NO. COA14-338
NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2014

STATE OF NORTH CAROLINA

v. Sampson County
Nos. 10 CRS 52051
10 CRS 52053-54

TORREY FREDERICK

Appeal by defendant from order entered 5 November 2013 by Judge Jay D. Hockenbury in Sampson County Superior Court. Heard in the Court of Appeals 27 August 2014.

Roy Cooper, Attorney General, by Joseph L. Hyde, Assistant Attorney General, for the State.

Staples Hughes, Appellate Defender, by Jillian C. Katz, Assistant Appellate Defender, for defendant-appellee.

DAVIS, Judge.

The State appeals from the trial court's order granting the motion to suppress of Torrey Frederick ("Defendant"). On appeal, the State contends that (1) several of the trial court's findings of fact were not supported by competent evidence; and (2) the trial court erred in concluding that the police

checkpoint at issue was unconstitutional. After careful review, we affirm.

Factual Background

Shortly before midnight on 29 August 2010, Sergeant William King ("Sgt. King") with the Clinton Police Department ("CPD") decided to conduct a driver's license and registration checkpoint ("the Checkpoint") at the intersection of Johnson Street and Fisher Drive in Clinton, North Carolina. Sgt. King chose this particular location and time for the Checkpoint because "[t]hat's just where I decided" and because "[i]t was a slow point in the shift[.]" Sgt. King oversaw a squad composed of three other officers: Officers Edgar Carter ("Officer Carter"), Dennis Menendez ("Officer Menendez"), and C. Price ("Officer Price"). Sgt. King called these officers and told them to meet him at the intersection of Johnson Street and Fisher Drive in order to conduct the Checkpoint.

At the time Sgt. King ordered the Checkpoint to be set up, the CPD did not have a written policy in place concerning how to operate motor vehicle checkpoints. In accordance with the practice of the CPD, the patrol sergeants for each of the CPD's patrol squads could order that a checkpoint be conducted at their discretion without any prior approval from superior officers in the CPD.

Within ten minutes of being contacted by Sgt. King, Officers Carter, Menendez, and Price met Sgt. King at the intersection of Johnson Street and Fisher Drive. Without any instructions from Sgt. King or any discussion between themselves as to how the checkpoint was to be set up or conducted, the officers positioned their patrol cars on both sides of Johnson Street. Blue lights were activated on at least two of the vehicles.

As Sgt. King was preparing to take his position in assisting with the Checkpoint, the first vehicle to approach the Checkpoint, a white GMC Sierra driven by Michael Wallace ("Wallace"), was stopped by Officer Menendez. Defendant was a passenger in the Sierra as was an unidentified woman seated in the back seat. Officer Menendez asked Wallace for his license and registration, and Wallace produced a motorcycle learner's permit. Officer Menendez then instructed Wallace to pull over to the shoulder of the road.

Wallace pulled over but then continued driving for an additional 200-300 feet on the shoulder of the road. He then got out of the vehicle and began walking back toward the officers. Officer Carter ordered Wallace to get back into the Sierra, and Wallace complied. Wallace then began erratically driving the Sierra in reverse back toward the officers.

Once the Sierra stopped, Officer Carter ordered Wallace out of the vehicle and asked him why he had pulled forward and then driven back toward the officers in reverse. Wallace responded that he "thought you wanted me to come back to you." Officer Carter asked Wallace if there was anything illegal in the Sierra to which he responded "[n]o." Officer Carter then inquired whether he could search the Sierra to which Wallace replied "[n]o, my bossman would not appreciate it."

Officer Carter — who was one of two K-9 officers within the CPD — got his police canine from the back seat of his patrol car, performed "a free air scan around the [Sierra]" and "got a positive alert from the K-9 on the passenger side." After Officer Carter informed Sgt. King of this development, the officers removed Defendant and the female passenger from the Sierra and began conducting a search of the vehicle.

