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NO. COA09-1639

NORTH CAROLINA COURT OF APPEALS

Filed: 16 November 2010

STATE OF NORTH CAROLINA

v.

Pitt County
No. 08 CRS 55300

JOSEPH MICHAEL KINCER,
Defendant.

Appeal by defendant from judgment entered 18 June 2009 by Judge W. Russell Duke, Jr., in Pitt County Superior Court. Heard in the Court of Appeals 13 May 2009.

Attorney General Roy Cooper, by Assistant Attorney General Kathryne E. Hathcock, for State.

The Robinson Law Firm, P.A., by Leslie S. Robinson, for defendant-appellant.

ERVIN, Judge.

Defendant Joseph Michael Kincer appeals from a judgment subjecting him to Level 5 punishment based on his plea of guilty to driving while impaired. After careful consideration of Defendant's challenges to the trial court's judgment in light of the record and the applicable law, we find no error in the trial court's judgment.

I. Factual Background

A. Substantive Facts

On 17 May 2008, Sergeant Joseph Collins of the North Carolina State Highway Patrol signed two Highway Patrol Policy-14 (HP-14)

authorization forms documenting his approval of a driver's license checkpoint. According to both forms, the checkpoint was to be located on Rural Paved Road 1534 in Pitt County for the purpose of inspecting drivers' licenses.¹ Among the five troopers who actually participated in the operation of the checkpoint were Sergeant Collins and Trooper Everett Deans. One HP-14 form indicated that the checkpoint would operate between 6:00 p.m. and 8:30 p.m. and designated Trooper S.G. Tyndall as the Lead Trooper. The other HP-14 form stated that the checkpoint would operate from 5:45 p.m. until 8:00 p.m. and designed Trooper S.P. Ziemba as the Lead Trooper. Sergeant Collins was unable to explain the reason that he signed two HP-14 forms or the reason that there were differences in the contents of the two forms.

Sergeant Collins testified that the designated location, which was situated at the intersection of the Old Pactolus Highway and Blue Heron Drive, had not been utilized for checkpoint-related purposes in recent months and was a "good location for all types of violations." The participating troopers did not erect signs or markers on either side of the checkpoint in order to advise approaching motorists that they were nearing an authorized checkpoint. However, the emergency lights on all five patrol vehicles present at the checkpoint site remained activated during its existence. Participating troopers wore reflective vests bearing the letters "SHP" during that period as well. Although

¹ In addition, one of the HP-14 forms stated that the checkpoint would be located on Rural Paved Road 1534 "near old Hard Times Building."

Sergeant Collins remained at the checkpoint throughout the entire period that it was in operation, he did not recall writing any citations during the time that he was present at the checkpoint.

Sergeant Collins told the troopers participating in the checkpoint to stop every vehicle that entered the operation, to "request a driver's license, talk with the driver, make sure that the driver's license was valid, and observe . . . the interior . . . and also the exterior of the vehicle." The participating troopers were directed to limit their interactions with the drivers who entered the checkpoint to the activities set out in the instructions given by Sergeant Collins and to refrain from asking for other items of information, such as proof that the driver had insurance or a specification of the places where the driver had been or was going. In addition, participating troopers were prohibited from searching stopped vehicles in the absence of independently obtained reasonable suspicion. "[I]f other violations were noticed" or unusual information appeared on licenses of drivers entering the checkpoint, participating troopers were allowed to "follow[] up" by posing additional questions.

At approximately 7:49 p.m., Defendant approached the checkpoint and attempted to drive past Trooper Deans, who was standing in the roadway. After being told to stop, Defendant pulled his vehicle over at a point approximately four or five feet from the place at which Trooper Deans was standing. As he approached the vehicle for the purpose of examining Defendant's driver's license, Trooper Deans immediately detected a strong odor

of alcohol. A subsequent chemical analysis revealed that Defendant had a blood alcohol level of .12.

