NO. COA14-893

NORTH CAROLINA COURT OF APPEALS

Filed: 3 March 2015

STATE OF NORTH CAROLINA

v. Mecklenburg County
Nos. 10 CRS 211197-99

DERRICK LEE McDONALD
Defendant.

Appeal by defendant by writ of certiorari from order entered 14 July 2011 by Judge Hugh B. Lewis in Mecklenburg County Superior Court. Heard in the Court of Appeals 3 December 2014.

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

Staples Hughes, Appellate Defender, by Jon H. Hunt, Assistant Appellate Defender, for defendant-appellant.

DAVIS, Judge.

Derrick Lee McDonald ("Defendant") appeals by writ of certiorari from his convictions of possession with intent to sell or deliver cocaine and possession of marijuana. On appeal, he contends that the trial court erred by denying his motion to suppress. After careful review, we vacate the trial court's order and remand for further proceedings consistent with this opinion.

Factual Background

On 11 March 2010, Detective Brett Riggs ("Detective Riggs") with the Charlotte-Mecklenburg Police Department ("CMPD") prepared a written operational plan for a checkpoint ("the Checkpoint") at the intersection of Ashley Road and Joy Street in Charlotte, North Carolina. The Checkpoint was conducted that night from 12:34 a.m. to 1:52 a.m. Every vehicle driving through the Checkpoint was stopped, and the officers asked the driver of each vehicle for his or her driver's license.

During the course of the Checkpoint's implementation, a vehicle in which Defendant was riding in the front passenger seat was stopped. The only other occupant of the vehicle was the driver.[1] When several of the officers approached the vehicle, they detected a strong odor of marijuana emanating therefrom. Defendant opened the front passenger door and exited the vehicle. As he did so, a bag containing 41.4 grams of marijuana, two baggies containing 2.7 grams of powder cocaine, a digital scale, cell phones, and a set of keys all fell out of the vehicle. Defendant was placed under arrest.

On 6 July 2010, Defendant was indicted for (1) possession of a Schedule VI controlled substance; (2) possession with intent to sell or deliver a controlled substance; and (3) possession of drug paraphernalia. On 26 October 2010, Defendant filed in Mecklenburg

[1] The record does not contain the driver's name.

County Superior Court a motion to suppress all evidence obtained as a result of the traffic stop based on his assertion that the Checkpoint was unconstitutional.

A hearing on Defendant's motion to suppress was heard on 13 July 2011 by Judge Hugh B. Lewis. At the hearing, Detective Riggs testified, in pertinent part, as follows:

> Q. What was the purpose of the license checkpoint?
>
> A. As a driver safety checkpoint, checking for valid driver's license, registration, proper registration on the vehicles coming through the checkpoint.
>
> Q. And was there a proper plan for this checkpoint?
>
> A. Yes, sir. I typed up an operational plan essentially stating that every car that approached the checkpoint would be stopped, the driver would be asked to produce their driver's license.
>
> I had a provision in the ops plan that stated that if a hazard — or if it became a hazard to conduct the check due to weather, circumstances, that it would be cancelled. Additionally if traffic became backed up we would allow all cars to move through until the traffic lightened and then we'd begin checking every car.

During the hearing, the State introduced into evidence the written plan for the Checkpoint prepared by Detective Riggs. The written plan stated that the purpose of the Checkpoint was "[t]o increase police presence in the targeted area while checking for Operators License and Vehicle Registration violations." The plan

also detailed the pattern to which the officers would adhere in conducting the Checkpoint:

> Predetermined Pattern: All vehicles coming through the check point shall be stopped unless the Officer in charge determines that a hazard has developed or that an unreasonable delay to motorist [sic] is occurring. At that point all vehicles will be allowed to pass through until the hazard or delay is cleared.