Upon searching the Sierra, Officer Carter discovered .40-caliber ammunition and plastic baggies. Officer Carter then walked up to the spot on the shoulder of the road where the Sierra had been situated before Wallace began driving in reverse. Upon inspection of the area, Officer Carter found a .40-caliber pistol, marijuana, and a Ziploc bag containing a substance later identified as half a brick of cocaine.

On 12 January 2011, Defendant was indicted for (1) trafficking in cocaine; (2) possession with intent to

manufacture, sell, and deliver a Schedule II controlled substance; (3) maintaining a vehicle to keep controlled substances; (4) possession with intent to sell and deliver a Schedule VI controlled substance; (5) possession of a stolen firearm; (6) possession of drug paraphernalia; (7) possession of a firearm by a felon; and (8) attaining habitual felon status.

A hearing on Defendant's motion to suppress was heard on 14 October 2013 by Judge Jay D. Hockenbury in Sampson County Superior Court. Defendant moved to suppress all evidence stemming from the Checkpoint based on his assertion that the Checkpoint was unconstitutional.

On 5 November 2013, the trial court entered an order containing the following pertinent findings of fact:

> 3. North Carolina General Statute 20-16.3A, Checking Stations and Roadblocks provided under subsection A: A law enforcement agency may conduct checking stations to determine compliance with provisions of this chapter. If the agency is conducting a checking station for the purpose of determining compliance with this chapter, it **MUST** (emphasis supplied) (2) operate under a **Written Policy** (emphasis supplied) that provides guidelines for the pattern which need not be in writing.
>
> 4. The parties have stipulated, and Chief James Tilley of the Clinton Police Department has corroborated the stipulation, that the Clinton Police Department had no written checkpoint policy on or about August 29, 2010. The Court takes this stipulation as fact for the purposes of this hearing.

5. On or about August 29, 2010, Chief Tilley was the assistant chief of police of the Clinton Police Department in charge of all operations and internal affairs of the Department. The Department had many policies, including but not limited to traffic policy, arrest policy, and bias-based profile policy, but had no written policy as to checkpoints.

. . . .

7. On August 29, 2010, Sergeant King was a squad supervisor with duties to oversee police operations for his squad on its shift.

. . . .

9. The leadership of the Clinton Police Department did not give any training or instructions to the squad leaders as to how to legally conduct a driver license checkpoint. Sergeant King had his field training program in 1995, and there was no specific training as to how to conduct a driver license checkpoint given by his leaders or supervisors since then.

10. Despite the lack of training or instructions, the sergeant or person in command could order a driver license checkpoint at their discretion as long as it complied with all the policies and procedures of the Department. The sergeant or person in command would have complete discretion as to time, location, and how the checkpoint was set up and implemented. In the absence of the sergeant, the next supervisory officer, the corporal, would do the same. Neither the sergeant nor the corporal would have to call to seek permission from a superior officer to set up a driver license checkpoint.

. . . .

12. Around midnight, and for no particular reason except it was a slow night in the neighborhoods while on patrol, Sergeant King issued an order for his squad to come to the intersection of Johnson and Fisher Streets in Clinton, North Carolina to meet for a driver license-traffic stop checkpoint.

13. Within 10 minutes, the squad came together and without any instructions from Sergeant King on how to conduct the checkpoint, the squad implemented the checkpoint. The squad previously had implemented traffic checkpoints under Sgt. King. The squad positioned their cars on the side of Johnson Street with blue lights and strobe lights on so the public could see the police cars. The officers put on yellow vests, and proceeded with the stops. The past procedure was to stop every car and check for the driver's license and registration. Also, the officers were observing for other potential violations, seatbelt violations, open container violations, and detection of odor of alcohol.

14. Johnson Street and Fisher Street were selected by Sergeant King for no particular reason. It had been used before as a driver license-registration checkpoint. Johnson Street was a combined business-residential area with heavy traffic through town, just past the Wellness Center with the hospital several blocks away. The housing projects were one-half to three-quarter miles away.

