Stick to the Plan (er, Policy)

Author : Shea Denning

Categories : Search and Seizure, Uncategorized

Tagged as : DWI, suppression, traffic offenses

Date : May 4, 2009

Before December 1, 2006, GS 20-16.3A set forth requirements governing impaired driving checkpoints but not other types of checking stations and roadblocks. While non-DWI checking stations and roadblocks had to satisfy the strictures of the state and federal constitution, no specific statutory procedures governed their establishment and use. The Motor Vehicle Driver Protection Act of 2006 (S.L. 2006-253), rewrote G.S. 20-16.3A to govern all motor vehicle checking stations, and to require, among other things, that checkpoints be conducted pursuant to a written policy that provides guidelines for the pattern pursuant to which vehicles are stopped. It seems likely that questions will arise regarding whether a court may or must suppress evidence obtained from a checkpoint that is not conducted in compliance with statutory requirements.

The answer with respect to at least one statutory requirement is no. G.S. 20-16.3A(d) requires that the placement of checkpoints be random or statistically indicated and that agencies avoid placing checkpoints repeatedly in the same area. Subsection (d) specifies, however, that a violation of "[t]his subsection shall not be grounds for a motion to suppress or a defense to any offense arising out of the operation of the checking station."

No such statutory direction is provided with respect to the other requirements. Cases decided under previous iterations of G.S. 20-16.3A may, however, provide some guidance. In *State v. Barnes*, 123 N.C. App. 144 (1996), the court considered whether stopping and detaining the defendant at a checkpoint established by the state highway patrol to "detect driver's license and registration violations as well as other motor vehicle violations including driving while impaired" was constitutional. The trial court had concluded that the checkpoint failed to meet guidelines established by G.S. 20-16.3A and a directive of the state highway patrol and thus was an unreasonable seizure under the Fourth Amendment. The court of appeals reversed, determining that the trial court's findings showed "substantial compliance" with G.S. 20-16.3A and the patrol's directive, and thus no Fourth Amendment violation.

In *State v. Colbert*, 146 N.C. App. 506 (2001), the court of appeals likewise reversed the trial court's granting of the defendant's motion to suppress evidence obtained as a result of an impaired driving checkpoint stop upon findingthe checkpoint plan constitutionally permissible and in compliance with G.S. 20-16.3A.

Thus, in both *Barnes* and *Colbert*, for checkpoints governed by G.S. 20-16.3A, consideration of whether the requirements of G.S. 20-16.3A were followed was central to the court's analysis of the constitutionality of the checkpoint and the propriety of suppression of the evidence.

In *State v. Tarlton*, 146 N.C. App. 417 (2001), the defendant appealed from the trial court's denial of his motion to suppress evidence obtained as a result of a license checkpoint stop, arguing in part that the state failed to prove the constitutionality of the checkpoint because the written policy by which the checkpoint was conducted was not admitted into evidence. The court of appeals affirmed the trial court, holding that a written plan was not a constitutional requirement, and that the license check was not governed by former G.S. 20-16.3A (1999), which, as previously noted, applied only to impaired driving checks. It is unclear whether a court would reach the same conclusion for a checkpoint governed by current G.S. 20-16.3A for which there was no written policy.

While a court conceivably could construe noncompliance with G.S. 20-16.3A as rendering a checkpoint

unconstitutional under the theory that the statutorily required procedures act as a substitute for the Fourth Amendment reasonableness inquiry, such a theory is unsupported by any state law precedent, and seems unlike to be adopted. Other courts have concluded that checkpoint policies themselves serve such a purpose. *See*, *e.g.*, *State v. McDermott*, 1999 WL 1847364 (Del. Ct. Comm. Pleas April 30, 1999) (concluding that the Delaware State Police Policy was created to ensure compliance with the reasonableness requirement of the Fourth Amendment) (unpublished op.); *see also Commonwealth v. Anderson*, 547 N.E.2d 1134 (Mass. 1989) (noting that "[o]nce the Department of Public Safety and the State police have adopted such standard, written guidelines for the conduct of roadblocks, which have been accepted as a sufficient substitute for the usual Fourth Amendment 'reasonableness' demands, it follows that the Commonwealth must carefully comply with them.").

It seems more likely that courts confronted with suppression motions based on noncompliance with current GS 20-16.3A will distinguish statutory compliance from constitutionality. And in such cases, there is no explicit statutory authority for ordering suppression based merely upon a statutory, rather than a constitutional, violation. The expanded exclusionary rule codified in G.S. 15A-974(2) requires suppression of evidence for a substantial violation of Chapter 15A, but there is no corresponding statutory exclusionary rule encompassing violations of Chapter 20.

Notwithstanding the lack of explicit statutory authority to suppress, suppression may still be an appropriate remedy for substantial noncompliance with G.S. 20-16.3A. After all, courts have held that suppression of test results is the appropriate remedy for statutory violations related to administration of a chemical analysis under the implied consent laws even though no statute explicitly grants the authority to suppress evidence for such a violation. *See, e.g., State v. Hatley*, 661 S.E.2d 43 (2008); *State v. Myers*, 118 N.C. App. 452 (1995). A court could, in my view, reasonably conclude that suppression likewise is the appropriate remedy for statutory violations related to checkpoints, except, of course, for violations of the type for which the legislature has stated that suppression is not an appropriate remedy.