On 14 July 2011, the trial court entered a written order denying Defendant's motion to suppress. Defendant subsequently entered a plea of guilty. The trial transcript did not reflect that Defendant intended to appeal the denial of his motion prior to entering his guilty plea, and no notice of his intention to appeal the motion was contained in the transcript of plea. Defendant was sentenced to 6-8 months imprisonment. The sentence was suspended, and Defendant was placed on 24 months supervised probation.

Defendant then attempted to appeal the order denying his motion to suppress. The State filed a motion to dismiss the appeal on the ground that Defendant had failed to properly preserve his right to appeal the order. In an unpublished opinion filed on 17 July 2012, we dismissed Defendant's appeal without prejudice to his right to seek an evidentiary hearing in superior court for a determination of whether his guilty plea did, in fact, reserve his right to appeal the denial of his motion to suppress. *State v. McDonald*, 221 N.C. App. 670, 729 S.E.2d 128 (2012) (unpublished).

Defendant subsequently filed a motion for appropriate relief, which was heard by the trial court on 1 February 2013. On that same date, the trial court ordered that Defendant's plea transcript be amended to reflect Defendant's intent to appeal the denial of his motion to suppress. Defendant filed a petition for writ of certiorari on 23 December 2013, which this Court granted by order entered 7 January 2014.

Analysis

Defendant's sole argument on appeal is that the trial court erred in denying his motion to suppress. Specifically, Defendant asserts that the trial court failed to determine (1) the Checkpoint's primary programmatic purpose; and (2) the reasonableness of the Checkpoint.

> When reviewing a motion to suppress evidence, this Court determines whether the trial court's findings of fact are supported by competent evidence and whether the findings of fact support the conclusions of law. If supported by competent evidence, the trial court's findings of fact are conclusive on appeal, even if conflicting evidence was also introduced. However, conclusions of law regarding admissibility are reviewed de novo.

State v. Jarrett, 203 N.C. App. 675, 677, 692 S.E.2d 420, 423 (citation and internal quotation marks omitted), *disc. review denied*, 364 N.C. 438, 702 S.E.2d 501 (2010). In the present case, the trial court made the following pertinent findings of fact:

> 1. On July 13, 2011, the defense made a motion to suppress the checkpoint and any evidence

produced thereafter on the basis that the checkpoint was unconstitutional.

2. The State called Detective B. Riggs, the arresting officer, as a witness.

3. Det. Riggs testified that he was the officer in charge and that he had developed the operation plan for the checkpoint that took place near the intersection of Ashley Rd. and Joy St. on the evening of March 11, 2010.

4. Det. Riggs also testified that the purpose of the checkpoint was to check for operator's license and vehicle registration and insurance violations.

5. It was Det. Riggs's testimony that every vehicle was to be stopped and checked for proper license, registration, and insurance, unless the weather became a hazard or traffic was unreasonably delayed; in those cases Det. Riggs said that either the checkpoint would be shut down or they would allow all vehicles to pass through until the hazard or delay was no longer present, at which point they would resume checking each vehicle.

6. Det. Riggs testified that every vehicle was stopped.

7. The State entered the physical document of the operation plan into evidence as State's Pre-trial Exhibit #1, which is attached to the order.

8. The language in the operation plan (State's Pre-trial Exhibit #1) laid out the purpose and pattern of the checkpoint.

> a. The purpose of the checkpoint was, "To increase police presence in the targeted area while checking for Operator's License and Vehicle Registration violations."
>
> b. The predetermined pattern was, "All

> vehicles coming through the checkpoint shall be stopped unless the Officer in charge determines that a hazard has developed or that an unreasonable delay to motorists is occurring. At that point all vehicles will be allowed to pass through until the hazard or delay is cleared."