15. There was no set time limit for the driver license checkpoint on Johnson Street. Other past checkpoints have lasted from 30 minutes to one hour, but could last only several minutes due to heavy call volume. There was no evidence as to how long the August 29, 2010 checkpoint lasted or when it ended. Sergeant King, the supervising officer who ordered the driver license and registration checkpoint, participated in the

> checkpoint and in other checkpoints he previously ordered.

Based upon these findings of fact, the trial court made the following conclusions of law:

> 1. The Court makes an independent finding that the driver license-registration stop checkpoint established by Sergeant Kind [sic] had both a lawful and an unlawful purpose. Lawful purpose: checking for driver license and registration; unlawful purpose: checking for indications of an odor of alcohol suggesting driving while impaired.
>
> 2. As to the reasonableness of the checkpoint:
>
> a. The Court has assessed the gravity of the public concerns served by the seizure, and finds that the State has a viable interest in ensuring compliance with the driver license and registration laws, but this interest greatly decreases when the officers use the stop to look for potential DWI violations that can be readily observable and adequately addressed by roving patrols while officers develop individualized suspicion of a certain vehicle.
>
> b. The Court has assessed the degree to which the seizure advanced the public interest and finds it de minimus in that the checkpoint was inappropriately tailored in that Sergeant King spontaneously decided to set up the checkpoint on a whim (the night was slow in the neighborhoods); the checkpoint had a predetermined starting point but no ending point; there was no reason why the time was selected other than it was a slow night; there were no instructions given

> by the sergeant to the squad members in conducting the checkpoint.
>
> c. In assessing the severity of the interference with individual liberty occasioned by the checkpoint, the Court finds that this driver license-registration checkpoint seizure was not carried out pursuant to a plan embodying explicit neutral limitations on the conduct of officers in that the location was not selected by a supervising officer not in the field, but rather by the sergeant that participated in the checkpoint; there were no written or oral guidelines given to the sergeant by his superiors, and there were no instructions given by the sergeant to his squad of officers conducting the checkpoint.
>
> 3. The Clinton Police Department had no written drivers license-registration checkpoint policy as required by G.S. 20-16.3A on August 29, 2010.
>
> 4. Taking into consideration the totality of the circumstances, the Court concludes that on balance, the intrusion of the defendant's protected liberty interest is not outweighed by the public interest in the flawed and unreasonable driver license and registration checkpoint conducted by the Clinton Police Department on August 29, 2010.

Based on these findings, the trial court granted Defendant's motion to suppress. The State filed a timely notice of appeal.

Analysis

In arguing that the trial court improperly granted Defendant's motion to suppress, the State contends that the

trial court failed to ascertain the primary programmatic purpose of the Checkpoint and that it erred in determining that the Checkpoint was conducted in an unconstitutional manner. We disagree.

Our review of a trial court's ruling on 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). Any findings of fact that are not specifically challenged by a party are "deemed to be supported by competent evidence and are binding on appeal." *State v. Roberson*, 163 N.C. App. 129, 132, 592 S.E.2d 733, 735-36, *disc. review denied*, 358 N.C. 240, 594 S.E.2d 199 (2004). "If there is competent evidence to support the trial court's finding, then it is similarly binding on appeal, even if the evidence is conflicting." *State v. Knudsen*, __ N.C. App. __, __, 747 S.E.2d 641, 645 (citation and quotation marks omitted), *disc. review denied*, 367 N.C. 258, 749 S.E.2d 865 (2013). On appeal, "[t]he conclusions of law made from the findings of fact are reviewable *de novo*." *State v. Brown*, 199 N.C. App. 253, 256, 681 S.E.2d 460, 463 (2009).

