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Validity of police roadblocks or checkpoints for purpose of discovery of alcoholic intoxication—post-Sitz cases

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The following annotation addresses the current issues related to roadblocks erected by state or local police for discovering drunk drivers. The United States Supreme Court held in Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990), that a state's use of a highway sobriety checkpoint does not per se violate the Fourth Amendment to the United States Constitution. The United States Supreme Court decision, however, only addressed the issue of the inherent validity of sobriety checkpoints under the federal constitution. Before and after the Court's seminal decision, sobriety checkpoints were both struck down and upheld in several states on state constitutional principles. In those states where sobriety checkpoints have not been invalidated, the main focus has shifted away from the inherent constitutionality of sobriety checkpoints to the validity of the implementation of specific roadblocks. The reported case, State v. Downey, 945 S.W.2d 102, 74 A.L.R.5th 729 (Tenn. 1997), is representative of this shift in focus. In *Downey*, the Tennessee Supreme Court held that, while roadblocks are valid under the state constitution, the roadblock in question, having been improperly administered, was not. This annotation discusses the validity of sobriety checkpoints in light of Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990).

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I. PRELIMINARY MATTERS

§ 1[a] Introduction—Scope

This annotation [1] collects and discusses state cases pertaining to sobriety checkpoints erected by the police to combat the problem of drunken drivers. While the focus of this article is on case law issued after the decision of the United States Supreme Court in Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990), earlier cases will be examined if they are currently applicable.

Roadblocks erected to apprehend escaping criminals, deter illegal aliens, check drivers for valid licenses/car registrations, or inspect trucks for safety and regulatory violations (weigh stations) are beyond the scope of this annotation and will not be addressed unless relevant to the issue at hand. [2]

A number of states may have rules, regulations, and constitutional provisions or legislative enactments directly bearing on all of the above. These provisions are discussed herein only to the extent and in the form that they are reflected in the opinions of the various courts that fall within the scope of this annotation. The reader is consequently advised to consult the appropriate statutory or regulatory compilations to ascertain the current status of all the states discussed herein, including those listed in the Jurisdictional Table of Cited Statutes and Cases.

§ 1[b] Introduction—Related annotations

Related Annotations are located under the Research References heading of this Annotation.

§ 2[a] Summary and comment—Generally

It is beyond dispute that drunk driving causes carnage on the roadways of our nation. [3] It also cannot be challenged that "the use of highways and streets by vehicular traffic may be limited, controlled, and regulated by the responsible public authority in the exercise of the police power whenever and to the extent necessary to provide for and promote the safety and general welfare of the populace." [4]

It was against this backdrop that, like many states, Michigan established and implemented a sobriety checkpoint pilot program in 1986. Constitutionally challenged, the case ultimately made its way before the United States Supreme Court. In Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990), the Court held that a state's use of sobriety checkpoints did not violate the Fourth and Fourteenth Amendments to the United States Constitution. Acknowledging that "a Fourth Amendment seizure occurs when a vehicle is stopped at a checkpoint," the Court nonetheless determined that

such "seizures" are constitutionally "reasonable." Using the three–pronged balancing test enunciated in Brown v. Texas, 443 U.S. 47, 99 S. Ct. 2637, 61 L. Ed. 2d 357 (1979), the Court ruled that (1) the state had a compelling interest in preventing drunk driving; (2) the use of sobriety checkpoints was effective in achieving that goal; and (3) the level of intrusiveness on individual liberty was slight.

The United States Supreme Court's decision, however, only addressed the validity of sobriety checkpoints under the federal constitution. Both prior and subsequent to the Court's seminal 1990 decision, sobriety checkpoints were struck down in several states as violative of state constitutional principles (§ 3). Other states, meanwhile, have held that, while their respective state constitutions afford citizens greater protection than that arising from the Fourth Amendment, sobriety checkpoints are not per se violative of the state constitutions (§ 4).

Today, in those states where sobriety checkpoints have not been invalidated on state constitutional grounds, the main issue is no longer the inherent constitutionality of sobriety checkpoints. Instead, the constitutional focus has shifted to reviewing the implementation of specific roadblocks. While no mandatory checklist has been established to date in most states for consideration in assessing the constitutionality of specific sobriety checkpoints, numerous factors have been repeatedly identified by courts across the various jurisdictions.

The critical factor considered by courts in almost every jurisdiction where sobriety checkpoints are permissible concerns the amount of discretion exercised by police officers in the field (§ 5). If police officers in the field exercise an excessive amount of discretion, the roadblock will usually be held to have been constitutionally deficient.

Indeed, the issue of field officer discretion underlies many of the other factors that have been identified by courts reviewing specific sobriety checkpoints. For example, certain states require that roadblocks be carried out pursuant to, and sometimes in strict compliance with, a neutral plan, written or otherwise, that must be established in advance by upper– or supervisory–level personnel (§ 6). Other states have considered the sequence in which cars are stopped at the roadblock, with favor being granted to those checkpoints where cars are stopped in a neutral, non–discriminatory fashion (§ 9). Courts have also scrutinized the length of time that cars are detained at roadblocks, as well as the level of intrusion imposed on drivers by inquiring police officers (§ 8). Once again, the policy underlying all of these factors is the limitation of field officer discretion at the sobriety checkpoints.

Among other factors considered by courts is the choice of location for the roadblock (§ 10). In some states, the sobriety checkpoint must be conducted in a location where prior accidents or arrests for drunken driving have taken place. Courts have also considered the conditions that are put in place at a roadblock to provide for the safety of the traveling public, such as flashing lights, flares, signs, cones, and reflective clothing on police officers (§ 7). Often, these courts have not only been concerned for the physical safety of individuals, but also for the psychological effect (e.g., surprise, fright) that the strong show of force at a late night sobriety checkpoint can have on unsuspecting, innocent highway travelers. Similarly, other courts have considered whether the public was given advance notice, through the media or otherwise, of the intended roadblock (§ 11). Advance publicity, it has been held, not only informs travelers of what will be transpiring, but also can serve to deter individuals from drinking and driving in the first place. Courts have also given consideration to the effectiveness of less intrusive methods for combating drunken driving, such as roving patrols, where, in contrast to sobriety checkpoints, some level of suspicion is required before a motor vehicle can be stopped (§ 12).

Despite identification of the many above–mentioned factors, courts have rarely expressly indicated that any specific factors must be considered in reviewing the validity of a sobriety checkpoint, and it is rare that a deficiency in relation to one factor will invalidate an otherwise constitutionally conducted roadblock. [5]

Another issue that has arisen in connection with the conduct of sobriety checkpoints concerns whether police can chase and detain a motor vehicle that appears to attempt to avoid the roadblock; courts have come down on both sides of this issue (§ 13- 14).

§ 2[b] Summary and comment—Practice pointers

With the constitutional battle lost at the federal level, in states wherein state constitutional protection exceeds that of the federal constitution and sobriety checkpoints have not already been subjected to scrutiny under the state constitution, counsel should assert that the roadblock is unconstitutional on state grounds. This argument has already been successfully made in several states, including Louisiana, Minnesota, Oregon, Rhode Island, Washington, and, interestingly, Michigan. [6]

In states that accept the constitutionality of roadblocks, the focus of any argument should be on the manner in which the roadblock was conducted. Indeed, the United States Supreme Court left this very question open in Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990).

To successfully attack the validity of a roadblock, counsel is wise to focus on the various factors often examined in these cases: the extent of police discretion, whether an objective and neutral plan exists, the extent of any such plan and whether it was designed by upper echelon personnel, whether roadblock took into account and carried out appropriate safety conditions, the length of detention and the level of intrusion, the sequence in which cars were stopped, the location of the roadblock and how that decision was made, whether advance publicity was issued and the extent of that publicity, and how to handle drivers who sought to avoid the roadblock. [7]

A challenge may be directed to the training and experience of a police officer, challenging his expertise to make the initial determination as to which drivers should be administered field sobriety tests for intoxication. [8] Another argument to consider is whether other means exist that would be more effective than roadblocks in apprehending drunk drivers. [9]

As drunk driving is fought primarily by state and local authorities, the bulk of the case law emanates from the state, as opposed to the federal, level. Nonetheless, federal case law may be found concerning checkpoints erected to (1) detect equipment violations; [10] (2) search vehicles leaving railway parking lots; [11] (3) stop all cars leaving a national monument campground wherein gunshots were illegally fired; [12] (4) protect prison grounds; [13] (5) deter illegal aliens; [14] (6) check drivers' licenses, vehicle registrations, and proofs of insurance; [15] and (7) to detect illegal drugs. [16]

II. STATE CONSTITUTIONAL PRINCIPLES

§ 3. Checkpoints invalid under state constitutional law

[Cumulative Supplement]

The courts in the following cases, which were handed down both before and after the United States Supreme Court's decision in Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990), held that sobriety checkpoints were invalid under state constitutional provisions.

In State v. Henderson, 114 Idaho 293, 756 P.2d 1057 (1988), the Supreme Court of Idaho held that police roadblocks designed to detect and deter drunk drivers violated Art. 1, § 17 of the Idaho Constitution, where the police lacked express legislative authority, particularized suspicion of criminal wrongdoing, and prior judicial approval. In Idaho, a state statute allows a roadblock to be erected to apprehend an individual whom the police have a reasonable belief has broken the law. The court stated that suspicion of wrongdoing is a condition precedent to the institution of a roadblock in Idaho and determined that roadblocks are not an efficient means of deterring drunk driving.

In State v. Church, 538 So. 2d 993 (La. 1989), reh'g denied, (Mar. 2, 1989), the Supreme Court of Louisiana declared roadblocks designed primarily to detect drunken drivers unconstitutional under Article 1, Section 5 of the Louisiana Constitution of 1974. In so doing, the court anticipated that the roadblock in question might actually satisfy federal constitutional standards, citing Delaware v. Prouse, 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979). The Louisiana Constitution, however, was held to afford greater individual liberties than the Fourth Amendment and negated even a roadblock that was minimally intrusive, applied with neutral criteria, and motivated by a compelling governmental interest. Absent a reasonable suspicion or probable cause to believe that the defendant had committed, was about to commit, or was engaged in a criminal violation, the warrantless

stop of the defendant was not justified. The court, while acknowledging the pervasive societal problem presented by drunk drivers, also questioned the effectiveness of DWI roadblocks as opposed to other less intrusive means for detecting drunk drivers, such as roving patrols whose stops are based on articulable facts.

In Sitz v. Department of State Police, 443 Mich. 744, 506 N.W.2d 209 (1993), the Michigan Supreme Court, on remand after the seminal decision by the United States Supreme Court in Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990), reviewed in detail the history of automobile search and seizure law in Michigan and concluded that warrantless and suspicionless seizures of automobiles for the purpose of enforcing the criminal law violated Michigan's state constitution. Michigan's constitutional history, the court said, revealed that some level of suspicion was required for seizures conducted for the purpose of enforcing criminal laws.

Citing with favor the dissenting opinions of Justices Brennan, Stevens and Marshall in Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990), the Supreme Court of Minnesota declared sobriety checkpoints invalid under Article 1, Section 10 of the Minnesota Constitution in Ascher v. Commissioner of Public Safety, 519 N.W.2d 183 (Minn. 1994). The decision turned on the court's determination that even the minimal intrusion occasioned by a stop at a sobriety checkpoint could not be condoned absent some individualized suspicion. In particular, the court looked with disfavor on what it considered the majority's conclusion in Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990), that the longstanding requirement of individualized suspicion to justify a stop could be ignored so long as sobriety checkpoints were conducted in a nondiscriminatory manner. By in effect holding that each stop need not be based on any individualized suspicion so long as every, and not just some, cars were stopped, the Minnesota court felt that the majority had permitted the corollary to replace the inherent guarantee of the rule. Noting its disagreement with the *Sitz* majority's "radical" application of the balancing test enunciated in Brown v. Texas, 443 U.S. 47, 99 S. Ct. 2637, 61 L. Ed. 2d 357 (1979), the Minnesota court declared that the real issue in the case was not whether sobriety checkpoints were reasonable or effective, but, rather whether the state had met its burden of articulating a persuasive reason for disregarding the standard requirement of individualized suspicion. According to the court, the state could have sustained this burden by showing, for example, that the rights of ordinary citizens were outweighed by both the impracticality of requiring the police to obtain individualized suspicion and the increased arrest rate that would result from a departure from that requirement of individualized suspicion. Ultimately, however, the court held that the state had not met its burden and that stopping a large number of vehicles at temporary checkpoints in order to detect a small number of drunken drivers, estimated as amounting to only 1.4% of the stops made, was an unreasonable proposition that did not warrant a departure from the well–established requirement of objective individualized suspicion of wrongdoing under the Minnesota Constitution. [17]

The court in State v. Koppel, 127 N.H. 286, 499 A.2d 977 (1985), held that the state failed to show that roadblocks set up to detect and apprehend drunk drivers produced a sufficient public benefit to outweigh the intrusion on individual rights under the state constitutional article prohibiting all unreasonable searches and seizures, even though consideration was given to the deterrent effect of roadblocks, where there was no advance publicity of roadblocks, stops at roadblocks resulted in only 18 DWI arrests while during the same period 175 DWI arrests were made by traditional methods of roving patrols, and out of a total of 1,680 vehicles stopped at roadblocks only 18 DWI arrests resulted.

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After the ruling of the New Hampshire Supreme Court in State v. Koppel, 127 N.H. 286, 499 A.2d 977 (1985), legislation (N.H. Rev. Stat. Ann. § 265:1–a (1996)) was enacted authorizing sobriety checkpoints so long as the police obtained advance authorization from the appropriate court. The police are required to file a petition with the proper court, which may then issue "an order authorizing the sobriety checkpoint after determining that the sobriety checkpoint is warranted and the proposed method of stopping vehicles satisfies constitutional guarantees."

See State v. Smith, 674 P.2d 562 (Okla. Crim. App. 1984), a pre–*Sitz* case, in which the court held that sobriety checkpoints violated the United States Constitution's Fourth Amendment protection against unreasonable searches and seizures. The court held that Fourth Amendment protection against an unreasonable seizure of the person is violated by use of a temporary roadblock

as a means to stop all traffic, or traffic at established intervals, without any articulable facts giving rise to an unreasonable suspicion for the stop, for the purpose of seeking out criminal DUI offenders.

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The abrogation of State v. Smith, 674 P.2d 562 (Okla. Crim. App. 1984), was recognized by the court in Geopfert v. State ex rel. Dept. of Public Safety, 1994 OK CIV APP 142, 884 P.2d 1218 (Okla. Ct. App. Div. 1 1994), the *Geopfert* court holding that, in light of the United States Supreme Court's approval of DUI roadblocks under certain controlled circumstances in Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990), the case of State v. Smith, 674 P.2d 562 (Okla. Crim. App. 1984), had to be expanded to allow DUI roadblocks in some situations.

The court in Nelson v. Lane County, 304 Or. 97, 743 P.2d 692 (1987), held that a sobriety roadblock conducted to obtain evidence for criminal prosecution, absent a warrant or suspicion of wrongdoing on the part of the driver, would violate the state constitution as an illegal seizure of the person.

