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BLURRED LINES: *STATE V. GRIFFIN* AND THE RESULTING UNCERTAINTY IN NORTH CAROLINA COURTS REGARDING THE CONSTITUTIONAL ANALYSIS OF TRAFFIC CHECKPOINTS

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I. INTRODUCTION

Consider the following scenario: After a long day of work and several drinks at a local bar, a North Carolina driver approaches a traffic checkpoint on the way home. Upon approaching the checkpoint, the driver realizes that he left his cellular telephone at the bar. He activates his turn signal and makes a legal left turn away from the checkpoint to retrieve the telephone. The driver is immediately pursued and stopped by police officers who were monitoring the entrance of the checkpoint. The police officers administer a field sobriety test on the driver, and subsequently charge the driver with driving while impaired. At trial, the driver files a motion to suppress the evidence obtained from the stop, challenging the constitutionality of the traffic checkpoint. The driver claims that, independent of the existence of the checkpoint, there was insufficient reasonable suspicion to justify the stop.

Is the trial court required to determine the constitutionality of the checkpoint? What standard should the trial court use in making this constitutional determination? Does it make a difference that the driver's turn away from the checkpoint was legal? Can an unconstitutional checkpoint be factored into the reasonable suspicion analysis? The North Carolina Supreme Court's recent decision in *State v. Griffin* presents unsettling answers to these questions, and leaves the Fourth Amendment rights of North Carolina citizens in jeopardy.

This case note will discuss the current state of North Carolina's case law regarding the constitutionality of traffic checkpoints and the standard of reasonable, articulable suspicion. This note will critique the holding in *State v. Griffin*, and the impact of that holding in light of other recent North Carolina Supreme Court decisions. Finally, this note will explore the current options available to trial courts and law enforcement officers to safeguard the Fourth Amendment rights of North Carolina citizens in the performance of their daily work.

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II. THE CASE

Griffin arises from the arrest of Kevin Earl Griffin for driving while impaired.[1] On the night of January 5, 2009, North Carolina Highway Patrol Trooper Scott Casner conducted a driver's license checkpoint on Highway 306 in Pamlico County.[2] At approximately 9:55 p.m., Trooper Casner observed Griffin's vehicle approach the checkpoint, make a left turn onto the shoulder of the road, and then position his car in the opposite direction.[3] Trooper Casner immediately pulled up behind Griffin's vehicle and requested his driver's license.[4] At that point, Trooper Casner detected the odor of alcohol on Griffin, and subsequently charged Griffin for driving while impaired.[5]

On June 4, 2010, Griffin filed a motion to suppress all evidence obtained from the traffic stop.[6] Griffin argued that the checkpoint was unconstitutional and therefore his actions in turning around the vehicle did not constitute sufficient reasonable suspicion for the stop.[7] The trial court denied Griffin's motion to suppress, finding that there was reasonable and articulable suspicion for Trooper Casner to stop Griffin.[8] Griffin pled "no contest" to driving while impaired, but reserved his right to appeal the pre-trial ruling denying his motion to suppress.[9]

In a unanimous and unpublished opinion, the North Carolina Court of Appeals reversed the trial court's denial of Griffin's motion to suppress and vacated the resulting judgment.[10] The court analyzed the constitutionality of the checkpoint, and found that there were not enough facts in the record to conclude that the checkpoint at issue was appropriately tailored to fit its primary purpose of checking each driver for a valid driver's license.[11] The court therefore held "that the checkpoint violated defendant's constitutional rights, and that the evidence obtained as a result of the checkpoint should have been suppressed."[12] Finding the checkpoint unconstitutional, the court did not

1. State v. Griffin, ___ N.C. ___, ___, ___ S.E.2d ___, ___, No. 451PA12, 2013 WL 1501643, at *1 (2013).

2. *Id.*

3. State v. Griffin, 732 S.E.2d 394, 2012 WL 4501653, at *1 (N.C. Ct. App. Oct. 2, 2012), *rev'd*, No. 451PA12, 2013 WL 1501643 (N.C. Apr. 12, 2013).

4. *Id.*

5. *Id.*

6. *Griffin*, ___ N.C. at ___, ___ S.E.2d at ___, 2013 WL 1501643, at *1.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Griffin*, 732 S.E.2d 394, 2012 WL 4501653, at *3. .