I. Findings of Fact

The State challenges findings of fact 10, 12, and 14. As to finding of fact 10, the State asserts that "[t]o the extent this finding suggests a supervising officer could operate a checkpoint contrary to Department policies and procedures, the finding is not supported by the evidence." As support for this contention, the State cites to a written policy adopted by the CPD entered into evidence at the suppression hearing prohibiting racial or otherwise discriminatory profiling in conducting traffic stops. In addition, the State cites the practice of the CPD as testified to by Sgt. King and Chief Tilley that every car be stopped at a checkpoint.

We do not believe this evidence renders finding of fact 10 erroneous. Indeed, this finding expressly notes that the discretion of officers was limited only by their need to follow "all the policies and procedures of the Department." The trial court's finding noted the substantial discretion that remained with officers even assuming their compliance with all such policies and procedures. Furthermore, the fact that every car was stopped at the Checkpoint does not affect the weight the trial court gave to other competent evidence offered at the hearing tending to show that Sgt. King had complete discretion in setting up and conducting the Checkpoint.

With regard to findings of fact 12 and 14, the State argues that "[t]he trial court erred in finding that Sergeant King had

no particular reason for the time and place of the checkpoint." However, the following testimony of Sgt. King provided competent evidence tending to support these findings

> THE COURT: And this came up just right around
> midnight? What caused you, right about that time during this day, to say, hey, let's have a driver's license checkpoint?
>
> THE WITNESS: Numerous things could come in play. I mean, if we'd been busy with calls, this may have been the first chance we had.
>
> THE COURT: Let's just say about this particular night; that's what I'm talking about. What caused you, at that time around midnight — it's probably not going to be too many cars there — what caused you then to say, hey, I'm going to set up a driver's license checkpoint? What precipitated your thought process in doing that?
>
> THE WITNESS: It was a slow point in the shift
> and so we went into the neighborhood and set up — neighborhood/commercial — and set up the checkpoint.
>
> THE COURT: Have you done it — set up previous
> checkpoints at this same location?
>
> THE WITNESS: Yes, sir. This is — we had been
> there before but we — it has been a while since we had been there.
>
> THE COURT: So you had set up a checkpoint there before?
>
> THE WITNESS: Yes, sir.
>
> THE COURT: All right. So it was sort of a slow night. It's — the night was slow, so

let’s set up a checkpoint for driver’s license; is that how it was?

THE WITNESS: Yes, sir.

. . . .

Q. Okay. So why did you choose that intersection? Why did you choose Fisher to conduct this checkpoint?

A. That’s just where I decided.

Q. Just where you decided to do it?

A. Yes, sir.

. . . .

Q. So to put this checkpoint together, you pick up the radio, pick up the, phone: Guys let’s do a checkpoint.

A. That’s correct.

Q. That’s basically all there is to it?

A. Yes, sir. Long as it's a safe location for us and as well as the motoring public, yes, sir.

Q. Okay. So you don’t call Chief Tilley: Chief
Tilley, I’m going to set up a checkpoint.

A. No, sir.

Q. You don’t call the assistant chief or a lieutenant?

A. No, sir.

Q. It’s completely in your discretion to set this thing up?

A. For a driving license checkpoint, yes, sir.

> Q. Okay. And, obviously, if you didn't call anybody, you didn't call anybody to get instructions on how to conduct it. You just did it based on your training from 1995; is that right?
>
> A. Correct.
>
> . . . .
>
> Q. Okay. And judging by your testimony earlier, I don't think there was any magic reason why you chose to start it at midnight, other than it was just the way it worked out?
>
> A. That's correct.

In light of Sgt. King's testimony, we are satisfied that competent evidence also supported the trial court's findings of fact 12 and 14.

II. N.C. Gen. Stat. § 20-16.3A(a)

At the suppression hearing, both parties stipulated to the fact that on 29 August 2010 the CPD did not have a written checkpoint policy in place. The trial court referenced this stipulation in finding of fact 4. N.C. Gen. Stat. § 20-16.3A(a) provides, in pertinent part, as follows:

> 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) Operate under a written policy that provides guidelines for the pattern, which need not be in writing.