The court in State v. Boyanovsky, 304 Or. 131, 743 P.2d 711 (1987), held that a sobriety test roadblock resulting in the arrest of an alleged drunk driver and used to gather evidence for a criminal prosecution, absent an individualized suspicion of wrongdoing and without a warrant, was unconstitutional under the state constitution, and any evidence obtained therein was inadmissible.

The court in State v. Anderson, 304 Or. 139, 743 P.2d 715 (1987), held that evidence that officers obtained as a result of a sobriety roadblock, from a motorist whom they had no reason to suspect of any illegal activity, was not admissible in a subsequent DWI prosecution.

The Rhode Island Supreme Court in Pimental v Dept. of Transp., 561 A.2d. 1348 (R.I. 1989), affirmed a district court decision that held that sobriety checkpoints are unconstitutional under the state constitution. The court recognized that the state constitution granted greater protection than the Fourth Amendment. Given the relatively small number of violators detected by roadblocks, the court reasoned that less intrusive means (e.g., patrols and individualized suspicion), would adequately address the state's legitimate interest in apprehending drunk drivers, while at the same time protecting the general public against unreasonable warrantless searches and seizures.

In City of Seattle v. Messiani, 755 P.2d. 775 (Wash. 1988), the Washington Supreme Court found the sobriety checkpoint illegal under the state constitution, Wash. Const. article 1, § 7, which grants greater protection than the Fourth Amendment. Citing and quoting an earlier decision, the court indicated that state constitutional protections, unlike those in the federal constitution, explicitly protect the privacy rights of Washington citizens, including the freedom from warrantless searches absent special circumstances. Finding no "special circumstances" nor "authority of law," the court invalidated the roadblock at issue.

CUMULATIVE SUPPLEMENT

Cases:

Sobriety checkpoint that was conducted from 11:30 p.m. until 1:30 a.m. at location where drunk driving was not shown to be a particular problem, and was justified by police in part by objective of "mak[ing] sure everybody is doing what they're supposed to," was not reasonable under the search and seizure provisions of the State Constitution, in view of high level of discretion allowed to officers on how to approach and screen motorists and the weak link between danger posed by drivers operating vehicle while intoxicated (OWI) and the objectives, location, and timing of roadblock. West's A.I.C. Const. Art. 1, § 11. State v. Gerschoffer, 763 N.E.2d 960 (Ind. 2002).

Dual sobriety checkpoints that police set up outside residence where party was in progress, to administer breath tests to exiting partygoers intending to drive and to observe drivers once more as they left, were not constitutionally reasonable; checkpoints were set up in impromptu response to party, were on private property and immediately adjacent property, were targeted at a specific group rather than at general public, were conducted with apparently unfettered discretion, were completely unavoidable,

and were not effective in targeting danger of impaired driving or deterring potential offenders, as evidenced by the arrest of only one of 60 partygoers. West's A.I.C. Const. Art. 1, § 11. King v. State, 877 N.E.2d 518 (Ind. Ct. App. 2007).

It is not necessary for police officers conducting a sobriety checkpoint to use vehicle computers or instant messaging capabilities to place the decision of probable cause for arrest in the hands of a neutral and detached magistrate, as long as the defendant has the benefit of judicial review and independent blood testing. U.S.C.A. Const.Amend. 4. State v. Johnson, 233 P.3d 290 (Kan. Ct. App. 2010).

Sobriety roadblock, at which defendant was stopped and subsequently arrested for driving under the influence (DUI), constituted an unreasonable seizure; there was no single specific goal in place for roadblock, and instead, sheriff's department was seeking to inhibit speeding, aggressive, and impaired drivers, State failed to prove that safety threat from this group of drivers was of such magnitude that heightened action was required, there was no meaningful link between establishment of roadblock and interception of speeding and/or aggressive drivers, checking for DUI violations was just one of several actual purposes meant to be realized by roadblock, and decisions about establishing roadblock were made by same men who were actually conducting it at the scene. West's T.C.A. Const. Art. 1, § 7. State v. Varner, 160 S.W.3d 535 (Tenn. Crim. App. 2004).

Language of checkpoint plan provided insufficient guidance for conduct of sobriety checks, for purposes of state and federal constitutional reasonableness analysis; checkpoint instructions did not mention how, when, or if officers were to conduct checks on driver impairment, permitting exercise of significant discretion in order to determine whether particular driver in stopped vehicle was impaired and should be singled out for additional sobriety testing. U.S. Const. Amend. IV; Const. Art. 1, § 14. State v. Abell, 2003 UT 20, 70 P.3d 98 (Utah 2003).

Administrative highway checkpoint set up for purpose of inspecting and detecting drunk driving and controlled substance violations, vehicle equipment violations, compliance with seat belt and child restraint laws, and whether license plates, registration certificates, insurance certificates, and driver's licenses were in order was pretext to stop all vehicles without any individualized suspicion of crime having been committed, and thus violated state and federal constitutional prohibition against unreasonable searches and seizures. U.S.C.A. Const. Amend. 4; Const. Art. 1, § 14. State v. DeBooy, 2000 UT 32, 996 P.2d 546 (Utah 2000).

Motor vehicle checkpoint severely interfered with individual liberty and thus was an unconstitutional seizure, although checkpoint was not labeled a "sobriety checkpoint," where decision to run a checkpoint was made in haste, the number of officers present was below the minimum required for a checkpoint, lighting was not sufficient, checkpoint was inadequately marked and had inadequate signs to signify its existence, and defendant had to drive within 75 feet of the officers to even realize that they were law enforcement officers; overruling *State v. Davis*,195 W.Va. 79, 464 S.E.2d 598. U.S.C.A. Const.Amend. 4; Const. Art. 3, § 6. State v. Sigler, 687 S.E.2d 391 (W. Va. 2009).

[Top of Section]

[END OF SUPPLEMENT]

§ 4. Checkpoints valid under state constitutional law

[Cumulative Supplement]

The courts in the following cases held that, while their respective state constitutions afforded citizens greater protections than those arising from the Fourth Amendment of the United States Constitution, sobriety roadblocks were not per se violative of their state constitutions.

In Brouhard v. Lee, 125 F.3d 656 (8th Cir. 1997), the court held that the county's sobriety checkpoints, at sites selected on the basis of historical arrest and traffic related experience, chosen after consultation with the county sheriff and involving momentary detention of all motorists, were reasonable and in accord with the Fourth Amendment.

In People v. Rister, 803 P.2d 483 (Colo. 1990), the Supreme Court of Colorado stated that, while the state constitution provided greater rights than that of the Fourth Amendment, sobriety roadblocks are constitutionally proper so long as they are reasonable.

In State v. Boisvert, 40 Conn. App. 420, 671 A.2d 834 (1996), certification denied, 237 Conn. 903, 674 A.2d 1332 (1996), the Connecticut court, citing State v. Miller, 227 Conn. 363, 630 A.2d 1315 (1993) and State v. Kimbro, 197 Conn. 219, 496 A.2d 498 (1985), held that even though Art. 1, § 7 of the Connecticut Constitution affords greater rights than those found in the Fourth Amendment to the United States Constitution, sobriety roadblocks, absent reasonable and articulable suspicion, are permissible under state constitutional law so long as they are carried out reasonably.

In Harbaugh v. State, 711 So. 2d 77 (Fla. Dist. Ct. App. 4th Dist. 1998), review granted, 718 So. 2d 1234 (Fla. 1998), the court held that courts determine the constitutionality of driving under the influence (DUI) roadblocks by balancing the legitimate government interests involved against the degree of intrusion on the individual's fourth amendment rights; balancing test involves three considerations: (1) the gravity of the public concern that the seizure serves; (2) the degree to which the seizure advances the public interest; and (3) the severity of the interference with individual liberty.

In O'Kelley v. State, 210 Ga. App. 686, 436 S.E.2d 760 (1993), the court held that a roadblock at which defendant was stopped and arrested for being under the influence of alcohol was not unconstitutional. The court found that there was no evidence to support the defendant's claim that police officers were making random stops or exercising discretion in choosing which cars to stop at the time of her arrest; the arresting officer testified that it was his practice to stop every car unless cars got backed up on the exit ramp, in which case some cars would be permitted to pass to prevent accidents, but that the officers were stopping every car at the time the defendant was stopped. The court also found that there was evidence that a supervisory officer had approved the roadblock and that there was sufficient evidence that the roadblock was properly identified as a police checkpoint; two police cars, one with strobe lights flashing and other with blue and red lights flashing were parked on the side of road at end of exit ramp, both cars had reflective lettering identifying them as police vehicles and both officers were in uniform.

In State v. Madalena, 121 N.M. 63, 908 P.2d 756 (Ct. App. 1995), the Court of Appeals of New Mexico considered and rejected a claim that sobriety checkpoints represent a per se violation of the New Mexico Constitution. The court concluded that Article II, Section 10 of the New Mexico Constitution, which may provide greater protections than the Fourth Amendment to the United States Constitution, could be satisfied by a determination that a roadblock is "reasonable."

The court in Com. v. Tarbert, 517 Pa. 277, 535 A.2d 1035 (1987), a plurality opinion, held that even though it has not hesitated to interpret the Pennsylvania Constitution as affording greater protection to defendants than the federal Constitution, a drunk driving roadblock did not violate the state constitutional prohibition against unreasonable searches and seizures, Pa. Const. art. I, § 8, based on a compelling public interest in apprehending such drivers, provided that such roadblocks required a momentary stop to initially allow the police to make a brief trained observation of motorists without any physical search of the vehicle or its occupants, the roadblock was set up at fixed point in an area known to be traveled by drunk drivers, and the site selection for the roadblock was predetermined by administrative officials, not officers in field.

In State v. Claussen, 522 N.W.2d 196 (S.D. 1994), the court held that a roadblock set up to stop all vehicles leaving a private party after police officers observed juveniles consuming alcohol on the premises and were assaulted by juveniles throwing beer bottles, was reasonable law enforcement and was proper under the Fourth and Fourteenth Amendments.

In State v. Downey, 945 S.W.2d 102, 74 A.L.R.5th 729 (Tenn. 1997), the Supreme Court of Tennessee held that even though Article I, section 7 of the Tennessee Constitution may afford citizens of Tennessee even greater protection than that afforded by the Fourth Amendment to the United States Constitution, roadblocks are constitutional under state law so long as certain conditions are met (i.e., predetermined guidelines and supervisory personnel that limit police discretion).

CUMULATIVE SUPPLEMENT

Cases:

Sobriety checkpoint stop at which licensee stopped did not violate search and seizure provisions of federal and state constitutions, where police stopped traffic going in both directions, police posted signs alerting drivers to checkpoint's existence, police provided drivers with opportunity to exit turnpike prior to checkpoint, all vehicles that entered checkpoint were stopped, and officers asked specific questions to each operator and looked for signs that operator might be under influence of intoxicating liquor or drugs. U.S. Const. Amend. 4; C.G.S.A. Const. Art. 1, § 7; C.G.S.A. § 14–227a(a); § 14–227b(g) (1998). Mikolinski v. Commissioner of Motor Vehicles, 55 Conn. App. 691, 740 A.2d 885 (1999).

Roadblock used as driving under the influence (DUI) checkpoint met requisite particularized advanced planning and strict compliance standards, where written guidelines were clear, reasonable, and did not permit random or arbitrary vehicle stops or allow officers to discriminately target particular persons, and every encounter with a stopped vehicle included a request for documentation and some preliminary questioning and observation for signs of alcohol impairment. U.S.C.A. Const. Amend. 4. Rinaldo v. State, 787 So. 2d 208 (Fla. Dist. Ct. App. 4th Dist. 2001).

Roadblocks implemented in response to complaints of drunk driving did not violate state standards, where all vehicles were stopped at checkpoints, delay to motorists was minimal, roadblock was well identified as police checkpoint, and screening officers were sufficiently qualified to make initial determinations as to which motorists should be given field sobriety tests. Hardin v. State, 587 S.E.2d 634 (Ga. 2003).

Motorists reasonably may be stopped at a police roadblock when (1) the decision to implement the checkpoint in question, which includes deciding to have the roadblock and where and when to have it, was made by supervisory officers and not officers in the field and that the supervisors had a legitimate primary purpose, (2) all vehicles were stopped as opposed to random stops, (3) the delay to motorists was minimal, (4) the roadblock operation was well identified as a police checkpoint, and (5) the screening officer's training and experience were sufficient to qualify him to make an initial determination as to which motorists should be given field tests for intoxication. Overton v. State, 606 S.E.2d 306 (Ga. Ct. App. 2004).

The Supreme Court of Indiana in State v. Gerschoffer, 763 N.E.2d 960 (Ind. 2002), in which the Court of Appeals had interpreted Ind. Const. Art. 1, § 11 to prohibit all sobriety checkpoints as unreasonable seizures, disagreed, but affirmed suppression of the evidence obtained from the roadblock in this case, as discussed in §§ 5 and 10, because the procedures followed did not satisfy the requirements of Section 11, a part of Indiana's Bill of Rights. The court joined those jurisdictions rejecting the contention that all sobriety roadblocks are per se violations of state constitutional requirements.

Operation of sobriety checkpoint by state police did not violate separation of powers provision of State Constitution, though statute authorized detention of an individual when a law enforcement officer believes in good faith that a person has committed an infraction or ordinance violation, as operating while intoxicated (OWI) was either a misdemeanor or a felony, and did not involve the commission of an infraction or ordinance violation, there was no indication that the General Assembly had denied law enforcement the ability to detain a person suspected of committing a misdemeanor or felony, and there was no authority for the proposition that the General Assembly was required to specifically authorize detention in all criminal investigations. West's A.I.C. Const. Art. 4, § 1; West's A.I.C. 9–30–5–1 et seq., 34–28–5–3. Cleer v. State, 929 N.E.2d 218 (Ind. Ct. App. 2010).

Sobriety checkpoints are not necessarily unconstitutional. Const. Pt. 1, Art. 19; RSA 265:1–a. State v. Hunt, 924 A.2d 424 (N.H. 2007).

State trooper complied with statutory requirements for conducting checkpoint; checkpoint was organized pursuant to predetermined plan, and license check was conducted systematically, every vehicle was stopped, and every driver was asked to produce driver's license and proof of registration. U.S.C.A. Const.Amend. 4; G.S. § 20–16.3A(a)(1) (Repealed). State v. Veazey, 689 S.E.2d 530 (N.C. Ct. App. 2009), review denied, 2010 WL 1040109 (N.C. 2010).

Drivers' license checkpoint stop was constitutionally conducted, and thus evidence obtained thereby was admissible in driving while impaired (DWI) trial, where evidence supported findings that troopers were on preventive patrol and decided to do license check in particular area, Highway Patrol had established policies for drivers' license checks, trooper believed that policy required check to be conducted by at least two troopers, by nonrandom method, and it required blue light on vehicle at time,

policy did not require on site presence of supervisor, trooper called supervisor, who gave him permission to do license check to be completed before dark, and troopers conducted roadblock in daylight, positioned patrol vehicles so that blue lights were operating on both vehicles, and checked every vehicle in both directions except when they were writing citations. U.S.C.A. Const. Amend. 4. State v. Tarlton, 553 S.E.2d 50 (N.C. Ct. App. 2001).