12. *Id.*

address whether there was reasonable suspicion for Trooper Casner to stop Griffin's vehicle.[13]

The State petitioned the North Carolina Supreme Court for discretionary review pursuant to N.C. Gen. Stat. § 7A-31.[14] The Court, in a 6-to-1 opinion authored by Justice Newby, reversed the decision of the Court of Appeals and held that "[g]iven the place and manner of defendant's turn in conjunction with his proximity to the checkpoint . . . there was reasonable suspicion that defendant was violating the law; thus the stop was constitutional."[15] The Court further determined that it was not necessary to address the constitutionality of the checkpoint because there were sufficient grounds for reasonable suspicion independent of the existence of the checkpoint.[16]

In her dissenting opinion, Justice Beasley disagreed with the majority's holding that reasonable suspicion could be found independent of the existence of the checkpoint.[17] Justice Beasley explained that, while the presence of a checkpoint can be a factor for the court to consider, "the trial court must also determine the validity of the checkpoint if it is to be used in determining whether there was reasonable suspicion to stop a vehicle because it turned away from the checkpoint."[18] Justice Beasley further pointed out that, "[w]ithout the checkpoint, Trooper Casner would not have been in a position to observe defendant's turn and defendant would not have been in a position to allegedly avoid the checkpoint."[19] Further, Justice Beasley emphasized the fact that Trooper Casner's testimony at the suppression hearing left the legality of Griffin's actions uncertain.[20] She stated that "while it is clear that defendant did not turn at a major intersection of roadways, Trooper Casner's recollection of the point on the road at which defendant turned was inconsistent."[21] Justice Beasley concluded that "[the] turn was legal and, by Trooper Casner's own admission, it was unclear whether defendant was indeed attempting to turn around."[22] Justice Beasley recommended remanding the case to the trial court for further findings regarding the constitutionality and statutory validity of the driver's license checkpoint, and that if the trial court found that the checkpoint was valid, the existence of the checkpoint could be factored into the "time, place, and manner" anal-

13. *Griffin*, ___ N.C. at ___, ___ S.E.2d at ___, 2013 WL 1501643, at *1.
14. *Id.* at ___, ___ S.E.2d at ___, 2013 WL 1501643, at *1-2.
15. *Id.* at ___, ___ S.E.2d at ___, 2013 WL 1501643, at *2.
16. *Id.*
17. *Id.* at ___, ___ S.E.2d at ___, 2013 WL 1501643, at *2-3 (Beasley, J., dissenting).
18. *Id.* at ___, ___ S.E.2d at ___, 2013 WL 1501643, at *4.
19. *Id.*
20. *Id.*.
21. *Id.*
22. *Id.*.

ysis to determine whether there was reasonable articulable suspicion for the traffic stop.[23]

III. BACKGROUND

The Fourth Amendment to the United States Constitution protects individuals "against unreasonable searches and seizures."[24] The primary purpose of the Fourth Amendment is to "impose a standard of 'reasonableness' upon the exercise of discretion of . . . law enforcement agents, in order to 'safeguard the privacy and security of individuals against arbitrary invasions.'"[25] *Griffin* implicates the Fourth Amendment because "[a] traffic stop is a seizure 'even though the purpose of the stop is limited and the resulting detention quite brief.'"[26] "While license checks . . . are not *per se* unconstitutional, it is well established that stopping a person at such checkpoints is a seizure within the meaning of the Fourth Amendment and therefore must be reasonable."[27] "A search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing."[28] Checkpoint stops are not based on "individualized suspicion," and therefore must be "carried out in a manner that avoids the exercise of 'unbridled discretion' by officers in the field.'"[29] However, "[b]ecause checkpoint stops are minimally intrusive, and are not subjective stops, like those arising from roving patrols, checkpoints are viewed with less scrutiny than are roving patrols"[30] Thus, a checkpoint stop conforms to the Fourth Amendment if it is reasonable, and the reasonableness of the checkpoint (hence its constitutionality) must be judged on the basis of the individual circumstances.[31]

Pursuant to the Fourth Amendment, a search conducted without a warrant is "unreasonable unless it falls within one of the 'well delineated exceptions' to the warrant requirement."[32] "One such exception is the authority of law enforcement officers to effect a limited investi-

23. *Id.*(citing State v. Foreman, 351 N.C. 627, 629, 527 S.E.2d 921, 923 (2000)).

24. U.S. Const. amend. IV.

25. Delaware v. Prouse, 440 U.S. 648, 653–54 (1979) (quoting Marshall v. Barlow's Inc., 436 U.S. 307, 312 (1978)).

26. State v. Barnard, 362 N.C. 244, 246, 658 S.E.2d 643, 645 (2008) (quoting *Prouse*, 440 U.S. at 653).

27. State v. Mitchell, 358 N.C. 63, 72, 592 S.E.2d 543, 549 (2004) (Brady, J, dissenting) (citing Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 450 (1990); *Prouse*, 440 U.S. at 653–54).

28. City of Indianapolis v. Edmond, 531 U.S. 32, 37 (2000) (citing Chandler v. Miller, 520 U.S. 305, 308 (1997)).

29. *Mitchell*, 358 N.C. at 72, 592 S.E.2d at 549 (Brady, J., dissenting) (quoting *Prouse*, 440 U.S. at 663).

