) the trial court erred in concluding Defendant was stopped and seized after he passed through the checkpoint.

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). Unchallenged

findings of fact "are presumed to be supported by competent evidence and are binding on appeal." *State v. Baker*, 312 N.C. 34, 37, 320 S.E.2d 670, 673 (1984) (citation omitted). "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). Conclusions of law are reviewed *de novo*. *State v. Allen*, 197 N.C. App. 208, 210, 676 S.E.2d 519, 521 (2009).

1. Challenged Findings of Fact

Defendant challenges several findings of fact as being unsupported by competent evidence. We will review each of the challenged findings in turn.

a. *Findings of Fact 7, 8, 11, 13, 16, 17, 29*

First, Defendant argues the portions of Findings of Fact 7, 8, 11, 13, 16, 17, and 29 that conclude Sergeant Guy was the supervisor who signed the authorization form are unsupported by competent evidence. Defendant argues it is "insufficiently credible to rely on testimony someone 'must' have texted Sergeant Guy absent a foundation being laid for that testimony's credibility." It is not up to us, however, to determine credibility. Rather, that is left to the sole discretion of the trial court.

> It is well settled that the trial court determines the credibility of the witnesses, the weight to be given to the testimony, and "the reasonable inferences to be drawn therefrom." If different inferences may be drawn from the evidence, the trial court determines which inferences shall be drawn and which shall be rejected.

*State v. Fields*, 268 N.C. App. 561, 568, 836 S.E.2d 886, 891 (2019). "If the findings

are supported by competent evidence, they are binding on this Court even though there is evidence to the contrary." *State v. Davis*, 290 N.C. 511, 541, 227 S.E.2d 97, 115–16 (1976).

First, there was competent evidence to support the finding that Sergeant Guy authorized the checkpoint. At the suppression hearing, Trooper Lamancusa testified that Sergeant Guy provided authorization for the checkpoint after one of the troopers texted him. This authorization is also evidenced by the authorization form that was signed by Sergeant Guy. Trooper Lamancusa further testified that Sergeant Guy was the supervisor of their shift on 31 December, and the troopers "always g[e]t approval" from their supervisor prior to conducting checkpoints.

Second, any contrary evidence does not negate the above evidence from supporting the finding that Sergeant Guy approved the checkpoint. Defendant argues that evidence at trial "compounded the lack of competent evidence offered" during the hearing on the motion to suppress because the trial court "learned at trial that the signature on the HP-14 did not match Sgt. Guy's signature on another HP-14, filed in Vance County Case Number 19 CR 51581." During the trial, after the trial court had already rendered its ruling on the motion to suppress, Defendant's counsel attempted to impeach Trooper Lamancusa's testimony by comparing Sergeant Guy's signature on the authorization form for this case to an authorization form identified as "State's Exhibit 1" in another Vance County case, 19 CR 5158, which Defendant's counsel found after "dig[ging] through" his files to "find one that

Sergeant Guy had signed."[1] Defense counsel argued the signature on the authorization form for this case did not match the signature on the second form, which, unlike the authorization form that only had the signature, included Sergeant Guy's printed name.[2] After the State objected to this questioning, arguing Defendant was attempting to re-litigate a fact that had been resolved at the suppression hearing, Defendant's counsel asked the trial court to take judicial notice of the document. The trial court did take judicial notice of the document. The document used to impeach Trooper Lamancusa was not in evidence when the trial court rendered its initial ruling on the motion to suppress, but it was used at trial, and the trial court's order memorializing its denial of Defendant's motion to suppress was entered about two weeks after the trial had concluded. Defendant argues the differences in the two signatures were "obvious and noteworthy." The document used to impeach Trooper Lamancusa, however, is not in our Record, and even if we accept Defendant's contention there was some difference in the signatures, we also must assume the trial court assessed the weight and credibility of this information along with the rest of the evidence. The trial court had competent evidence to support the finding that Sergeant Guy gave authorization for the checkpoint despite any evidence to the contrary, and the findings, therefore, are binding on appeal. *See Fields*, 268 N.C.

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[1] This document was not presented at the hearing on the motion to suppress, as Defendant's counsel found it after that hearing. This document is not included in our Record on appeal.

[2] Again, this description of the second form is based upon trial testimony and representations in Defendant's counsel's argument before the trial court as the document is not in our Record.