Driving under the influence of alcohol (DUI) roadblocks were not per se unconstitutional under state constitution. U.S.C.A. Const. Amend. 4; Const. Art. 1, § 8; 75 Pa.C.S.A. § 3731 (Repealed). Com. v. Beaman, 2004 PA Super 91, 846 A.2d 764 (2004).

Drunk–driver roadblock did not violate defendant's right against unreasonable search and seizure; roadblock was preapproved by county attorney, route selected was one likely to be traveled by intoxicated drivers, insofar as roadblock was located on major route for people coming from nearby drinking establishments, and every car was stopped at roadblock. Const. Art. 1, § 8. Com. v. Stewart, 2003 PA Super 86, 846 A.2d 738 (2004).

Although the stopping of a motor vehicle at a sobriety checkpoint constitutes a "seizure" for constitutional purposes, such checkpoint stops are not per se unreasonable, and hence are not per se unconstitutional under either the Fourth Amendment or the State Constitution. U.S.C.A. Const.Amend. 4; Const. Art. 1, § 8. Com. v. Worthy, 957 A.2d 720 (Pa. 2008).

Statistical data indicating that roving patrols by police officers in detecting impaired driving were more efficient than sobriety checkpoints by showing that fewer man hours were utilized to effect individual stops based on individualized suspicion and resulted in higher percentage of arrests, by itself, did not establish that checkpoint constituted unreasonable seizure per se; checkpoint to detect impaired drivers was related to State's compelling interest in highway safety, and data could be misleading in that checkpoints served strong deterrent effect because of its heightened visibility to motoring public. U.S.C.A. Const. Amend. 4; Const. Art. 1, § 8. Com. v. Beaman, 880 A.2d 578 (Pa. 2005).

The Supreme Court of Pennsylvania held in Com. v. Yastrop, 564 Pa. 338, 768 A.2d 318 (2001), that, under Pennsylvania law, systematic, nondiscriminatory, nonarbitrary roadblocks for the purpose of detecting drunk drivers, if established and conducted in substantial compliance with the Tarbert-Blouse guidelines (Com. v. Tarbert, 517 Pa. 277, 535 A.2d 1035 (1987), this section; Com. v. Blouse, 531 Pa. 167, 611 A.2d 1177 (1992)), are constitutional under Pa. Const. art. I, § 8. Accordingly, a driving under the influence roadblock established by the police satisfied the Tarbert-Blouse guidelines and, thus, did not violate the State Constitution. The roadblock was located on a route likely to be traveled by drunk drivers. The officers erected large signs to alert drivers of the roadblock ahead and stopped every car that came upon the roadblock. The officers stopped the drivers for approximately thirty seconds each and detained for field testing only those who smelled of alcohol.

Vehicle checkpoints with the primary objective of enforcing safety requirements are constitutional under the Fourth Amendment. U.S.C.A. Const.Amend. 4. Wright v. Com., 52 Va. App. 263, 663 S.E.2d 108 (2008).

[Top of Section]

[END OF SUPPLEMENT]

III. GENERAL FACTORS

§ 5. Police discretion

[Cumulative Supplement]

The courts in the following cases held, either expressly or implicitly, that excessive police discretion in the field will render a sobriety checkpoint invalid.

Ala

Hagood v. Town of Town Creek, 628 So. 2d 1057 (Ala. Crim. App. 1993)

Ariz

State v. Tykwinski, 170 Ariz. 365, 824 P.2d 761 (Ct. App. Div. 1 1991)

Ark

Mullinax v. State, 327 Ark. 41, 938 S.W.2d 801 (1997), cert. denied, 520 U.S. 1252, 117 S. Ct. 2411, 138 L. Ed. 2d 176 (1997)

Cal

Ingersoll v. Palmer, 43 Cal. 3d 1321, 241 Cal. Rptr. 42, 743 P.2d 1299 (1987)

People v. Banks, 6 Cal. 4th 926, 25 Cal. Rptr. 2d 524, 863 P.2d 769 (1993)

Roelfsema v. Department of Motor Vehicles, 41 Cal. App. 4th 871, 48 Cal. Rptr. 2d 817 (6th Dist. 1995)

Colo

People v. Rister, 803 P.2d 483 (Colo. 1990)

Conn

State v. Boisvert, 40 Conn. App. 420, 671 A.2d 834 (1996), certification denied, 237 Conn. 903, 674 A.2d 1332 (1996)

Fla

State v. Jones, 483 So. 2d 433 (Fla. 1986)

Campbell v. State, 679 So. 2d 1168 (Fla. 1996)

Ga

LaFontaine v. State, 269 Ga. 251, 497 S.E.2d 367 (1998), reconsideration denied, (Apr. 1, 1998) and cert. denied, 119 S. Ct. 371, 142 L. Ed. 2d 307 (U.S. 1998)

State v. Golden, 171 Ga. App. 27, 318 S.E.2d 693 (1984)

Evans v. State, 190 Ga. App. 856, 380 S.E.2d 332 (1989)

State v. Sherrill, 247 Ga. App. 708, 545 S.E.2d 110 (2001)

Hawaii

State v. Fedak, 9 Haw. App. 98, 825 P.2d 1068 (1992)

Ill

People v. Bartley, 109 Ill. 2d 273, 93 Ill. Dec. 347, 486 N.E.2d 880 (1985)

People v. Wells, 241 Ill. App. 3d 141, 181 Ill. Dec. 505, 608 N.E.2d 578 (3d Dist. 1993)

People v. Taylor, 259 Ill. App. 3d 289, 197 Ill. Dec. 207, 630 N.E.2d 1331 (3d Dist. 1994)

Ind

State v. Garcia, 500 N.E.2d 158 (Ind. 1986)

Covert v. State, 612 N.E.2d 592 (Ind. Ct. App. 5th Dist. 1993)

Iowa

State v. Loyd, 530 N.W.2d 708 (Iowa 1995)

Kan

State v. Deskins, 234 Kan. 529, 673 P.2d 1174 (1983)

State v. Barker, 252 Kan. 949, 850 P.2d 885 (1993)

Ky

Steinbeck v. Com., 862 S.W.2d 912 (Ky. Ct. App. 1993)

Md

Little v. State, 300 Md. 485, 479 A.2d 903 (1984)

Mass

Com. v. Anderson, 406 Mass. 343, 547 N.E.2d 1134 (1989)

Neb

State v. Crom, 222 Neb. 273, 383 N.W.2d 461 (1986)

NM

City of Las Cruces v. Betancourt, 105 N.M. 655, 735 P.2d 1161 (Ct. App. 1987)

State v. Bates, 120 N.M. 1060, 902 P.2d 1060 (Ct. App. 1995)

NY

People v. Scott, 63 N.Y.2d 518, 483 N.Y.S.2d 649, 473 N.E.2d 1 (1984)

ND

State v. Everson, 474 N.W.2d 695 (N.D. 1991)

City of Bismarck v. Uhden, 513 N.W.2d 373 (N.D. 1994)

Ohio

State v. Eggleston, 109 Ohio App. 3d 217, 671 N.E.2d 1325 (2d Dist. Montgomery County 1996)

Pa

Com. v. Tarbert, 517 Pa. 277, 535 A.2d 1035 (1987)

Com. v. Frombach, 420 Pa. Super. 498, 617 A.2d 15 (1992)

Com. v. Ziegelmeier, 454 Pa. Super. 330, 685 A.2d 559 (1996)

Tenn

State v. Downey, 945 S.W.2d 102, 74 A.L.R.5th 729 (Tenn. 1997)

Utah

State v. Park, 810 P.2d 456 (Utah Ct. App. 1991)

Va

Hall v. Com., 12 Va. App. 972, 406 S.E.2d 674 (1991)

Wash

City of Seattle v. Messiani, 755 P.2d. 775 (Wash. 1988)

W Va

Carte v. Cline, 194 W. Va. 233, 460 S.E.2d 48 (1995)

In Hagood v. Town of Town Creek, 628 So. 2d 1057 (Ala. Crim. App. 1993), the court found that it was clear that the police officers conducting the roadblock did so with nearly "unfettered" discretion. This was so notwithstanding the fact that the police chief himself was present. The court also found it highly relevant that there was no written policy that could have limited that discretion. The roadblock accordingly was found to be unreasonable.

In LaFontaine v. State, 269 Ga. 251, 497 S.E.2d 367 (1998), reconsideration denied, (Apr. 1, 1998) and cert. denied, 119 S. Ct. 371, 142 L. Ed. 2d 307 (U.S. 1998), the Georgia Supreme Court considered what would be an acceptable level of discretion. In that case, the decision to set up the roadblock was made by a state patrol supervisor, but the location was left to the discretion of the field officers. The evidence showed that the roadblock was erected in an area that was the subject of a high number of traffic violation complaints on a particular road. Every vehicle was stopped to check for licenses and insurance. When the defendant was stopped, the trooper smelled a strong odor of alcohol, also noting that the defendant's face was flushed and his eyes were bloodshot. The court held that, although the field officers were given limited decisionmaking authority concerning where to place the roadblock, the roadblock was established and carried out by supervisory personnel and the field officers' discretion was minimal.

In Brimer v. State, 201 Ga. App. 401, 411 S.E.2d 128 (1991), the general factors used to determine if a roadblock was reasonable were that the procedures did not involve random and arbitrary detention of vehicles, but were organized by experienced superiors for the stopping of all vehicles at the checkpoint, leaving no discretion to officers to focus randomly or discriminately on particular persons; and the stops themselves were minimal and reasonable in terms of time and intrusion.

In State v. Fedak, 9 Haw. App. 98, 825 P.2d 1068 (1992), a police sergeant ordered the location of the sobriety roadblock moved due to traffic congestion, and the Intermediate Court of Appeals of Hawaii ruled that a subsequent stop of the defendant was invalid, as the state failed to show that the sergeant had the authority to change the location.

In Com. v. Anderson, 406 Mass. 343, 547 N.E.2d 1134 (1989), the Supreme Judicial Court of Massachusetts held that a driver stopped approximately 15 minutes after the scheduled termination of a drunk–driving roadblock was unreasonable and violated the Fourth Amendment and the commonwealth's constitution, as the troop commander had the sole authority for extending the roadblock beyond its two–hour duration. The court, as discussed in § 6, noted that "strict" rather than "substantial" compliance with written guidelines for roadblocks is required.

In State v. Crom, 222 Neb. 273, 383 N.W.2d 461 (1986), four or five Omaha patrolmen unilaterally decided to set up a sobriety checkpoint, at which every fourth vehicle would be stopped, under the pretext of checking the operator's license and vehicle registration. The field officers were not acting pursuant to any guidelines and made all decisions concerning the establishment and conduct of the roadblock themselves. The officers freely moved the checkpoint from place to place as they saw fit and they ultimately placed a cruiser, with lights flashing, in the middle of two southbound lanes of a roadway in close proximity to a bar that had been the source of recent problems. The defendant was stopped at that location, not due to any individual suspicion,

but because his was one of the fourth vehicles to go through the checkpoint. The Supreme Court of Nebraska struck down the seizure of the defendant as violative of the Fourth Amendment, declaring that the defendant's reasonable expectation of privacy had been subjected to arbitrary invasion at the unfettered discretion of the officers in the field.

In City of Las Cruces v. Betancourt, 105 N.M. 655, 735 P.2d 1161 (Ct. App. 1987), the Court of Appeals of New Mexico held that the absence of restrictions on the discretion of field officers would be fatal to the constitutionality of a sobriety checkpoint.

While the court in State v. Downey, 945 S.W.2d 102, 74 A.L.R.5th 729 (Tenn. 1997), held, as discussed in § 4, that sobriety roadblocks are valid under the state constitution, the court held that the roadblock in question, having been improperly administered, was not. The court held that the sobriety roadblock was not established and operated in a manner that was consistent with the state constitution, and thus the roadblock constituted an unreasonable seizure, as the decision to set up the roadblock was made by the officer in the field, the site selected for the roadblock and the procedure to be used in operating the roadblock were matters left to the discretion of the officer in the field, and no supervisory authority was sought or obtained. The court further held that the decision to hold a sobriety roadblock and the decision as to its time and place should be matters reserved for prior administrative approval, thus removing the determination of those matters from the discretion of police officers in the field, and the question of which vehicles to stop at a roadblock should not be left to the unfettered discretion of the officers at the scene but should be in accordance with objective standards prefixed by administrative decision.

CUMULATIVE SUPPLEMENT

Cases:

In determining reasonableness of a checkpoint traffic stop, factors to weigh intrusiveness include whether the checkpoint: (1) is clearly visible, (2) is part of some systematic procedure that strictly limits the discretionary authority of police officers, and (3) detains drivers no longer than reasonably necessary to accomplish purpose of checking license and registration, unless other facts come to light creating a reasonable suspicion of criminal activity. U.S.C.A. Const.Amend. 4. U.S. v. William, 603 F.3d 66 (1st Cir. 2010).

The decision to establish a sobriety checkpoint, the selection of the site, and the procedures for the checkpoint operation should be made and established by supervisory law enforcement personnel, and not by an officer in the field, to reduce the potential for arbitrary and capricious enforcement. Arthur v. Department of Motor Vehicles, 184 Cal. App. 4th 1199, 2010 WL 1611128 (4th Dist. 2010).

Written guidelines that governed sobriety checkpoint at which defendant's automobile was stopped failed to adequately limit the discretion of individual officers with respect to vehicle selection; guidelines initially called for every vehicle to be stopped, but allowed the checkpoint supervisor to develop a contingency plan if a traffic backup occurred, which was likely. U.S.C.A. Const.Amend. 4. Guy v. State, 993 So. 2d 77 (Fla. Dist. Ct. App. 2d Dist. 2008).

In assessing the sufficiency of sobriety checkpoint plans, courts generally focus upon the amount of discretion police officers at the scene are allowed to exercise. Rinaldo v. State, 787 So. 2d 208 (Fla. Dist. Ct. App. 4th Dist. 2001).

Factors for determining constitutional validity of roadblock are: (1) decision to implement roadblock was made by supervisory personnel rather than officers in field; (2) all vehicles are stopped as opposed to random vehicle stops; (3) delay to motorists is minimal; (4) roadblock operation is well identified as a police checkpoint; and (5) screening officer's training and experience is sufficient to qualify him to make initial determination as to which motorists should be given field tests for intoxication. U.S.C.A. Const. Amend. 4. Wrigley v. State, 248 Ga. App. 387, 546 S.E.2d 794 (2001).

