

Passing Through “Checkpoint Chickie”:  
How To Conduct A Legal Checkpoint  
Legal Question of the Week  
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In that great television series, The Andy Griffith Show,<sup>1</sup> Don Knotts showed us what being a law enforcement officer in North Carolina is all about through his portrayal of the fearless lawman, Barney Fife. In the episode entitled “Barney’s Sidecar,” a report comes into the Sheriff’s office of “a speeder up on Highway 6.”<sup>2</sup> Upon learning that Andy<sup>3</sup> needs the squad car for other official business,<sup>4</sup> Barney purchases a World War II motorcycle complete with sidecar<sup>5</sup> and uses it to establish a traffic checkpoint on Highway 6 to “nip this speeding in the bud.”<sup>6</sup> Hilarious hijinks ensue.

This episode got the legal office thinking about whether Barney’s checkpoint was constitutional.<sup>7</sup> As it happens, the North Carolina Court of Appeals handed down a decision in a checkpoint case just this week!<sup>8</sup> In State v. Jarrett,<sup>9</sup> the court upheld the constitutionality of a Forsyth County checkpoint. While Jarrett doesn’t represent a big

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<sup>1</sup> One of the interesting premises of the Andy Griffith show was that although Andy was the Sheriff, he refused to carry a gun, relying instead on his deep fountain of wisdom and common sense to solve any problem. Who ever heard of a sheriff without a gun? That would be as crazy as a sheriff who was prohibited under state and federal law from carrying a gun. That could never happen.....could it?

<sup>2</sup> Since the locations in The Andy Griffith Show were often based on real N.C. spots (Mount Pilot was Pilot Mountain, for instance) I was curious if there was a N.C. Hwy 6. In fact, there used to be, but it was decommissioned in 2005. N.C. Hwy 6 basically followed Patterson Avenue to Lee Street near the Greensboro Coliseum. Come to think of it, there are quite a few speeders on that road.

<sup>3</sup> Andy Griffith and I are both graduates of the first ever public university, the University of North Carolina at Chapel Hill. We were also both famous members of the UNC Men’s Glee Club. I would imagine we both were the coolest guys on campus during our time there, but I haven’t asked him to be sure.

<sup>4</sup> Did Andy ever drive a car other than the official squad car? Weren’t the taxpayers of Mayberry unhappy that their Sheriff used the only police car in town for personal business?

<sup>5</sup> It’s unclear whether Barney used seized funds from Mayberry’s drug interdiction unit to make this purchase.

<sup>6</sup> If you aren’t familiar with this episode you can catch the relevant scene on YouTube here: [http://www.youtube.com/watch?v=1kplr\\_UDUIM](http://www.youtube.com/watch?v=1kplr_UDUIM) Any resemblance between Barney and former or current HPPD officers is strictly coincidental.

<sup>7</sup> This gives me an idea for a special crossover episode between The Andy Griffith Show and Law and Order. Barney Fife travels to Manhattan for a vacation and is drawn into a homicide investigation. I can see Barney testifying for District Attorney Jack McCoy now.

<sup>8</sup> What a coincidence!

<sup>9</sup> COA 09-1036 (May 4, 2010).

change in checkpoint law, the opinion does a good job of setting out the current factors which go into determining whether a checkpoint passes legal muster. I'm sad to say that "Checkpoint Chickie" was probably unconstitutional, but since the Sheriff was also the Justice of the Peace, the Mayberry Sheriff's Office could do whatever the heck they wanted.<sup>10</sup>

In Jarrett, the Forsyth County Sheriff's Office conducted a checkpoint pursuant to a written Sheriff's Office policy. Six deputies stopped every car passing through the checkpoint in either direction to determine if the driver had a valid driver's license and vehicle registration. There was a supervisor present, everyone was in their traffic vests and the Sheriff's cars had their blue lights activated.

The defendant, 18 year old Andrew Jarrett, approached the checkpoint at about 11:15 pm. When a deputy spoke to him, he noticed an aluminum can in the area between the driver and front passenger which the passenger was trying to hide by leaning over toward the defendant. After the deputy asked a couple of times what was in the can, the passenger raised it, revealing it was a Busch Ice beer. After some additional investigation, the driver was charged with driving while impaired and driving by a person less than 21 after consuming alcohol.

On appeal from a denial of his motion to suppress based on the constitutionality of the checkpoint, the Court of Appeals looked to a two part test to decide if the checkpoint was set up and operated in a legal manner. Under this test the court must first decide what the "primary programmatic purpose" of the checkpoint was and if that was a constitutional purpose. If the purpose is valid, the court must then decide if the checkpoint itself was reasonable.<sup>11</sup>

#### QUESTION ONE: PRIMARY PROGRAMMATIC PURPOSE<sup>12</sup>

A number of cases through the years have ruled on the purposes for which a checkpoint may constitutionally be used. Police may conduct checkpoints for:

1. DWI enforcement<sup>13</sup>
2. Driver's License and Registration enforcement<sup>14</sup>
3. To seek information about a recent crime in the area<sup>15</sup>
4. Illegal Alien interdiction<sup>16</sup>

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<sup>10</sup> And without an in-house legal advisor, how was Barney supposed to know the law anyway?

