An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-775

Filed: 7 April 2020

Surry County, No. 14 CRS 53189

STATE OF NORTH CAROLINA

v.

RICHARD VAUGHN SPRINKLE-SURRATT, Defendant.

Appeal by defendant from judgment entered 15 May 2019 by Judge William R. Bell in Surry County Superior Court. Heard in the Court of Appeals 3 March 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Candace A. Hoffman, for the State.

Grace, Tisdale & Clifton, P.A., by Christopher R. Clifton, Michael B. Grace, Greer B. Taylor, and Aaron J. Horner, for defendant-appellant.

YOUNG, Judge.

Where there was evidence that a traffic stop was conducted with a valid programmatic purpose, and the trial court found it to be reasonable in light of the rights of the public and defendant, the trial court did not err in denying defendant's motions to suppress and dismiss. Where the statute enabling the traffic stop did not unlawfully violate defendant's constitutional right to freedom of travel, the trial court

did not err in denying defendant's motions to suppress and dismiss. Where the statute enabling the traffic stop did not unconstitutionally violate the Equal Protection Clause, the trial court did not err in denying defendant's motions to suppress and dismiss. We find no error.

I. Factual and Procedural Background

On 1 September 2014, the Mount Airy Police Department established a checkpoint in Mount Airy, North Carolina, for the purpose of ensuring compliance with the motor vehicle code by identifying motor vehicle violations. Richard Vaughn Sprinkle-Surratt (defendant) received a citation from officers at this checkpoint for "failing to carry driver's license while operating a motor vehicle." A chemical breath analysis revealed an alcohol concentration of "0.15 or more."

Defendant was tried in Surry County District Court and found guilty of impaired driving. The court sentenced defendant to one month of unsupervised probation. Defendant appealed to Surry County Superior Court for trial *de novo*.

On 12 July 2016, defendant filed a motion to suppress the evidence from the checkpoint, alleging that the checkpoint violated his Fourth Amendment rights and departmental guidelines. On 1 September 2016, defendant filed a second motion to suppress, alleging that the law enabling the checkpoint – N.C. Gen. Stat. § 20-16.3A – was designed to prevent review of potential disparate racial impact, and was thus unconstitutional and invalid on its face. Defendant also filed a memorandum of law

with the court, alleging that N.C. Gen. Stat. § 20-16.3A was facially invalid for violating the "fundamental right to travel" guaranteed by the Fourteenth Amendment. Finally, on 12 May 2017, defendant filed a motion to dismiss, once more alleging that the checkpoint was premised upon an unconstitutional law, and thus that the charges arising from the stop must be dismissed.

On 25 May 2017, the trial court entered an order on defendant's motions. The court found that N.C. Gen. Stat. § 20-16.3A did indeed implicate defendant's constitutional rights. It denied defendant's motions to suppress and dismiss, but held that because the constitutional rights implicated were substantial, the order should be certified for immediate appeal. Defendant petitioned this court for certiorari. However, this Court denied certiorari, and granted the State's motion to dismiss the appeal, on 16 October 2017.

The matter was subsequently remanded to the trial court, which considered the matter of defendant's constitutional arguments. On 29 March 2019, the trial court entered an order, concluding that the checkpoint served a "valid and constitutional primary programmatic purpose[,]" that the manner and time span of the checkpoint was reasonable, that the interference with the public was minimal, that vehicles were consistently stopped, and therefore "there was no violation of the defendant's constitutional rights regarding the manner in which the checkpoint was

conducted." The court noted defendant's objections, but denied the motions to suppress.

Defendant pleaded guilty to driving while impaired, reserving his right to appeal the denial of his motions to suppress. On 15 May 2019, the trial court entered its judgment, suspending defendant's sentence and sentencing him to 12 months of supervised probation.

Defendant appeals.

II. Constitutionality

In various arguments, defendant contends that the checkpoint itself, as well as the statute enabling it, is unconstitutional, and therefore that the trial court erred in denying his motions to suppress and dismiss. We disagree.

A. Standard of Review

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).

"The standard of review for alleged violations of constitutional rights is *de novo*." *State v. Graham*, 200 N.C. App. 204, 214, 683 S.E.2d 437, 444 (2009), *appeal dismissed and disc. review denied,* 363 N.C. 857, 694 S.E.2d 766 (2010).

B. Programmatic Purpose

First, defendant contends that the checkpoint does not serve a valid programmatic purpose, rendering it an unreasonable search in violation of the Fourth Amendment.

> 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.

State v. Veazey, 191 N.C. App. 181, 185, 662 S.E.2d 683, 686 (2008). "[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." *Id.*

> 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, 124 S.Ct. at 890, 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.

