

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM YORK COUNTY  
Court of Common Pleas  
Case No. 2015-CP-46-03059

JOHN C. HAYES, III, Circuit Court Judge

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Appellate Case No. 2016-000544

City of Rock Hill,

Respondent,

v.

Theotis E. Dunham,

Appellant.

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**INITIAL BRIEF OF RESPONDENT**

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JUL 05 2017

SC Court of Appeals

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## **STATEMENT OF THE ISSUE ON APPEAL**

- I. Is there any evidence to support the trial court's ruling that the traffic checkpoint was proper and did not violate the Fourth Amendment rights of the Appellant?

## **STATEMENT OF THE CASE**

Appellant was arrested for driving under the influence 1<sup>st</sup> offense and driving under suspension 4<sup>th</sup> offense in the City of Rock Hill, South Carolina on September 18, 2014. On June 16, 2015 prior to a bench trial the Appellant moved to dismiss the charges. The case proceeded to a bench trial and the trial court denied the Respondent's motion to dismiss in an order dated September 30, 2015 and found the Appellant guilty of both charges. Appellant was sentenced to thirty (30) days or a fine of \$997.00 on the driving under the influence charge and ninety (90) days and a fine of \$2,105.00 on the driving under suspension charge.

On October 6, 2015 Appellant filed a timely Notice of Appeal from the city court's convictions with the York County Court of Common Pleas. The appeal was heard by the Honorable John C. Hayes, III, on February 16, 2016. By order dated February 18, 2016 and filed February 19, 2016, Judge Hayes affirmed the ruling of the trial court and dismissed Appellant's appeal.

On March 1, 2016, Appellant filed a timely Notice of Appeal from the ruling of the circuit court. This appeal follows.

## STATEMENT OF FACTS

On September 18, 2014 the York County Multijurisdictional Traffic Unit conducted a traffic checkpoint on East Main Street near Cowan Farm Road within the city limits of Rock Hill. This location is within the Southern Data-Driven Approaches to Crime and Traffic Safety (DDACTS) Area in Rock Hill, South Carolina<sup>1</sup>. The Southern DDACTS Area had one hundred and twenty accidents over a five year period from July 1, 2009 to June 30, 2014 within a quarter mile of the area and the area had several accident hot spots. The traffic checkpoint plan was approved by Major Steve Parker of the City of Rock Hill Police Department<sup>2</sup>. The checkpoint called for all vehicles traveling in both directions to be checked under normal circumstances unless the supervisor approves the deviation. The area was chosen as it provided a safe sight distance and adequate space to stage patrol and violator vehicles.

On September 18, 2014 at approximately 3:00 pm a briefing was conducted at the Rock Hill Police Department Training Room outlining the enforcement event scheduled for later that same day.<sup>3</sup> Lieutenant Anthony Breeden was the officer in charge of the checkpoint and he testified that “all cars were to be checked for driver’s license, registration, proof of insurance and impairment.” ROA, \_\_\_\_\_. Lt. Breeden testified that following the briefing the officers established the traffic checkpoint at the location chosen by him at US 21/East Main Street near the intersections of East White Street and Belleview Avenue. This was the same location that was briefed earlier that afternoon and was within a quarter ( $\frac{1}{4}$ ) to a half ( $\frac{1}{2}$ ) of a mile of the intersection of US 21/East Main Street and Cowan Road. Lt. Breeden testified that Cowan Farm Road was visible from the location of the traffic checkpoint and the entire area is known as

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<sup>1</sup> City’s Exhibit #1D

<sup>2</sup> City’s Exhibit #1A

<sup>3</sup> City’s Exhibit #1B

Cowan Farm Road. ROA, \_\_\_\_\_. Lt. Breeden as the supervisor was the only person authorized to permit any deviation from the checkpoint plan. ROA,\_\_\_\_\_.

On September 18, 2014 at approximately 9:30 p.m. two officers with the Rock Hill police department were working the traffic checkpoint when a vehicle operated by the Appellant approached the traffic checkpoint. Appellant’s vehicle had a headlight out and when asked to produce his driver’s license he was unable to produce it and later admitted to the officers that his license was suspended. In addition, Appellant smelled of an odor of alcohol and admitted he had been drinking earlier. Appellant was directed off the roadway where following an investigation as to his level of impairment he was arrested and charged with driving under the influence 1<sup>st</sup> offense and driving under suspension 4<sup>th</sup> offense.