<sup>11</sup> This update deals only with whether the checkpoint was constitutional. Checkpoints set up for DWI enforcement or enforcement of Chapter 20 offenses must also conform to N.C.G.S. 20-16.3A. Maybe we'll discuss that another time.

<sup>12</sup> I like it when the courts use alliteration, but I'm going to shorten this to "primary purpose."

<sup>13</sup> Michigan v. Sitz, 496 U.S. 444 (1990).

<sup>14</sup> Delaware v. Prouse, 440 U.S. 648 (1979). In addition to license and registration, this could probably be extended to other Chapter 20 offenses that could not be discovered simply by observing a vehicle during normal road travel, as opposed to those that can be observed such as tinted windows or covered license tags. See State v. Veazey, 662 S.E.2d 683 (2008).

<sup>15</sup> Illinois v. Lidster, 540 U.S. 419 (2004).

<sup>16</sup> U.S. v. Martinez-Fuerte, 428 U.S. 543 (1976). I'm not talking about the space kind, I'm talking about the "came from outside the country without permission" kind. However, I would advise against setting up

On the other hand, police MAY NOT conduct checkpoints for “general crime control” or ordinary criminal wrongdoing or narcotics interdiction.<sup>17</sup>

In determining the primary purpose of a checkpoint, the testimony of the officers operating the checkpoint is critical. Courts have held that if the officer’s testimony of the primary purpose is uncontradicted, the court may rely on it. However, what generally happens in these cases is that the officer testifies on direct examination that the purpose of the checkpoint is license and registration enforcement, but then admits on cross-examination that officers were looking for any and all violations. When this happens, the court must look closely to determine what the primary purpose of the checkpoint really was because of the fear that officers could set up checkpoints for an unlawful purpose and try to make it legal by merely checking everyone’s driver’s licenses.

Obviously, officers at a license checkpoint are also looking for other violations because good officers are ALWAYS on the lookout for any and all violations. The distinction that an officer must make clear when testifying in these cases is that the primary purpose is license and registration enforcement (or DWI as the case may be) and although the officer is not purposefully looking for other violations of the criminal law, if reasonable suspicion is developed during the course of a stop, the officer will investigate further.<sup>18</sup>

#### QUESTION TWO: IS THE CHECKPOINT REASONABLE?

Even if the primary purpose of the checkpoint is a valid one, courts must still decide if the checkpoint was reasonable. This is done by balancing the public’s interest in the purposes of the checkpoint against the stopped individual’s privacy interest. To do this balancing test, the court considers three questions: (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.<sup>19</sup>

The first prong (the gravity of the public concerns served by the seizure) is determined by looking again at the primary purpose of the checkpoint. In Jarrett, the court ruled that this prong was satisfied because a checkpoint to uncover and deter driver’s license and registration violations was a reasonable one.

Under the second prong, (the degree to which the seizure advances the public interest) the court considers several factors to determine whether the police tailored their

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either a Martian checkpoint or a Mexican border checkpoint in North Carolina since neither Mars nor the Mexican border are that close by.

<sup>17</sup> Indianapolis v. Edmond, 531 U.S. 32 (2000).

<sup>18</sup> This assumes of course that the primary purpose of the checkpoint is in fact valid. Please don’t set up checkpoints as a way to make arrests for drugs or guns and then try to pass them off as license checkpoints. When police try to find legal loopholes or push the envelope, it usually ends badly. See Arizona v. Gant, 556 U.S. \_\_\_ (2009).

<sup>19</sup> For the record, these three questions come from Brown v. Texas, 443 U.S. 47 (1979) which was a Fourth Amendment seizure case but not a checkpoint case.

checkpoint stops to fit the primary purpose. These factors include whether police spontaneously decided to set up a checkpoint on a whim (bad), whether police offered any reason why a particular road or stretch of road was chosen (good reason=good), and whether the checkpoint had a predetermined starting or ending time (good). In general, the court is looking into whether this was planned out or whether it was done haphazardly. The more thought goes into tailoring the checkpoint to further the primary purpose, the better.

Finally, under the third prong (the severity of interference with individual liberty), the court also looks at different factors to ensure that the intrusion on individual liberty is no greater than necessary to achieve the checkpoint's purpose. Some of those factors are:

1. The checkpoint's potential interference with legitimate traffic;
2. Whether police took steps to put drivers on notice of an approaching checkpoint;
3. Whether the location of the checkpoint was selected by a supervisor rather than officers in the field;
4. Whether there was a set pattern for stopping vehicles; and
5. Whether police operated the checkpoint pursuant to any oral or written guidelines.

The factors I've discussed under these last two prongs are non-exclusive, meaning they don't all have to be present, and the court may consider other factors that didn't make the list.

In Jarrett, the court found that the Forsyth County checkpoint satisfied these prongs based on several of the factors. They upheld the trial court's ruling denying the motion to suppress and affirmed Mr. Jarrett's conviction for Driving While Impaired.

In the not-so-long-ago past, when things got slow on third shift, two officers might get together and decide to conduct a driver's license checkpoint to pass the time. Those types of checkpoints are much harder to do constitutionally these days. Instead, a checkpoint should be done with a clear purpose, clear rationale, and clear planning. So be smart. As Barney says, "There are two types of cops. The quick and the dead."

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