

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 08CRS26927

STATE OF NORTH CAROLINA

vs.

LORI RIGBY

ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS

On August 17, 2009, the Court considered the Defendant's Motion to Suppress, after having heard testimony, reviewing the file and being otherwise fully apprised in the premises the Court makes the following findings of fact and conclusions of law:

1. On May 8, 2008, the Fuquay Varina Police Department established a check point on the inbound lanes of State Highway 55.
2. The stated purpose of the motor vehicle checkpoint was to identify violations of the motor vehicle code. The stated programmatic purpose was to detect drivers license violations, registration violations and seatbelt violations.
3. Lt. Atkins was the supervisor in charge of the motor vehicle check point.
4. In the early morning hours, the Defendant drove through the check point without stopping her vehicle. Detective Muller, who was manning the check point, gave chase to the Defendant's vehicle and stopped the Defendant's vehicle approximately ½ mile past the checkpoint.
5. Defendant was subsequently arrested for driving while impaired.
6. At the hearing on the Defendant's Motion to Suppress, Lt. Atkins testified that he was the supervisor of the checkpoint. Other key issues from Lt. Atkins testimony are as follows:
 - a. The checkpoint had no preset starting time nor a preset ending time. Lt. Atkins advised all officers manning the checkpoint that the checkpoint would last at least one hour.
 - b. The checkpoint was not preplanned and was set up spontaneously due to the fact that the Fuquay Varina Police Department was experiencing a low call volume and that manpower was available at the time. Furthermore, Lt. Atkins testified that it is the policy of the Fuquay Varina Police Department to set up checkpoints at least once per month as call volume and manpower permit.

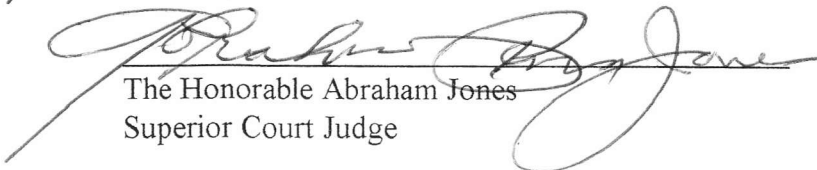
- c. The checkpoint was established on Highway 55 for no purpose other than convenience and that the particular section of Highway 55 would yield no different results than any other stretch of road in Fuquay Varina.
7. The State introduced into evidence Fuquay Varina's written checkpoint plan which stated how the checkpoint was conducted. The plan contained no provisions for the manner in which a checkpoint was to be established.

CONCLUSIONS OF LAW

8. Once a primary programmatic purpose has been established, the Court must conduct an inquiry as to the reasonableness of the checkpoint.
9. The court conducted a three part inquiry as to the reasonableness of the checkpoint as set forth in *Brown v. Texas*, 443 U.S. 47, 50, 99S.Ct. 2637, 2640, 61 L.Ed.2d 357, 361(1979) as cited in *State v. Rose*, 170 N.C. App. 284, 293-94, 612 S.E. 2d 336, 342(2005).
10. The second element of the three part test requires that the police narrowly tailor the checkpoint to serve the primary programmatic purpose.
11. The spontaneous nature of the checkpoint, the lack of a preset beginning and ending time, as well as the fact that the stretch of road selected would not yield any different results than any other stretch of road indicate to the Court that the checkpoint was not tailored to serve the primary programmatic purpose.
12. As such, the checkpoint plan as written is unconstitutional and the particular checkpoint established on May 8, 2008 was not operated in a reasonable manner in accordance with the holdings in *Brown* and *Rose* and therefore was unconstitutional.

ORDERED AND ADJUDGED that, for reasons stated in this order, Defendant's Motion to Suppress is **granted in its entirety and the case is dismissed.**

Signed this 4th day of Sept, 2009.


The Honorable Abraham Jones
Superior Court Judge