App. at 568, 836 S.E.2d at 891; *see also Cooke*, 306 N.C. at 134, 291 S.E.2d at 619.

b. *Finding of Fact 7*

Second, Defendant argues Finding of Fact 7 is unsupported by competent evidence because there was no competent evidence to support who sent the text message to Sergeant Guy.

Finding of Fact 7 states: "Prior to starting the checking station, one of the troopers sent a text message to Sergeant [Guy] of the N.C. Highway Patrol, requesting approval to conduct the checking station, and the checking station was approved by [Sergeant] Guy." This finding is directly supported by Trooper Lamancusa's testimony that one of the troopers texted Sergeant Guy for authorization prior to conducting the checkpoint.

Defendant further seems to assert certain evidentiary arguments regarding the lack of the foundation for this testimony. Defendant, however, did not object at the suppression hearing to Trooper Lamancusa's testimony regarding the text message and therefore, he has not preserved this argument for appellate review. *See* N.C.R. App. P. 10(a)(1) ("In order to preserve an issue for appellate review, a party must have presented to the trial court a timely . . . objection . . . and obtain a ruling upon the party's request.").

As we have concluded, Finding of Fact 7 is supported by competent evidence, and any evidentiary argument was not preserved, it is binding on appeal. *See Cooke*, 306 N.C. at 134, 291 S.E.2d at 619.

c. *Finding of Fact 31*

Third, Defendant argues the portion of Finding of Fact 31 that states Defendant "did not slow down" was unsupported by competent evidence because Defendant was not driving above the speed limit when he drove through the checkpoint.

Finding of Fact 31 states: "As [] Defendant approached the checkpoint, Trooper Lamancusa noticed [] Defendant's vehicle coming down the hill towards the checkpoint and further noticed that the vehicle did not slow down as it was coming to the checkpoint."

Trooper Lamancusa testified that he believed the speed limit on that portion of the road was forty-five or fifty-five miles per hour and Defendant was driving approximately thirty-five to forty miles per hour. He further testified that he began flashing his flashlight at Defendant's truck because he noticed Defendant "wasn't slowing down." Contrary to Defendant's apparent argument, the fact that Defendant was driving below the speed limit does not make the fact that he did not slow down any less true. The finding of fact did not say Defendant was speeding, it stated only that he did not slow down, which is supported by the evidence. Thus, Finding of Fact 31 is binding on appeal. *See Cooke*, 306 N.C. at 134, 291 S.E.2d at 619.

d. *Finding of Fact 33*

Fourth, Defendant argues the portion of Finding of Fact 33 that states the speed limit on the state road was "either [forty-five] or [fifty-five miles per hour]" is

not supported by competent evidence. Defendant notes that Trooper Lamancusa testified at the suppression hearing that he did not know the speed limit on that exact stretch of road but stated it was "either forty-five or fifty-five miles per hour," but at the trial, he testified that the speed limit was fifty-five. Defendant contends the "only credible evidence" was his trial testimony of fifty-five miles per hour since he was uncertain in his testimony at the suppression hearing. Either way, the trial court's finding is supported by the evidence presented at the suppression hearing. Moreover, the exact speed limit is not relevant to the issues in this appeal, as Defendant was not charged with speeding.

Finding of Fact 33, therefore, is supported by competent evidence. *See Cooke*, 306 N.C. at 134, 291 S.E.2d at 619.

e. *Finding of Fact 35*

Defendant challenges Finding of Fact 35 as being unsupported by competent evidence because Trooper Lamancusa's testimony does not support the fact that he had to move out of the road to avoid being struck by Defendant's vehicle, and any inference that Trooper Lamancusa had to move out of the roadway to avoid being hit is unsupported.

Finding of Fact 35 states: "Trooper Lamancusa, who was standing in the southbound lane, had to move out of the roadway for his own safety as [] Defendant approached and went through the checkpoint without stopping."