N.C. Gen. Stat. § 20-16.3A(a) (2013). In *State v. White*, __ N.C. App. __, 753 S.E.2d 698, *temp. stay allowed*, __ N.C. __, 755 S.E.2d 49 (2014), we held that the existence of a written policy as set out in section (2a) of N.C. Gen. Stat. § 20-16.3A is required in order for a checkpoint to be deemed valid:

> We observe that the language used in N.C.G.S. § 20–16.3A(a)(2a) is mandatory — If the agency is conducting a checking station, it *must* operate under a written policy.
>
> In light of the mandatory language contained within N.C.G.S. § 20–16.3A, we conclude that the trial court did not err by concluding that a lack of a written policy in full force and effect at the time of defendant's stop at the checkpoint constituted a substantial violation of section 20–16.3A.

White, __ N.C. App. at __, 753 S.E.2d at 703 (internal citation, quotation marks, brackets, and ellipses omitted). Therefore, the absence of such a written policy rendered the Checkpoint illegal under the North Carolina General Statutes.[1]

[1] Therefore, on this ground alone, the trial court's granting of Defendant's motion to suppress was proper. However, for the reasons set out below, the granting of the motion was also correct based on the trial court's conclusion that the

III. Constitutionality of Checkpoint

In addition to noting the Checkpoint's failure to comply with the North Carolina General Statutes, the trial court also held that the Checkpoint was unconstitutional. It is well established that

> [w]hen 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. Jarrett, 203 N.C. App. 675, 677, 692 S.E.2d 420, 423 (citation, internal brackets, and ellipses omitted), *disc. review denied*, 364 N.C. 438, 702 S.E.2d 501 (2010).

A. Primary Programmatic Purpose

The State contends that the trial court failed to make the required determination as to the Checkpoint's primary programmatic purpose. Specifically, it argues that the trial court found two purposes — one that was lawful and another that was unlawful — without determining which of these two purposes was the primary one. For this reason, the State argues, remand

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Checkpoint was established and operated in an unconstitutional manner.

to the trial court is necessary.

"In considering the constitutionality of a checkpoint, the trial court must initially examine the available evidence to determine the purpose of the checkpoint program." *State v. Gabriel*, 192 N.C. App. 517, 521, 665 S.E.2d 581, 585 (2008) (citation and internal quotation marks omitted). The rationale behind inquiring into a checkpoint's primary programmatic purpose is that "[t]his type of searching inquiry is required to ensure 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 522, 665 S.E.2d at 585 (citation and internal quotation marks omitted).

In the present case, the trial court found that the Checkpoint had dual purposes: (1) checking for driver's license and registration compliance; and (2) checking for motorists who were driving while impaired by alcohol. While we agree the trial court should have made findings as to the single primary programmatic purpose of the Checkpoint, we do not believe its failure to do so requires a remand.

As an initial matter, we do not believe the trial court's conclusion that one of the specific purposes of the Checkpoint was for the detection of motorists driving while impaired is supported by its findings of fact or, for that matter, supported

by the evidence presented at the suppression hearing.[2] The only evidence in the record of any possible alternative purpose for the Checkpoint (in addition to checking for driver's license and registration compliance) was testimony elicited from Sgt. King during cross-examination by Defendant's trial counsel:

> [Defendant's trial counsel]: Now His Honor hit on this, the purpose was to check for license; isn't that true?
>
> [Sgt. King]: Yes, sir.
>
> Q. But it's not limited to that either. When someone pulls up to one of these checkpoints, you approach their window; don't you?
>
> A. Yes, sir.
>
> Q. And you can tell if they've got their seatbelt on?
>
> A. Yes, sir.
>
> Q. And if they don't, you can write them a ticket for seatbelt?
>
> A. Yes, sir.
>
> Q. You can see inside the car, see if they've got open containers, so you can write for open container tickets if you saw