B. Procedural History

On 17 May 2008, Trooper Deans cited Defendant for driving while subject to an impairing substance. On 29 September 2008, Defendant filed a motion seeking to have evidence "obtained as a result of the stop of Defendant's motor vehicle and his subsequent arrest" suppressed. On 17 February 2009, Judge Charles M. Vincent heard Defendant's case in the Pitt County District Court, denied Defendant's suppression motion, convicted him of driving while impaired, determined that Level Five punishment should be imposed, and ordered that Defendant be imprisoned for a term of 45 days in the custody of the Sheriff of Pitt County, with that sentence suspended for twelve months on the condition that Defendant pay a \$50.00 fine and the costs, perform 24 hours of community service, obtain a substance abuse assessment and comply with any treatment recommendations, and surrender his driver's license and not operate a motor vehicle until properly licensed to do so. Defendant noted an appeal to the Pitt County Superior Court from Judge Vincent's judgment.

On 28 April 2009, Defendant filed a motion in the Superior Court seeking the suppression of evidence "obtained as a result of the stop of Defendant's motor vehicle and his subsequent arrest." After a hearing held at the 15 June 2009 session of the Pitt County Superior Court, the trial court announced its decision to deny Defendant's suppression motion on 18 June 2009 and entered a

written order containing findings of fact and conclusions of law on 22 September 2009, *nunc pro tunc* to 15 June 2009, that denied Defendant's suppression motion.² On 18 June 2009, Defendant, after preserving his right to challenge the denial of his suppression motion on appeal, entered a plea of guilty to driving while impaired. Based upon Defendant's plea, the trial court found him to be a Level V offender and sentenced him to a minimum and maximum term of 30 days imprisonment in the custody of the North Carolina Department of Correction, with this active sentence to be suspended pending his completion of twelve months unsupervised probation and the payment of a \$100.00 fine and the costs. Defendant noted an appeal to this Court from the trial court's judgment and the denial of his suppression motion.

II. Legal Analysis

A. Standard of Review

On appeal, Defendant challenges the trial court's decision to deny his motion to suppress the evidence obtained as a result of the fact that he was stopped at the 17 May 2008 checkpoint. "Our review of a trial court's denial of a motion to suppress is strictly limited to a determination of whether [the trial court's]

² Although this Court has questioned the extent to which a trial court has the authority to enter a written order containing findings and conclusions after the entry of judgment, *State v. Veazey*, 191 N.C. App. 181, 186-87, 662 S.E.2d 683, 687 (2008), given that neither party has objected to this Court's consideration of the trial court's written findings and conclusions and given that the trial court in this case, unlike the situation at issue in *Veazey*, did not make oral findings and conclusions at the time that it announced its decision to deny Defendant's suppression motion, we will base our evaluation of Defendant's appellate challenge to the trial court's decision on the trial court's written order.

findings are supported by competent evidence, and in turn, whether the findings support the trial court's ultimate conclusion." *State v. Allison*, 148 N.C. App. 702, 704, 559 S.E.2d 828, 829 (2002) (citing *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982)). If there is a conflict between the evidence concerning a material factual issue, it is the duty of the trial court to make findings resolving the conflict, which will not be disturbed on appeal if they have adequate evidentiary support. *State v. Chamberlain*, 307 N.C. 130, 143, 297 S.E.2d 540, 548 (1982) (citations omitted). The trial court's conclusions of law are subject to *de novo* review. *State v. Haislip*, 362 N.C. 499, 500, 666 S.E.2d 757, 758 (2008) (citation omitted). The critical inquiry that must be undertaken in connection with the appellate review of a trial court order granting or denying a suppression motion is determining "whether the ruling of the trial court was correct . . . and whether the ultimate ruling was supported by the evidence." *State v. Austin*, 320 N.C. 276, 290, 357 S.E.2d 641, 650, *cert. denied*, 484 U.S. 916, 98 L. Ed. 2d 224 (1987) (internal citation omitted). If the answer to this question is in the affirmative, the trial court's conclusions of law are binding on appeal as well. *State v. West*, 119 N.C. App. 562, 565, 459 S.E.2d 55, 57 (citation omitted), *disc. review denied and appeal dismissed*, 341 N.C. 656, 462 S.E.2d 524 (1995).