30. *Id.* at 66, 592 S.E.2d at 545 (majority opinion).

31. *See id.* (quoting Illinois v. Lidster, 540 U.S. 419, 426 (2004)).

32. United States v. Smith, 396 F.3d 579, 583 (4th Cir. 2005) (quoting Katz v. United States, 389 U.S. 347, 357 (1967)).

gatory detention when they possess 'a reasonable and articulable suspicion that the person seized is engaged in criminal activity.'"[33] Two kinds of traffic stops include "investigatory" traffic stops and traffic stops based on a "perceived traffic violation".[34] Traffic stops based on a perceived violation require the standard of probable cause; while investigatory stops require only the reasonable, articulable suspicion standard.[35] The United States Supreme Court has explained that "reasonable, articulable suspicion" is "'a particularized and objective' basis for suspecting the person stopped of criminal activity."[36]

North Carolina courts have interpreted the reasonable and articulable suspicion standard to require that "[t]he stop . . . be based on specific and articulable facts, as well as the rational inferences from those facts, as viewed through the eyes of a reasonable, cautious officer, guided by his experience and training."[37] In determining whether reasonable suspicion exists, the court must consider the totality of the circumstances.[38] "Consistent with the totality of the circumstances approach, a court must ascertain whether all of the circumstances *taken together* amount to reasonable suspicion."[39] The fundamental question in *Griffin* is whether the defendant's actions in turning away from the checkpoint were sufficient to constitute reasonable articulable suspicion without a consideration of the constitutionality of the checkpoint.[40]

The reasonable, articulable suspicion standard has been applied to investigatory traffic stops since *Terry v. Ohio* in 1968.[41] This application was upheld by the United States Supreme Court of the United States in 2000 in *Illinois v. Wardlow*.[42] In *Wardlow*, the Court explained that, "[w]hile 'reasonable suspicion' is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires

33. *Id.* (quoting Reid v. Georgia, 448 U.S. 438, 440 (1980) (per curiam); Terry v. Ohio, 392 U.S. 1, 21–22 (1968)).

34. *Barnard*, 362 N.C. at 250, 658 S.E.2d at 647.

35. *See id.*

36. *Smith*, 396 F.3d at 583 (quoting Ornelas v. United States, 517 U.S. 690, 696 (1996); United States v. Cortez, 449 U.S. 411, 417 (1981)).

37. *Barnard*, 362 N.C. at 247, 658 S.E.2d at 645 (quoting State v. Watkins, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994); *Terry*, 392 U.S. at 21–22).

38. *Id.* (quoting *Watkins*, 337 N.C. at 441; *Cortez*, 449 U.S. at 417).

39. *Id.* at 250, 658 S.E.2d at 647 (Brady, J., dissenting) (emphasis in original) (citing United States v. Sokolow, 490 U.S. 1, 9 (1989)).

40. *See* State v. Griffin, ___N.C.___, ___, ___S.E.2d.___, ___, No. 451PA12, 2013 WL 1501643, at *2(2013).

41. *Barnard*, 362 N.C. at 249, 658 S.E.2d at 646 (Brady, J., dissenting); *see also Terry*, 392 U.S. 1 (holding that, consistent with the Fourth Amendment, an officer may conduct a brief, investigatory stop when faced with reasonable, articulable suspicion of criminal activity).

42. *See* Illinois v. Wardlow, 528 U.S. 119 (2000).

at least a minimal level of objective justification for making the stop."[43]

In *Griffin*, both the majority and the dissent relied on *State v. Foreman* to resolve the issue presented.[44] In *Foreman*, the defendant was arrested and charged with driving while impaired after turning away from a checkpoint.[45] At 2:00 a.m. an officer observed the defendant's vehicle make a "quick left turn" immediately before passing the checkpoint notice signs.[46] Unlike in *Griffin*, the officer did not immediately pull over the vehicle, but rather followed the defendant as she made a second abrupt left turn.[47] The defendant then pulled into a residential driveway and turned off the car lights and ignition.[48] The officer testified that he was able to see people crouched down inside the car.[49] The officer then approached the vehicle and observed several containers of alcohol in the vehicle, and a strong smell of alcohol both in the car and on the defendant.[50] Before trial, the defendant moved to suppress the officer's observations, arguing that the evidence was inadmissible because of an invalid stop and seizure.[51] The trial court denied the defendant's motion to suppress, and the North Carolina Court of Appeals affirmed.[52]

