

# LAWYERS WEEKLY

<http://www.nclawyersweekly.com>

North Carolina Lawyers Weekly, September 8, 2008

## Checkpoint doesn't pass constitutional scrutiny

### From STAFF REPORTS

In a sign that trial courts are taking a closer look at the constitutionality of driver's license checkpoints, an Alamance County court has thrown out a man's checkpoint-based DWI charges.

Graham police officers arrested the defendant at a driver's license checkpoint in May 2007 after detecting an odor of alcohol on the defendant's breath and conducting a field sobriety test.

The defendant filed a motion to suppress evidence collected at the stop, arguing that the checkpoint violated his right to be free from unreasonable search and seizure under the state and federal constitutions.

A District Court judge denied the motion, but on Aug. 19, Superior Court Judge Abraham Jones reversed, finding that the checkpoint was a "generalized crime control checkpoint" prohibited by the U.S. Supreme Court in *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000).

"I didn't argue that until the end [of the hearing]," said the defendant's attorney, Marcus E. Hill of Durham. "An officer testified that it was a driver's license checkpoint, and they set it up because they were bored. They didn't know there were any more problems with licenses in that area than in any other area, and the only reason they set it up in that area was because it got more traffic."

"I asked him some more questions, and he told me, 'Really, we're looking for all crimes.' And in *Edmonds*, the Supreme Court said you can't do that. It's pretty clear."

The case is *State v. Robinson* (07-CR-853653).

Alamance County Assistant District Attorney Paul Soderberg said the case would be appealed.

"We believe it was a valid stop under the statute, and we are going to appeal on that basis," Soderberg said.

### CLOSER SCRUTINY

Under North Carolina law, officers cannot randomly stop vehicles for the purpose of checking for driver's licenses. However, they may stop vehicles at checkpoints that comport with G.S. § 20-16.3A and pass constitutional muster.

In *State v. Rose*, 170 N.C. App. 284 (2005), the Court of Appeals ordered trial courts to conduct a two-part inquiry whenever an officer's stated purpose for a checkpoint — for instance, checking driver's licenses — appeared to be contradicted by evidence of the checkpoint's actual purpose — for instance, general crime control.

The first part requires the court to determine the checkpoint's primary programmatic purpose.

If that purpose is found to be constitutionally permissible, the court must move onto the second part, a three-prong balancing test set out in *Brown v. Texas*, 443 U.S. 47 (1979).

The balancing test looks at:

1. The gravity of the public concerns served by the checkpoint;
2. The degree to which the checkpoint advanced that public interest (whether it was appropriately tailored); and
3. The severity of the interference with individual liberty.

In a July Court of Appeals ruling, *State v. Veazey* (*North Carolina Lawyers Weekly* No. 08-07-0835, 22 pages), a panel reversed and remanded a DWI conviction after finding that the trial court had not conducted that two-part inquiry.

In dicta, the Court of Appeals panel suggested that the purpose of the checkpoint — to look "for all motor



Marcus E. Hill

vehicle violations," as one officer testified — may actually have been unconstitutional.

"*Edmonds* says you can't have general crime control checkpoints, and I don't know what else a driver's license checkpoint is but

a general crime control checkpoint," Hill said.

For the same reasons it stated in *Veazey*, the Court of Appeals vacated and remanded a DWI conviction on Sept. 2 in *State v. Gabriel*.

### SPONTANEOUS AND RANDOM

In the Aug. 19 order, Superior Court Judge Jones focused on whether the checkpoint had been "appropriately tailored" to check for driver's licenses.

The court found that the checkpoint set up near downtown Graham had been "spontaneous without any agreement as to starting or finishing time" or any reason for the location other than the fact that it was on a "well-traveled" road.

There also was no neutral limitation on the field officers' discretion and no supervisor, the court found.

This prompted the court to conclude that the "spontaneous, unplanned and unbounded" checkpoint was a "generalized crime control checkpoint" that violated the defendant's constitutional rights.

"In this situation, the police just didn't have a lot to do. Instead of going out and patrolling, they decided to throw up the checkpoint," Hill said. "Police look for crimes, and they thought this was an effective way to do it."