B. Legal Analysis

1. Multiple HP-14 Forms

In challenging the trial court's decision to deny his suppression motion, Defendant first argues that the trial court erred by finding that the HP-14 form admitted into evidence as State's Exhibit No. 1 controlled the operation of the checkpoint in light of the fact that Defendant introduced a different HP-14 form into evidence as Defendant's Exhibit No. 1A and the fact that Sergeant Collins was unable to explain the reason for the existence of the two forms. According to Defendant, the record did not contain sufficient evidence to support the trial court's determination that the existence of the differing forms was attributable to an administrative error. We do not find Defendant's argument persuasive.

In denying Defendant's suppression motion, the trial court found as a fact that:

2. Sgt. Collins of the Highway Patrol signed the Checking Station Authorization (hereinafter referred to as "HP-14") on May 17, 2008.
3. Although there were two HP-14's for the same location but the times and lead trooper were different, there was only one checking station and the HP-14 that controlled this checkpoint is [S]tate['s] exhibit one which is incorporated by reference as part of this order.
4. The two HP-14's were the result of an administrative error and in no way prejudiced the defendant.

At the suppression hearing, Sergeant Collins confirmed that he signed both of the HP-14 forms that were admitted into evidence.

According to Sergeant Collins, although State's Exhibit No. 1 specified a different time period for the operation of the checkpoint than Defendant's Exhibit No. 1A, he intended that the checkpoint operate from 6:00 p.m. to 8:30 p.m. This evidence, without more, supports the trial court's determination that the HP-14 form introduced into evidence as State's Exhibit No. 1 controlled the 17 May 2008 checkpoint.³ In addition, in light of Sergeant Collins' testimony that the HP-14 form introduced into evidence as State's Exhibit No. 1 controlled the checkpoint, the fact that the discrepancies between the two forms were relatively minor, and the fact that there was no stated explanation for the discrepancy between the two HP-14 forms contained in the record, it was not unreasonable for the trial court to conclude that an administrative error caused the creation of multiple HP-14 forms. Thus, we conclude that the challenged finding did, in fact, have adequate record support.

In addition, any error that the trial court may have committed in its findings relating to the multiple HP-14 forms did not prejudice Defendant's chances for a more favorable outcome at the suppression hearing. For example, Trooper Deans cited Defendant for driving while impaired at 7:49 p.m. on 17 May 2008, a point in time which was within the operating hours specified in both HP-14 forms. In addition, Sergeant Collins testified that, while there

³ The fact that Trooper Deans testified that he received the other HP-14 form at the time that he came to the checkpoint and participated in its operation goes to the weight to be afforded Sergeant Collins' testimony, which is a matter for the trial court, rather than this Court.

was usually only one lead trooper involved in the operation of a specific checkpoint, nothing prohibited the designation of multiple lead troopers for purposes of such operations. It is difficult for us to understand how discrepancies such as those at issue here would serve to render the checkpoint unconstitutional, particularly given that the primary purpose of the checkpoint, as stated in both HP-14 forms, was to check drivers' licenses at Rural Paved Road 1534 on the evening of 17 May 2008. As a result of these facts and the fact that "police officers are not constitutionally mandated to conduct driver's license checkpoints pursuant to written guidelines[,] " *State v. Mitchell*, 358 N.C. 63, 68, 592 S.E.2d 543, 546 (2004), we are unable to conclude that any error that the trial court may have committed in its findings concerning the multiple HP-14 forms introduced into evidence at the suppression hearing prejudiced Defendant. Thus, we reject Defendant's initial challenge to the trial court's suppression order.

2. Location of the Checkpoint

Next, Defendant contends that the trial court erroneously found that the location on Rural Paved Road 1354 was selected for the checkpoint "because of the safety for the officers and motorists and previous checking stations had been successful in the past." Although Sergeant Collins expressly testified that the location in question was one "that we had worked throughout my time here, since I came to Pitt County" and that "it's a good location for all types of violations," he later testified that the selection of a checkpoint site was usually made by the lead trooper, that he