The North Carolina Supreme Court modified and affirmed the decision of the Court of Appeals, reasoning that, "[a]lthough we disapprove of the Court of Appeals' conclusion that a legal turn away from a DWI checkpoint, upon entering the checkpoint's perimeters, cannot justify an investigatory stop, we find no error in defendant's conviction."[53] The Court explained that, while "a legal turn, by itself, is *not* sufficient to establish a reasonable, articulable suspicion, a legal turn in conjunction with other circumstances, such as the time, place and manner in which it is made, *may* constitute a reasonable, articulable suspicion which could justify an investigatory stop."[54] Therefore, "if defendant was seized solely based on a legal left turn preceding the DWI checkpoint, that seizure was unconstitutional."[55] The Court held that

43. *Id.* at 123 (quoting *Sokolow*, 490 U.S. at 7).
44. *See Griffin*,___N.C. at___,___S.E.2d at ___ 2013 WL 1501643, at *3, *4.
45. State v. Foreman, 351 N.C. 627, 628, 527 S.E.2d 921, 922 (2000).
46. *Id.* at 629, 527 S.E.2d at 922.
47. *Id.*
48. *Id.*
49. *Id.*
50. *Id.* at 629, 527 S.E.2d at 923.
51. *Id.* at 628–30, 527 S.E.2d at 923.
52. *Id.* at 628, 527 S.E.2d at 922.
53. *Id.*.
54. *Id.* at 631, 527 S.E.2d at 923 (emphasis in original). .
55. *Id.* at 630, 527 S.E.2d at 923.

> it is reasonable and permissible for an officer to monitor a checkpoint's entrance for vehicles whose drivers may be attempting to avoid the checkpoint, and it necessarily follows that an officer, *in conjunction with the totality of the circumstances* . . . may pursue and stop a vehicle which has turned away from a checkpoint within its perimeters for reasonable inquiry to determine why the vehicle turned away.[56]

Further, the Court emphasized in dicta that "it is constitutionally permissible, and undoubtedly prudent, for officers to *follow* vehicles that legally avoid DWI checkpoints, in order to ascertain whether other factors exist which raise a reasonable and articulable suspicion that an occupant of the vehicle is engaged in criminal activity."[57]

Four years later in *State v. Mitchell*, the North Carolina Supreme Court again considered the issue of reasonable and articulable suspicion surrounding a traffic checkpoint.[58] In *Mitchell*, the defendant was arrested and charged with driving while impaired after he refused to stop at a driver's license checkpoint.[59] At 4:15 a.m., the defendant approached the checkpoint, and when the officer directed the defendant to stop, the defendant sped up and drove through the checkpoint.[60] The officer pursued the defendant, who finally stopped after over a mile.[61] The defendant moved to suppress the stop and arrest, contending that the traffic checkpoint was unconstitutional.[62] Citing *Foreman*, the Court found that the officer did have sufficient reasonable articulable suspicion to stop the defendant independent of the checkpoint.[63] However, the Court noted that the facts of the case "[did] not deal with the circumstance where a driver makes a *legal* turn away from a checkpoint."[64]

In his dissent, Justice Brady explained that "[p]olice officers may certainly develop reasonable articulable suspicion to stop a car based upon their observations, unrelated to the checkpoint, that a crime has been committed. Armed with such suspicion, the officers' seizure of the vehicle is proper regardless of the constitutionality of the checkpoint."[65] Justice Brady disagreed with the majority's resolution of the

56. *Id.* at 632-33, 527 S.E.2d at 924 (emphasis added).
57. *Id.* at 633, 527 S.E.2d at 925 (Frye, C.J., concurring) (emphasis added).
58. *See Mitchell*, 358 N.C. 63, 66-69, 592 S.E.2d 543, 545-46 (2004).
59. *See id.* at 64-65, 592 S.E.2d at 544.
60. *See id.* at 65-69, 592 S.E.2d at 544-47.
61. *Id.* at 66, 592 S.E.2d at 544.
62. *Id* at 65, 592 S.E.2d at 544–45.
63. *Id.* at 69-70, 592 S.E.2d at 546–47 (quoting State v. Foreman, 351 N.C. 627, 631, 527 S.E.2d 921, 923 (2000); citing, N.C. GEN. STAT. §§ 20-140(a), 141.5(a) (2001) ("[W]ithout concluding that defendant committed any crimes . . . [the officer] had reasonable articulable suspicion that defendant committed several crimes: assaulting a police officer, 'attempting to elude a law enforcement officer who is in the lawful performance of his duties' . . . and driving a vehicle 'carelessly and heedlessly in willful or wanton disregard of the rights or safety of others.'").
64. *Id.* at 69, 592 S.E.2d at 547 (emphasis added).
65. *Id.* at 71, 592 S.E.2d at 548 (Brady, J., dissenting).

