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

MOTION TO SUPPRESS

COMES NOW, Defendant, LORI RIGBY, by and through his undersigned counsel and pursuant to N.C. Gen. Stat § 15A-972 moves this Court to issue an order suppressing certain evidence that may be used in this case. The specific evidence sought to be suppressed is as follows:

1. All statements made by Ms. Rigby during the course of the investigation by the Fuquay Varina Police Department subsequent to the stop of Ms. Rigby's vehicle.
2. All observations made by any officer of the Fuquay Varina Police Department subsequen to the stop of Ms. Rigby's vehicle.
3. The results of the chemical analysis submitted to by Ms. Rigby on May 8, 2008.
4. Any other evidence that the State seeks to introduce at trial which was obtained subsequent to the stop of Ms. Rigby's vehicle on May 8, 2008.

The grounds for this motion are that all of the aforementioned evidence was illegally seized without a warrant by virtue of an unlawful seizure, detention and interrogation of the Defendant in violation of the Defendant's Fourth and Fifth Amendment Rights of the United States Constitution made applicable to the States through the Fourteenth Amendment of the United States Constitution.

BACKGROUND FACTS

On May 8, 2008 at approximately 1:30am, the Fuquay Varina police department was conducting a driver's license checkpoint on NC Hwy. 55 near the intersection of Old Powell Rd. At approximately 1:45am, Ms. Rigby drove her car through the checkpoint without stopping her vehicle. Ms. Rigby was pursued by Officer Muller and was stopped approximately ½ mile after the checking station.

The checking station in question was organized by a Lieutenant of the Fuquay Varina Police Department. The Lieutenant made a spontaneous decision to conduct a checking station because the manpower was available at the time. There was no preplanned starting time for the checkpoint or ending time for the checkpoint. Additionally, the location of the checkpoint was selected at random and was "no more likely than any other location" to detect license and registration violations.

LEGAL ANALYSIS

I. ELEMENTS OF A VALID CHECKPOINT

A search or seizure is unreasonable in the absence of individualized suspicion of wrongdoing subject to certain limited and well defined exceptions. *See State v. Gabriel*, 665 S.E.2nd 581, 584 (2008). A police checkpoint for the purposes of a license and registration check and/or a sobriety checkpoint may be constitutional dependent upon the manner in which the checkpoint is setup and conducted. *See Id.* When considering a challenge to a checkpoint, "the reviewing court must undertake a two-part inquiry to determine whether the checkpoint meets constitutional requirements: (1) court must first determine the primary programmatic purpose of the checkpoint program; and (2) once a legitimate primary programmatic purpose is determined, the court must also analyze whether the checkpoint was reasonable by weighing the

public's interest in the checkpoint against the intrusion on the defendant's Fourth and Fourteenth Amendments privacy interests. *See Id. at* 584-86 *citing State v. Veazey*, 662 S.E.2d 683, 686 *see also City of Indianapolis v. Edmond*, 531 U.S. 32, 40-42, 121 S. Ct 447, 148 L.Ed.2d 333, 343(2000)

The Court must examine all available evidence to determine the primary purpose of a checkpoint. *See Gabriel* at 585 *citing State v. Rose*, 170 N.C.App. 284, 293, 612 S.E.2d 336, 342(2005). The United States Supreme Court has stated that a trial court may not simply accept the State's invocation of a proper purpose, but must carry out a close review of the scheme at issue. *See Rose* at 289 *citing Ferguson v. City of Charleston*, 532 U.S. 67, 81, 121 S.Ct. 1281, 1290, 149 L.Ed.2d 205, 218(2001).

The Court's inquiry does not end with the finding of a permissible purpose. If a proper programmatic purpose is found, the Court must determine that the checkpoint was conducted in a reasonable manner. The checkpoint must be judged on the basis of the individual circumstances. *See Rose* at 293 *citing Illinois v. Lidster*, 540 U.S. 419, 427, 124 S.Ct. 885, 890, 157 L.Ed.2d 843, 852(2004).

