

Checkpoints – Rowan County Criminal Law

Roundtable

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General Checkpoint Considerations

1. **State must introduce a written checkpoint policy in effect at the time of checkpoint.** If the policy is not introduced to the Court, any and all evidence acquired as a result of defendant's seizure at the checkpoint must be suppressed.ⁱ
2. The **State carries the burden of proof** regarding the constitutionality of the checkpoint.
3. **Checkpoint avoidance: Was your client stopped “under the totality of the circumstances” or as “part of the checkpoint plan?”** Under the totality of the circumstances, an officer may pursue and stop a vehicle which has turned away from a checkpoint for reasonable inquiry to determine why the vehicle turned away from the checkpoint. North Carolina's interest in combating intoxicated drivers outweighs the minimal intrusion that an investigatory stop may impose upon a motorist under these circumstances.ⁱⁱ If, from the officer's perspective, the seizure is based on the totality of the circumstances that criminal activity is afoot, the constitutionality of the checkpoint need not be examined. **That said, with slick lawyering, you can still challenge the checkpoint's constitutionality.** If the law enforcement officer testifies it is part of the “checkpoint plan” to stop persons avoiding the checkpoint; and that the officer “acted pursuant to the checkpoint plan” in stopping your client, the checkpoint avoider, your client has standing to challenge the constitutionality of the plan by which she was “snared.”ⁱⁱⁱ
4. As a practical matter, **I do not consult with the ADA or arresting officer about the specifics of the checkpoint prior to the hearing.** It is difficult for the State to prove your client was stopped by a constitutionally valid checkpoint and I have learned my questions, pre-hearing, only work to prepare the ADA and/or arresting officer.

Constitutional Checkpoint Considerations

1. **First**, the Court must consider the **primary programmatic purpose** of the checkpoint.
 - a. Four proper purposes:^{iv}
 - i. License and registration checkpoints;
 - ii. DWI checkpoints;
 - iii. Checkpoints designed to intercept illegal aliens; and
 - iv. Attempts to uncover information about a recent and known crime, as opposed to unknown crimes of the general sort.
 - b. A 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.^v The Court must consider all the available evidence in order to determine the relevant primary purpose.
 - i. A checkpoint whose primary purpose is to find any and all criminal violations is unlawful, even if police have secondary objectives related to highway safety. Veazey, 191 N.C. App. 181, 189.
 - ii. Further, it is unclear whether a primary purpose of finding any and all motor vehicle violations is a lawful primary purpose. One reason that a checkpoint is an appropriate tool for helping police discover certain types of motor vehicle violations is that police cannot discover such violations simply by observing a vehicle during normal road travel (20-7(a) (driver must carry license while driving) (20-313(a) owner must maintain insurance policy). However, the U.S. Supreme Court has expressed concern with allowing suspicionless stops to enforce motor vehicle violations which are readily observable. Id. at 190. Many violations of N.C.'s motor vehicle laws are readily observable and can be adequately addressed by roving patrols when officers develop individualized suspicion of a certain vehicle. (20-63(e) license plate must be clean and unconcealed) (20-126 vehicle must have inside rearview mirror and driver's side outside mirror) (20-129 establishing requirements for headlights and rear lights) (20-135.2B (a) children may not be transported in an open truck bed) (20-140.2 vehicle cannot be overcrowded). Id.
 - c. **The primary purpose inquiry is to be conducted only at the programmatic level and is not an invitation to probe the minds of individual officers acting at the scene.**^{vi} This requires testimony and a finding as to the programmatic purpose at the supervisory level – as opposed to the field officers' purpose – for any checkpoint at issue.^{vii} In practice, the State routinely elicits testimony from the officers who conducted the checkpoint and their stated purpose; not their supervisors. Seize this opportunity.
 - i. The decision of the U.S. Supreme Court in Edmond has **elevated proof of the supervisor's primary purpose to a constitutional prerequisite of a lawful checkpoint.** We do not know from the transcript whether "DUI checks" were the purpose of the supervisor who decided to implement the

roadblock or were the purpose of the officers in the field. The burden is on the State to prove that the seizure, i.e., the stopping of the defendant's vehicle, was constitutionally valid. Under the guidance of Edmond, the required proof includes evidence of the supervisor's primary purpose in implementing the roadblock. We will not presume from a silent record that constitutional requirements have been satisfied. "We hold the state must present some admissible evidence, testimonial or written, of the supervisor's purpose, i.e., purpose at the "programmatically level," in the words of Edmond."^{viii}