case based on a finding of reasonable suspicion, and instead believed that the paramount question of the case should have been the constitutionality of the checkpoint.[66] Justice Brady pointed out that, pursuant to the arresting officer's testimony at the suppression hearing, the defendant's vehicle was stopped solely as a result of the random checkpoint.[67] Therefore, "[a]s the license checkpoint was the impetus for defendant's stop, the determinative issue is . . . [whether] the random license checkpoint [was] unreasonable and therefore unconstitutional[.]"[68]

The majority in *Griffin* cited to the persuasive Fourth Circuit opinion of *United States v. Smith*.[69] In *Smith*, the defendant was arrested after turning away from a driver's license checkpoint in Durham, North Carolina.[70] At approximately 3:00 a.m., the arresting officer observed that the defendant approached the checkpoint and then "appeared to slam on [his] brakes."[71] The defendant then made a left turn onto a private gravel driveway leading to a single residence.[72] Based on these observations, the officer followed the defendant down the driveway and eventually charged the defendant with possession of a firearm by a convicted felon.[73] The Court held that

> when law enforcement officers observe conduct suggesting that a driver is attempting to evade a police roadblock—such as unsafe or erratic driving or behavior indicating the driver is trying to hide from officers—police *may take that behavior into account* in determining whether there is reasonable suspicion to stop the vehicle and investigate the situation further.[74]

Therefore, the court explained that, while evasion of a road block is not alone dispositive, it is a factor to consider in determining whether there is sufficient reasonable suspicion to investigate further.[75]

Justice Beasley's dissent in *Griffin* pointed out that North Carolina precedent "has been less than clear on how a trial court should approach a constitutional analysis of a checkpoint."[76] The statutory validity of traffic checkpoints in North Carolina is governed by N.C. Gen. Stat. § 20-16.3A (2011); however, "mere compliance with [this

66. *Id.*
67. *Id.*
68. *Id.* at 72, 592 S.E.2d at 548.
69. *See* State v. Griffin, ___ N.C. at ___, ___ S.E.2d at ___, No. 451PA12, 2013 WL 1501643, at *3 (2013).
70. . United States v. Smith, 396 F.3d 579, 581–82 (2005).
71. *Id.* at 581.
72. *Id.*
73. *Id.* at 581–82.
74. *Id.* at 585 (emphasis added).
75. *See id.*
76. State v. Griffin, ___ N.C. ___, ___, ___ S.E.2d___, ___, 2013 WL 1501643, at *5 (2013) (Beasley, J., dissenting).

statute] does not insulate a checkpoint from constitutional scrutiny."[77] Justice Beasley attempted to synthesize this ambiguous jurisprudence, and pointed to both *Mitchell* and *Foreman* for guidance. She interpreted *Mitchell* as setting out two factors for trial courts to consider in determining the constitutionality of a checkpoint: (1) whether a supervisor approved the checkpoint, and (2) whether the officer conducting the checkpoint abided by the supervisor's instructions for the checkpoint.[78] Justice Beasley's dissent also explained that the North Carolina Court of Appeals has identified a list of non-exclusive factors for trial courts to consider in their analysis, but these factors are not determinative and have not been adopted by the North Carolina Supreme Court.[79] Further, she noted that *Foreman* cites *Michigan Dep't of State Police v. Sitz* where "[t]he United States Supreme Court held that DWI checkpoints are constitutional if vehicles are stopped according to a neutral, articulable standard (e.g., every vehicle) and if the government interest in conducting the checkpoint outweighs the degree of the intrusion."[80] Justice Beasley reasoned that, based on *Foreman's* reliance on *Sitz*, North Carolina trial courts should be guided by United States Supreme Court case law, as well as *Mitchell*, in determining the constitutionality of traffic checkpoints.[81]

In *Brown v. Texas*, the United States Supreme Court explained that a constitutional determination of the reasonableness of a stop "involves a weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty."[82] Pursuant to the Fourth Amendment, "a seizure must be based on specific, objective facts indicating that society's legitimate interests require the seizure of the particular individual, or that the seizure must be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers."[83]

In *Griffin*, the majority also relied on *State v. Barnard*.[84] In *Barnard*, the North Carolina Supreme Court considered whether a defendant's constitutional rights were violated by a traffic stop that led to

77. *Id.*("The General Assembly cannot interpret the North Carolina Constitution or United States Constitution; that is a power that belongs exclusively to the judicial branch." (internal citations omitted)).

78. *Id.* (citing *Mitchell*, 358 N.C. at 72, 592 S.E.2d at 549).

79. *Id.* (citing State v. Rose, 170 N.C. App. 284, 612 S.E.2d 336 (2005); State v. Veazey, 191 N.C. App. 181, 662 S.E.2d 683 (2008); *Sitz*, 496 U.S. 444)

80. *Id.* (quoting *Foreman*, 351 N.C. at 629, 527 S.E.2d at 922; *Sitz*, 496 U.S. 444).

