

## DUI checkpoint controversy rages on

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Posted: Wednesday, July 10, 2013 8:46 pm

The issue regarding the legality of sobriety checkpoints has morphed into a national debate this week in light of a controversial video involving a Rutherford County Sheriff's Office deputy accused of violating a man's rights during a Fourth of July roadblock.

With nearly four million views on YouTube already, the viral video features Deputy A.J. Ross interacting with 21-year-old Chris Kalbaugh, a Middle Tennessee State University student who is a member of the Rutherford County chapter of the Libertarian Party of Tennessee.



Deputy A.J. Ross commands Chris Kalbaugh (left) to exit his vehicle during a July 4, 2013, DUI checkpoint conducted by the Rutherford County Sheriff's Office and Tennessee Highway Patrol in Murfreesboro, Tenn. (Photo courtesy of C. Kalbaugh)

Kalbaugh posted the video a few hours after being searched at a DUI checkpoint in Rutherford County.

The controversy has even garnered the attention of Bill O'Reilly, the Fox News host of "The O'Reilly Factor." O'Reilly discussed the issue during his show Wednesday night, only a few hours after Sheriff Robert Arnold appeared on the Nashville CBS news affiliate to defend the Sheriff's Office.

In light of the fact that Arnold refused to comment on the issue for nearly a week, anger has continued to swell throughout Rutherford County, so much so that the department's Facebook page was deactivated a few days ago.

During an interview with News Channel 5, Arnold admitted that he is surprised the video has gained national attention. And despite the backlash, he does not think Ross did anything wrong.

"I was very surprised it went viral," Arnold said during the interview. "What they are getting here is a one-sided bias view. ... (Ross) did not trash his constitutional rights."

Arnold, a first-term Republican sheriff who is up for re-election next year, also alleged that he has received threatening phone calls in retaliation over the incident.

"The past few days, we have had phone calls from all over the world," he said. "I personally have had phone calls at my house, threatening to decapitate my children."

He did not elaborate on whether the Sheriff's Office has requested the district attorney or Tennessee Bureau of Investigation launch a probe into the matter, nor did he explain why it has taken him nearly a week to publicly discuss the incident.

Much of the backlash from Rutherford County residents, as well as other Tennesseans, stems from what they have described as the outright disrespect Ross showed toward Kalbaugh.

“As a veteran, I was shocked and appalled by the behavior observed,” a man who wished to remain anonymous said in an e-mail that was sent to Rutherford County law enforcement officials. “The behavior of your officers at that checkpoint was utterly deplorable and an embarrassing representation of both your department and your city.

“The eyes of law-abiding citizens everywhere are now upon you. What are the consequences an officer can expect for this behavior from his department and elected officials?”

Integrity is doing the right thing even when no one is watching, upholding one’s oath to the U.S. and Tennessee constitutions and citizenry to an equal standard regardless of the presence of witnesses or a cellphone video, the man continued.

“Police officers everywhere, while in a difficult line of work, are held to a higher standard specifically because the public expects a level of integrity that is above reproach,” the man said.



### **Student cries foul over treatment**

Those remarks come on the heels of Kalbaugh’s claims that Ross violated his Fourth Amendment rights because he was held without just cause while a K-9 unit spent several minutes conducting a legal sniff on the outside of his car, only to falsely alert deputies to possible drugs.

Although Deputy Mike Hoekstra, who handles the K-9 officer, is heard pointing out that his dog did not give a strong alert, Ross is captured on the video searching the car, which did not have any illegal substances in it.

As a result, Kalbaugh was allowed to leave and did not receive any citations.

“I broke no laws, and I made sure to be respectful the entire time while still exercising my constitutional freedom,” Kalbaugh said in a statement released by the Libertarian Party. “The officers would not let me leave, but they would not answer if I was being detained.”

Contending that he does not use any illegal substances, Kalbaugh said he became furious when deputies told him the K-9 unit had made an alert, referred to as a “hit” by law enforcement officials, on the car.

“I knew that was impossible,” he said. “All of this happened because I did not want to lower my window all the way, which was completely legal. Later on, when (Ross) tried to open my door and pull me out of the vehicle, I was glad that my window was only partially open.”

Axl David, who serves as communications director for the Libertarian Party of Tennessee, insists no one involved with the video has claimed the sobriety checkpoints are unconstitutional.

David said the Libertarian Party has become concerned about how the Sheriff’s Office conducts DUI checkpoints, noting that is why members were advised to “record their interactions, should they find themselves going through a checkpoint during their routine travels.”

“So many media outlets have claimed the Libertarian Party is saying that the checkpoint is unconstitutional,” he said. “We are not saying that at all.”

Rather, David said he believes Kalbaugh's rights were violated because a K-9 unit was used during the roadblock.

“In a 2000 decision, the U.S. Supreme Court specifically prohibited suspicionless searches and banned the use of drug-sniffing dogs at roadblocks,” he said. “Mind you, I’m not a lawyer. But, I think the Supreme Court and U.S. Constitution speaks for itself.”

In addition, David noted Ross never asked if Kalbaugh was intoxicated even though he was questioned at a sobriety checkpoint.

Even so, it is obvious Ross knew Kalbaugh, who did not exhibit any signs of being intoxicated, was not driving under the influence based on their conversation and interaction with each other, David said.

Given the situation, he said, “We believe what transpired after that was unconstitutional because Ross clearly knew he was not intoxicated.”

### **Legal community reacts with mixed opinions**

Some defense attorneys and legal experts, on the other hand, say that by refusing to completely roll down his window when asked to do so, Ross could have interpreted Kalbaugh as being combative.

“The fact that he didn’t roll down his window does give the deputy the right to be suspicious,” said Joe Brandon Jr., a Murfreesboro criminal defense attorney. “By refusing to cooperate, he gave probable cause.”

Unlike being stopped by law enforcement for a traffic violation, Brandon said deputies already have probable cause to search a vehicle or to conduct a more thorough investigation of a resident because DUI checkpoints are usually voluntary.

“The location where DUI checkpoints will be conducted are published beforehand, so (Kalbaugh) could have avoided that area altogether,” he said. “Instead, he chose to participate and consent in the checkpoint.”

[Legal expert David Raybin](#), who is considered one of the foremost experts on Tennessee criminal laws, has made a similar argument, noting a driver may only be subjected to a stop and search if an officer has “reasonable suspicion that criminal activity is afoot.”

“The driver may refuse consent for investigation beyond what the officer can reasonably suspect,” he said. “What makes the encounter in the YouTube video different is that it occurred at a DUI checkpoint, not a traffic stop.”

Aside from those assessments, Raybin said the issue regarding the K-9 unit is a valid one that should be more closely examined because Hoekstra is recorded on the video conceding that “it wasn’t much of an alert.”

“A closer question is whether the search of the interior of the vehicle met constitutional muster based on the meager dog alert,” Raybin said.

Brandon agreed, saying Kalbaugh does have a valid argument about whether Hoekstra improperly handled the drug-sniffing dog while searching the outside of the vehicle.

“I have heard many complaints over the years about this very same issue,” Brandon said, adding he has had clients who also accused law enforcement officials of practically guiding a dog with their hand in order to get a hit on a vehicle.

“This is just the first time I’ve actually seen any evidence supporting those types of complaints,” he said, though he stopped short of directly implying or accusing Hoekstra of conducting the search in that questionable manner.

Brandon did say, however, he has never liked the idea of law enforcement officials having the legal right to search a vehicle without a warrant during a routine traffic stop.

“In my opinion,” he said, “drug-sniffing dogs are nothing but an excuse to search a vehicle.”