The Supreme Court of Indiana in State v. Gerschoffer, 763 N.E.2d 960 (Ind. 2002), in affirming suppression of the evidence obtained from the sobriety roadblock, noted that many states consider the degree of discretion exercised by field officers conducting the roadblock a critical factor. The sergeant flagged in five vehicles at a time, then allowed other traffic to flow through. As soon as all five vehicles were cleared, the sergeant flagged in five more, without regard to vehicle type. The court held that this procedure seems to be a reasonably neutral and consistent method. The court noted that other procedures, however,

were not as carefully controlled. Aside from being told to be "professional and courteous," officers received no specific directive on how to approach and screen motorists. Each individual officer was therefore allowed to decide whether to immediately request license, registration, and/or insurance information from all drivers or only from some of them based on an appearance of impairment or other grounds. No standardized instructions were given to ensure that officers addressed drivers in a consistent manner. Furthermore, each officer had the discretion to decide how many and what type of sobriety tests to perform if he or she detected alcohol. The court held that the state had therefore not shown that it provided sufficiently explicit guidance to ensure against arbitrary or inconsistent actions by the screening officers, and this very important factor weighed against the reasonableness of the roadblock.

Operation of sobriety checkpoint by state police officers did not violate Fourth Amendment, even though defendant argued that officer in charge at checkpoint unconstitutionally exercised his discretion by stopping and restarting checkpoint based on traffic conditions; checkpoint was executed pursuant to state police guidelines, officer's stopping and restarting checkpoint complied with safety requirements set forth in guidelines, purposes of checkpoint included reduction of accidents and detection of drunk driving, decision to conduct checkpoint was approved by a supervisor, and specific vehicles were not targeted for stops. U.S.C.A. Const.Amend. 4. Smith v. Com., 219 S.W.3d 210 (Ky. Ct. App. 2007).

Road check, which was set up to detect motorists driving under the influence, did not violate Fourth Amendment, and thus defendant's arrest was valid; road check was designed and established for proper public safety concern of detecting motorists driving under the influence, there was no proof that particular road check in question was conducted in an unsafe manner, nor was there any proof that road check was unconstitutional because it was discretionary, or was for an improper purpose not related to public safety. U.S.C.A. Const. Amend. 4. Com. v. Sharpe, 58 S.W.3d 492 (Ky. Ct. App. 2001), review denied, (Nov. 14, 2001).

Police sobriety checkpoint did not constitute in impermissible general search for contraband or criminal activity; the checkpoint guidelines specifically stated that the purpose of the checkpoint was "to apprehend alcohol violators and deter drunk driving," and the sobriety checkpoint did not become a roadblock for the purpose of searching for evidence of drug trafficking and other contraband simply because the initial screening officers were directed to divert a vehicle to secondary screening when their observations provided reasonable suspicion, based on articulable facts, that an occupant of the vehicle was engaged in the commission of a felony or a violation of the narcotics law. U.S.C.A. Const.Amend. 4. Com. v. Swartz, 454 Mass. 330, 910 N.E.2d 277 (2009).

Discretion afforded to police regarding whether to direct driver to secondary screening area after initial stop at sobriety checkpoint was constitutionally permissible, since driver could be sent to secondary screening area if officer had reasonable suspicion based on articulable facts that driver was under the influence, although police were not required to direct all drivers to secondary screening area if they had reasonable suspicion driver was under the influence; police were not required to make a stop whenever they had reasonable suspicion, or to arrest whenever there was probable cause, and, similarly, there was no reason to require police to direct drivers to secondary screening area every time it was warranted. U.S.C.A. Const.Amend. 4; M.G.L.A. Const. Pt. 1, Art. 14. Com. v. Murphy, 454 Mass. 318, 910 N.E.2d 281 (2009).

State Police guidelines, requiring officers at sobriety checkpoints to stop and conduct further testing of all motorists who demonstrated certain clues of impaired operation, were constitutionally permissible; guidelines imposed a "zero tolerance" enforcement policy with respect to all observed violations, thereby reducing discretionary enforcement. U.S.C.A. Const.Amend. 4; M.G.L.A. Const. Pt. 1, Art. 14. Com. v. Bazinet, 76 Mass. App. Ct. 908, 924 N.E.2d 755 (2010).

Close questions as to when the threshold of police officer's minimal discretion to deviate from supervisor's script at driving while intoxicated (DWI) roadblocks is reached should be resolved in favor of privacy, not a broadening of discretion. U.S.C.A. Const.Amend. 4. State v. Duarte, 2007-NMCA-012, 149 P.3d 1027 (N.M. Ct. App. 2006).

The sine qua non of a non–arbitrary procedure for operating a sobriety checkpoint is to eliminate the discretion of the officers operating that checkpoint as to which cars to stop. U.S. Const. Amend. IV. People v. Bigger, 771 N.Y.S.2d 826 (J. Ct. 2004).

The question of which vehicles to stop at a drunk driver roadblock should not be left to the unfettered discretion of police officers at the scene, but instead should be in accordance with objective standards prefixed by administrative decision. Com. v. Stewart, 2003 PA Super 86, 846 A.2d 738 (2004).

Temporary suspension of sobriety checkpoint on three separate occasions during evening at direction of supervising police officer in order to allow traffic to pass through unimpeded to alleviate a traffic back-up did not violate proscription against placing unfettered discretion with on-site officers as to which vehicles to stop at checkpoint, and, thus, this procedure complied with Federal and State Constitution's prohibition against unreasonable searches and seizures; when checkpoint was in operation, every vehicle was stopped, only when traffic volume became heavy and resulting back-up caused unreasonable delay did supervising officer temporarily suspend checkpoint operation, and there was no evidence that any officer based decision as to when to suspend or resume checkpoint operation on characteristics or actions of any particular vehicle or driver. U.S.C.A. Const.Amend. 4; Const. Art. 1, § 8. Com. v. Worthy, 957 A.2d 720 (Pa. 2008).

Language of checkpoint plan provided insufficient guidance for conduct of sobriety checks, for purposes of state and federal constitutional reasonableness analysis; checkpoint instructions did not mention how, when, or if officers were to conduct checks on driver impairment, permitting exercise of significant discretion in order to determine whether particular driver in stopped vehicle was impaired and should be singled out for additional sobriety testing. U.S. Const. Amend. 4; U.S. Const. Art. 1 § 14. State v. Abell, 2003 UT 20, 70 P.3d 98, 116 A.L.R.5th 735 (Utah 2003).

[Top of Section]

[END OF SUPPLEMENT]

§ 6. Objective and neutral plan designed by upper echelon personnel

[Cumulative Supplement]

The courts in the following cases held or recognized that roadblocks must be carried out pursuant to a previously established and neutral plan.

Ala

Hagood v. Town of Town Creek, 628 So. 2d 1057 (Ala. Crim. App. 1993)

Ariz

State v. Tykwinski, 170 Ariz. 365, 824 P.2d 761 (Ct. App. Div. 1 1991)

Ark

Mullinax v. State, 327 Ark. 41, 938 S.W.2d 801 (1997), cert. denied, 520 U.S. 1252, 117 S. Ct. 2411, 138 L. Ed. 2d 176 (1997)

Cal

Ingersoll v. Palmer, 43 Cal. 3d 1321, 241 Cal. Rptr. 42, 743 P.2d 1299 (1987)

People v. Banks, 6 Cal. 4th 926, 25 Cal. Rptr. 2d 524, 863 P.2d 769 (1993)

Colo

People v. Rister, 803 P.2d 483 (Colo. 1990)

Conn

State v. Boisvert, 40 Conn. App. 420, 671 A.2d 834 (1996), certification denied, 237 Conn. 903, 674 A.2d 1332 (1996)

Fla

State v. Jones, 483 So. 2d 433 (Fla. 1986)

Campbell v. State, 679 So. 2d 1168 (Fla. 1996)

Hartsfield v. State, 629 So. 2d 1020 (Fla. Dist. Ct. App. 4th Dist. 1993)

Ga

LaFontaine v. State, 269 Ga. 251, 497 S.E.2d 367 (1998), reconsideration denied, (Apr. 1, 1998) and cert. denied, 119 S. Ct. 371, 142 L. Ed. 2d 307 (U.S. 1998)

Payne v. State, 232 Ga. App. 591, 502 S.E.2d 526 (1998)

Hawaii
State v. Fedak, 9 Haw. App. 98, 825 P.2d 1068 (1992)
Ill
People v. Taylor, 259 Ill. App. 3d 289, 197 Ill. Dec. 207, 630 N.E.2d 1331 (3d Dist. 1994)
Ind
State v. Garcia, 500 N.E.2d 158 (Ind. 1986)
Covert v. State, 612 N.E.2d 592 (Ind. Ct. App. 5th Dist. 1993)
Iowa
State v. Loyd, 530 N.W.2d 708 (Iowa 1995)
Kan
State v. Deskins, 234 Kan. 529, 673 P.2d 1174 (1983)
State v. Barker, 252 Kan. 949, 850 P.2d 885 (1993)
Ky
Steinbeck v. Com., 862 S.W.2d 912 (Ky. Ct. App. 1993)
Md
Little v. State, 300 Md. 485, 479 A.2d 903 (1984)
Mass
Com. v. McGeoghegan, 389 Mass. 137, 449 N.E.2d 349, 37 A.L.R.4th 1 (1983)
Com. v. Trumble, 396 Mass. 81, 483 N.E.2d 1102 (1985)
Com. v. Amaral, 398 Mass. 98, 495 N.E.2d 276 (1986)
Com. v. Anderson, 406 Mass. 343, 547 N.E.2d 1134 (1989)
NM
City of Las Cruces v. Betancourt, 105 N.M. 655, 735 P.2d 1161 (Ct. App. 1987)
State v. Bates, 120 N.M. 1060, 902 P.2d 1060 (Ct. App. 1995)
State v. Bates, 120 N.M. 1060, 902 P.2d 1060 (Ct. App. 1995)
State v. Madalena, 121 N.M. 63, 908 P.2d 756 (Ct. App. 1995)
NY
People v. Scott, 63 N.Y.2d 518, 483 N.Y.S.2d 649, 473 N.E.2d 1 (1984)
ND
City of Bismarck v. Uhden, 513 N.W.2d 373 (N.D. 1994)
Ohio
State v. Eggleston, 109 Ohio App. 3d 217, 671 N.E.2d 1325 (2d Dist. Montgomery County 1996)
State v. Blackburn, 63 Ohio Misc. 2d 211, 620 N.E.2d 319 (Mun. Ct. 1993)
Pa
Com. v. Yastrop, 768 A.2d 318 (Pa. 2001)
Tex
Holt v. State, 887 S.W.2d 16 (Tex. Crim. App. 1994), reh'g on petition for discretionary review denied, (Oct. 5, 1994)
Enax v. State, 877 S.W.2d 548 (Tex. App. Beaumont 1994), reh'g overruled, (June 30, 1994)
Utah
State v. Kitchen, 808 P.2d 1127 (Utah Ct. App. 1991)
W Va
Carte v. Cline, 194 W. Va. 233, 460 S.E.2d 48 (1995)

In U.S. v. Huguenin, 154 F.3d 547, 1998 FED App. 256P (6th Cir. 1998), reh'g denied, (Oct. 19, 1998), the court held that even if the vehicle checkpoint had as its primary purpose the detection of intoxicated drivers, the procedure used was unreasonable under the Fourth Amendment, since the objective intrusion into the defendants' privacy was not limited by appropriate operating procedures, but was unnecessarily high due to lack of limitations on the officers' discretion. The court noted that the initial detention of defendant motorists lasted for at least several minutes instead of the ten to 15 seconds generally needed to determine whether a driver was operating the vehicle under the influence of alcohol, and that the questioning of defendants was not aimed solely at ascertaining whether the driver was intoxicated.

The court in Mullinax v. State, 327 Ark. 41, 938 S.W.2d 801 (1997), cert. denied, 520 U.S. 1252, 117 S. Ct. 2411, 138 L. Ed. 2d 176 (1997), held that a fixed sobriety roadblock that followed the guidelines of stopping every car and then inquiring further of every fifth car as to the driver's license and registration was carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers, as required under the Fourth Amendment, even though the plan was not a statewide written plan; the court found that the testimony regarding the field officers' discussion of particular procedures and location for the roadblock with their superior officer demonstrated that the officers were not allowed impermissible discretion in implementing the roadblock.

In State v. Boisvert, 40 Conn. App. 420, 671 A.2d 834 (1996), certification denied, 237 Conn. 903, 674 A.2d 1332 (1996), the court found it important that the roadblock was set up in accordance with state police guidelines that were promulgated by the commissioner of public safety. The regulations required that the roadblock be approved in advance by ranking officers, the location date and time be chosen pursuant to a number of named factors, including safety and convenience of the public, advance publicity be given, and drivers be assured that the stop was routine.

In Com. v. Trumble, 396 Mass. 81, 483 N.E.2d 1102 (1985), the Massachusetts Supreme Judicial Court reviewed a specific set of guidelines established by the Massachusetts State Police for governing sobriety checkpoints and declared them to pass muster under the both the United States and Massachusettsconstitutions. The court reflected favorably on the following aspects of the guidelines at issue: (1) steps were included to prevent the arbitrary selection of vehicles to be stopped; (2) provisions were made to ensure the safe conduct of the roadblock, including directions on the manner for selecting and setting up the sites; (3) motorist inconvenience was addressed by provisions dealing with traffic congestion and the length of the initial vehicle stop; (4) advance planning by supervisory personnel was required; (5) plans were required to include the date, time, location, duration, and set pattern of cars to be stopped; and (6) the date of roadblock was to be announced to the news media prior to implementation. The court then went on to hold that the roadblock in question was conducted in careful compliance with the established guidelines.

In Com. v. Amaral, 398 Mass. 98, 495 N.E.2d 276 (1986), a roadblock was struck down as violative of both the Fourth Amendment to the United States Constitution and Article 14 of the Massachusetts Declaration of Rights due to the lack of a plan devised by supervisory level enforcement officials for establishing and conducting the roadblock. The court emphasized that some form of carefully crafted standards and neutral criteria, established by administrative officials, was essential for determining the time and location of the roadblock as well as for guiding officers in the field. The fact that a captain was responsible for setting up the roadblock was deemed insufficient.

In Com. v. Anderson, 406 Mass. 343, 547 N.E.2d 1134 (1989), the Supreme Judicial Court of Massachusetts declared that "strict" rather than "substantial" compliance with written guidelines for roadblocks is required. In so doing, the court affirmed a lower court order suppressing evidence arising from the stop of the defendant's vehicle fifteen minutes after the scheduled deadline for terminating the roadblock. The court found that the guidelines in question permitted only the troop commander to extend a roadblock beyond two hours and that this extension had to be done in writing and in advance. The evidence indicated, however, that the extension in question had been authorized by a supervisor on the scene, not the troop commander, and had not been done in writing and in advance. The roadblock, therefore, was not in strict compliance with the written guidelines. Strict compliance was deemed essential to avoid arbitrary and discretionary actions by officers on the scene.

In People v. Hill, 166 Misc. 2d 148, 631 N.Y.S.2d 988 (County Ct. 1995), the court held that a written general order issued by the town police department in March 1992 was sufficient to authorize a traffic checkpoint conducted in September 1994 in conformity with general order and that issuance of a further order specifically authorizing the particular checkpoint was unnecessary.