81. *Id.*

82. Brown v. Texas, 443 U.S. 47, 50–51 (1979).

83. *Id.* at 51 (citing Delaware v. Prouse, 440 U.S. 648, 663(1979)).

84. *See Griffin*, ___ N.C. at ___, ___ S.E.2d at ___, 2013 WL 1501643, at *2.

his conviction.[85] At approximately 12:15 a.m. an officer pulled up behind the defendant at a stoplight.[86] After the light turned green, the defendant remained stopped for approximately thirty seconds before making a legal left turn.[87] Based on these facts, the officer then initiated a stop of the vehicle which led to the defendant's arrest.[88] The trial court denied the defendant's motion to suppress, and a divided Court of Appeals panel found no error.[89] The North Carolina Supreme Court, in a 5-to-2 majority opinion written by Justice Newby, held that "[the] defendant's thirty-second delay at a green traffic light under these circumstances gave rise to a reasonable, articulable suspicion that defendant may have been driving while impaired[.]"[90] The Court therefore found that the stop of the defendant's vehicle was constitutional.[91]

In a vehement dissent, Justice Brady strongly disagreed with the majority's reasoning, and stated that "standing alone, [the thirty-second delay] could not have raised a reasonable, articulable suspicion that defendant was engaged in criminal activity."[92] Justice Brady explained that "appellate courts should take great care not to set the standard of reasonable, articulable suspicion so low that the Fourth Amendment is rendered meaningless."[93] Citing *Brown*, Justice Brady stated that "the requisite degree of suspicion must be high enough 'to assure that an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field.'"[94] He pointed out that the North Carolina Supreme Court "now stands alone among the nation's courts of last resort in holding that a single factor susceptible of *innocent* explanation can give rise to a reasonable, articulable suspicion that *criminal* activity is afoot."[95] Justice Brady poignantly forecasted that "the majority has lowered the threshold of the Fourth Amendment's standard of reasonable, articulable suspicion to an unacceptable level, dangerously exposing the citizens of North Carolina to the potential for unreasonable and arbitrary police practices unchecked by our state's trial and appellate courts."[96]

85. *Barnard*, 362 N.C. at 244, 658 S.E.2d at 644 (2008).
86. *Id.* at 245, 658 S.E.2d at 644.
87. *Id.*
88. *Id.*
89. *Id.* at 246, 658 S.E.2d at 644.
90. *Id.* at 244–45, 658 S.E.2d at 644.
91. *Id.* at 245, 658 S.E.2d at 644.
92. *Id.* at 248, 658 S.E.2d at 646 (Brady, J., dissenting).
93. *Id.* at 251, 658 S.E.2d at 647.
94. *Id.* (citing Brown v. Texas, 443 U.S. 47, 50–51(1979)).
95. *Id.* at 259-60, 658 S.E.2d at 653 (emphasis in original).
96. *Id.* at 248, 658 S.E.2d at 646.

IV. ANALYSIS

In *Griffin*, the North Carolina Supreme Court allowed discretionary review of a unanimous unpublished Court of Appeals decision, and had the opportunity to resolve a consistently unclear issue in North Carolina's jurisprudence; namely, what is the proper constitutional analysis that trial courts should apply to traffic checkpoints?[97] However, rather than resolve the ambiguity, the Court further muddies the water of North Carolina precedent, and establishes a rule that endangers the Fourth Amendment rights of all North Carolina citizens.

The rule established in *Griffin* can be understood as follows: *any* turn away from a driver's license checkpoint is, alone, sufficient to establish reasonable articulable suspicion to justify an investigatory traffic stop, without a consideration of the constitutionality of said checkpoint.[98] Because the trial court did not make any clear findings or conclusions regarding the legality of Griffin's actions, this rule must be read to apply to any turn away from a checkpoint, legal or illegal.[99] Further, this rule even applies to a legal turn away from an unconstitutional checkpoint. The trial court did not engage in a constitutional analysis of the checkpoint, and the Court of Appeals subsequently ruled that the checkpoint was unconstitutional.[100] Thus, by only addressing the issue of reasonable suspicion, the North Carolina Supreme Court has established that any turn away from a checkpoint can be sufficient to constitute reasonable suspicion, even where there are insufficient findings from the trial court to determine either the legality of the turn or the constitutionality of the checkpoint.[101]

Trial courts should apply the *Griffin* rule with caution in order to properly safeguard the Fourth Amendment rights of criminal defendants. In her dissent, Justice Beasley pointed out that there were insufficient findings of fact and conclusions of law by the trial court regarding the statutory validity of the checkpoint under N.C. Gen. Stat. § 20-16.3A.[102] While she explained that, given a different set of facts, reasonable suspicion could be found without considering the existence of a checkpoint; in *Griffin,* "there [was] no basis for reasonable suspicion independent of the checkpoint."[103] Justice Beasley emphasized that the arresting officer did not identify a moving violation or other violation of the law when observing Griffin's turn, and had he "been stationed along the highway to check for speeding or other traf-