had not chosen the site at which the 17 May 2008 checkpoint was conducted, and that he did not know why that site had been selected or who had selected it. Although the testimony of Sergeant Collins concerning the reasons underlying the decision to conduct the checkpoint at Rural Paved Road 1534 does not indicate who made the selection decision and does not mention the safety-related consideration recited in the trial court's factual findings, N.C. Gen. Stat. § 20-16.3A(d) explicitly provides that the location at which a checkpoint is operated "shall not be grounds for a motion to suppress or a defense to any offense arising out of the operation of a checking station." Defendant has not challenged the constitutionality of N.C. Gen. Stat. § 20-16.3A(d) or otherwise demonstrated that any deficiencies in the decision concerning the checkpoint's location justify suppression of any evidence obtained as a result of a stop conducted at that checkpoint in light of N.C. Gen. Stat. § 20-16.3A(d). As a result, assuming for purposes of discussion that the trial court erroneously found as a fact that the checkpoint location was selected for safety-related reasons and because it had been used successfully in the past, Defendant has not established that any such error in any way contributed to the denial of his suppression motion.

3. Constitutionality of the Checkpoint

Thirdly, Defendant challenges the constitutionality of the checkpoint at which he was stopped on 17 May 2008. According to the Fourth and Fourteenth Amendments to the United States Constitution, a search or seizure, including an investigative

detention, must be based on either the consent of the person being searched or on an individualized determination that the search is supported by probable cause or a reasonable articulable suspicion. *Terry v. Ohio*, 392 U.S. 1, 20-22, 20 L. Ed. 2d 889, 905-06 (1968). The United States Supreme Court has, however, recognized certain limited exceptions to the general rule requiring that an involuntary search have an individualized justification. *United States v. Martinez-Fuerte*, 428 U.S. 543, 560-62, 49 L. Ed. 2d 1116, 1130-31 (1976). It is, for example, permissible for law enforcement officers to briefly detain vehicles at checkpoints if the purpose of the checkpoint is legitimate and the checkpoint itself is conducted in a reasonable manner. *Id.* at 561-62, 49 L. Ed. 2d at 1130-31.

"When considering a challenge to a checkpoint, the reviewing court must undertake a two-part inquiry to determine whether the checkpoint meets constitutional requirements." *Veazey*, 191 N.C. App. at 185, 662 S.E.2d at 686. 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). Secondly, if the checkpoint had a legitimate primary programmatic purpose, the court must then weigh the public's interest in the checkpoint against the affected individual's Fourth Amendment privacy interests. *State v. Jarrett*, __ N.C. App. __, __, 692 S.E.2d 420, 423 (2010) (citing *Veazey*, 191 N.C. App. at 185-86, 662 S.E.2d at 686-87). In conducting the required balancing inquiry, the 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." *Brown v. Texas*, 443 U.S. 47, 51, 61 L. Ed. 2d 357, 362 (1979). Assuming that a proper analysis of the relevant factors results in a determination that the public concerns served by the checkpoint and resulting seizure outweigh the severity of the interference with individual liberty, the checkpoint will be upheld against a constitutional challenge. *Illinois v. Lidster*, 540 U.S. 419, 427-28, 157 L. Ed. 2d 843, 852-53 (2004).

a. Primary Purpose

According to Defendant, the Highway Patrol's primary purpose in establishing the checkpoint was to "engage in the enterprise of ferreting out crime." However, "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." *Veazey*, 191 N.C. App. at 187, 662 S.E.2d at 687 (citing *State v. Burroughs*, 185 N.C. App. 496, 499-500, 648 S.E.2d 561, 565-66 (2007)). In this case, all of the evidence tends to show that the checkpoint was operated for the legitimate purpose of checking motorists' driver's licenses. See *Veazey*, 191 N.C. App. at 185, 662 S.E.2d at 686 (stating that a checkpoint that was operated for the purpose of checking driver's licenses would not run afoul of the Fourth and Fourteenth Amendments).