[2] We also note that the trial court appears to have found that a checkpoint designed to detect impaired driving would not be based on a lawful purpose. To the contrary, this Court has made clear that checkpoints may lawfully be established for such a purpose. *See State v. Townsend*, __ N.C. App. __, __, 762 S.E.2d 898, 907 (2014) ("We agree with the trial court's findings that the checkpoint was conducted for a legitimate primary purpose, as the record indicates the checkpoint was established, pursuant to N.C. Gen. Stat. § 20-16.3, to check all passing drivers for DWI violations.").

that; isn't that true?

A. Yes, sir.

Q. You can probably smell the odor of alcohol if it was strong enough coming from the car, so you could take them out and check for DWI; isn't that true?

A. Yes, sir.

Q. You could see if they had any guns or weapons inside the car and if so, you could pull them out and arrest them for Chapter 90 gun violations; could you not?

A. If it was in plain sight, yes, sir.

Q. Right; if it was in plain sight.

A. Yes, sir.

Q. So it's safe to say then that this checkpoint is really for general crime control in the City of Clinton; right?

A. No, sir.

Q. That's not true?

A. No, sir. It's for driving license.

Q. Okay. But it's not limited to that if other things arise?

A. Yes. I mean, you know, we are there to check driving license. But, you know, if somebody pulls up with a machine gun sitting in the front seat, obviously, we are going to see it.

[Defendant's trial counsel]: Okay. No further questions, Your Honor.

We do not believe this testimony was sufficient to sustain the trial court's finding that a specific programmatic purpose of

the Checkpoint was for the detection of impaired driving.

Nor do we believe that a remand is necessary so that the trial court can make an explicit finding as to the single primary programmatic purpose of the Checkpoint. In seeking such a remand, the State relies upon *Gabriel*, 192 N.C. App. 517, 665 S.E.2d 581; *State v. Veazey*, 191 N.C. App. 181, 662 S.E.2d 683 (2008); and *State v. Rose*, 170 N.C. App. 284, 612 S.E.2d 336, *appeal dismissed and disc. review denied*, 359 N.C. 641, 617 S.E.2d 656 (2005). However, the State's reliance on these cases is misplaced. In *Veazey*, the trial court failed to make any adequate independent findings as to the primary programmatic purpose of a checkpoint. Instead, the trial court

> merely found that "Trooper Carroll said the purpose of the checkpoint was to — for license checks, make sure persons were observing the motor vehicle statutes, State of North Carolina." This finding simply recites two of Trooper Carroll's stated purposes for the checkpoint and is not an independent finding regarding the actual primary purpose. Without such a finding, the trial court could not, and indeed did not, issue a conclusion regarding whether the primary purpose of the checkpoint was lawful.

Veazey, 191 N.C. App. at 190, 662 S.E.2d at 689 (internal brackets omitted).

Similarly, in *Rose*, "the trial court simply accepted, without comment, the field officers' label of the checkpoint as a license and registration checkpoint. There is no finding as

to the programmatic purpose — as opposed to the field officers' purpose — for the checkpoint at issue." *Rose*, 170 N.C. App. at 289, 612 S.E.2d at 340.

Finally, in *Gabriel*, the trial court did not make an independent finding as to the primary programmatic purpose of the checkpoint. "Because the trial court denied defendant's motion to suppress without making any findings of fact or conclusions of law regarding the checkpoint's primary programmatic purpose, we are unable to determine the constitutionality of the checkpoint." *Gabriel*, 192 N.C. App. at 522, 665 S.E.2d at 585.

