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NO. COA12-390
NORTH CAROLINA COURT OF APPEALS

Filed: 2 October 2012

STATE OF NORTH CAROLINA

v.

Pamlico County
No. 09-CRS-50007

KEVIN EARL GRIFFIN

Appeal by defendant from judgment entered 3 October 2011 by Judge Marvin K. Blount, III, and an order entered 24 June 2011 by Judge Kenneth F. Crow in Pamlico County Superior Court. Heard in the Court of Appeals 12 September 2012.

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

Robert G. Raynor, Jr., for defendant.

ELMORE, Judge.

Kevin Earl Griffin (defendant) appeals from judgment entered on his plea of "no contest" following entry of an order denying his motion to suppress. After careful consideration, we reverse the order and vacate the subsequent judgment.

I. Background

On 5 January 2009, Trooper Scott Casner of the North Carolina Highway Patrol was conducting a driver's license checkpoint near the intersection of NC 306 South and RP 1005 near Arapahoe. According to Casner, at approximately 9:55 PM he saw defendant traveling towards the checkpoint. Casner then observed defendant make a left turn onto the shoulder and position his vehicle in the opposite direction. Casner pulled up behind defendant and asked for his driver's license. At this time, Casner detected the odor of alcohol on defendant. Defendant was then charged with driving while impaired (DWI).

On 4 June 2010, defendant filed a motion to suppress all evidence obtained from the stop, arguing that the state obtained the evidence as a result of an unconstitutional checkpoint. On 4 October 2010, the matter came on for hearing, and on 24 June 2011, the trial court entered an order denying defendant's motion. As a result, on 3 October 2010 defendant entered a plea of "no contest" to DWI, but reserved his right to appeal the pre-trial ruling. Defendant now appeals the denial of his motion to suppress.

II. Analysis

Defendant presents five arguments on appeal. In sum, defendant argues 1) that Casner did not have reasonable

suspicion to stop defendant, 2) that the checkpoint was arbitrary and unconstitutional, and 3) that the trial court erred in making findings of facts 1, 2 and 4. We agree with defendant's second argument.

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).

Here, defendant challenges the trial court's conclusion that "Trooper Casner conducted the license checkpoint as allowed by North Carolina Law and the United States Constitution."

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. . . . Second, if a court finds that police had a legitimate primary programmatic purpose for conducting a checkpoint . . . [the court] must judge its reasonableness, hence, its constitutionality, on the basis of the

individual circumstances.

State v. Nolan, ___ N.C. App. ___, ___, 712 S.E.2d 279, 284 (2011) (quotations and citations omitted).

A. Primary programmatic purpose

Here, the trial court found that the primary purpose of the checkpoint was to “check every approaching driver for a valid driver’s license.” “Our Courts have upheld checkpoints where it found that a checkpoint’s lawful primary purpose was designed to uncover drivers’ license and vehicle registration violations, and detect intoxicated drivers[.]” *Id.* at ___, 712 S.E.2d at 286 (quotations and citations omitted). Thus, we conclude that the checkpoint at issue was established with a legitimate programmatic purpose.

B. Reasonableness

Next, we must review whether the checkpoint was reasonable.

To determine whether a seizure at a checkpoint is reasonable requires a balancing of the public’s interest and an individual’s privacy interest. In order to make this determination, this Court has required application of the three-prong test set out by the United States Supreme Court in *Brown v. Texas*, 443 U.S. 47, 50, 99 S. Ct. 2637, 2640, 61 L. Ed. 2d 357, 361 (1979). Under *Brown*, the trial court must consider [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 ____, 712 S.E.2d at 286-87 (quotations and citations omitted) (alterations in original)

i. Gravity of the public concerns

Both the United States Supreme Court as well as our Courts have suggested that license and registration checkpoints advance an important purpose[.] The United States Supreme Court has also noted that states have a vital interest in ensuring compliance with other types of motor vehicle laws that promote public safety on the roads.

State v. Veazey, 191 N.C. App. 181, 191, 662 S.E.2d 683, 690 (2008) (quotations and citations omitted). Here, as we have already discussed, the checkpoint was established to check each driver for a valid driver's license. As such, we conclude that the checkpoint at issue clears the first prong of the *Brown* analysis.

ii. Degree to which the seizure advances the public interest

Focusing our analysis on the second prong, we must next determine

whether [t]he police appropriately tailored their checkpoint stops to fit their primary purpose. Our Court has previously identified a number of non-exclusive factors that courts should consider when determining whether a checkpoint is appropriately tailored, including: [1] whether police spontaneously decided to set up the checkpoint on a whim; [2] whether police offered any reason why a particular road or

stretch of road was chosen for the checkpoint; [3] whether the checkpoint had a predetermined starting or ending time; and [4] whether police offered any reason why that particular time span was selected.

Id. (citations and quotations omitted).

Upon review of the trial court's order, we are unable to identify any findings of facts addressing the aforementioned factors. Likewise, upon a *de novo* review of the record, we are unable to locate any evidence or testimony that would support such findings.

At the suppression hearing, Casner was asked "[w]hy was that area selected for the checkpoint?" He responded "[i]t was just where we had chosen to go do the checkpoint. There was no real reason as to why we were there." Further, Casner testified that the checkpoint had no predetermined time frame. He said, "It was planned to start around 9:30 PM on that day. We didn't have a finishing time."

As such, we are unable to conclude that the checkpoint at issue was appropriately tailored to achieve its primary purpose. As a result, the checkpoint fails to clear the second prong of the *Brown* analysis.

III. Conclusion

Accordingly, we conclude that the checkpoint violated defendant's constitutional rights, and that the evidence

obtained as a result of the checkpoint should have been suppressed. We reverse the trial court's order and vacate the subsequent judgment.

Vacated.

Judges CALABRIA and STEPHENS concur.

Report per Rule 30(e).