On a number of occasions during his testimony at the suppression hearing, Sergeant Collins described the primary purpose of the checkpoint as inspecting motorists' driver' licenses. In addition, Sergeant Collins testified that "[e]very vehicle was to be stopped;" that participating troopers were only allowed to "make sure that the driver's license was valid, and observe the driver[,] . . . the interior of the vehicle and also the exterior of the vehicle;" and that, in the event that "[e]verything" appeared "fine" at the conclusion of this cursory inspection, the driver would be allowed to proceed on his or her way. According to Sergeant Collins, participating troopers were not allowed to ask the stopped motorists to produce a registration card, there were no drug dogs present, and no search was conducted as long as a driver produced a valid license and no other violations were noted. Similarly, Trooper Deans affirmed that he did not ask drivers entering the checkpoint for anything other than their drivers' licenses, that anyone possessing a valid driver's license was allowed to proceed through the checkpoint, and that he was never instructed to look for any additional criminal violations during the operation of the checkpoint. Simply put, the record is completely devoid of any evidence tending to contradict the stated objective of the checkpoint as described by Sergeant Collins. Thus, the trial court did not err by concluding that the primary purpose of the checkpoint was an appropriate one.

b. Reasonableness of the Checkpoint

Although Defendant concedes that a checkpoint conducted for the purpose of checking drivers' licenses serves a significant public interest, he disputes the trial court's conclusion that the checkpoint at issue here advanced the public interest it was intended to serve and did not work a severe interference with individual liberty. We are unable to agree with Defendant's contentions.

First, the trial court's factual findings and legal conclusions reflect a proper consideration of the factors that must be utilized in ascertaining whether the operation of a checkpoint properly advanced the relevant public interest. In making this determination, which focuses upon whether the checkpoint is narrowly tailored toward achieving the relevant public interest, courts should consider whether law enforcement officers spontaneously set up the checkpoint, whether law enforcement officers explained the reason that a particular location was selected, whether the checkpoint had a predetermined start and end time, and whether law enforcement officers explained the reason that they selected the time frame that was utilized for the checkpoint. *Veazey*, 191 N.C. App. at 191, 662 S.E.2d at 690. In addition, the extent to which the checkpoint is appropriately supervised by superior officers is also relevant to a proper determination of the reasonableness issue. *State v. Rose*, 170 N.C. App. 284, 294-95, 612 S.E.2d 336, 342-43, *disc. review denied*,

appeal dismissed, and cert. denied, 359 N.C. 651, 617 S.E.2d 656 (2005).

Sergeant Collins authorized the checking station by signing an HP-14 form. Although the record reflects that a decision to set up the checkpoint was made and implemented in a relatively short period of time, there is no indication that the times during which the checkpoint was in existence were determined for any sort of arbitrary reason or that appropriate approvals were not obtained. The instructions given to participating troopers clearly required them to focus on identifying unlicensed drivers and did not authorize a general attempt to ferret out any and all types of criminal activity. In addition, Sergeant Collins testified that the participating troopers complied with the plan established for the checkpoint and that the policies outlined in Directive K.4⁴ were in effect throughout its operation. Although Sergeant Collins was unable to identify the individual who selected the location for the checkpoint, his testimony as to the appropriateness of that location for the purpose of conducting a checkpoint has not been seriously challenged on appeal. The undisputed evidence in the record also establishes, contrary to Defendant's contention, that Sergeant Collins was acting in a supervisory role throughout the entire time that the checkpoint was in operation. Based on the testimony received at the suppression hearing, the trial court found as a fact that:

⁴ Directive K.4 is the Highway Patrol policy document governing the operation of checkpoints.

15. The Court further finds that checking licenses is a lawful primary purpose and determining whether a person has a valid drivers license cannot be accomplished without stopping the vehicle.
16. The Court after considering the gravity of the public concern served by the seizure finds that checking licenses advances an important purpose.
17. The Court after considering the degree to which the seizure advances the public interest finds that the checking station was pursuant to a written plan with a predetermined starting and ending time and a specified purpose.
18. The Court finds that the plan appropriately tailored the checking station to checking licenses.

The trial court's factual findings are supported by the evidence in the record and are, therefore, binding upon this Court for purposes of appellate review. As a result, we conclude that the trial court did not err by determining that the operation of the checkpoint was narrowly tailored to achieve the goal of identifying and dealing with unlicensed drivers.