In People v. Richmond, 174 Misc. 2d 40, 662 N.Y.S.2d 998 (County Ct. 1997), the court held that the sobriety checkpoint roadblock at which the defendant was stopped violated the search and seizure clause, even if the officers conducting the roadblock performed their duties in good faith and with professional competence, where the chief of police did not promulgate a plan for the officers to follow and by which the officer's actions could be objectively measured and directives given by the officer for the roadblock did not contain explicit and neutral limitations on the conduct of the operating personnel.

In Holt v. State, 887 S.W.2d 16 (Tex. Crim. App. 1994), reh'g on petition for discretionary review denied, (Oct. 5, 1994), a roadblock was struck down because there was no statewide authorization written by a "a politically accountable governing body." The Arlington Police Department set up a roadblock pursuant to written guidelines "established in 1988 by a committee of police officers having supervisory authority within the Arlington Police Department. The Arlington City Council had previously granted policy–making authority to the Chief of Police, who approved such guidelines. The City Council did not consider these procedures. The location of the checkpoint at issue had been selected by the sergeant in the Traffic Division, who was the supervisor of the checkpoint, and had been approved by the Traffic Division Commander. The location was selected on the basis of several significant factors that were supported by research done by officers within the Traffic Division." The court reasoned that, because a governing body in Texas did not authorize a statewide procedure for DWI roadblocks, such roadblocks were unreasonable and unconstitutional unless and until a politically accountable governing body saw fit to enact constitutional guidelines regarding such roadblocks.

In Enax v. State, 877 S.W.2d 548 (Tex. App. Beaumont 1994), reh'g overruled, (June 30, 1994), a sobriety checkpoint was established by a deputy constable at the request of his superior, a constable. The deputy constable was directed to stop every motor vehicle coming on the roadblock and check on the driver's state of sobriety and determine if the driver had a valid license and proof of insurance. The defendant, operating the very first car to come on the roadblock, was ultimately arrested and charged with DWI. At the suppression hearing, the only witness called by the state was the deputy constable, who testified that the purpose for having the DWI roadblock was to save lives and prevent accidents caused by drunk drivers. The court of appeals found that the state had failed to establish in the lower court that the roadblock was reasonable under the Fourth Amendment. Specifically, the court held that the state had failed to establish the reasonableness of the roadblock in question by failing to, among other things, produce any evidence to prove that the instructions to the deputy constable were based on objective standardized guidelines, nor had the state proven that any Texas law enforcement agency had even developed or instituted such guidelines. To establish the reasonableness of a DWI roadblock, the state was required to prove, among other things, that authoritatively standardized procedures were used in connection with the roadblock, both to serve its stated purpose and to minimize field officers' discretion, so the court overruled the trial court's denial of the defendant's motion to suppress and remanded the matter to the lower court.

In State v. Kitchen, 808 P.2d 1127 (Utah Ct. App. 1991), the Utah Court of Appeals found that the roadblock was not conducted pursuant to an explicit, neutral plan and was not prepared by a neutral body, but by the officer who conducted the roadblock. The court indicated that the United States Supreme Court's holding in Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990), required that roadblocks be conducted pursuant to a general set of plans. The roadblock in question, however, was conducted pursuant to a plan devised specifically for that roadblock. The court also found that the plan, which called for stopping only automobiles and light trucks, was not explicit enough and that the plan should have limited the police officers' discretion.

CUMULATIVE SUPPLEMENT

Cases:

Defendant failed to establish that roadblock, which served in part as a checkpoint for testing motorists for driving under the influence of alcohol, did not comply with State regulation that required supervisor to approve time and location of checkpoint prior to checkpoint being implemented, where trooper who conducted checkpoint testified that before checkpoint was implemented, another trooper called him on the radio and informed him that the supervising corporal had approved checkpoint, and trooper testified that officers from another State agency were present at scene and cooperated in checkpoint. Kirby v. State, 874 So. 2d 581 (Ala. Crim. App. 2003).

Fact that city police operated sobriety checkpoint at a different location than had been indicated in a media advisory did not show that checkpoint lacked supervisory decisionmaking, as required to show irregularity in operation of checkpoint; other factors indicated supervisory control rather than a decision by patrol officers in the field, including that city police department's traffic division had planned a sobriety checkpoint for date of challenged checkpoint, checkpoint had been manned by seven

police officers, and officer's testimony confirming that traffic division set up sobriety checkpoints. Arthur v. Department of Motor Vehicles, 184 Cal. App. 4th 1199, 2010 WL 1611128 (4th Dist. 2010).

Roadside sobriety checkpoint was conducted pursuant to neutral criteria, and thus, detention of defendant at checkpoint was not an unreasonable seizure, where police established method of operation approved by ranking officers, safe location was chosen, posted signs alerted drivers to checkpoint's existence and provided them with opportunity to exit before entering checkpoint, every car was stopped, and officers were instructed to ask each motorist a specific set of questions. U.S. Const. Amend. 4; C.G.S.A. Const. Art. 1, § 7. State v. Mikolinski, 56 Conn. App. 252, 742 A.2d 1264 (1999).

Police roadblock at which defendant was arrested for driving under the influence (DUI) was reasonable; roadblock was established for the proper purpose of examining the driver's licenses and proof of insurance of all vehicles traveling eastbound on parkway, decision of where and when to place the roadblock was made by supervisory personnel rather than field officers, all vehicles were stopped with minimal delay, and officers were trained and experienced in making initial determination as to which motorists should be given field tests for intoxication. Lutz v. State, 548 S.E.2d 323 (Ga. 2001).

Police roadblock at which defendant was stopped was a valid roadblock; decision to implement a roadblock was made by a supervising officer, all vehicles were stopped at the roadblock and were delayed for only one to two minutes unless a violation was noted, roadblock was well identified with signs and marked patrol cars with their lights flashing, and all officers involved in the roadblock were sufficiently trained to determine whether a motorist should be given field tests for intoxication. U.S.C.A. Const.Amend. 4. McGlon v. State, 673 S.E.2d 513 (Ga. Ct. App. 2009).

Testimony by captain in city police department, that he met beforehand with officers from county sheriff's department who manned roadblock to discuss what the officers were to check for, was sufficient to support trial court's conclusion in ruling on motion to suppress that roadblock was established by supervisory personnel, as opposed to officers in the field, as necessary for compliance with Fourth Amendment. U.S.C.A. Const.Amend. 4. Britt v. State, 668 S.E.2d 461 (Ga. Ct. App. 2008).

Uncontradicted testimony of officer who supervised roadblock, which was set up to check for licenses, impairment, and other matters, that he was a squad supervisor and he was authorized to order roadblocks was sufficient to establish that fact, for purposes of determining whether roadblock violated Fourth Amendment, where officer testified he alone made decision to implement roadblock that stopped defendant independent of any officers in the field, and his authority to implement roadblock resulted from roadblock policy promulgated by police chief's office. U.S.C.A. Const.Amend. 4. Gonzalez v. State, 657 S.E.2d 617 (Ga. Ct. App. 2008).

Law enforcement officers' stop of defendant at a police roadblock for enforcement of driving-under-influence (DUI) laws was reasonable; decision to set up roadblock was made by a supervisory officer who also approved time and place of roadblock, roadblock served a legitimate purpose, all vehicles were stopped at roadblock, screening officer had prior training and experience with respect to field sobriety testing, police checkpoint implementation, and DUI detection, delay to motorists was minimal, and roadblock was well identified by several signs, emergency vehicle, police car with flashing lights, and officers at scene. U.S.C.A. Const.Amend. 4. Carson v. State, 629 S.E.2d 487 (Ga. Ct. App. 2006).

A roadblock is satisfactory where the decision to implement the roadblock was made by supervisory personnel rather than the officers in the field; all vehicles are stopped as opposed to random vehicle stops; the delay to motorists is minimal; the roadblock operation is well identified as a police checkpoint; and the "screening" officer's training and experience is sufficient to qualify him to make an initial determination as to which motorists should be given field tests for intoxication. U.S.C.A. Const.Amend. 4. Thomas v. State, 625 S.E.2d 455 (Ga. Ct. App. 2005).

Driver/safety checkpoint was reasonable under Fourth Amendment; checkpoint was establish for legitimate purpose of checking driver's licenses, proof of insurance, and registration, supervisory personnel, rather than field officers, decided location and date, all vehicles were stopped, and delay was minimal and clearly identified to approaching traffic. U.S. Const. Amend. IV. McCray v. State, 601 S.E.2d 452 (Ga. Ct. App. 2004).

The police may reasonably stop a person at a police roadblock when: (1) the record reflects that the decision to implement the checkpoint in question was made by supervisory officers and not officers in the field and that the supervisors had a legitimate primary purpose; (2) all vehicles were stopped as opposed to random stops; (3) the delay to motorists was minimal; (4) the roadblock operation was well identified as a police checkpoint; and (5) the screening officer's training and experience were sufficient to qualify him to make an initial determination as to which motorists should be given field tests for intoxication. U.S.C.A. Const. Amend. 4. Dale v. State, 600 S.E.2d 763 (Ga. Ct. App. 2004).

A police roadblock satisfies the Fourth Amendment if the following criteria are met: (1) the decision to implement the roadblock was made by supervisory personnel at "the programmatic level," rather than officers in the field, for a legitimate primary purpose; (2) all vehicles, rather than random vehicles, are stopped; (3) the delay to motorists is minimal; (4) the roadblock is well identified as a police checkpoint; and (5) the screening officer has adequate training to make an initial determination as to which motorists should be given field sobriety tests. U.S. Const. Amend. IV. Harwood v. State, 586 S.E.2d 722 (Ga. Ct. App. 2003).

For the purposes of determining whether a roadblock is an illegal stop, a roadblock is satisfactory where the decision to implement the roadblock was made by supervisory personnel rather than the officers in the field; all vehicles are stopped as opposed to random vehicle stops; the delay to motorists is minimal; the roadblock operation is well identified as a police checkpoint; and the "screening" officer's training and experience are sufficient to qualify him to make an initial determination as to which motorists should be given field tests for intoxication. U.S.C.A. Const. Amend. 4. Hobbs v. State, 579 S.E.2d 50 (Ga. Ct. App. 2003).

Roadblock set up where defendant was stopped and arrested for driving under the influence of alcohol could not be deemed unauthorized for want of proof at the programmatic level of a proper primary purpose; lieutenant testified that he ordered the roadblocks, determining where and when they would occur, that the officers who executed the roadblocks had not participated in the decision to do so, that the roadblocks were set up to check drivers for sobriety and operator's permits, that he was there not as a field officer participating in the roadblocks, but as the supervisor on the scene, and that chief of police policy authorized him to order roadblocks as a supervisor. U.S. Const. Amend. IV; O.C.G.A. § 40–6–391(a)(1). Ross v. State, 257 Ga. App. 541, 573 S.E.2d 402 (2002), cert. denied, (Jan. 13, 2003).

A roadblock is satisfactory, and will pass constitutional muster, where the decision to implement the roadblock was made by supervisory personnel rather than the officers in the field, all vehicles are stopped as opposed to random vehicle stops, the delay to motorists is minimal, the roadblock operation is well identified as a police checkpoint, and the screening officer's training and experience is sufficient to qualify him to make an initial determination as to which motorists should be given field tests for intoxication. U.S.C.A. Const. Amend. 4. State v. Dymond, 248 Ga. App. 582, 546 S.E.2d 69 (2001).

A roadblock is reasonable under the Fourth Amendment if (1) the decision to implement it was made by supervisory personnel, rather than the officers in the field; (2) all vehicles are stopped as opposed to random vehicle stops; (3) the delay to motorists is minimal; (4) the roadblock operation is well identified as a police checkpoint; and (5) the screening officer's training and experience is sufficient to qualify him to make an initial determination as to which motorists should be given field tests for intoxication. U.S. Const. Amend. 4. State v. Stearns, 240 Ga. App. 806, 524 S.E.2d 554 (1999), reconsideration denied, (Nov. 16, 1999).

If police fail to establish uniform procedures for dealing with motorists who come through a roadblock that has been set up to stop motorists for the purpose of detecting and apprehending drunk drivers, the roadblock will not pass constitutional muster and the stops will be invalid under the Fourth Amendment. U.S. Const. Amend. IV. State v. Villas, 2002-NMCA-104, 55 P.3d 437 (N.M. Ct. App. 2002), cert. denied, 55 P.3d 428 (N.M. 2002).

With regard to sobriety checkpoints, a vehicle may be stopped where all of the following factors are present: (1) a checkpoint or roadblock location selected for its safety and visibility to oncoming motorists; (2) adequate advance warning signs, illuminated at night, timely informing approaching motorists of the nature of the impending intrusion; (3) uniformed officers and official vehicles in sufficient quantity and visibility to show the police power of the community; and (4) a predetermination by policy-

making administrative officers of the roadblock location, time, and procedures to be employed, pursuant to carefully formulated standards and neutral criteria. U.S.C.A. Const.Amend. 4. State v. Williams, 2009-Ohio-970, 909 N.E.2d 667 (Ohio Ct. App. 1st Dist. Hamilton County 2009).

The decision to hold a drunk–driver roadblock, as well as the decision as to its time and place, should be matters reserved for prior administrative approval, thus removing the determination of those matters from the discretion of police officers in the field. Com. v. Stewart, 2003 PA Super 86, 846 A.2d 738 (2004).

Administrative highway checkpoint set up for purpose of inspecting and detecting drunk driving and controlled substance violations, vehicle equipment violations, compliance with seat belt and child restraint laws, and whether license plates, registration certificates, insurance certificates, and driver's licenses were in order violated statute governing authorization and establishment of such checkpoints, where there was no showing of necessity of searching for equipment violations at sobriety checkpoint, and plan for conducting checkpoint did not provide any guidelines as to what such a search should entail or how it should be conducted. U.C.A.1953, 77–23–104. State v. DeBooy, 2000 UT 32, 996 P.2d 546 (Utah 2000).

Trooper's ability to choose the site of the traffic checkpoint from the list of pre–approved sites, as opposed to being directed to a specific site by his supervisor, did not operate to give him unbridled discretion over the checkpoint, as would violate Fourth Amendment rights of motorists stopped; by seeking pre–checkpoint approval from his supervisor, the ultimate selection of the site and time was determined by the supervisor, not the trooper, and coupled with the restriction of possible checkpoint sites to those only on the pre–approved list, the establishment of the checkpoint under explicit neutral limitations on the conduct of individual officers was achieved. U.S.C.A. Const. Amend. 4. Palmer v. Com., 36 Va. App. 169, 549 S.E.2d 29 (2001).

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[END OF SUPPLEMENT]

§ 7. Safe conditions

[Cumulative Supplement]

In the following cases, the courts, either expressly or implicitly, held that safety conditions are one of the factors to be considered in assessing the validity or reasonableness of a roadblock.