- d. As a primary purpose, general crime control is not allowed. Closely examine the true purpose regarding why the checkpoint was requested/approved (a known problem with impaired driving in that area during that time period?); the officers that are participating in the checkpoint (narcotics officers checking for vehicle registrations? Drug dogs walking around stopped vehicles?); etc.
 - i. "We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes."^{ix} Individualized suspicion is normally required for a warrantless seizure to be valid, and courts will not approve of checkpoints whose primary purpose is to uncover general unknown crimes.
 - ii. "Surely an illegal multi-purpose checkpoint cannot be made legal by the simple device of assigning 'the primary purpose' to one objective instead of the other, especially since that change is unlikely to be reflected in any significant change in the magnitude of the intrusion suffered by the checkpoint detainee."^x
2. **Second**, if a legitimate primary programmatic purpose is found, that does not mean the stop is automatically, or even presumptively, constitutional. It simply means **the court must judge its reasonableness**, hence, its constitutionality, on the basis of the individual circumstances.^{xi} To determine whether a seizure at a checkpoint is reasonable requires a balancing of the public's interest and the individual's privacy interest. Three-part inquiry:
 - a. **The gravity of the public concerns by the seizure**, which analyzes the importance of the purpose of the checkpoint.
 - i. The aforementioned proper purposes have all been held to be important.
 - b. **The degree to which the seizure advances the public interest**, which analyzes *whether a checkpoint is appropriately tailored to the alleged public concern*. In my opinion, this is the most important factor, because law enforcement knows the buzzwords to use: "License checking station"; "DWI checking station." **These factors allow you to examine if law enforcement targeted the specific area, during the specific time allotted, because they've had problems with the specific offenses they are trying to curtail**. "Without tailoring, it is possible that a roadblock purportedly established to check licenses would be located and conducted in a way as to facilitate the detection of crimes unrelated to licensing.

Those risks can be minimized by a **requirement** that the location of roadblocks be determined by a supervisory official, *considering where license and registration checks would likely be effective.*”^{xii} Factors:

- i. Whether police spontaneously decided to set up the checkpoint on a whim;
 - ii. Whether police offered any particular reason why a stretch of road was chosen for the checkpoint;
 - iii. Whether the checkpoint had a predetermined starting or ending time; and
 - iv. Whether the police offered any reason why that particular time span was selected.
- c. **The severity of the interference with individual liberty**, which closely analyzes officer discretion in conducting the checkpoint. Factors:
- i. The checkpoint’s potential interference with legitimate traffic;
 - ii. Whether police took steps to put drivers on notice of an approaching checkpoint;
 - iii. Whether the location of the checkpoint was selected by a supervising official, rather than officers in the field;
 - iv. Whether police stopped every vehicle that passed through the checkpoint, or stopped vehicles pursuant to a set pattern;
 - v. Whether drivers could see visible signs of the officers’ authority;
 - vi. Whether police operated the checkpoint pursuant to any oral or written guidelines;
 - vii. Whether the officers were subject to any form of supervision; and
 - viii. Whether the officers received permission from their supervising officer to conduct the checkpoint.

Checkpoint Case Cites

1. City of Indianapolis v. Edmond, 531 U.S. 32 (2000).
2. State v. Rose, 170 N.C. App. 284 (2005).
3. State v. Gabriel, 192 N.C. App. 517 (2008).
4. State v. Veazey, 191 N.C. App. 181 (2008) (also referred to as Veazey I).
5. State v. Veazey, 201 N.C. App. 398 (2009) (also referred to as Veazey II).
6. State v. White, 232 N.C. App. 296 (2014).
7. State v. McDonald, 239 N.C. App. 559 (2015).
8. State v. Ashworth, 790 S.E.2d 173 (N.C. Ct. App. August 2, 2016).

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- ⁱ State v. White, 232 N.C. App. 296 (2014).
- ⁱⁱ State v. Foreman, 351 N.C. 627 (2000).
- ⁱⁱⁱ State v. Haislip, 186 N.C. App. 275, 280 (2007). Note that the Court of Appeals decision cited above was vacated by State v. Haislip, 362 N.C. 499 (2008), but not because of the logic of the Court of Appeals decision. Although not controlling law, you should still argue the Court of Appeals' rationale. The decision was vacated by the North Carolina Supreme Court because it concluded the record was inadequate for appellate review as the transcript revealed no ruling on the motion to suppress, nor was there a written order on the motion to suppress from the trial court that was included in the record.
- ^{iv} State v. Gabriel, 192 N.C. App. 517, 520 (2008); State v. Rose, 170 N.C. App. 284, 288 (2005). Rose lays out the many United States Supreme Court opinions on the validity of suspicionless seizures at fixed checkpoints.
- ^v Ferguson v. City of Charleston, 532 U.S. 67, 81 (2001); State v. Rose, 170 N.C. App. 284, 289 (2005).
- ^{vi} City of Indianapolis v. Edmond, 531 U.S. 32, 48 (2000); State v. Rose, 170 N.C. App. 284, 289 (2005).
- ^{vii} People v. Jackson, 99 N.Y.2d 125, 131-32 (2002); State v. Rose, 170 N.C. App. 284, 289 (2005).
- ^{viii} State v. Rose, 170 N.C. App. 284, 292 (2005).
- ^{ix} City of Indianapolis v. Edmond, 531 U.S. 32, 44 (2000); State v. Rose, 170 N.C. App. 284, 289 (2005).
- ^x State v. Rose, 170 N.C. App. 284, 290 (2005).
- ^{xi} State v. Rose, 170 N.C. App. 284, 293 (2005).
- ^{xii} State v. Rose, 170 N.C. App. 284, 294-95 (2005).