## ARGUMENT

### I. THE TRAFFIC CHECKPOINT WAS PROPERLY PLANNED AND CONDUCTED IN A MANNER CONSISTENT WITH THE FOURTH AMENDMENT

Traffic checkpoints have been generally approved for the purpose of enforcing routine motor vehicle violations or other violations closely related to traffic safety. Delaware v. Prouse, 440 U.S. 648 (1979). Drivers' license checkpoints and vehicle license checks were approved in Michigan Dept. of State Police v. Sitz, 496 U.S. 444 (1990). "[W]hile detaining a vehicle at a traffic safety checkpoint constitutes a "seizure," where the checkpoint serves the public interest and does not impose an unreasonable restriction on one's liberty, it does not violate Fourth Amendment proscriptions." McHam v. State, 404 S.C. 465, 476, 746 S.E.2d 41, 47 (2013).

#### A. Standard of Review

A trial court's Fourth Amendment suppression ruling must be affirmed if supported by any evidence, and an appellate court may reverse only when there is clear error. State v. Groome, 378 S.C. 615, 618, 664 S.E.2d 460, 461 (2008).

On appeals from a motion to suppress based on Fourth Amendment grounds, this Court applies a deferential standard of review and will reverse if there is clear error. However, this deference does not bar this Court from conducting its own review of the record to determine whether the trial judge's decision is supported by the evidence. State v. Vickery, 399 S.C. 507, 514, 732 S.E.2d 218, 221 (Ct. App. 2012).

Under the clear error standard, an appellate court will not reverse a trial court's finding of fact simply because it would have decided the case differently. Rather, the appellate court must determine whether, based on the evidence, it is left with the definite and firm conviction the trial

court committed a mistake. Accordingly, we will apply an any evidence standard to the trial court's ruling. Id. (internal citations omitted).

### **B. Law/Analysis**

“Constitutional challenges to checkpoint seizures turn on whether the initial stop at the checkpoint was reasonable. . . . Whether particular checkpoint seizures are reasonable is determined by balancing the gravity of the public interest sought to be advanced and the degree to which the seizures do advance that interest against the extent of the resulting intrusion upon the liberty interests of those stopped”. State v. Vickery, 399 S.C. 507, 515, 732 S.E.2d 218, 222 (Ct. App. 2012). “[A] claim that a particular exercise of discretion in locating or operating a checkpoint is unreasonable is subject to post-stop judicial review.” State v. Vickery, 399 S.C. 507, 516, 732 S.E.2d 218, 222 (Ct. App. 2012). In State v. Vickery, this Court applied the guidance from State v. Groome in analyzing the constitutionality of a traffic checkpoint. “The Groome court noted Brown established a three part balancing test for determining the constitutionality of a traffic checkpoint: 1) the gravity of the public interest served by the seizure; 2) the degree to which the seizure serves the public interest; and, 3) the severity of the interference with individual liberty.” State v. Vickery, 399 S.C. 507, 517, 732 S.E.2d 218, 223 (Ct. App. 2012).

### **C. The Traffic Checkpoint Was Conducted Pursuant to the Direction of the Supervising Officer**

Appellant’s only challenge on this appeal is the allegation that there was no basis for the location of the checkpoint. The record in this case indicates otherwise. Moreover, there is evidence to support the conclusions of the trial court in its finding upholding the reasonableness of the traffic checkpoint.

First, the approved traffic checkpoint was for the general location of US 21/E. Main Street at Cowan Farm Road. The plan also allows the supervisor to deviate from the plan, if they deem it necessary and that the supervisor will inform all officers. (ROA, \_\_\_\_\_). The supervisor in this case was Lieutenant Breeden who testified that he chose the location which was on US 21 between the intersection of White Street and Belleview on one end and Cowan on the other end. Lt. Breeden testified that the entire area is known as Cowan Road and that the Cowan Road intersection is visible from where the roadblock was conducted. (ROA, \_\_\_\_). This location was briefed to all officers participating in the traffic checkpoint and Lt. Breeden was the only officer authorized to deviate from the plan. (ROA, \_\_\_\_\_). Officials conducting a traffic checkpoint have discretion as to the timing and location of the traffic checkpoint. “We observed that the random stops involved the kind of standardless and unconstrained discretion which is the evil the Court has discerned when in previous cases it has insisted that the discretion of the official in the field be circumscribed, at least to some extent.” Mich. Dep't of State Police v. Sitz, 496 U.S. 444, 454, 110 S. Ct. 2481, 2487 (1990). Even the dissent in Sitz notes that law enforcement has broad discretion regarding the location and timing of a traffic checkpoint. “[A]lthough the checkpoint is most frequently employed during the hours of darkness on weekends (because that is when drivers with alcohol in their blood are most apt to be found on the road), the police have extremely broad discretion in determining the exact timing and placement of the roadblock.” Mich. Dep't of State Police v. Sitz, 496 U.S. 444, 464, 110 S. Ct. 2481, 2492 (1990) (Stevens, J. dissenting).