Ala

Hagood v. Town of Town Creek, 628 So. 2d 1057 (Ala. Crim. App. 1993)

Ark

Mullinax v. State, 327 Ark. 41, 938 S.W.2d 801 (1997), cert. denied, 520 U.S. 1252, 117 S. Ct. 2411, 138 L. Ed. 2d 176 (1997)

Cal

Ingersoll v. Palmer, 43 Cal. 3d 1321, 241 Cal. Rptr. 42, 743 P.2d 1299 (1987)

People v. Banks, 6 Cal. 4th 926, 25 Cal. Rptr. 2d 524, 863 P.2d 769 (1993)

Conn

State v. Boisvert, 40 Conn. App. 420, 671 A.2d 834 (1996), certification denied, 237 Conn. 903, 674 A.2d 1332 (1996)

Fla

Campbell v. State, 679 So. 2d 1168 (Fla. 1996)

Ga

LaFontaine v. State, 269 Ga. 251, 497 S.E.2d 367 (1998), reconsideration denied, (Apr. 1, 1998) and cert. denied, 119 S. Ct. 371, 142 L. Ed. 2d 307 (U.S. 1998)

Evans v. State, 190 Ga. App. 856, 380 S.E.2d 332 (1989)

Payne v. State, 232 Ga. App. 591, 502 S.E.2d 526 (1998)

White v. State, 233 Ga. App. 276, 503 S.E.2d 891 (1998), cert. denied, (Nov. 5, 1998)

Iowa

State v. Hilleshiem, 291 N.W.2d 314 (Iowa 1980)

State v. Loyd, 530 N.W.2d 708 (Iowa 1995)

Kan

State v. Deskins, 234 Kan. 529, 673 P.2d 1174 (1983)

State v. Barker, 252 Kan. 949, 850 P.2d 885 (1993)

Md

Little v. State, 300 Md. 485, 479 A.2d 903 (1984)

Mass

Com. v. McGeoghegan, 389 Mass. 137, 449 N.E.2d 349, 37 A.L.R.4th 1 (1983)

Mo

State v. Welch, 755 S.W.2d 624 (Mo. Ct. App. W.D. 1988)

NM

City of Las Cruces v. Betancourt, 105 N.M. 655, 735 P.2d 1161 (Ct. App. 1987)

State v. Madalena, 121 N.M. 63, 908 P.2d 756 (Ct. App. 1995)

NY

People v. Scott, 63 N.Y.2d 518, 483 N.Y.S.2d 649, 473 N.E.2d 1 (1984)

ND

State v. Everson, 474 N.W.2d 695 (N.D. 1991)

City of Bismarck v. Uhden, 513 N.W.2d 373 (N.D. 1994)

Ohio

State v. Eggleston, 109 Ohio App. 3d 217, 671 N.E.2d 1325 (2d Dist. Montgomery County 1996)

Pa

Com. v. Myrtetus, 397 Pa. Super. 299, 580 A.2d 42 (1990)

SD

State v. Thill, 474 N.W.2d 86 (S.D. 1991)

W Va

Carte v. Cline, 194 W. Va. 233, 460 S.E.2d 48 (1995)

In Hagood v. Town of Town Creek, 628 So. 2d 1057 (Ala. Crim. App. 1993), the court noted that there were various factors that weighed against a finding that the roadblock in question was reasonable, including the paucity of safety precautions taken at the roadblock. The insufficient safety conditions included the following: (1) despite the late evening hour, the only lighting was provided by parking lights on the police vehicles and the use of "mag" flashlights to direct traffic; (2) there were no signs, flares, or other warnings that a roadblock existed; and (3) the officers wore no reflective clothing. While not "pivotal to its constitutionality," the small number of safety precautions taken was yet another negative factor to be considered.

In Mullinax v. State, 327 Ark. 41, 938 S.W.2d 801 (1997), cert. denied, 520 U.S. 1252, 117 S. Ct. 2411, 138 L. Ed. 2d 176 (1997), the police set up barrels, thus increasing visibility of the roadblock, carried flashlights, wore orange reflective vests with "POLICE" written in large letters, and had two police cruisers with their blue lights flashing and their headlights on. The court implicitly found these safety features acceptable in the ultimate determination that the roadblock in question was reasonable.

In Little v. State, 300 Md. 485, 479 A.2d 903 (1984), which was decided prior to Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990), the Maryland court looked favorably on, among other things, several safety–related factors, including the following: (1) roadblocks conducted in a fashion that caused motorists little fright or annoyance; (2) adequate advance warning of checkpoints; (3) well illuminated and staffed roadblocks; and (4) regulations calling for suspension of the roadblock if traffic became congested.

In State v. Welch, 755 S.W.2d 624 (Mo. Ct. App. W.D. 1988), the Missouri Court of Appeals considered favorably, among other things, the use of easily readable signs, red flares, cruisers with flashing lights, and officers in reflective vests to readily announce the roadblock to oncoming travelers, as well as provisions for alleviating congestion any time four or five cars became backed up.

In State v. Bates, 120 N.M. 1060, 902 P.2d 1060 (Ct. App. 1995), the court looked favorably on the fact that traffic was allowed to flow through the roadblock for up to five minutes to relieve congestion, as well as the fact that the checkpoint was visible to oncoming motorists from up to of a mile away.

In State v. Madalena, 121 N.M. 63, 908 P.2d 756 (Ct. App. 1995), the court found that the safety of motorists was well provided for, with orange pylons, "special" stop signs, six police cars with flashing lights, and a safe distance for stopping as one approached the roadblock.

In City of Bismarck v. Uhden, 513 N.W.2d 373 (N.D. 1994), the court looked favorably on, among other things, the use of signs, flares, cones, and other safety devices and the fact that the location was chosen because it had good lighting, "presumably" to allow motorists to see that the roadblock was being conducted by authorized officials and to lessen the chance of motorist fright or annoyance.

CUMULATIVE SUPPLEMENT

Cases:

Police roadblock set up to screen drivers for driving under influence was not illegal under Fourth Amendment; task force had specific authority to set up roadblock, checkpoint was for legitimate purpose, screening officer was certified and qualified to administer breath and field sobriety tests, every car that passed through roadblock was checked, delay to motorists was minimal, and roadblock was well identified with reflective signs and flashing lights, police cars, and officers dressed in reflective gear. U.S.C.A. Const. Amend. 4. Dale v. State, 600 S.E.2d 763 (Ga. Ct. App. 2004).

The stop of defendant's vehicle at a checkpoint constituted a valid checkpoint stop; police testimony established that the primary purpose of the checkpoint was roadway safety and enforcement of vehicular laws and regulations rather than general crime control, that the checkpoint was effective in advancing those interests, and that the degree of intrusion on drivers' liberty and privacy interests was minimal, and one of the officers testified that he kept a written record of the checkpoint stops that had taken place. U.S.C.A. Const.Amend. 4. People v. Dugan, 869 N.Y.S.2d 57 (App. Div. 1st Dep't 2008).

An on-site law enforcement officer's determination as to when to suspend or when to resume a sobriety checkpoint must be controlled by two general requirements: to ensure safety and to keep any delay in passing through the checkpoint reasonable; considerations of safety, both for the public and the officers, must be paramount in the operation of a checkpoint. U.S.C.A. Const.Amend. 4; Const. Art. 1, § 8. Com. v. Worthy, 957 A.2d 720 (Pa. 2008).

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[END OF SUPPLEMENT]

§ 8. Length of detention and level of intrusion

[Cumulative Supplement]

In the following cases, the courts, either expressly or implicitly, held that other factors to be considered in determining the validity or reasonableness of a sobriety roadblock are the length and level of intrusion of the stop.

Ariz

State v. Superior Court In and For Pima County, 143 Ariz. 45, 691 P.2d 1073 (1984)

Ark

Mullinax v. State, 327 Ark. 41, 938 S.W.2d 801 (1997), cert. denied, 520 U.S. 1252, 117 S. Ct. 2411, 138 L. Ed. 2d 176 (1997)

Colo

People v. Rister, 803 P.2d 483 (Colo. 1990)

Conn

State v. Boisvert, 40 Conn. App. 420, 671 A.2d 834 (1996), certification denied, 237 Conn. 903, 674 A.2d 1332 (1996)

Fla
State v. Jones, 483 So. 2d 433 (Fla. 1986)
Campbell v. State, 679 So. 2d 1168 (Fla. 1996)
Ga
State v. Golden, 171 Ga. App. 27, 318 S.E.2d 693 (1984)
Payne v. State, 232 Ga. App. 591, 502 S.E.2d 526 (1998)
White v. State, 233 Ga. App. 276, 503 S.E.2d 891 (1998), cert. denied, (Nov. 5, 1998)
Ill
People v. Wells, 241 Ill. App. 3d 141, 181 Ill. Dec. 505, 608 N.E.2d 578 (3d Dist. 1993)
Kan
Davis v. Kansas Dept. of Revenue, 252 Kan. 224, 843 P.2d 260 (1992)
State v. Barker, 252 Kan. 949, 850 P.2d 885 (1993)
Md
Little v. State, 300 Md. 485, 479 A.2d 903 (1984)
Mo
State v. Welch, 755 S.W.2d 624 (Mo. Ct. App. W.D. 1988)
NM
City of Las Cruces v. Betancourt, 105 N.M. 655, 735 P.2d 1161 (Ct. App. 1987)
State v. Bates, 120 N.M. 1060, 902 P.2d 1060 (Ct. App. 1995)
ND
State v. Everson, 474 N.W.2d 695 (N.D. 1991)
Ohio
State v. Blackburn, 63 Ohio Misc. 2d 211, 620 N.E.2d 319 (Mun. Ct. 1993)
Pa
Com. v. Myrtetus, 397 Pa. Super. 299, 580 A.2d 42 (1990)
Tex
State v. Van Natta, 805 S.W.2d 40 (Tex. App. Fort Worth 1991), petition for discretionary review refused, 811 S.W.2d 608 (Tex. Crim. App. 1991)
Enax v. State, 877 S.W.2d 548 (Tex. App. Beaumont 1994), reh'g overruled, (June 30, 1994)
The court in State v. Boisvert, 40 Conn. App. 420, 671 A.2d 834 (1996), certification denied, 237 Conn. 903, 674 A.2d 1332 (1996), held that a roadblock where all drivers were stopped for only a minute or two and were required to answer only a few questions was reasonable.

In State v. Blackburn, 63 Ohio Misc. 2d 211, 620 N.E.2d 319 (Mun. Ct. 1993), the court considered with disfavor the fact that cars were stopped at the roadblock for two to five minutes. The court contrasted this with the minimal 25–second detention of vehicles in Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990). Ultimately, the length of time vehicles were detained was one of several factors the court considered in deciding that the roadblock in question was unconstitutional.

In State v. Van Natta, 805 S.W.2d 40 (Tex. App. Fort Worth 1991), petition for discretionary review refused, 811 S.W.2d 608 (Tex. Crim. App. 1991), the roadblock in question contemplated the detention of all southbound drivers. The field officers were instructed to greet the drivers by stating: "Good evening. We're conducting a DWI checkpoint, field sobriety evaluation. Thank you for your courtesy." Each detention was intended to last less than a minute unless the officers observed signs of intoxication. Based on this showing, the court held that the state had fully satisfied one of the three prongs of the balancing test derived from Brown v. Texas, 443 U.S. 47, 99 S. Ct. 2637, 61 L. Ed. 2d 357 (1979), namely, that the roadblock in question was designed to be brief and minimally intrusive to drivers. The court also held that the state had satisfied one of the two remaining prongs by establishing that the state had a compelling interest in eradicating drunk driving. Ultimately, however, the roadblock was deemed unconstitutional due to the state's failure to establish the third prong—the effectiveness of roadblocks in dealing with drunk driving.

CUMULATIVE SUPPLEMENT

Cases:

Police roadblock checkpoint at which all motorists were systematically stopped so that police could ask them for information about a recent fatal hit–and–run accident on that highway and hand each driver a flyer requesting assistance in identifying the vehicle and driver involved in the accident was reasonable, and thus, did not violate the Fourth Amendment rights of motorist who was arrested for driving under the influence of alcohol (DUI) after he arrived at the stop; the relative public concern was grave, the stop advanced that concern to a significant degree, and the stop, which required a wait in line of a few minutes at most, interfered only minimally with liberty of the sort the Fourth Amendment seeks to protect. U.S. Const. Amend. IV. Illinois v. Lidster, 124 S. Ct. 885 (U.S. 2004).

Traffic safety compliance checkpoint did not in itself effectuate an unlawful seizure or stop of defendant's vehicle; while the checkpoint may have been briefly inconvenient for the affected motorists, the police did not restrict defendant's freedom of movement in such a way that a reasonable person in his position would not have felt free to leave. U.S.C.A. Const.Amend. 4. Jones v. U.S., 972 A.2d 821 (D.C. 2009).

Police roadblock at which defendant was arrested for driving under the influence (DUI) was reasonable; roadblock was established for the proper purpose of examining the driver's licenses and proof of insurance of all vehicles traveling eastbound on parkway, decision of where and when to place the roadblock was made by supervisory personnel rather than field officers, all vehicles were stopped with minimal delay, and officers were trained and experienced in making initial determination as to which motorists should be given field tests for intoxication. Lutz v. State, 548 S.E.2d 323 (Ga. 2001).

Police roadblock set up to screen drivers for driving under influence was not illegal under Fourth Amendment; task force had specific authority to set up roadblock, checkpoint was for legitimate purpose, screening officer was certified and qualified to administer breath and field sobriety tests, every car that passed through roadblock was checked, delay to motorists was minimal, and roadblock was well identified with reflective signs and flashing lights, police cars, and officers dressed in reflective gear. U.S.C.A. Const. Amend. 4. Dale v. State, 600 S.E.2d 763 (Ga. Ct. App. 2004).

A roadblock is reasonable under the Fourth Amendment if (1) the decision to implement it was made by supervisory personnel, rather than the officers in the field; (2) all vehicles are stopped as opposed to random vehicle stops; (3) the delay to motorists is minimal; (4) the roadblock operation is well identified as a police checkpoint; and (5) the screening officer's training and experience is sufficient to qualify him to make an initial determination as to which motorists should be given field tests for intoxication. U.S. Const. Amend. 4. State v. Stearns, 240 Ga. App. 806, 524 S.E.2d 554 (1999), reconsideration denied, (Nov. 16, 1999).

Police officer's request that defendant produce his driver's license and vehicle registration, at a police sobriety checkpoint, did not violate defendant's Fourth Amendment rights, for the purpose of prosecution for operating a motor vehicle after privileges had been forfeited for life; the purpose of checkpoint was to prevent drunk driving, asking for a drivers license and registration gave officers an opportunity to look for signs of intoxication, and drivers stopped at checkpoint were detained for under two minutes. U.S.C.A. Const. Amend. IV. Sublett v. State, 815 N.E.2d 1031 (Ind. Ct. App. 2004).

Deficiencies in operations plan for sobriety checkpoint lasting 150 minutes during which police stopped every vehicle that approached the checkpoint did not to rise to the level of a constitutional violation of defendant's rights which would require suppression of the evidence gathered during the stop; although no specific plan was outlined in plan to ensure that stops were non-random, since every vehicle was stopped the checkpoint was in fact non-random, and lack of a specific duration in plan was de minimis. U.S.C.A. Const.Amend. 4. State v. Owens, 977 So. 2d 300 (La. Ct. App. 2d Cir. 2008).