The trial court then made the following pertinent conclusions of law:

> 1. Under N.C.G.S. § 20-16.3A(a)(2a) [sic], a pattern is required, but does not need to be in writing; however, here we have both Det. Riggs's testimony and the written operation plan that express the pattern that was exercised at the checkpoint.
>
> 2. Additionally, N.C.G.S. § 20-16.3A(a)(2) requires that law-enforcement designate what they will check for and how the vehicles will be stopped; Det. Riggs's testimony and the written operation plan indicated that all vehicles would be stopped and that they would be checking for Operator's License and Vehicle Registration violations.
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> 3. In *State v. Barnes*, the North Carolina Court of Appeals found that where the findings showed that a checking station was conducted in substantial compliance with required guidelines a motion to suppress was not proper. *State v. Barnes*, 123 N.C. App. 144, 472 S.E.2d 784 (1996).
>
> 4. Based on Det. Riggs's testimony and the written operation plan, the checkpoint conducted by Det. Riggs was in compliance with the applicable statute and did not violate the defendant's constitutional rights.

In denying Defendant's motion to suppress, the trial court relied upon our decision in *State v. Barnes*, 123 N.C. App. 144,

472 S.E.2d 784 (1996). In *Barnes*, the defendant was stopped at a checkpoint and arrested for driving while impaired. The officers conducting the checkpoint stopped all vehicles that approached the checkpoint, the stated purpose of which was "to detect driver's license and registration violations as well as other motor vehicle violations including driving while impaired." *Id.* at 146, 472 S.E.2d at 785. The defendant moved to suppress all evidence stemming from the checkpoint on the ground that it had been conducted in an unconstitutional manner, and the trial court granted the defendant's motion. On appeal, this Court reversed, holding that

> [u]pon careful review of the evidence, we find that the court's findings do not support its conclusion that the checking station was not conducted in accordance with required guidelines. Instead, the findings show that there was substantial compliance with N.C. Gen. Stat. § 20-16.3A and [State Highway Patrol] Directive 63. Accordingly, we find no fourth amendment violation and we reverse the trial court's order granting defendant's motion to suppress.

Id. at 147, 472 S.E.2d at 785.

Since *Barnes* was decided, however, this Court has modified the framework it employs in analyzing Fourth Amendment challenges to checkpoints based on intervening decisions on this subject from the United States Supreme Court. We explained this framework in *State v. Veazey*, 191 N.C. App. 181, 662 S.E.2d 683 (2008).

In *Veazey*, a state trooper set up a driver's license checkpoint. When the defendant was stopped at the checkpoint, the trooper detected a strong odor of alcohol on him and ultimately arrested him for driving while impaired. At trial, the defendant moved to suppress evidence stemming from the checkpoint on the ground that the checkpoint violated his rights under the Fourth and Fourteenth Amendments. The trial court denied the defendant's motion to suppress. *Id.* at 182-83, 662 S.E.2d at 684-85.

On appeal, we remanded the case to the trial court for new findings and conclusions, applying the United States Supreme Court's decisions in *City of Indianapolis v. Edmond*, 531 U.S. 32, 148 L.Ed.2d 333 (2000), and *Illinois v. Lidster*, 540 U.S. 419, 157 L.Ed.2d 843 (2004) — both of which were decided after *Barnes*. We held that in reviewing a constitutional challenge to a checkpoint, courts are required to apply a two-part test in order to determine its reasonableness. *Veazey*, 191 N.C. App. at 185-86, 662 S.E.2d at 686-87.

We noted that, as an initial matter, *Edmond* requires the identification of the primary programmatic purpose of the checkpoint.

> First, the court must determine the primary programmatic purpose of the checkpoint. In *Edmond*, the United States Supreme Court distinguished between checkpoints with a primary purpose related to roadway safety and checkpoints with a primary purpose related to general crime control. According to the

> Court, checkpoints primarily aimed at addressing immediate highway safety threats can justify the intrusions on drivers' Fourth Amendment privacy interests occasioned by suspicionless stops. However, the *Edmond* Court also held that police must have individualized suspicion to detain a vehicle for general crime control purposes, and therefore a checkpoint with a primary purpose of general crime control contravenes the Fourth Amendment.
>
> The Supreme Court in *Edmond* also noted that a checkpoint with an invalid primary purpose, such as checking for illegal narcotics, cannot be saved by adding a lawful secondary purpose to the checkpoint, such as checking for intoxicated drivers. Otherwise, according to the Court, law enforcement authorities would be able to establish checkpoints for virtually any purpose so long as they also included a license or sobriety check. For this reason, courts must examine the available evidence to determine the primary purpose of the checkpoint program.

