

"The South Carolina Court of Appeals Revisits DUI/DWI Checkpoints in State v. Vickery"

On August 22, 2012, the South Carolina Court of Appeals clarified certain legal requirements that must be present for a DUI roadblock to pass constitutional muster in South Carolina. In Vickery (State v. Vickery, S.C. App. Op. #5025, August 22, 2012), the state appealed the trial judge's suppression of evidence arising out of a DUI/DWI -drunk driver-checkpoint because it felt that the roadblock was constitutional. The South Carolina Court of Appeals agreed, reversing the trial judge's decision and remanding the case back to the trial court for final disposition.

On April 25, 2009, officers with the Greenwood, South Carolina police department conducted four simultaneous DUI checkpoints in the same general vicinity from approximately 9:00 p.m. until 3:00 a.m. the following morning. At one of the four checkpoints, the defendant Randy Vickery, was arrested and charged with "possession of methamphetamine with intent to distribute" and "possession of methamphetamine with the intent to distribute within a half mile proximity of a school." At a pre-trial suppression hearing Vickery made a motion to suppress the evidence discovered at the traffic stop. The basis of Vickery's challenge was that the checkpoint/road block violated Vickery's Fourth Amendment rights. At the suppression hearing, Officer Robbie Byrd of the Greenwood Police Department, testified that the four checkpoint locations were determined based upon "traffic flow, speeding complaints, loud music complaints, anything of that nature and primarily just involving traffic." Byrd further testified that the checkpoint locations were selected by Lieutenant Bass and Major Marshall. Byrd also stated that officers would stop each car that came through the checkpoint and check each driver for license, registration, etcetera. Byrd concluded his testimony to the court that the four checkpoints employed that night resulted in forty-eight (48) traffic cases and two drug cases. He also testified that the stops produced no violations that lasted longer than a minute.

Upon the completion of Byrd's testimony, Vickery's attorneys argued that the State of South Carolina had not laid the proper foundation to establish the checkpoints constitutionality under Brown v Texas 443 U.S. 47 (1979), Michigan Department of State Police v Sitz (496 U.S. 444 (1990)), and State v Groome 378 S.C. 615, 664 S.E.2d 460 (2008).

The State responded and agreed that Sitz, "retains the requirement that the State produce empirical data to support the road block in question." The State bolstered that argument by referring to the fact that several "traffic enforcement activity reports "had been introduced in front of the trial judge and provided the necessary empirical data to validate the constitutionality required for roadblocks. The State also called Major Urban Mitchell of the Administrative Division of the Greenwood Police Department. Major Mitchell testified that the Greenwood Police Department had determined that conducting traffic safety checkpoints/road blocks was an effective way to manage traffic problems. At the conclusion of the suppression hearing, the trial judge suppressed all evidence from the checkpoint in Vickery's case. The trial judge found that the State presented "insufficient empirical data justifying the authorization and implementation of the road block/checkpoint in question...".

On appeal, the State argued that the trial judge abused his discretion in finding that the State had failed to meet the "effectiveness" requirement under the case of Brown v Texas. ("Brown v Texas 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 interference with individual liberty.")

The three judge panel of the South Carolina Court of Appeals agreed with the State, and reversed and remanded the case accordingly. In ruling with the State, the Court stated, "...the cases on point do not require the State to present preexisting and empirical data to justify setting up a checkpoint. The case law does require some basis for the location of the checkpoint. Here, the State presented sufficient empirical data, through his testimony and exhibits, to justify the authorization and implementation of the checkpoint in question." "...Prouse, Groome and Sitz all require some empirical data that supports the second prong of Brown, that the seizure served the public interest. However, none of these cases state exactly how much evidence is considered to be enough. The United States Supreme Court, as well as our own Supreme Court (South Carolina), has stressed that no evidence is never enough. Here, we do have some evidence, lying somewhere between the standards articulated in Prouse and Sitz. By showing that the traffic stops resulted in a total of forty-eight (48) 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 that the State had failed to put up enough evidence to show the checkpoints effectiveness." Accordingly, giving proper weight to the factors discussed and the data provided by the State as to the second factor set forth in Brown, the license checkpoint at issue did not violate Vickery's Fourth Amendment rights and the trial court's decision is reversed and remanded.

*South Carolina DUI Lawyer Steve Sumner exclusively handles misdemeanor and felony DUI defense. He is a member the National College for DUI Defense, holds an AV-preeminent rating from Martindale-Hubbell and a "Superb" ranking with Avvo. He has spoken at professional seminars on the topic of DUI defense in Charlotte, NC, Columbia, SC and Charleston, SC. He represents clients in Greenville, Spartanburg and Anderson counties, South Carolina. You can contact him at [upstatedui.com](http://upstatedui.com) or 864-235-3834. His office is located at 1088 N. Church Street, Greenville, SC 29601.*