Under the New Mexico Constitution, after a checkpoint stop at a roadblock that has been set up to stop motorists for the purpose of detecting and apprehending drunk drivers, a police officer cannot further detain a motorist without reasonable suspicion of

criminal activity. Const. Art. 2, § 10. State v. Villas, 2002-NMCA-104, 55 P.3d 437 (N.M. Ct. App. 2002), cert. denied, 55 P.3d 428 (N.M. 2002).

Plan by city's public safety department for impaired driving checkpoint, requiring that every vehicle driving through checkpoint be stopped, that every driver be administered a series of alcohol screening procedures, and that a driver be taken to second location for alco–sensor test only if there was reasonable and articulable suspicion of impairment, met constitutional requirement of reasonableness and did not violate statutory prohibition against giving officers discretion as to which vehicle to stop and which stopped drivers could be asked to submit to alcohol screening tests. U.S.C.A. Const. Amend. 4; G.S. § 20–16.3A(2). State v. Colbert, 553 S.E.2d 221 (N.C. Ct. App. 2001).

Traffic stop was justified as occurring after motorist entered sobriety checkpoint, and therefore did not have to be supported by reasonable suspicion, where motorist tried to avoid checkpoint by driving in the left-turn lane but was directed by officer to re-enter the lane that went through the checkpoint.Com. v. Kendall, 2001 PA Super 42, 767 A.2d 1092 (Pa. Super. Ct. 2001).

Officer participating at checkpoint for driving under the influence of alcohol (DUI), by directing driver to park his vehicle in a nearby parking lot because he exhibited signs of alcohol use, was properly conducting an investigative detention, and did not effect the functional equivalent of an arrest, as would require probable cause, rather than reasonable suspicion. U.S.C.A. Const.Amend. 4. Taylor v. Com., 948 A.2d 189 (Pa. Commw. Ct. 2008).

Stopping of a motor vehicle during a traffic checking detail stop must be reasonable so as to minimize intrusion into an individual's privacy. U.S.C.A. Const. Amend. 4. Palmer v. Com., 36 Va. App. 169, 549 S.E.2d 29 (2001).

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[END OF SUPPLEMENT]

§ 9. Sequence in which cars stopped

[Cumulative Supplement]

In the following cases, the courts, expressly or implicitly, held that a factor to be considered in determining the validity or reasonableness of a sobriety roadblock is the sequence in which cars are stopped; for example, whether every vehicle or every fifth vehicle is detained, as opposed to a random, discriminatory selection of vehicles.

Ark

Mullinax v. State, 327 Ark. 41, 938 S.W.2d 801 (1997), cert. denied, 520 U.S. 1252, 117 S. Ct. 2411, 138 L. Ed. 2d 176 (1997)

Colo

People v. Rister, 803 P.2d 483 (Colo. 1990)

Conn

State v. Boisvert, 40 Conn. App. 420, 671 A.2d 834 (1996), certification denied, 237 Conn. 903, 674 A.2d 1332 (1996)

Fla

State v. Jones, 483 So. 2d 433 (Fla. 1986)

Campbell v. State, 679 So. 2d 1168 (Fla. 1996)

Ga

LaFontaine v. State, 269 Ga. 251, 497 S.E.2d 367 (1998), reconsideration denied, (Apr. 1, 1998) and cert. denied, 119 S. Ct. 371, 142 L. Ed. 2d 307 (U.S. 1998)

State v. Golden, 171 Ga. App. 27, 318 S.E.2d 693 (1984)

Evans v. State, 190 Ga. App. 856, 380 S.E.2d 332 (1989)

Ill

People v. Bartley, 109 Ill. 2d 273, 93 Ill. Dec. 347, 486 N.E.2d 880 (1985)

People v. Wells, 241 Ill. App. 3d 141, 181 Ill. Dec. 505, 608 N.E.2d 578 (3d Dist. 1993)

People v. Taylor, 259 Ill. App. 3d 289, 197 Ill. Dec. 207, 630 N.E.2d 1331 (3d Dist. 1994)

Ind

State v. Garcia, 500 N.E.2d 158 (Ind. 1986)
Covert v. State, 612 N.E.2d 592 (Ind. Ct. App. 5th Dist. 1993)
Kan
State v. Deskins, 234 Kan. 529, 673 P.2d 1174 (1983)
State v. Barker, 252 Kan. 949, 850 P.2d 885 (1993)
Md
Little v. State, 300 Md. 485, 479 A.2d 903 (1984)
Mass
Com. v. McGeoghegan, 389 Mass. 137, 449 N.E.2d 349, 37 A.L.R.4th 1 (1983)
Com. v. Trumble, 396 Mass. 81, 483 N.E.2d 1102 (1985)
Mo
State v. Welch, 755 S.W.2d 624 (Mo. Ct. App. W.D. 1988)
NM
State v. Bates, 120 N.M. 1060, 902 P.2d 1060 (Ct. App. 1995)
State v. Madalena, 121 N.M. 63, 908 P.2d 756 (Ct. App. 1995)
ND
State v. Everson, 474 N.W.2d 695 (N.D. 1991)
City of Bismarck v. Uhden, 513 N.W.2d 373 (N.D. 1994)
Pa
Com. v. Myrtetus, 397 Pa. Super. 299, 580 A.2d 42 (1990)
Com. v. Kendall, 437 Pa. Super. 139, 649 A.2d 695 (1994)
Tex
Holt v. State, 887 S.W.2d 16 (Tex. Crim. App. 1994), reh'g on petition for discretionary review denied, (Oct. 5, 1994)
Wash
City of Seattle v. Messiani, 755 P.2d. 775 (1988)
W Va
Carte v. Cline, 194 W. Va. 233, 460 S.E.2d 48 (1995)
In LaFontaine v. State, 269 Ga. 251, 497 S.E.2d 367 (1998), reconsideration denied, (Apr. 1, 1998) and cert. denied, 119 S. Ct. 371, 142 L. Ed. 2d 307 (U.S. 1998), the Georgia Supreme Court found it significant in determining the reasonableness of a sobriety checkpoint that all cars were stopped, leaving no discretion to the officers in the field.

In Brimer v. State, 201 Ga. App. 401, 411 S.E.2d 128 (1991), the court held that a roadblock was not unreasonable and was not itself an invasion of Fourth Amendment rights where the roadblock was designed to stop vehicles traveling in either direction, each driver was stopped, asked for his driver's license and proof of insurance, and was observed for intoxication. The court determined that the roadblock was not established as subterfuge or pretext to stop vehicles and search for drugs, but was established because of a founded concern for public safety.

In White v. State, 233 Ga. App. 276, 503 S.E.2d 891 (1998), cert. denied, (Nov. 5, 1998), the appellate court implicitly accepted the notion that, while the sobriety roadblock plan called for stopping all cars, it was permissible not to if "safety considerations dictated otherwise."

In People v. Wells, 241 Ill. App. 3d 141, 181 Ill. Dec. 505, 608 N.E.2d 578 (3d Dist. 1993), where the roadblock was set up to check for licenses, seat belt violations, improper lighting, expired license plates, and "to be on the lookout for intoxicated drivers," the court implicitly condoned stopping every other vehicle, as well as any vehicle "with some type of obvious violation."

In City of Bismarck v. Uhden, 513 N.W.2d 373 (N.D. 1994), the North Dakota court looked favorably on, among other things, the fact that every other car was stopped, thereby preventing any field officer discretion. The court reached this conclusion even though the supervisor on the scene was permitted to adjust the frequency of stops if necessary.

CUMULATIVE SUPPLEMENT

Cases:

Testimony of defendant's friend, who was following defendant's car in another vehicle, that he saw at least one other vehicle being "waved through" roadblock without being required to stop, was insufficient to establish that police randomly selected which vehicles to stop and thus that roadblock was improper under Fourth Amendment; friend admitted that the car he saw being waved through "was already there" when he reached the roadblock, such that vehicle could have been at the end of its stop when he first saw it, and friend also acknowledged that his own vehicle was required to stop when he reached the checkpoint. U.S.C.A. Const.Amend. 4. Britt v. State, 668 S.E.2d 461 (Ga. Ct. App. 2008).

Secondary roadblock at which defendant was stopped was directly connected with primary roadblock, and thus, stop of defendant at secondary roadblock, which resulted in his conviction for driving under the influence of alcohol (DUI), was lawful; secondary roadblock was only 20 yards from primary roadblock, officer manning secondary roadblock was posted in his position by his lieutenant, who was manning the primary roadblock, and secondary roadblock was clearly marked with flashing lights from officer's marked police car. U.S.C.A. Const. Amend. 4. Fischer v. State, 581 S.E.2d 680 (Ga. Ct. App. 2003).

Plan by city's public safety department for impaired driving checkpoint, requiring that every vehicle driving through checkpoint be stopped, that every driver be administered a series of alcohol screening procedures, and that a driver be taken to second location for alco–sensor test only if there was reasonable and articulable suspicion of impairment, met constitutional requirement of reasonableness and did not violate statutory prohibition against giving officers discretion as to which vehicle to stop and which stopped drivers could be asked to submit to alcohol screening tests. U.S.C.A. Const. Amend. 4; G.S. § 20–16.3A(2). State v. Colbert, 553 S.E.2d 221 (N.C. Ct. App. 2001).

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[END OF SUPPLEMENT]

§ 10. Location

[Cumulative Supplement]

In the following cases, the courts, expressly or implicitly, held that a factor to be considered in determining the validity or reasonableness of a sobriety checkpoint is the location chosen for conducting it.

Ariz

State v. Tykwinski, 170 Ariz. 365, 824 P.2d 761 (Ct. App. Div. 1 1991)

Cal

Ingersoll v. Palmer, 43 Cal. 3d 1321, 241 Cal. Rptr. 42, 743 P.2d 1299 (1987)

Colo

People v. Rister, 803 P.2d 483 (Colo. 1990)

Conn

State v. Boisvert, 40 Conn. App. 420, 671 A.2d 834 (1996), certification denied, 237 Conn. 903, 674 A.2d 1332 (1996)

Ga

LaFontaine v. State, 269 Ga. 251, 497 S.E.2d 367 (1998), reconsideration denied, (Apr. 1, 1998) and cert. denied, 119 S. Ct. 371, 142 L. Ed. 2d 307 (U.S. 1998)

Hawaii

State v. Fedak, 9 Haw. App. 98, 825 P.2d 1068 (1992)

Iowa

State v. Hilleshiem, 291 N.W.2d 314 (Iowa 1980)

State v. Loyd, 530 N.W.2d 708 (Iowa 1995)

Kan

State v. Barker, 252 Kan. 949, 850 P.2d 885 (1993)

Mass

Com. v. Donnelly, 34 Mass. App. Ct. 953, 614 N.E.2d 1018 (1993)

Mo

State v. Welch, 755 S.W.2d 624 (Mo. Ct. App. W.D. 1988)

NJ

State v. Mazurek, 237 N.J. Super. 231, 567 A.2d 277 (App. Div. 1989), certification denied, 121 N.J. 623, 583 A.2d 320 (1990)

NM

City of Las Cruces v. Betancourt, 105 N.M. 655, 735 P.2d 1161 (Ct. App. 1987)

State v. Bates, 120 N.M. 1060, 902 P.2d 1060 (Ct. App. 1995)

State v. Madalena, 121 N.M. 63, 908 P.2d 756 (Ct. App. 1995)

NY

People v. Scott, 63 N.Y.2d 518, 483 N.Y.S.2d 649, 473 N.E.2d 1 (1984)

Ohio

State v. Blackburn, 63 Ohio Misc. 2d 211, 620 N.E.2d 319 (Mun. Ct. 1993)

Pa

Com. v. Myrtetus, 397 Pa. Super. 299, 580 A.2d 42 (1990)

Com. v. Kendall, 437 Pa. Super. 139, 649 A.2d 695 (1994)

In Ingersoll v. Palmer, 43 Cal. 3d 1321, 241 Cal. Rptr. 42, 743 P.2d 1299 (1987), the California Supreme Court held that the location of a sobriety checkpoint should be determined by achieving the governmental interest in erecting the roadblock in the first place (e.g., "on roads having a high incidence of alcohol related accidents and/or arrests").

In People v. Rister, 803 P.2d 483 (Colo. 1990), the Colorado Supreme Court indicated that the location chosen for conducting a sobriety checkpoint must be reasonable. The location at issue, which was found to be acceptable to the court, was selected "on the basis of information that drunk drivers had been arrested or had been involved in accidents on roads … that provided access to nearby recreational sites."

In Brimer v. State, 201 Ga. App. 401, 411 S.E.2d 128 (1991), the court held that a roadblock was not unreasonable and was not itself an invasion of Fourth Amendment rights where a deputy sheriff, who was an experienced, senior officer, set up the roadblock on a public road, about 75 yards from a house where it was alleged that there was party going on at which underage persons were drinking alcohol and using drugs. The purported purpose of the roadblock was "to keep anybody under influence of drugs from getting on public highway and killing or maiming anybody." The court found that the roadblock was not established as subterfuge or pretext to stop vehicles and search for drugs, but was established because of a founded concern for public safety.

In Com. v. Donnelly, 34 Mass. App. Ct. 953, 614 N.E.2d 1018 (1993), the Appeals Court of Massachusetts rendered a very narrow and fact–specific decision concerning the site selected for a sobriety roadblock. The court noted that the site selected for a roadblock must be a "problem area," where prior accidents or arrests for drunk driving had taken place. The written guidelines in question required that site selection be based on, among other things, a location where prior alcohol–related incidents had occurred. In order to satisfy this requirement, the commonwealth submitted evidence of alcohol–related incidents that occurred at the chosen location two or more years prior to the roadblock at issue. The commonwealth did not produce, however, any evidence relative to two prior sobriety roadblocks that had been conducted at the same location within the same year as the roadblock in question. Inferring that the Commonwealth would have produced such evidence had it been helpful, the court struck down the roadblock. The court noted that the combination of the failure to produce this relevant evidence and the staleness of the evidence actually produced converted the site–selection process from one based on current and reliable information to one based on police discretion.

In State v. Mazurek, 237 N.J. Super. 231, 567 A.2d 277 (App. Div. 1989), certification denied, 121 N.J. 623, 583 A.2d 320 (1990), while the police chief testified that the location of the roadblock was "pitifully unproductive," the court held that the roadblock was nonetheless reasonable, as the success of a roadblock cannot be measured solely in terms of the number of arrests made.

In State v. Madalena, 121 N.M. 63, 908 P.2d 756 (Ct. App. 1995), the New Mexico Court of Appeals considered favorably the fact that the roadblock's location was chosen based on the fact that a number of alcohol–related fatalities and accidents had occurred in the vicinity.