97. *See generally* State v. Griffin, ___ N.C. ___, ___ S.E.2d ___, 2013 WL 1501643 (2013).
98. *See id.* at ___, ___S.E.2d at ___, 2013 WL 1501643 at*6 (Beasley, J. dissenting).
99. *See id.* at___, ___ S.E.2d at ___, 2013 WL 1501643, at *7 (Beasley, J., dissenting).
100. *Id.* at ___, ___ S.E.2d at ___, 2013 WL 1501643, at *1 (majority opinion).
101. *See id.* at ___, ___ S.E.2d at ___, 2013 WL 1501643, at *1.
102. *Id.* at ___, ___ S.E.2d at ___, 2013 WL 1501643, at *5 (Beasley, J., dissenting).
103. *Id.* at ___, ___ S.E.2d at ___, 2013 WL 1501643, at *6.

fic violations, he could not have stopped defendant based solely on his legal turn."[104] Justice Beasley soundly concluded that, because the officer's suspicion was aroused solely based on the existence of a checkpoint, the constitutionality of the checkpoint must be decided.[105]

Disregarding the problematic *Griffin* rule will not leave law enforcement officers without recourse to apprehend motorists who legally attempt to evade valid traffic checkpoints. It is prudent police practice for officers to follow vehicles that avoid checkpoints "in order to ascertain whether other factors exist which raise a reasonable and articulable suspicion that an occupant of the vehicle is engaged in criminal activity."[106] In fact, in almost every case cited by the majority in which the stop and seizure was upheld as constitutional, the officer did not immediately pull over the vehicle, but rather followed the defendant until there was reasonable suspicion sufficient to satisfy the Fourth Amendment.[107] By allowing officers to forego the prudent and necessary step of following evading motorists, *Griffin* has sanctioned the use of traffic checkpoints in a manner that allows for "the exercise of 'unbridled discretion' by officers in the field."[108]

The majority in *Griffin* discussed *Foreman* in an apparent attempt to find precedential support for its decision.[109] *Foreman* explained that "a legal turn, by itself, is *not* sufficient to establish a reasonable, articulable suspicion, [however,] a legal turn in conjunction with other circumstances, such as the time, place and manner in which it is made, *may* constitute a reasonable, articulable suspicion which could justify an investigatory stop."[110] The majority attempted to apply this rule by stating, "[g]iven the place and manner of defendant's turn in conjunction with his proximity to the checkpoint, we hold there was reasonable suspicion that defendant was violating the law; thus the stop was constitutional."[111] *Griffin* reasoned that "even a legal turn, when viewed in the totality of the circumstances, may give rise to reasonable

104. *Id.*

105. *Id.*.

106. State v. Foreman, 351 N.C. 627, 630-31, 527 S.E.2d 921, 923 (2000).

107. *See, eg., id.* (explaining that the officer followed the defendant and observed her pull into a residential driveway and crouch down to avoid detection by law enforcement); State v. Mitchell, , 358 N.C. 63, 72, 592 S.E.2d 543, 549 (noting that the defendant drove through the checkpoint and the officer followed him for over one mile); United States v. Smith, 396 F.3d 579 (explaining that the officer followed the defendant and observed the defendant pull into a residential driveway). *But see Barnard*, 362 N.C. 244, 658 S.E.2d 643 (noting that the defendant waited at a green light for thirty seconds and the officer immediately pulled him over).

108. State v. Mitchell, 358 N.C. 63, 72, 592 S.E.2d 543, 549 (quoting Delaware v. Prouse, 440 U.S. 648,663).

109. *See Griffin*, ___ N.C. at ___, ___ S.E.2d at ___, 2013 WL 1501643, *2.

110. *Foreman*, 351 N.C. at 631, 527 S.E.2d at 923.

111. *Griffin*, ___ N.C. at ___, ___ S.E.2d at ___, 2013 WL 1501643, at *2.

suspicion."[112] However, the Court does not identify what was considered in their analysis of the "place and manner" of the turn; in fact, the only circumstance it explicitly identified in its totality of the circumstances analysis is the existence of the driver's license checkpoint.[113] Therefore, as Griffin's proximity to the checkpoint was the sole factor explicitly considered by the majority, it is incomprehensible how a judgment could be issued on the merits without a constitutional analysis of said checkpoint.