Secondly, the trial court, as is required by the third prong of the test enunciated in *Brown*, considered "the severity of the interference with [drivers'] individual libert[ies]." The primary issue that must be addressed in connection with this aspect of the *Brown* test is whether the checkpoint was conducted "pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers." *Brown*, 443 U.S. at 51, 61 L. Ed. 2d at 362. For that reason,

[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; 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 oral or written 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. 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 (internal citations omitted). Although Defendant argues that there were no "markers or signs to [provide] notice [to] the public" at the checkpoint, all five officers activated the blue lights on their vehicles consistently with Directive K.4, which requires that all checkpoints "be marked by signs and/or activated emergency lights, marked Patrol vehicles parked in conspicuous locations, or other ways to ensure motorists are aware that an authorized checking station is being conducted." For that reason, there was no necessity for the participating troopers to post signs or similar markers in order for the checkpoint to comply with departmental policy. In addition, while Defendant suggests that Sergeant Collins' presence at the checkpoint somehow diminished his supervisory authority, we see no basis in the record for concluding

that his presence at and participation in the checkpoint's operation somehow converted him from a supervisor to a line trooper given the undisputed evidence establishing that he authorized the checkpoint and provided the participating troopers with their instructions. Finally, the instructions given to participating troopers sharply circumscribed the extent of their discretion to question and obtain information from motorists entering the checkpoint. As a result, the trial court found that:

19. The Court after assessing the severity of the interference with individual liberty finds that patrol vehicles had their lights activated during the entire checking station, troopers stopped every vehicle, and a supervisor (Sgt. Collins) reviewed the plan and was at the checking station.

In view of the evidence discussed above, we have no hesitation in determining that the trial court correctly concluded that the participating troopers' ability to exercise investigative discretion was minimal and that the operation of the checkpoint did not violate Defendant's rights under the Fourth and Fourteenth Amendments. See *State v. Mitchell*, 358 N.C. at 68, 592 S.E.2d at 546 (stating that, "[b]ecause police officers are not constitutionally mandated to conduct driver's license checkpoints pursuant to written guidelines; because [the officers] received sufficient supervisory authority to conduct the checkpoint; and because the officers stopped all oncoming traffic at the checkpoint, we conclude that the checkpoint was constitutional"); *State v. VanCamp*, 150 N.C. App. 347, 351, 562 S.E.2d 921, 925 (2002) (upholding the constitutionality of a checkpoint for the

purpose of checking driver's licenses and registrations at which all vehicles were stopped); *State v. Tarlton*, 146 N.C. App. 417, 421-23, 553 S.E.3d 50, 53-54 (2001); *State v. Grooms*, 126 N.C. App. 88, 90, 483 S.E.2d 445, 446 (1997) (holding that a checkpoint for the purpose of checking drivers' licenses and attempting to locate stolen vehicles, and individuals with outstanding arrest warrants at which all vehicles were stopped was constitutional); *State v. Sanders*, 112 N.C. App. 477, 480, 435 S.E.2d 842, 844 (1993) (finding that a checkpoint for drivers' licenses at which all vehicles were stopped was constitutional). Thus, for the reasons set forth above, we reject Defendant's challenge to the constitutionality of the checkpoint.

4. Compliance with State Law Governing Checkpoints

Finally, Defendant contends that the State failed to demonstrate that the participating troopers complied with N.C. Gen. Stat. § 20-16.3A and relevant Highway Patrol policies in conducting the 17 May 2008 checkpoint. We disagree.

N.C. Gen. Stat. § 20-16.3A provides, in pertinent part, that:

(a) If [a law enforcement] 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) Operate 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 drivers 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 in operation during the conducting of the checking station.

(b) An officer who determines there is a reasonable suspicion that an occupant has violated a provision of this Chapter, or any other provision of law, may detain the driver to further investigate in accordance with law.

. . .

(c) Law enforcement agencies may conduct any type of checking station or roadblock as long as it is established and operated in accordance with the provisions of the United States Constitution and the Constitution of North Carolina.

Similarly, Directive K.4 provides that all checkpoints must be conducted so that:

The site for every checking station shall be selected with due regard for the safety of motorists and the members operating the checking station. Sufficient distance must be provided to allow a motorist traveling at the speed limit to stop his/her vehicle in a normal manner under the existing conditions. No checking station shall be conducted without at least two uniformed members present and at least one marked Patrol vehicle.

All checking stations shall be marked by signs and/or activated emergency lights, marked Patrol vehicles parked in conspicuous locations, or other ways to ensure motorists are aware that an authorized checking station is being conducted. Blue lights, on at least one Patrol vehicle shall be operated at all times.