Trooper Lamancusa testified that, when Defendant was driving down the hill

in the right southbound lane, Trooper Lamancusa was in the left southbound lane closest to the median and "had to move out of the way in the roadway." Defendant argues Trooper Lamancusa's testimony that he was in the left-hand, southbound lane of traffic whereas Defendant was driving in the right-hand southbound lane shows that Trooper Lamancusa was not in the path of Defendant's car. Defendant's argument assumes Trooper Lamancusa would have no need to move unless a car is headed directly toward him, but we will not assume a rational officer would remain standing anywhere in a roadway while a driver who is not slowing for a clearly visible checkpoint intentionally drives through it. In any event, the evidence supports the trial court's finding as is it is in the trial court's sound discretion to determine "the weight to be given to the testimony" and "the reasonable inferences to be drawn therefrom." *See Fields*, 268 N.C. App. at 568, 836 S.E.2d at 891.

Finding of Fact 35, therefore, is supported by competent evidence despite any potential evidence to the contrary. *See Cooke*, 306 N.C. at 134, 291 S.E.2d at 619; *see also Davis*, 290 N.C. at 541, 227 S.E.2d at 115–16.

f. *Finding of Fact 37*

Defendant argues Finding of Fact 37 is unsupported by competent evidence because the finding "presupposes," without testimony from any southbound drivers that passed through the checkpoint, that motorists would recognize the checkpoint as such.

Finding of Fact 37 states:

> A reasonable driver, keeping a proper lookout and maintaining proper control of his vehicle when approaching the checkpoint at issue, would easily be able to discern the blue lights on Trooper Harrah's vehicle, discern the flashlights and reflective safety vests indicating there are persons standing in the roadway, and have ample time to bring the vehicle to a controlled stop well in advance of the checkpoint.

When conducting a checkpoint, officers must "[a]dvise the public that an authorized checking station is being operated by having, *at a minimum*, one law enforcement vehicle with its blue light in operation during the conducting of the [checkpoint]." N.C. Gen. Stat. § 20-16.3A(a)(3) (2023) (emphasis added).

Not only was the checkpoint conducted in compliance with the statutory requirement of notice to motorists, but there is also competent evidence to support Finding of Fact 37. Trooper Lamancusa testified that the checkpoint was set up at the bottom of a valley that was roughly half a mile away from the top of the hill on each side, giving approaching motorists opportunity to observe the checkpoint. The patrol cars were parked along the roadway with their blue lights flashing. Trooper Lamancusa further testified that each officer at the checkpoint was holding a flashlight and wearing their state issued uniforms and reflective safety vests.

Based on this testimony, the trial court was well within its discretion to make the inference that a "reasonable driver" could see the checkpoint with ample opportunity to stop. In challenging this inference, Defendant points to other evidence that, in his view, supports a finding that motorists would not be able to identify the

checkpoint such as the lack of signage indicating the checkpoint, the low level of traffic, and the time of night. This, however, is not the standard under which we review challenged findings of fact and has no bearing on whether a finding is supported by competent evidence.

Accordingly, Finding of Fact 37 is supported by the testimony of Trooper Lamancusa and is therefore binding on appeal. *See Cooke*, 306 N.C. at 134, 291 S.E.2d at 619.

g. *Finding of Fact 39*

Finally, Defendant argues there is no evidence to support Finding of Fact 39 because there was no evidence to show Defendant was attempting to evade the checkpoint.

Finding of Fact 39 states: "Defendant's conduct in failing to slow his vehicle and stop for the checkpoint could, and reasonably would, be seen by a reasonably cautious officer as Defendant's attempt to evade the checkpoint and avoid an encounter with law enforcement."

Trooper Lamancusa testified that Defendant drove through the checkpoint and stopped about 100 feet south of the checkpoint only after "multiple officers" yelled at him. The finding does not state unequivocally that Defendant was attempting to evade the checkpoint. It simply states that an officer *could* perceive Defendant's failure to stop at the checkpoint as an attempt to evade stopping, which is a reasonable inference for the trial court to make. Such an inference will not be upset

by this Court. *See Fields*, 268 N.C. App. at 568, 836 S.E.2d at 891.

Finding of Fact 39, therefore, is supported by competent evidence and is binding on appeal. *See Cooke*, 306 N.C. at 134, 291 S.E.2d at 619.

2. Lawfulness of the Checkpoint

Defendant presents two arguments that the checkpoint was not conducted in a lawful manner: Defendant argues the checkpoint was (a) unconstitutional, and (b) conducted in violation of N.C. Gen. Stat. § 20-16.3A (2023).

a. *Constitutionality of the Checkpoint*

Defendant does not challenge the assertion that the checkpoint was related to roadway safety, as opposed to general crime, but instead challenges only the reasonableness of the stop. Specifically, Defendant argues the checkpoint was not reasonable because it was not "tailored to address its stated programmatic purpose."