The majority in *Griffin* did not make a determination regarding the legality of Griffin's turn, but characterized Griffin's actions as "more suspicious" than the defendants' actions in *Foreman* and *Smith*.[114] In *Foreman* the defendant deliberately attempted to evade the police at 2:00 a.m. by hiding in her car in a residential driveway.[115] In *Smith*, the defendant slammed on his breaks at approximately 3:00 a.m. and, in an attempt to elude the pursuing officer, pulled into a residential driveway.[116] The majority did not provide any support for its statement that Griffin's turn in the middle of the road was "more suspicious" than the defendant's turn onto a connecting street in *Foreman,* or the defendant's turn into a private driveway in *Smith*.[117] In her dissent, Justice Beasley explained that the trial court's order did not contain any findings that Griffin was driving erratically or irresponsibly, and that the arresting officer's own testimony suggests the turn was legal.[118]

The North Carolina Supreme Court was not required to decide *Griffin* after the Court of Appeals issued a unanimous and unpublished opinion on the matter; the opinion had no precedential value and therefore no impact on the state's jurisprudence.[119] In exercising its discretion to hear *Griffin*, the Court should have used this opportunity to establish a clear rule as to how trial courts should conduct a constitutional analysis of traffic checkpoints. Instead, the Court chose to not address the matter. By avoiding the creation of a clear rule, the court has established a rule that is problematic and severely jeopardizes the constitutional rights of motorists in North Carolina. As it stands, law enforcement officers have no clear directive as to when and for what reasons they can initiate a stop of a vehicle that has

112. *Id.* .

113. *See id.*

114. *Id.*

115. *Id.* at ___, ___ S.E.2d at ___, 2013 WL 1501643, at *6 (Beasley, J., dissenting) (citing *Foreman*, 351 N.C. at 633, 527 S.E.2d at 922–23).

116. *Id.* citing United States v. Smith, 396 F.3d 579,581 (2004))

117. *Id.* at ___, ___ S.E.2d at ___, 2013 WL 1501643, at *2 (majority opinion).

118. *Id.* at ___, ___ S.E.2d at ___, 2013 WL 1501643, at *7 (Beasley, J., dissenting).

119. N.C. GEN. STAT. § 7A-31 (2011).

turned away from a checkpoint. Further, trial courts have no guidance as to how to determine the constitutionality of checkpoints.

The rule established in *Griffin* is especially disturbing when viewed in light of *Barnard*, also authored by Justice Newby. *Barnard* established that "a single factor susceptible of *innocent* explanation can give rise to a reasonable, articulable suspicion that *criminal* activity is afoot."[120] After *Griffin*, such a "single factor" can be now determinative, even when coupled with unconstitutional police practices.[121] Justice Brady's language in his *Barnard* dissent is especially poignant in light of the court's ruling in *Griffin*; the "threshold of the Fourth Amendment's standard of reasonable, articulable suspicion" has been lowered "to an unacceptable level[.]"[122] North Carolina citizens are now "dangerously expos[ed]" "to the potential for unreasonable and arbitrary police practices[.]"[123] Such a lowered standard clearly does not fulfill the primary purpose of the Fourth Amendment to "impose a standard of 'reasonableness' upon the exercise of discretion . . . of law enforcement agents, in order to 'safeguard the privacy and security of individuals against arbitrary invasions."[124] Rather, as Justice Beasley forewarned in her dissent, the majority's decision in *Griffin* will "give police officers *carte blanche* to set up illegal checkpoints and stop motorists for no other reasoning than that they simply turned around."[125] Therefore, with *Griffin* and *Barnard*, the North Carolina Supreme Court has virtually stripped North Carolina motorists of their Fourth Amendment rights and has given the State exactly "the sort of unchecked power that the Fourth Amendment seeks to prevent."[126]

V. CONCLUSION

The North Carolina Supreme Court had the opportunity to resolve an area of particular ambiguity in our state's jurisprudence in *Griffin*. Instead, the Court chose to issue a ruling that has a profound and detrimental impact on the constitutional rights of all North Carolina citizens. This state's highest court has now sanctioned the use of a single factor, susceptible of innocent explanation, to be determinative

120. State v. Barnard, 362 N.C. at 259-60, 658 S.E.2d 643,652 (2008) (Brady, J., dissenting) (emphasis in original).

121. *See id.*

122. *See id.* at 248, 659 S.E.2d at 646.

123. *See id.*

124. Delaware v. Prouse, 440 U.S. 648, 653–54 ("persons in automobiles on public roadways may not for that reason alone have their travel and privacy interfered with at the unbridled discretion of police officers." *Id.* at 663).

125. State v. Griffin, ___ N.C.___ , ___, ___ S.E.2d ___, ___, 2013 WL 1501643, *6 (Beasley, J., dissenting).

126. *Id.*

of reasonable suspicion, even when accompanied by unconstitutional police practices. Further, the Court did not provide any guidance, and in fact only contributed confusion and uncertainty to law enforcement officers and trial courts who must attempt to apply this rule in their daily work.