With the exception of Special Operations checking stations, all checking stations shall provide for the stopping of every vehicle. Individual members shall not vary from this policy, except that the member in charge of the checking station may allow variance from this requirement if the traffic congestion or other factors are creating a hazard. The member in charge may then authorize all vehicle to pass through the checking station until there is no longer a hazard.

Checking stations shall be operated so as to avoid unnecessary traffic congestion and delay to motorists.

Adequate area must be available off the traveled portion of the highway to allow for the safety of motorists when enforcement action is taken.

Patrol vehicles must be parked to allow access to the highway for pursuit in any direction.

Members must maintain radio contact with the Communications Center.

In addition, Directive K.4 provides, with respect to the operation of Standard Checking Stations, such as the one at issue here, that:

Members may conduct checking stations to determine compliance with motor vehicle laws. Examples for which this type of checking station may be used[] include[], verification of drivers' licenses, vehicle registration checks, insurance checks, seat belt compliance checks and driving while impaired.

All checking stations, day or night, shall be approved, in writing, by a district supervisor or higher authority. The supervisor shall designate the purpose, location and

approximate time of operation of the checking station. The placement of checkpoints should be random or statistically indicated, and, unless statistically indicated, supervisors shall avoid placing checking stations repeatedly in the same location or proximity. Supervisors shall use Form HP-14 (Checking Station Authorization) for this purpose.

A supervisor who authorizes establishment of a checking station shall specify, on the Form HP-14 whether drivers shall be asked to produce a drivers license, proof of registration or insurance information or any combination thereof. The driver of every vehicle stopped shall be asked to produce the document(s) specified and members working the checking station shall have no discretion to deviate from this pattern unless the member has some reasonable suspicion to investigate further.

. . . .

Standard Checking Stations shall comply with the United States and North Carolina Constitutions and shall be conducted in accordance with the provisions of N.C. [Gen. Stat.] § 20-16.3A.

The evidence contained in the present record establishes that Sergeant Collins had the authority to authorize the checkpoint. In addition, the undisputed record evidence demonstrates that participating troopers were directed to ask the drivers of all vehicles that entered the checkpoint to produce their licenses and instructed to do nothing other than to engage the stopped drivers in a brief conversation, ask to see the stopped drivers' drivers licenses, and observe anything that might be in plain view in the interior of the stopped automobiles. Although there were two slightly different HP-14 forms relating to the 17 May 2008 checkpoint, we conclude that the discrepancy between these two

forms did not result in a deviation from applicable Highway Patrol policy given that Sergeant Collins signed both forms, that both forms listed the same location for the checkpoint, that Directive K.4 only requires that an "approximate time of operation" be specified, and that Directive K.4 does not mandate the designation of a specific number of lead troopers. Motorists approaching the checkpoint were provided with adequate notice because the blue lights on all five patrol vehicles present at the checkpoint were activated throughout the checkpoint's existence and because each participating trooper wore a green florescent vest clearly marked "SHP." Finally, the actual stopping of vehicles entering the checkpoint was conducted in accordance with the instructions that were given to participating troopers. As a result, the record evidence clearly supports the trial court's conclusion that "the checking station complied with N.C. Gen. Stat. 20-16.3A" and establishes that the checkpoint was conducted consistently with Directive K.4.⁵

III. Conclusion

Thus, for the reasons set forth above, we conclude that all of Defendant's challenges to the trial court's order denying his suppression motion lack merit. Since the only challenges that Defendant has advanced on appeal relate to the denial of his

⁵ Admittedly, the trial court's findings and conclusions make no express mention of Directive K.4. However, in the absence of any evidence tending to show that the manner in which the checkpoint was conducted involved any material deviation from the requirements set out in Directive K.4, any error that may have resulted from the trial court's failure to mention that policy document did not prejudice Defendant.

suppression motion and since we have concluded that the trial court did not commit any prejudicial error in the course of denying that motion, we conclude that Defendant is not entitled to any relief on appeal and that his conviction and sentence should remain undisturbed.

NO ERROR.

Judges BRYANT and ELMORE concur.

Report per Rule 30(e).