When reviewing a challenge to the constitutionality of a checkpoint, this Court must conduct a two-part inquiry to determine whether the checkpoint was constitutional: (1) "the court must determine the primary programmatic purpose of the checkpoint," and (2) the reasonableness of the stop. *State v. Veazey*, 191 N.C. App. 181, 185, 662 S.E.2d 683, 686 (2008).

Not only does Defendant concede the checkpoint was related to roadway safety, but the case law and the Record support such a conclusion given Trooper Lamancusa's testimony that the purpose of the checkpoint was to verify motorists' drivers' licenses and registrations. *See State v. Rose*, 170 N.C. App. 284, 290, 612

S.E.2d 336, 340 (2005) (stating a checkpoint is constitutional if it is for the purpose of "examining licenses and registrations"). We therefore proceed to the second part of our inquiry—the reasonableness of the stop.

A checkpoint with a programmatic purpose is not "automatically, or even presumptively, constitutional" as it must also be reasonable. *Veazey*, 191 N.C. App. at 185, 662 S.E.2d at 686. "The reasonableness of seizures that are less intrusive than a traditional arrest depends on a balance between the public interest and the individual's right to personal security free from arbitrary inference by law officers." *Brown v. Texas*, 443 U.S. 47, 50, 99 S. Ct. 2637, 2640, 61 L. Ed. 2d 357, 361 (1979). To determine the reasonableness of a checkpoint, the trial court must "[(1)] weigh[] 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 50–51, 99 S. Ct. at 2640, 61 L. Ed. 2d at 362.

Defendant once again concedes license and registration checkpoints advance an important public interest. *See Deleware v. Prouse*, 440 U.S. 648, 658, 99 S. Ct. 1391, 1398, 59 L. Ed. 2d. 660, 669 (1979) (reasoning that the State has a "vital interest" in ensuring motorists are qualified and permitted to operate motor vehicles on public roadways). Defendant challenges only prongs (2) and (3) of our reasonableness inquiry.

To show a checkpoint advanced the public interest, the trial court should determine "whether the police appropriately tailored their checkpoint stops to fit

their primary purpose." *Veazey*, 191 N.C. App. at 191, 662 S.E.2d at 690 (citation and internal quotation marks omitted). There are four, "*non-exclusive*" factors that this Court has identified for trial courts to consider when deciding whether a checkpoint is tailored:

> [W]hether 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.

*Id.* at 191, 662 S.E.2d at 690; *see also State v. Cobb*, 381 N.C. 161, 167, 872 S.E.2d 21, 26 (2022) ("Alongside *other* factors, the use of time and location limitations in establishing and operating the checking station provides evidence that the vehicle stop was appropriately tailored." (emphasis added)).

Defendant incorrectly asserts the above factors "should *all* be tailored to meet the programmatic purpose" based on the facts of this specific checkpoint. (Emphasis added). This argument is contrary to the case law, which is clear that the factors are "*non-exclusive*" factors to be *considered* by the trial court. *See Veazey*, 191 N.C. App. at 191, 662 S.E.2d at 690

Here, the Order demonstrates the trial court adequately considered these factors. The trial court concluded three out of the four suggested factors weighed in favor of the checkpoint advancing the public interest:

> i. The checking station in this case was done pursuant to an organizational plan developed by a NCSHP supervisor

> and not spontaneous or put together on a whim; and
>
> ii. The stretch of roadway where the checking station was put into operation was selected because there was good visibility in both directions; and
>
> iii. The checking station had a predetermined start time [2:00 a.m.] and end time [3:00 a.m].

These conclusions are supported by the following, binding, findings of fact:

> 9. The [authorization] form indicate[d] the checking station was to be located on SR 1295 approximately 0.5 mile South of US Hwy 158 in Vance County, and was to be operational on December 31, 2017 beginning at 2:00 a.m. and ending at 3:00 a.m . . . .
>
> . . . .
>
> 11. The [authorization] form further directed that said checking station shall be conducted in accordance with NCSHP Directive K.04 [], a copy of which Directive was admitted into evidence as Defense Exhibit 1. The [authorization] form was signed by Sgt. Guy.
>
> . . . .
>
> 18. The particular location of the checkpoint in this case was selected because the area provided a good line of sight for vehicles approaching the checkpoint in that the checkpoint was located in a small "valley" with just under one-half mile on either side of the checkpoint that allowed approaching motorists to see the checkpoint well in advance of approaching the checkpoint.