Id. at 185-86, 662 S.E.2d at 686-87. The court must therefore "make findings regarding the actual primary purpose of the checkpoint and . . . reach a conclusion regarding whether this purpose was lawful." *Id.* at 190, 662 S.E.2d at 689.

At the hearing on the motions to suppress, the State presented the testimony of Sergeant Jonathan Watson (Sgt. Watson), a patrol sergeant with the Mount Airy Police Deartment. Sgt. Watson testified that, on 1 September 2014, the day of the offense, he and several other officers conducted a traffic checkpoint with approval of their superior officer. Sgt. Watson testified as to how the checkpoint was set up, the procedures and duration of the checkpoint, and how the stops would be conducted. He also testified that during the checkpoint a patrol car had its blue lights active at all times, and that the checkpoint was visible from "a couple hundred yards, at least, from both directions[.]" He specifically noted the reasons for choosing that location in which to conduct the checkpoint:

> Well, through the years we're always getting complaints from the businesses about people speeding down through there. I've done traffic checks there before. It's a location you always find a lot of Chapter 20 violations. If you run radar there through the day or night there's people continuously speeding through that location.

Sgt. Watson also helped the State introduce the Mount Airy Police Department policy on traffic checkpoints, which was admitted into evidence without objection. Finally, Sgt. Watson was prepared to testify as to how the stop at issue transpired, when defendant objected, noting that the motion to suppress "goes to how the checkpoint

was run, and I think anything after the checkpoint we haven't challenged." With the consent of the State, this objection was sustained.

Based on this and other evidence presented at the hearing, the trial court entered an order denying the motions to suppress. Specifically, the court found that "[t]he purpose of the checkpoint was to search for N.C. General Statute Chapter 20 violations[,]" a concern premised upon multiple prior complaints of speeding at this location. The court concluded that "checking for Chapter 20 violations is a valid and constitutional primary programmatic purpose[,]" that the checkpoint was subject to a detailed plan and not spontaneous, that the location and time span were reasonable, and that the interference with the public was minimal. The court further concluded that defendant's constitutional rights were not violated by the manner in which the checkpoint was conducted.

The testimony of Sgt. Watson supports the trial court's finding as to the primary programmatic purpose of the checkpoint. However, defendant disagrees, citing discrepancies. At the hearing, defense counsel contended that the stop was not a "Chapter 20 checkpoint or even a DWI checkpoint" but rather an "arrest point[,]" citing Sgt. Watson's testimony that once he pulled defendant over to arrest him, roughly 26 minutes after starting the checkpoint, officers discontinued the checkpoint and resumed allowing vehicles through unchecked. Defendant argued then that the evidence does not show a primary programmatic purpose of checking for Chapter 20

violations, but rather a primary programmatic purpose of obtaining an arrest. Likewise, on appeal, defendant contends that this testimony was insufficient to establish a valid programmatic purpose.

The very testimony upon which defendant relied, however, undermines that argument. Sgt. Watson did indeed testify that he pulled over defendant less than half an hour into the duration of the checkpoint, that officers halted the checkpoint at that time, and that the checkpoint did not resume thereafter. But he testified as to the reason for that as well. Specifically, he noted that "there has to be three officers on the scene" to run a checkpoint, and as he had arrested defendant and taken him into custody – rather than merely issuing a citation – he could no longer participate as the third officer at the checkpoint. Absent a third officer, Sgt. Watson noted, the checkpoint had to be discontinued. This is reinforced by the Mount Airy Police Department checkpoint policy, which specifies that "[t]here shall be at a minimum of three (3) officers working a Checking Station[,]" and that "[i]f at any time the number of officers fall below three, the Checking Station shall be terminated."

Based on this testimony, and notwithstanding defendant's arguments, it is clear that the trial court properly determined the programmatic purpose of the checkpoint, namely to search for Chapter 20 violations. The court further found that this was a valid programmatic purpose, and that it was reasonable under the circumstances. In short, the trial court correctly made all the requisite findings,

which were supported by competent evidence, and conclusions, which were supported by findings, necessary to support its ultimate determination. Accordingly, we hold that the trial court did not err in denying defendant's motions to suppress and dismiss on the basis of the checkpoint's programmatic purpose.

C. Right to Travel

Next, defendant contends that N.C. Gen. Stat. § 20-16.3A violates the right to travel pursuant to the Privileges and Immunities Clause.

Defendant cites to many federal cases concerning the right to travel freely from one state to another, and the right to freely cross state borders. Defendant further notes that our Supreme Court has held that "the right to travel upon the public streets of a city is a part of every individual's liberty, protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and by the Law of the Land Clause, Article I, § 17, of the Constitution of North Carolina." *State v. Dobbins*, 277 N.C. 484, 497, 178 S.E.2d 449, 456 (1971). However, it is a substantial leap from the precedent cited by defendant – which holds that there is a broad, general right to move freely between and within states – and defendant's conclusion – that a checkpoint is equivalent to a roadblock, and therefore unlawfully impedes and deters travel in violation of these broad rights.