Id. at 185, 662 S.E.2d at 686 (internal citations, quotation marks, and brackets omitted).

Next, we addressed the second prong of the test for determining a checkpoint's constitutionality based on *Lidster*:

> Second, if a court finds that police had a legitimate primary programmatic purpose for conducting a checkpoint, "[t]hat does not mean the stop is automatically, or even presumptively, constitutional. It simply means that [the court] must judge its reasonableness, hence, its constitutionality, on the basis of the individual circumstances." *Lidster*, 540 U.S. at 426, 157 L.Ed.2d at 852. To determine whether a checkpoint was reasonable under the Fourth Amendment, a court must weigh the public's interest in the checkpoint against the individual's Fourth

> Amendment privacy interest. *See*, *e.g.*, *Martinez-Fuerte*, 428 U.S. at 555, 49 L.Ed.2d at 1126. In *Brown v. Texas*, 443 U.S. 47, 61 L.Ed.2d 357 (1979), the United States Supreme Court held that when conducting this balancing inquiry, a court must weigh "[(1)] the gravity of the public concerns served by the seizure, [(2)] the degree to which the seizure advances the public interest, and [(3)] the severity of the interference with individual liberty." *Id.* at 51, 61 L.Ed.2d at 362. If, on balance, these factors weigh in favor of the public interest, the checkpoint is reasonable and therefore constitutional. *See*, *e.g.*, *Lidster*, 540 U.S. at 427–28, 157 L.Ed.2d at 852–53.

Veazey, 191 N.C. App. at 185-86, 662 S.E.2d at 686-87.

Therefore, it is clear that the analysis employed by this Court in *Barnes* has been superseded by decisions from the United States Supreme Court and that the analytical framework articulated in *Veazey* must instead be used in reviewing challenges to the constitutionality of a checkpoint. Accordingly, we must now determine whether the trial court properly utilized this framework in the present case.

I. Primary Programmatic Purpose

Defendant first argues that the trial court failed to determine the Checkpoint's primary programmatic purpose. Specifically, he 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. We disagree.

In determining a checkpoint's legality, "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).

> [W]here 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. However, where there is evidence in the record that could support a finding of either a lawful or unlawful purpose, a trial court cannot rely solely on an officer's bare statements as to a checkpoint's purpose. In such cases, the trial court may not simply accept the State's invocation of a proper purpose, but instead must carry out a close review of the scheme at issue.

Veazey, 191 N.C. App. at 187, 662 S.E.2d at 687-88 (internal citations, quotation marks, and brackets omitted); *see also Gabriel*, 192 N.C. App. at 521, 665 S.E.2d at 585 ("[W]hen a trooper's testimony varies concerning the primary purpose of the checkpoint, the trial court is required to make findings regarding the actual primary purpose of the checkpoint and to reach a

conclusion regarding whether this purpose was lawful." (citation, internal quotation marks, and ellipses omitted)).

In the present case, the trial court found that "[t]he purpose of the checkpoint was, 'To increase police presence in the targeted area while checking for Operator's License and Vehicle Registration violations.'" It is well established that checkpoints may lawfully be conducted for the purpose of "verify[ing] drivers' licenses and vehicle registrations[.]" *State v. Rose*, 170 N.C. App. 284, 288, 612 S.E.2d 336, 339, *appeal dismissed and disc. review denied*, 359 N.C. 641, 617 S.E.2d 656 (2005).