We previously determined Finding of Fact 11 is supported by the evidence, and Findings of Fact 9 and 18 were not challenged by Defendant and are therefore binding on appeal. *See Baker*, 312 N.C. at 37, 320 S.E.2d at 673.

As these binding findings of fact support the trial court's consideration of the relevant factors, we conclude that the trial court adequately considered, and was correct in its conclusion, that the checkpoint advanced the public interest. *See Veazey*, 191 N.C. App. at 191, 662 S.E.2d at 690.

We next consider whether the severity of the stop was such that it interfered with independent liberty. "[C]ourts have consistently required restrictions on the discretion of the officers conducting the checkpoint to ensure that the intrusion on individual liberty is no greater than is necessary to achieve the checkpoint's objectives." *Veazey*, 191 N.C. App. at 192, 662 S.E.2d at 691. As with the second prong of the three-part inquiry, the United States Supreme Court and our appellate courts have identified *non-exclusive* factors the trial court should consider when reviewing officer discretion and individual privacy:

> [T]he checkpoint's potential interference with legitimate traffic; whether police took steps to put drivers on notice of an approaching checkpoint; whether the location of the checkpoint was selected by a supervising official, rather than by officers in the field; whether police stopped every vehicle that passed through the checkpoint, or stopped vehicles pursuant to a set pattern; whether drivers could see visible signs of the officers' authority; whether police operated the checkpoint pursuant to any written or oral guidelines; whether the officers were subject to any form of supervision; and whether the officers received permission from their supervising officer to conduct the checkpoint.

*Id.* at 193, 662 S.E.2d at 691. Our Supreme Court has made it clear that these factors, and any others the courts may consider pertinent "are not lynchpins, but instead are

circumstances to be considered as part of the totality of the circumstances in examining the reasonableness of the checkpoint." *Id.* at 193, 662 S.E.2d at 691 (citation omitted) (cleaned up).

Here, in making its decision regarding the severity of the interference with individual liberty, the trial court considered the following factors:

> i. The efficient manner in which the [checkpoint] was organized with brief questioning of motorists for limited purposes posed only limited potential for interference with legitimate traffic;
>
> ii. The NCSHP officers conducting the [check point] stopped every vehicle passing through the checking station; and
>
> iii. Given the constant blue lights flashing from the patrol vehicle and the standardized uniforms with reflective vests, drivers approaching the [checkpoint] could see visible signs of the Troopers' authority; and
>
> iv. The checking station was being operated by NCSHP Troopers pursuant to a written plan (i.e. [the authorization form] and the NCSHP directives as the apply to [checkpoints]; and
>
> v. Troopers on scene had received authorization to conduct the checking station from Sgt. [Guy].

These factors considered by the trial court are supported by Findings of Fact 7 and 11, which as stated above, are binding. They are further supported by the following findings of fact:

> 6. At approximately 2:00 a.m. Trooper Lamancusa, along with [two] other members of the [NCSHP] (Trooper Harrah and Trooper Thomas), began conducting a checking station

> on SR 1295, approximately one-half mile South of the intersection with U.S. Highway 158. Members of the Vance County Sheriff's Department were also on scene to provide assistance to the Troopers.
>
> . . . .
>
> 20. During the operation of the checkpoint Trooper Harrah's patrol vehicle was parked in the grass median with his blue lights activated.
>
> 21. While the checkpoint was being conducted, each officer was dressed in their State issued uniforms and wearing yellow/greenish reflective safety vests. In addition, each officer had a flashlight that was on.
>
> 22. The pattern specified in the [authorization form] (checking all vehicles) was designated in advance, and was followed, and no officer deviated from that pattern.
>
> . . . .
>
> 24. Drivers that approached the checking station were asked for their driver's license and registration. If the driver produced the requested documents, and there was no other indication of illegal activity, the driver was sent on their way. The longest that any motorist possessing a driver's license and registration, which no other indications of illegal activity, would be delayed was approximately [thirty] seconds to one minute.