Conversely, in the present case, the trial court *did* conduct an independent inquiry — which was memorialized in conclusion of law 1 — into the primary programmatic purpose of the Checkpoint. While, as discussed above, the trial court erred in determining that one programmatic purpose of the Checkpoint was to detect impaired driving, its finding that the Checkpoint was also established for the lawful purpose of checking driver's license and registration was supported by competent evidence. Moreover, as set out below, the trial court's remaining conclusions of law sufficiently analyzed the factors relevant to the reasonableness test set out in *Brown v. Texas*, 443 U.S. 47, 61 L.Ed.2d 357 (1979). Consequently, we reject the State's argument that a remand is necessary so that

the trial court can enter an express finding of a single primary programmatic purpose for the Checkpoint.

B. Reasonableness

As noted above, a trial court's constitutional inquiry does not end with the finding that a checkpoint has a lawful primary purpose.

> Instead, the trial court must still determine whether the checkpoint itself 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, 61 L.Ed.2d 357, 361, 99 S.Ct. 2637, 2640, (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.

State v. Nolan, 211 N.C. App. 109, 119-20, 712 S.E.2d 279, 286-87 (internal citations, quotation marks, and brackets omitted), *cert. denied*, 365 N.C. 337, 731 S.E.2d 834 (2011).

1. Gravity of Public Concerns

> The first *Brown* factor — the gravity of the public concerns served by the seizure — analyzes the importance of the purpose of the checkpoint. This factor is addressed by first identifying the primary programmatic purpose as required by *Edmond* and then assessing the importance of the particular

> stop to the public.

Rose, 170 N.C. App. at 294, 612 S.E.2d at 342 (internal citation omitted). It is well established that "[b]oth 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." *Veazey*, 191 N.C. App. at 191, 662 S.E.2d at 690 (internal citations, quotation marks, and brackets omitted).

2. Appropriately Tailored

"Under the second *Brown* prong — the degree to which the seizure advanced public interests — the trial court was required to determine whether the police appropriately tailored their checkpoint stops to fit their primary purpose." *Nolan*, 211 N.C. App. at 121, 712 S.E.2d at 287 (citation and internal quotation marks and brackets omitted).

> 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.

Here, the trial court found that (1) the Checkpoint was spontaneously set up by Sgt. King on a whim; (2) "Johnson Street and Fisher Street were selected by Sergeant King for no particular reason"; (3) the Checkpoint did not have a predetermined ending time; and (4) the only reason provided by Sgt. King as to why he chose to conduct a checkpoint when he did was because "it was a slow night." These findings of fact were based upon competent evidence introduced at trial. Sgt. King, Chief Tilley, and Officer Carter all testified as to the events and circumstances surrounding the Checkpoint, and their testimony supports these findings. We therefore hold that the trial court's conclusion of law that the checkpoint was not appropriately tailored to advance the legitimate purpose of enforcing driver's license and registration laws was supported by its factual findings.

3. Interference with Individual Liberty

In applying the third and final factor in *Brown*,

> courts 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.
>
> Courts 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 lynchpins, but instead are circumstances to be considered as part of the totality of the circumstances in examining the reasonableness of a checkpoint.

Veazey, 191 N.C. App. at 192-93, 662 S.E.2d at 690-91 (internal citations, quotation marks, and brackets omitted).

In the present case, the evidence before the trial court established that (1) at the time the Checkpoint was conducted, the CPD had no written checkpoint policy; (2) Sgt. King could implement checkpoints on his own initiative without obtaining advance approval from a non-participating superior officer in the CPD; (3) the time and location of the Checkpoint were essentially determined based on a whim; and (4) participating officers were given no specific instructions on how to conduct the Checkpoint. We are satisfied that all of this evidence supports the trial court's findings of fact, which — in turn —

support its legal conclusion that the intrusion on individual liberty was not outweighed by the Checkpoint's objective.

Conclusion

For the reasons stated above, we affirm the trial court's order granting Defendant's motion to suppress.

AFFIRMED.

Judges HUNTER, Robert C., and DILLON concur.

Report per Rule 30(e).