The trial court's finding that the Checkpoint's purpose was to check for driver's license and vehicle registration violations was supported by the testimony of Detective Riggs and the written plan for the Checkpoint. Defendant contends, however, that the trial court found the Checkpoint also served the dual purpose of increasing police presence in the area. He attempts to equate this latter purpose with a general crime control purpose, which our courts have held cannot serve as the basis for a checkpoint. *See Veazey*, 191 N.C. App. at 185, 662 S.E.2d at 686 ("[P]olice must have individualized suspicion to detain a vehicle for general crime control purposes, and therefore a checkpoint with a primary purpose of general crime control contravenes the Fourth Amendment.").

We reject Defendant's argument on this issue as we do not believe an attempt to increase police presence in an affected area *while conducting a checkpoint for a recognized lawful purpose* is akin to operating a checkpoint for the general detection of crime. The trial court's reference to increasing police presence was linked to the permissible purpose of checking for driver's license and vehicle registration violations. Defendant does not point to any evidence in the record suggesting that the Checkpoint was actually being operated for the purpose of general crime control or that the stated desire to check for driver's license and vehicle registration violations was a mere subterfuge. Moreover, as the State notes in its brief, *any* checkpoint inherently results in the increased presence of law enforcement officers in the subject area. Accordingly, Defendant's argument on this issue is overruled.

II. Reasonableness

Defendant's final argument is that the trial court erred in failing to adequately determine the reasonableness of the Checkpoint. We agree.

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

> After finding a legitimate programmatic purpose, the trial court must determine whether the roadblock was reasonable and, thus, constitutional. 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*. 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. Townsend, __ N.C. App. __, __, 762 S.E.2d 898, 907-08 (2014) (internal citations, quotation marks, and brackets omitted); *see also Jarrett*, 203 N.C. App. at 679, 692 S.E.2d at 424-25 ("Although the trial court concluded that the checkpoint had a lawful primary purpose, its inquiry does not end with that finding. Instead, the trial court must still determine whether the checkpoint itself was reasonable. . . . 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*. . . ." (internal citations and quotation marks omitted)).

We have held that "[t]he 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 . . . 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).

With regard to "the second *Brown* prong — the degree to which

the seizure advanced public interests — the trial court [is] required to determine whether the police appropriately tailored their checkpoint stops to fit their primary purpose." *State v. Nolan*, 211 N.C. App. 109, 121, 712 S.E.2d 279, 287 (citation, internal quotation marks, and brackets omitted), *cert. denied*, 365 N.C. 337, 731 S.E.2d 834 (2011).

> 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.

Finally, in applying the third *Brown* factor, "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." *Id.* at 192, 662 S.E.2d at 690-91.

> 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.

Id. at 193, 662 S.E.2d at 691 (internal citations, quotation marks, and brackets omitted).

In conclusion of law 4 in its order, the trial court made the following determination:

> 4. Based on Det. Riggs's testimony and the written operation plan, the checkpoint conducted by Det. Riggs was in compliance with the applicable statute and did not violate the defendant's constitutional rights.

We do not believe this bare conclusion is sufficient given the failure of the trial court to adequately assess the Checkpoint's reasonableness under the constitutional framework set out in *Veazey* and applied in other recent cases from our Court. While it appears that evidence was received at the suppression hearing as to many of the factors that are relevant under the *Brown* test, the trial court's order lacks express findings on a number of these issues.

With regard to the first prong of the *Brown* test, the trial

court made no findings concerning the gravity of the public concerns served by the Checkpoint. While — as discussed above — checking for driver's license and vehicle registration violations is a permissible purpose for the operation of a checkpoint, the identification of such a purpose does not exempt the trial court from determining the gravity of the public concern actually furthered under the circumstances surrounding the specific checkpoint being challenged. *See Rose*, 170 N.C. App. at 293, 612 S.E.2d at 342 ("[E]ven if a checkpoint is for one of the permissible purposes, that does not mean the stop is automatically, or even presumptively, constitutional. It simply means that we must judge its reasonableness, hence, its constitutionality, on the basis of the individual circumstances." (citation, internal quotation marks, and brackets omitted)).