These unchallenged findings of fact are binding on appeal and support the trial court's conclusion that the interference with motorist's liberty was not so severe as to make the checkpoint unreasonable. *See Baker*, 312 N.C. at 37, 320 S.E.2d at 673.

Accordingly, the trial court's conclusions demonstrate that it adequately considered all three prongs required by *Brown* when determining whether the stop

was reasonable. *See Brown*, 433 U.S. at 50–51, 99 S. Ct. at 2640, 61 L. Ed. 2d at 362. Moreover, the conclusion that the stop was reasonable is supported by the binding, findings of fact, and the trial court, therefore, did not err. *See Cooke*, 306 N.C. at 134, 291 S.E.2d at 619.

b. *Compliance with State Law*

Defendant argues the checkpoint was not conducted in compliance with N.C. Gen. Stat. § 20-16.3A because the troopers did not comply with Directive K.04—the policy under which troopers were operating the checkpoint.

A license and registration checkpoint must comply with the following, pertinent statutory provisions:

> (a) A law-enforcement agency may conduct checking stations to determine compliance with the provisions of this Chapter. If the agency is conducting a checking station for the purposes of determining compliance with this Chapter, it must:
>
> > . . . .
> >
> > (2) Designate in advance the pattern both for stopping vehicles and for requesting drivers that are stopped to produce drivers license, registration, or insurance information.
> >
> > (2a) Operating under a written policy that provides guidelines for the pattern, which need not be in writing. The policy may be either the agency's own policy, or if the agency does not have a written policy, it may be the policy of another law enforcement agency, and may include contingency provisions for altering either pattern if actual traffic conditions are different from those anticipated, but

> no individual officer may be given discretion as to which vehicle is stopped or, of the vehicles stopped, which driver is requested to produce driver[']s license, registration, or insurance information. If officers of a law enforcement agency are operating under another agency's policy, it must be stated in writing.
>
> (3) Advise the public that an authorized checking station is being operated by having, at a minimum, one law enforcement vehicle with its blue light on operation during the conducting of the checking station.

N.C. Gen. Stat. § 20-16.3A (2023).

Directive K.04, under which the troopers were operating during the checkpoint, provides:

> All checking stations, day or night, shall be approved by a district supervisor or higher authority. The supervisor shall designate the purpose, location and approximate time of operation of the checking station. A supervisor who authorizes establishment of a checking station shall specify, on [the authorization form], whether drivers shall be asked to produce[] proof of registration or insurance information or any combination thereof in addition to producing a valid driver's license.

Contrary to Defendant's arguments, the evidence supports a conclusion that the troopers followed Directive K.04 when conducting the checkpoint. We previously addressed the trial court's findings regarding Sergeant Guy's approval of and authorization for the checkpoint. The authorization form that Sergeant Guy filled out and signed shows the checkpoint was to be conducted on 31 December 2017 on SR 1295 in Vance County from 2:00 a.m. until 3:00 a.m. The authorization form

reflects that the stated purpose of the checkpoint was to check vehicle registration. The signature on the form, coupled with Trooper Lamancusa's testimony, shows that Sergeant Guy approved the checkpoint and designated the purpose, location, and approximate time of operation of the checkpoint. *See* N.C. Gen. Stat. § 20-16.3A.

The trial court, therefore, did not err in concluding the checkpoint was conducted in accordance with state law.

3. Seizure of Defendant

Finally, Defendant argues the trial court erred by concluding Trooper Lamancusa had reasonable suspicion to stop Defendant, separate and apart from the constitutionality of the checkpoint, after Defendant failed to slow his vehicle and stop for the checkpoint because Defendant stopped at the checkpoint when he became aware that officers wanted him to stop. Because we conclude the checkpoint was performed in accordance with constitutional and state law, it is immaterial whether Defendant was stopped at the checkpoint or stopped after he drove past the checkpoint. Thus, we do not reach the merits of this argument.

## IV. Conclusion

For the reasons stated above, we hold the findings of fact are supported by competent evidence and are binding on appeal. We further hold the findings of fact support the conclusions of law that the checkpoint was operated in a manner that comported with constitutional and state law.

NO ERROR.

Judge STROUD and MURPHY concur.

Report per Rule 30(e).