



No Checkpoint Policy? No Checkpoint Evidence.

Author : Shea Denning

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Regular and well-publicized checkpoints are an important component of the State's effort to curtail impaired driving. Checkpoints provide specific as well as general deterrence. A handful of impaired drivers typically are arrested at any given checking station and subsequently prosecuted for impaired driving. Many more drivers than are stopped hear about the checkpoint. That publicity increases the perception of drivers generally that if they drive while impaired, they are likely to be caught and punished.

A recent opinion from the court of appeals makes clear that if the State wants to rely on checkpoints to accomplish either objective, law enforcement agencies must comply with the statutory requirements set forth in [G.S. 20-16.3A](#). That provision requires, among other things, that an agency conducting a checking station to determine compliance with the state's motor vehicle laws operate under a written policy. The policy must provide guidelines for the pattern for stopping vehicles and for requesting drivers to produce driver's license, registration and insurance information. The appellate court in [State v. White](#) held that the trial court did not err in suppressing evidence gathered at a checkpoint carried out by officers of a sheriff's department that had no written policy. The absence of a written policy was a substantial violation of G.S. 20-16.3A, which warranted suppression of the evidence.

Facts. Three officers with the Anson County Sheriff's Department conducted a "license check" checkpoint on September 11, 2009, pursuant to a checkpoint plan written by one of the officers. The department had no written policy for checking stations. The plan provided that the checkpoint was to begin at 7:55 p.m. at a designated intersection, that three specified officers would be present at the checkpoint, that the officers would wear their traffic vests, and that the "chase policy" would be in full effect. No ending time for the operation was stated in the plan.

The checkpoint began at the designated time and place, and the three named officers were present wearing safety vests. The blue lights on three police cars were activated. All of the vehicles approaching the checkpoint were stopped. Minutes after the checkpoint began, a driver was arrested for impaired driving. Two of the officers left the checkpoint to take the person to the sheriff's office. One officer remained behind, but did not stop anyone until the other officers returned an hour and a half later. The defendant in *White* was stopped at the checkpoint around 11 p.m., about an hour after it resumed. The checkpoint ended at 11:20 p.m. with the defendant's arrest on charges of driving while impaired and driving while license revoked.

Procedural History. The defendant was convicted of both charges in district court. He was sentenced at Level 1 for the DWI conviction, and ordered to serve six months of imprisonment. He was sentenced to 45 days imprisonment for driving while license revoked. The defendant appealed his convictions to superior court, where he moved to suppress all evidence resulting from the traffic stop on the basis that the checkpoint did not comply with G.S. 20-16.3A. The superior court granted the motion, concluding that the stop of the defendant after the checkpoint had been abandoned for more than an hour was "spontaneous," and coupled with the lack of a written policy for the checkpoint resulted in a substantial violation of G.S. 20-16.3A that warranted suppression of the evidence. The trial court did not rule on the constitutionality of the checkpoint, noting that the evidence was suppressed solely for the statutory violation. The State appealed.

Holding. The court of appeals affirmed. The appellate court emphasized the unchallenged finding that the Anson

County Sheriff's Department had no written policy providing guidelines for motor vehicle law checking stations as mandated by G.S. 20-16.3A. The court concluded that the agency's failure to comply with this requirement constituted a substantial violation of G.S. 20-16.3A.

The court rejected the State's argument that suppression was not an authorized remedy since [G.S. 15A-974](#) permits suppression only when the exclusion of evidence is required by the Constitution or the evidence was obtained as a result of a substantial violation of Chapter 15A. To rebut the State's contention that G.S. 15A-974 was the sole source of the suppression remedy, the court cited impaired driving cases in which it had held that the violation of a defendant's statutory implied consent rights in G.S. 20-16.2 requires suppression of the evidence obtained.

Moreover, the court noted that G.S. 20-16.3A itself indicates that suppression is appropriate for certain types of violations. G.S. 20-16.3A(d) provides that a violation of its provisions governing the placement of checkpoints is **not** grounds for a motion to suppress. The legislature's expression of this principle for but one of the statutory requirements indicates that the violation of other requirements, such as the mandate in G.S. 20-16.3A(a)(2a) that the agency have a written policy, **is** a proper basis for a motion to suppress.

Remaining Questions. *White* is a significant case as it resolves [the outstanding issue](#) of whether violations of G.S. 20-16.3A may give rise to suppression of the evidence. They may. *White* does not, of course, resolve all of the issues that arise from irregularities in checking stations. One such issue is whether an officer's departure from her agency's written policy requires suppression. A departure so significant as to arise to unfettered discretion would violate the constitution, but what about lesser violations? Suppose the policy requires officers to ask each driver for his driver's license and registration. One officer, without authorization, departs from this policy, figuring that she can determine from the license plate whether the registration is current. Another officer at the same checking station complies with the policy. Is the first officer's violation substantial? *White* doesn't answer this question. If, however, the trial court find the violation substantial, *White* requires suppression of the resulting evidence.