In United States v. Morton, 5:12-MJ-01508-JG-1 (2013 U.S. Dist. LEXIS 172242 \*; 2013 WL 6385269) the federal district court in North Carolina denied the motion to

suppress where the defendant who was charged with driving while intoxicated challenged the constitutionality of the traffic checkpoint. The defendant in Morton argued that it was unreasonable for the lieutenant in charge of the checkpoint to have the authority to decide the date, time, location and operating procedures of the checkpoint, the ability to create and alter the pattern of stopping vehicles as well as his authority to terminate the checkpoint. The district court held that “[u]nlike the discretionary spot-check of a vehicle in Prouse, checkpoint operations both appear to and actually do involve less discretionary enforcement activity. Accordingly, [Lieutenant] Tatro's authority in executing the checkpoint activities is neither unreasonable nor unconstitutional.” Id. at 12. (internal citations omitted).

In this case the traffic checkpoint plan was approved by the senior commander, Major Parker. The plan limits the exercise of officer discretion solely to one individual, the supervisor in charge. Lt. Breeden was the supervisor in charge, who chose the location of the checkpoint pursuant to the checkpoint plan. The location was selected based on the five years of traffic data that indicated this location was within the Southern DDACTS area which had experienced traffic hot spots with one hundred and twenty accidents within a quarter mile of the area. Indeed, the specific location chosen was on the northeastern edge of the DDACTS area on East Main Street (referred to as Albright Road by Appellant) in the immediate vicinity of where Highway 5, Highway 72 and US 21 all meet. The checkpoint location on East Main Street was between the intersections of Belleview Avenue and Cowan Farm Road. This area was within the borders of the Southern DDACTS area and the Cowan Farm Road intersection sits less than a quarter of a mile from the edge of this area.

Lt. Breeden briefed the plan to officers participating in the traffic checkpoint and the briefing outline notes that the location is E. Main Street (US 21) near the intersection of E. White and Belleview. Lt. Breeden testified that this location is visible to the Cowan Road intersection that is approximately a quarter to a half-mile away. “[F]or purposes of Fourth Amendment analysis, the choice among such reasonable alternatives remains with the governmental officials who have a unique understanding of, and a responsibility for, limited public resources, including a finite number of police officers. Mich. Dep't of State Police v. Sitz, 496 U.S. 444, 453-54, 110 S. Ct. 2481, 2487 (1990). The traffic checkpoint was chosen as it was within one of two DDACTS locations within the city limits of Rock Hill and this southern DDACT area contained traffic hot spots. The traffic checkpoint was conducted in a manner that limited individual officer discretion while maintaining the ability of the supervisor in charge to have appropriate discretion to ensure the safe operation of the checkpoint. Lt. Breeden made a reasonable choice in determining the location of the traffic checkpoint based on the guidance in the approved checkpoint plan.

#### **D. Data Collection**

The DDACTS enforcement report was submitted into evidence in this case and supports the trial court’s finding per the second prong of Brown v. Texas, 443 U.S. 47 (1979). (ROA, \_\_\_\_\_). The report was focused on traffic violations that occurred during the multi-jurisdictional event from 1500 to 0100 hours on September 18, 2014. The traffic checkpoint itself was conducted from approximately 1545 to 2300 hours on September 18, 2014. During this period of time two hundred and twenty seven (227) events were documented in the DDACTS Enforcement Report which included the

activity from the traffic checkpoint. Lt. Breeden testified that the report was a summary of all the traffic safety activity during the specific hours of the enforcement event, including the data from the traffic checkpoint. The evidence the City presented in this case is strikingly similar to the data presented in Vickery. “According to Groome, the question before us is whether the record supports the trial court's finding that the State's empirical data was insufficient to satisfy the second prong of Brown. By showing the stops resulted in a total of forty-eight traffic violations and eight criminal cases including two drug arrests, the State met its burden under the second prong of Brown and the trial court erred in determining the State had to put up more evidence to show the checkpoint's effectiveness.” State v. Vickery, 399 S.C. 507, 520-21, 732 S.E.2d 218, 225 (Ct. App. 2012). Likewise, the City in this matter provided sufficient evidence regarding the checkpoint’s effectiveness.

