

# Judge tosses DWI conviction on appeal

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GRAHAM - A Superior Court judge dismissed a driving while impaired charge, saying that the way the charges were brought was unconstitutional.

The case had been disposed of in Alamance County District Court in the past, but was later appealed.

The case involved a 54-year-old Graham man who was charged May 10, 2007 at a driver's license checkpoint by the Graham Police Department at the intersection of South Main Street and Glen Drive.

According to court records, Graham officer G. McDaniel asked the defendant for his license and registration when he pulled up to the roadblock. The officer detected an odor of alcohol and asked the defendant to pull over.

Minutes later, another officer, Cpl. C. Dunnagan, came over and followed up on the check. When asked if he had been drinking, the defendant told the officer that he had two beers earlier that day. His son, who was a passenger in the car, had been drinking "extensively" that night, court documents said.

After concluding a field sobriety test, the defendant was charged with DWI. The defendant pleaded not guilty in district court on June 10, arguing through attorney Rick Champion that the checkpoint was unconstitutional and unreasonable since it was a general search.

Chief District Court Judge Jim Roberson disagreed, saying the checkpoint was conducted according to state law. He said in an order that there was no evidence that finding criminal violations was the main purpose of the checkpoint, but rather that it was meant as a driver's license and registration check.

Though the defendant was given an Alco-Sensor test, Judge Roberson suppressed that evidence because the officer did not follow the proper rules when administering the test. The defendant received a suspended sentence of 30 days and a year of probation and was also ordered to do 24 hours of community service. He later appealed the judge's decision.

On Tuesday, Durham attorney Marcus Hill contended in Superior Court on behalf of the defendant that the checkpoint was unconstitutional and therefore, the arrest was unlawful. Hill argued that the officers did not develop a systematic plan in advance for the checkpoint as the law requires them to do, but that they did it spontaneously without a specific starting or ending time.

According to the state statute governing checkpoints, when law enforcement agencies conduct checkpoint stations to determine motor vehicle compliance, they have to designate in advance the pattern both for stopping vehicles and for requesting driver's licenses or registration or insurance information. They also have to operate under "a written policy that provides guidelines for the pattern."

The statute also said that checkpoints have to be "in accordance with the provisions of the United States Constitution and the Constitution of North Carolina" and should be conducted in random locations or where statistics show there is a need for them.

According to court documents, Dunnagan said they set the checkpoint using, in part, a policy designed for impaired driving checkpoints. He also said that the only criminal or traffic problem that he was aware of at that intersection was speeding.

Hill said there was no evidence that intersection had a problem with driver's license or registration, but simply that it was a well-traveled road.

Though these were the two issues that the officers were supposedly checking, Hill argued that they were conducting a generalized crime control checkpoint, which the law prohibits. At one point, he said, Dunnagan even leaned inside the defendant's car when he had stepped out of the car and opened and looked inside an ashtray and the car's floorboard.

The state, on the other hand, contended that the checkpoint was valid and set up properly according to the governing statute.

Superior Court Judge Abraham Jones of Raleigh did not think so.

"The checkpoint was not set up due to any particular problem or specific need but just because the traffic would typically have been heavier there than in any other places," the judge's ruling said. "The court finds this checkpoint to be spontaneous, unplanned and unbounded and thus an unreasonable violation of a stopped driver's right to be free of unreasonable searches and seizures under the Fourth Amendment to the U.S. Constitution."

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Jones said that one of the reasons courts don't let police set up checkpoints without a reason is because the law doesn't allow general stops.

"You cannot go, 'Papers please,' in this country," Jones said, adding that officers cannot just stop people "for whatever they can find."

"It doesn't work that way," he said.

The judge entered his order Thursday afternoon. The state immediately requested a transcript of the hearing since it's appealing the decision.

"We believe the checkpoint was valid and set up properly" according to state law, District Attorney Rob Johnson said.

Graham Police Chief Jeff Prichard agreed, saying it was a "duly established checking station."

The state withdrew its appeal one month later.