There is a three part test to determine the reasonableness of a checkpoint. *See Rose* at 293-94 *citing Brown v. Texas*, 443 U.S. 47, 50, 99 S.Ct. 2637, 2640, 61 L.Ed.2d 357, 361(1979). The court must look to "(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." *Lidster*, 540 U.S. at 427, 124 S.Ct. at 890, 157 L.Ed.2d at 852 *quoting Brown*, 443 U.S. at 51, 99 S.Ct. At 2640, 61 L.Ed.2d at 362. The second element of a reasonable checkpoint requires that the police narrowly tailor the checkpoint to serve the primary programmatic purpose. *See Rose* at 294 *citing Lidster* at 427. Without tailoring, "it is possible

that a roadblock purportedly established to check licenses would be located and conducted in such a way as to facilitate the detection of crimes unrelated to licensing." *See Rose* at 294-95 *citing LaFarve* § 10.8(a), at 347-48.

II. PRIMARY PROGRAMMATIC PURPOSE

The stated programmatic purpose for the checkpoint conducted by the Fuquay Varina Police Department on May 8, 2008 was a license and registration check. A thorough inspection of the evidence reveals that this checkpoint was for the impermissible purpose of general crime control.

In this case, similar to the case of *Rose*, the checkpoint was set up spontaneously. The only justification given for setting up the checkpoint was that the manpower was available. There was no preplanned starting time or ending time. Additionally, the time for the checkpoint was not in any way correlated to the likelihood of catching unlicensed drivers or impaired drivers. Furthermore, the section of road selected for the checkpoint was picked for no particular purpose and would not yield different results than any other stretch of road in Fuquay Varina.

The checkpoint was random in every aspect and had no discernable purpose other than general crime control. As such the checkpoint constituted an impermissible seizure in violation of the Defendant's Fourth Amendment rights made applicable to the State of North Carolina through the Fourteenth Amendment.

II. REASONABLENESS (NARROWLY TAILORED)

The second part of the "Brown Test" focuses on the degree to which the seizure advances the public interest. In considering the degree to which the seizure advances the public interest, the Court in *Lidster* "stressed that the police appropriately tailored their checkpoint stops to fit important criminal investigatory needs." *See Rose* at 294 *citing Lidster* (Internal Citations

Omitted.)

Similar to the facts in circumstances in *Rose*, there is a serious issue as to whether there was any tailoring at all of the Fuquay Varina checkpoint. As with *Rose*, the checkpoint set up by the Fuquay Varina Police Department was spontaneous in nature with no prior agreed beginning or ending time and there is no evidence available to show why the stretch of road was selected. Additionally, by the Lieutenant in charge's own statement, the stretch of road selected would not yield greater or lesser results than any other stretch of road in Fuquay Varina. Quite simply, the checkpoint was an impermissible fishing expedition.

III. NORTH CAROLINA STATUTE 20-16.3A

The North Carolina Legislature has gone to great lengths in an attempt to legislate around the United States Constitution. It is important to note that all of these attempts thus far have been met with a crushing defeat in the appellate courts. *See Veazey* (legislature cannot create a presumption of guilt) *see also Melendez-Diaz v. Massachusetts*, 557 U.S. ______(2009) (affidavit of chemical analyst is testimonial in nature). North Carolina Statute 20-16.3A, is similar to the type of convoluted legislation passed in an effort to deprive individuals accused of Driving While Impaired of their rights guaranteed under the United States Constitution.

North Carolina Statute 20-16.3A(d) states, "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.**"

The Defendant has asserted that, due to the lack of tailoring, the court is unable to determine a primary programmatic purpose as well as that the checkpoint was conducted in an unreasonable fashion. A crucial component of this argument is the completely random nature of

the checkpoint including, but not limited to, the placement of the checkpoint and the reasons for the placement of the checkpoint at that particular location. There is substantial case law from the United States Supreme Court, including *Brown, Lidster, Huguenin & Edmond*, which state, in part, that the placement of the checkpoint and the reasons therefore is a factor that the Courts must consider when ruling on the reasonableness and thus the Constitutionality of a checkpoint. The North Carolina Appellate Court and Supreme Court have ruled in similar fashion in *Rose, Veasey and Gabriel*.

To the extent that the legislature intends to deprive an individual of the right to argue the reasonableness of the checkpoint based upon the selection of the location, North Carolina Statute 20-16.3A is unconstitutional.

Certificate of Service

I certify that a copy hereof has been furnished to the State's Attorney by <method and date>

Respectfully submitted,

Attorney Signature Block