As to the second *Brown* prong, there were no findings made by the trial court regarding a number of the factors relevant to the issue of whether the Checkpoint was appropriately tailored to meet its primary purpose. For example, the trial court's order failed to address (1) why the intersection of Ashley Road and Joy Street was chosen for the Checkpoint; (2) whether the Checkpoint had a predetermined starting or ending time; and (3) whether there was any reason why that particular time span was selected. *Veazey*, 191 N.C. App. at 191, 662 S.E.2d at 690.

Finally, with regard to the third *Brown* prong, the trial court

made no findings addressing whether the location of the Checkpoint was selected by Detective Riggs or by his supervisor or the manner in which the officers conducting the Checkpoint were subject to supervision. In addition, no findings were made as to whether (1) the officers took steps to put drivers on notice of an approaching checkpoint; (2) drivers could see visible signs of the officers' authority; and (3) the officers conducting the checkpoint were provided with any oral or written guidelines. *Id.* at 193, 662 S.E.2d at 691.

We do not mean to imply that the factors discussed above are exclusive or that trial courts must mechanically engage in a rote application of them in every order ruling upon a motion to suppress in the checkpoint context. Rather, our holding today simply reiterates our rulings in *Veazey* and its progeny that in order to pass constitutional muster, such orders must contain findings and conclusions sufficient to demonstrate that the trial court has meaningfully applied the three prongs of the test articulated in *Brown*.

As such, we must vacate the trial court's order and remand so that the trial court can make appropriate findings as to the reasonableness of the Checkpoint under the Fourth Amendment. *See Rose*, 170 N.C. App. at 298-99, 612 S.E.2d at 345 ("Based on our review of the trial court's order, it appears that the trial court concluded that the checkpoint was reasonable based solely on the

purpose of the checkpoint and the fact that the officers stopped every car. In doing so, the court addressed the first prong of the . . . analysis and part of the third prong. The court made no findings regarding the tailoring of the checkpoint to the purpose (the second prong) and failed to consider all of the circumstances relating to the discretion afforded the officers in conducting the checkpoint (the third prong). Accordingly, we remand for further findings as to each of the . . . factors and a weighing of those factors to determine whether the checkpoint was reasonable."); *Veazey*, 191 N.C. App. at 194-95, 662 S.E.2d at 692 ("[T]hese findings alone cannot support a conclusion that the checkpoint was reasonable because the trial court did not make adequate findings on the first two *Brown* prongs. . . . The trial court . . . was required to explain why it concluded that, on balance, the public interest in the checkpoint outweighed the intrusion on Defendant's protected liberty interests. The trial court's written order, however, contains no such explanation. Therefore, if the trial court determines on remand that the State's primary purpose for the checkpoint was lawful, it must also issue new findings and conclusions regarding the reasonableness of the checkpoint.").[2]

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[2] We further note that a number of the trial court's "findings" in its order are not actual findings but rather are merely recitations of testimony. *See State v. Derbyshire*, __ N.C. App. __, __, 745 S.E.2d 886, 892-93 (2013) ("[A trial court's] mere recitation of testimony . . . is not sufficient to constitute a valid finding of fact. . . . Findings of fact must be more than a mere summarization

Conclusion

For the reasons stated above, we vacate the trial court's order denying Defendant's motion to suppress and remand for further proceedings consistent with this opinion.

VACATED AND REMANDED.

Judges CALABRIA and ELMORE concur.

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or recitation of the evidence . . . [O]ur review is limited to those facts found by the trial court and the conclusions reached in reliance on those facts, *not* the testimony recited by the trial court in its order." (internal citations, quotation marks, and brackets omitted)), ***disc. review denied***, __ N.C. __, 753 S.E.2d 785 (2014). We therefore instruct the trial court on remand to make findings of fact based upon its evaluation of the evidence and not to merely recite the testimony of Detective Riggs and the contents of the written plan for the Checkpoint.