Notably, defendant attempts to distinguish *Dobbins*, one of the very cases on which he relies. This is understandable, given the holding in that case. In *Dobbins*,

our Supreme Court – having held that the right to travel is protected by both federal and state constitutions – further noted that limitations existed on that right. The Court noted that traffic lights are a permissible limitation on that right, as are quarantines due to flood, fire, or disease. In that case, the City of Asheville had passed an ordinance permitting the Mayor to declare a state of emergency for public safety, and the Mayor had done so, citing the illegal and disruptive acts of persons unknown. In addressing the constitutionality of this ordinance, the Court noted that the curfew constituted

> a temporary prohibition of travel in a city faced with a clear and present danger of violent upheaval, accompanied by widespread destruction of property and personal injury. To prevent, control and terminate such an upheaval is the primary function of government. Neither the Fourteenth Amendment nor Article I, § 17, of the State Constitution prevents the City Government of Asheville from discharging this duty owed by it to the people of the city.

Id. at 499, 178 S.E.2d at 458. The Court held that "[t]he police power of the State is broad enough to sustain the promulgation and fair enforcement of laws designed to restore the right of safe travel by temporarily restricting all travel, other than necessary movement reasonably excepted from the prohibition." *Id.*

The checkpoint at issue in the instant case was established with the express purpose of finding and deterring traffic violations, a public safety concern. It was established under the authority of N.C. Gen. Stat. § 20-16.3A, which explicitly authorizes the creation of traffic checkpoints for such a purpose. Certainly, if an

absolute curfew – prohibiting all travel, completely, for a specified period of time – is reasonable to protect the public safety, then a police checkpoint – which does not stop travel, but merely delays it for a few moments – is likewise reasonable.

Notwithstanding defendant's extensive citation of case law from other jurisdictions – case law which, we note, is not binding upon this Court – our precedent is clear. A simple traffic checkpoint, absent some showing of additional circumstances, does not violate the right to free travel. The statute at issue does not, on its face, violate a defendant's constitutional rights. We therefore hold that the trial court did not err in holding that the checkpoint in the instant case did not violate defendant's constitutional right to free travel, and in denying defendant's motions to suppress and dismiss on that basis.

D. Equal Protection

Further, defendant contends that N.C. Gen. Stat. § 20-16.3A is drafted in such a way as to make it "extremely difficult to establish the discriminatory intent required" to show a violation of the Equal Protection Clause.

Defendant makes significant leaps of logic to reach this conclusion. He starts by noting the language of subsection (d) of the statute, which provides:

> The placement of checkpoints should be random or statistically indicated, and agencies shall avoid placing checkpoints repeatedly in the same location or proximity. This subsection shall not be grounds for a motion to suppress or a defense to any offense arising out of the operation of a checking station.

N.C. Gen. Stat. § 20-16.3A(d) (2019). He then, broadly, argues that "[b]y specifically barring challenges to the subsection, the statute disallows any and all challenges to equal protection in violation of the Equal Protection Clause."

However, defendant overlooks another subsection of the statute. The immediately preceding subsection specifically provides that "[l]aw 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*." N.C. Gen. Stat. § 20-16.3A(c) (emphasis added). This statutory language explicitly undermines defendant's claim. Even if, as defendant argues, subsection (d) were to violate the Equal Protection Clause – an argument with which we decline to agree – subsection (c) would nonetheless mandate compliance with the Equal Protection Clause, remedying any harm by requiring that it be addressed. Indeed, the very fact that defendant was able to address this concern to the trial court, and does so on appeal, is proof that the statute does not utterly prevent "any and all challenges to equal protection in violation of the Equal Protection Clause." Accordingly, we hold that the trial court did not err in holding that the checkpoint in the instant case did not violate defendant's constitutional right to equal protection of the laws, and in denying defendant's motions to suppress and dismiss on that basis.

E. Overall Unconstitutionality

Finally, defendant reasserts his argument that, for the foregoing reasons, N.C. Gen. Stat. § 20-16.3A is unconstitutional, the checkpoint was unlawful, and therefore the trial court erred in denying his motions to suppress and dismiss. As we have held, however, the checkpoint had a valid programmatic purpose, and the statute violated neither the right to free travel nor the Equal Protection Clause. Accordingly, we hold that the trial court did not err in denying defendant's motions to suppress and dismiss.

NO ERROR.

Chief Judge McGEE and Judge TYSON concur.

Report per Rule 30(e).