**E. Evidence Presented at Trial Supported the Brown v. Texas Three Factor Test**

In State v. Groome, the South Carolina Supreme Court adopted and applied the three part balancing test found in Brown v. Texas, 443 U.S. 47 (1979) to determine the constitutionality of a traffic checkpoint under the Fourth Amendment. “Brown established a three part balancing test for determining the constitutionality of a traffic checkpoint: 1) the gravity of the public interest served by the seizure; 2) the degree to which the seizure serves the public interest; and, 3) the severity of the interference with individual liberty.” State v. Groome, 378 S.C. 615, 619, 664 S.E.2d 460, 462 (2008).

In this case, evidence presented to the trial court demonstrated that the traffic checkpoint was prepared and conducted in a manner consistent with the 4<sup>th</sup> Amendment. Evidence presented to the trial court supports the finding that the primary purpose of the

traffic checkpoint was traffic safety and enforcement. The City presented evidence that the area where the traffic checkpoint was conducted was within one of two DDACTS areas located within the city limits of Rock Hill. All vehicles traveling in both directions were checked to ensure each driver had a driver's license, vehicle registration, and proof of insurance. Each driver was also checked for signs of impairment. The public has an overwhelming interest in being able to travel in safety on our highways and roadways. The public interest in safe travel was served in this case, where the City devoted law enforcement resources to a known area where a historically high number of traffic accidents have occurred.

Evidence was presented regarding the degree to which the traffic checkpoint serves the public interest. Lt. Breeden testified to why the location was chosen for enforcement based on traffic data collected over a five year period. Lt. Breeden also testified that data was collected from all enforcement activities during the DDACT enforcement event and this data was presented to the trial court. The evidence presented shows that the checkpoint location was chosen as it was within the boundaries of one of the two DDACTS areas in the City of Rock Hill. The data collected from the enforcement activities during the checkpoint operation shows that over two hundred traffic related events were identified including eighty eight (88) traffic violations and one hundred and eighteen (118) warnings. Lt. Breeden testified to the overall effectiveness of the traffic checkpoint and the data presented supports the trial courts findings regarding the traffic checkpoint.

Lastly, the severity of the interference with individual liberty was minimal due to the procedures contained within the traffic checkpoint plan and the manner in which the


checkpoint was conducted as testified to by Lt. Breeden and Officers Lambert and McNeely. Most importantly, Appellant does not challenge the traffic checkpoint on this ground. Therefore the ruling of the both the trial court and the circuit court holding the checkpoint was reasonable is the law of the case.

**CONCLUSION**

For all the foregoing reasons, the Appellant respectfully submits that the decision of the circuit court upholding Respondent's conviction should be affirmed.

Respectfully submitted,

June 30, 2017



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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM YORK COUNTY  
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Case No. 2015-CP-46-03059

JOHN C. HAYES, III, Circuit Court Judge

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City of Rock Hill,

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v.

Theotis E. Dunham

Appellant.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of Respondent's Motion to File of the Initial Brief of Respondent and Designation of Matter Outside of Time has been served upon opposing counsel by mailing a copy via regular U.S. Mail to him on the 30 day of June, 2017, to James W. Boyd., Attorney for Appellant 1544 Ebenezer Road, Post Office Box 36425, Rock Hill, South Carolina 29732.



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June 30, 2017

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

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SC Court of Appeals

Re: The City of Rock Hill v. Theotis E. Dunham  
Appellate Case No. 2016-000544

Dear Ms. Kitchings,

Enclosed please find a copy of the Initial Brief of Respondent along with the Designation of Matter in the above appeal. Also enclosed is the original and six (6) copies of Respondent's Motion to File the Initial Brief of Respondent and Designation of Matter Outside of Time.

Counsel for Respondent, James W. Boyd is copied on this letter and a certificate of service is also enclosed.

Sincerely,

Christopher E. A. Barton  
Senior City Solicitor  
Attorney for Respondent

Enclosures (2)  
Cc: James W. Boyd, Esq.

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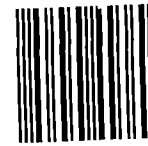
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