In People v. Scott, 63 N.Y.2d 518, 483 N.Y.S.2d 649, 473 N.E.2d 1 (1984), the court held that a roadblock need not be permanently in place, and that it may be temporary and in different locations, as a permanent location, which would in time become well known, could easily be avoided by drunk drivers.

In Com. v. Trivitt, 437 Pa. Super. 432, 650 A.2d 104 (1994), the roadblock was struck down as it was not located in an area likely to be used by drunk drivers.

CUMULATIVE SUPPLEMENT

Cases:

Operation of sobriety checkpoint at a different location than had been indicated in a media advisory giving advance publicity for checkpoint did not result in an unreasonable seizure of motorist in violation of the Fourth Amendment, since checkpoint had been operated in conformance with other seven factors for assessing intrusiveness. U.S.C.A. Const.Amend. 4. Arthur v. Department of Motor Vehicles, 184 Cal. App. 4th 1199, 2010 WL 1611128 (4th Dist. 2010).

The Supreme Court of Indiana in State v. Gerschoffer, 763 N.E.2d 960 (Ind. 2002), in affirming suppression of the evidence obtained from the sobriety roadblock, noted that the connection between the vehicular threat of OWI and the objectives, location and timing of the roadblock was tenuous at best. A press release indicated that this checkpoint was intended to catch drunk drivers, seat belt and child restraint violations, and "other violations." The officer in charge indicated that the site selection was intended to reduce speeding and "cruising." The State offered a montage of objectives, including the generic law enforcement goal of "mak[ing] sure everybody is doing what they're supposed to. The court noted this sounded more like a generalized dragnet than a minimally intrusive, neutral effort to remove impaired drivers from the roadways before they hurt someone. The court noted that the evening's statistics reinforce this conclusion, as seventy stops produced fourteen traffic arrests and thirty-four warnings, and only two citations were for OWI. The court also noted that the location's selection cast further doubt on whether this roadblock was sufficiently related to the public danger of drunk driving. While the officers in charge sensibly chose a well-lighted, reasonably busy area that was amenable to traffic control, and they chose this particular site partially because they had conducted a checkpoint in the same location the previous winter and wanted to compare results, when asked the reasons for the site selection, however, neither officer indicated that drunk driving had been a particular problem at this location. The officer said only that a high volume of general traffic violations occurred in the area, the officers operated the roadblock from 11:30 p.m. until 1:30 a.m. because "traffic is easier to handle; it's not exactly that we were going to get a lot of [OWI] arrests, businesses were closed at that hour and shoppers were no longer out, but it was still early enough for a "substantial amount of traffic," and finally, the timing was convenient based upon officer shift changes. As with location, the State did not link the timing to the danger being addressed. The court noted that to be constitutionally reasonable, the location and timing of sobriety checkpoints should take into account police officer safety, public safety, and public convenience, and the roadblock should also effectively target the public danger of impaired driving. Since the state did not offer any evidence of objective considerations such as an unusually high rate of OWI-related accidents or arrests in the chosen area, the court held that the State has therefore not shown that this roadblock was sufficiently related to the legitimate law enforcement purpose of combating drunk driving.

To be constitutionally reasonable, the location and timing of sobriety checkpoints should take into account police officer safety, public safety, and public convenience, and roadblock should also effectively target the public danger of impaired driving. West's A.I.C. Const. Art. 1, § 11. King v. State, 877 N.E.2d 518 (Ind. Ct. App. 2007).

Sobriety checkpoint at which defendant was arrested for driving while intoxicated was not invalid on ground that specific site where checkpoint was established was not selected by police supervisor; police directive setting forth criteria to be used in planning a sobriety checkpoint did not require that supervisor select specific site. McKinney's Vehicle and Traffic Law § 1192, subd. 3. People v. Sears, 769 N.Y.S.2d 708 (J. Ct. 2003).

It is essential that the route selected for a valid drunk–driver roadblock be one which, based on local experience, is likely to be traveled by intoxicated drivers; the time of the roadblock should be governed by the same consideration. Com. v. Stewart, 2003 PA Super 86, 846 A.2d 738 (2004).

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[END OF SUPPLEMENT]

§ 11. Advance publicity

[Cumulative Supplement]

In the following cases, the courts, expressly or implicitly, held that the existence and content of advance publicity is one of the factors, dispositive or otherwise, to be considered in assessing the validity or reasonableness of a sobriety roadblock.

Ariz

State v. Superior Court In and For Pima County, 143 Ariz. 45, 691 P.2d 1073 (1984)

Ark

Mullinax v. State, 327 Ark. 41, 938 S.W.2d 801 (1997), cert. denied, 520 U.S. 1252, 117 S. Ct. 2411, 138 L. Ed. 2d 176 (1997)

Cal

People v. Banks, 6 Cal. 4th 926, 25 Cal. Rptr. 2d 524, 863 P.2d 769 (1993)

Colo

People v. Rister, 803 P.2d 483 (Colo. 1990)

Conn

State v. Boisvert, 40 Conn. App. 420, 671 A.2d 834 (1996), certification denied, 237 Conn. 903, 674 A.2d 1332 (1996)

Fla

State v. Jones, 483 So. 2d 433 (Fla. 1986)

Campbell v. State, 679 So. 2d 1168 (Fla. 1996)

Ga

O'Kelley v. State, 210 Ga. App. 686, 436 S.E.2d 760 (1993)

Hooten v. State, 212 Ga. App. 770, 442 S.E.2d 836 (1994)

Ill

People v. Bartley, 109 Ill. 2d 273, 93 Ill. Dec. 347, 486 N.E.2d 880 (1985)

People v. Taylor, 259 Ill. App. 3d 289, 197 Ill. Dec. 207, 630 N.E.2d 1331 (3d Dist. 1994)

Ind

State v. Garcia, 500 N.E.2d 158 (Ind. 1986)

Covert v. State, 612 N.E.2d 592 (Ind. Ct. App. 5th Dist. 1993)

Kan

State v. Deskins, 234 Kan. 529, 673 P.2d 1174 (1983)

State v. Barker, 252 Kan. 949, 850 P.2d 885 (1993)

Me

State v. Leighton, 551 A.2d 116 (Me. 1988)

Mass

Com. v. McGeoghegan, 389 Mass. 137, 449 N.E.2d 349, 37 A.L.R.4th 1 (1983)

Com. v. Trumble, 396 Mass. 81, 483 N.E.2d 1102 (1985)

Com. v. Amaral, 398 Mass. 98, 495 N.E.2d 276 (1986)

NM

City of Las Cruces v. Betancourt, 105 N.M. 655, 735 P.2d 1161 (Ct. App. 1987)

State v. Bates, 120 N.M. 1060, 902 P.2d 1060 (Ct. App. 1995)

State v. Madalena, 121 N.M. 63, 908 P.2d 756 (Ct. App. 1995)

ND

City of Bismarck v. Uhden, 513 N.W.2d 373 (N.D. 1994)

Ohio

State v. Bauer, 99 Ohio App. 3d 505, 651 N.E.2d 46 (10th Dist. Franklin County 1994)

State v. Blackburn, 63 Ohio Misc. 2d 211, 620 N.E.2d 319 (Mun. Ct. 1993)

Pa

Com. v. Myrtetus, 397 Pa. Super. 299, 580 A.2d 42 (1990)

Com. v. Kendall, 437 Pa. Super. 139, 649 A.2d 695 (1994)

Tenn

State v. Downey, 945 S.W.2d 102, 74 A.L.R.5th 729 (Tenn. 1997)

Tex

Holt v. State, 887 S.W.2d 16 (Tex. Crim. App. 1994), reh'g on petition for discretionary review denied, (Oct. 5, 1994)

Utah

State v. Kitchen, 808 P.2d 1127 (Utah Ct. App. 1991)

In People v. Banks, 6 Cal. 4th 926, 25 Cal. Rptr. 2d 524, 863 P.2d 769 (1993), the California Supreme Court held that advance publicity is not a constitutional prerequisite to the operation of a sobriety roadblock. The court found that the operation of a sobriety checkpoint conducted in the absence of advanced publicity, but otherwise in conformance with previously established guidelines, does not result in an unreasonable "seizure" within the meaning of the Fourth Amendment.

In People v. Rister, 803 P.2d 483 (Colo. 1990), while the dates of a sobriety roadblock were revealed in advance, but not the exact location and time, the court held that this absence of information did not invalidate the roadblock.

In State v. Boisvert, 40 Conn. App. 420, 671 A.2d 834 (1996), certification denied, 237 Conn. 903, 674 A.2d 1332 (1996), the court noted that written guidelines had to be followed to set up a roadblock, which included announcing to the news media at least three days prior to the roadblock the name of the town and the approximate time. As to the roadblock in question, the court found that the press release failed to note the date or time of the roadblock and there was no evidence that the press release was even printed by the local media. Despite this shortcoming, the court found the roadblock to be in "substantial compliance with the guidelines" and affirmed the trial court's decision upholding the roadblock.

In State v. Barker, 252 Kan. 949, 850 P.2d 885 (1993), the Kansas Supreme Court held that advance publicity is one of many factors to be considered by a reviewing court. As to the roadblock in question, there was no advance publicity, but this was held to not be constitutionality fatal. The court noted that, while advance publicity is valid and desirable, its absence, on its own, did not invalidate the checkpoint.

In Com. v. Amaral, 398 Mass. 98, 495 N.E.2d 276 (1986), the Massachusetts Supreme Judicial Court suggested that, while advance publicity was not an "indispensable precondition to the reasonableness of a roadblock," advance publication of the date, but not location, of the roadblock would increase the checkpoint's deterrent effect and decrease any subjective impact on individuals.

In State v. Bauer, 99 Ohio App. 3d 505, 651 N.E.2d 46 (10th Dist. Franklin County 1994), the Ohio Appeals Court determined that the checkpoint was not invalid merely because the information given to the public did not include the location.

The court in State v. Blackburn, 63 Ohio Misc. 2d 211, 620 N.E.2d 319 (Mun. Ct. 1993), held that the failure of the state to offer any evidence of publicity, as well as site selection and operation, was deemed fatal to the validity of the sobriety roadblock in question.

CUMULATIVE SUPPLEMENT

Cases:

The timing and amount of advance notice to public regarding sobriety checkpoints operated by city police department did not render the checkpoints violative of state constitutional article prohibiting all unreasonable searches and seizures, where while the press release regarding the checkpoints was distributed to many media outlets on the day prior to the day of the first

checkpoint, assumption could be made that it went out before the end of the business day and thus in time to appear in the next day's morning papers, and while only one media outlet decided to print it, one was enough. Const. Pt. 1, Art. 19; RSA 265:1–a. State v. Hunt, 924 A.2d 424 (N.H. 2007).

Although advance publicity is not absolutely required in planning sobriety checkpoints, use of advance publicity serves to give even greater notice of the checkpoint and results in a lesser intrusion of privacy. U.S.C.A. Const.Amend. 4. State v. Williams, 2009-Ohio-970, 909 N.E.2d 667 (Ohio Ct. App. 1st Dist. Hamilton County 2009).

Police provided sufficient warning of roadblock to inspect for driving while under influence of alcohol (DUI), where police placed signs prominently in front of roadblock, there were lights, a number of officers, and police cars at the actual site of the roadblock, and news release regarding roadblock had been issued. U.S.C.A. Const. Amend. 4; Const. Art. 1, § 8; 75 Pa. C.S.A. § 6308(b). Com. v. Rastogi, 2003 PA Super 46, 816 A.2d 1191 (Pa. Super. Ct. 2003).

Driving under the influence (DUI) checkpoint was in substantial compliance with Tarbert–Blouse guidelines, and therefore, suppression of audio, visual and sensory impressions made by arresting officers at checkpoint was not warranted; officer testified that adequate notice was provided in the form of a news release, as well as sign which was placed about a quarter of a mile ahead of the checkpoint indicating there was a "police sobriety checkpoint ahead," and officer testified that motorists were stopped for a time period of no more than 30 seconds. Com. v. Etheredge, 2002 PA Super 58, 794 A.2d 391 (Pa. Super. Ct. 2002).

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[END OF SUPPLEMENT]

§ 12. Effectiveness; availability of less intrusive methods

[Cumulative Supplement]

In the following cases, the courts, in assessing the validity or reasonableness of roadblocks, considered the effectiveness of sobriety checkpoints or whether there were less intrusive means for achieving the goal of eradicating drunk driving.

In State v. Henderson, 114 Idaho 293, 756 P.2d 1057 (1988), the roadblock was held to be invalid due, in part, to two police officers testifying that more drunk drivers would be apprehended by routine patrols than by the use of roadblocks, so long as the same amount of manpower was employed.

In State v. Barker, 252 Kan. 949, 850 P.2d 885 (1993), the court stated that the availability of less intrusive means to accomplish the goal of eradicating drunk driving is one of many factors to consider in determining the reasonableness of a roadblock.

In State v. Leighton, 551 A.2d 116 (Me. 1988), the court upheld a sobriety checkpoint under the Fourth Amendment to the United States Constitution despite the absence of, among other things, a showing that there were no less intrusive means for detecting drunk drivers.

In Com. v. Shields, 402 Mass. 162, 521 N.E.2d 987 (1988), the Massachusetts Supreme Judicial Court declined to hold that the commonwealth was required to prove that there were no equally effective, yet less intrusive, means for enforcing the state's drunk–driving laws in order to sustain the burden of establishing the reasonableness of a sobriety checkpoint. Rather, the court held that the commonwealth only had to show that the roadblock in question was conducted in accordance with guidelines established in the earlier Massachusetts case of Com. v. Trumble, 396 Mass. 81, 483 N.E.2d 1102 (1985), as discussed in § 6.

In State v. Madalena, 121 N.M. 63, 908 P.2d 756 (Ct. App. 1995), the court held that neither the Fourth Amendment to the United States Constitution nor the New Mexico constitution requires the government to prove that there are no equally effective, yet less intrusive, alternatives for detecting drunk drivers.

In State v. Van Natta, 805 S.W.2d 40 (Tex. App. Fort Worth 1991), petition for discretionary review refused, 811 S.W.2d 608 (Tex. Crim. App. 1991), the court held that the arrest of the defendant at a sobriety checkpoint violated his rights under

the Fourth Amendment due to the state's failure to establish the effectiveness of roadblocks in dealing with drunk driving. The court reached this conclusion despite holding that the state had fully satisfied the other two prongs of the balancing test derived from Brown v. Texas, 443 U.S. 47, 99 S. Ct. 2637, 61 L. Ed. 2d 357 (1979), namely, that the state had a compelling interest in eradicating drunk driving and that the roadblock in question was designed to be brief and minimally intrusive to drivers. For the third prong, however, the state failed to present any statistical or opinion evidence about the effectiveness of sobriety checkpoints. Indeed, the state's witness disclaimed any knowledge about the effectiveness of roadblocks in fighting drunk driving. The court also found that, while there was evidence that a total of 177 cars were stopped at the roadblock and some indication that other drunk driving arrests had been made, the evidence only established that one driver, the defendant, had been arrested.

In Enax v. State, 877 S.W.2d 548 (Tex. App. Beaumont 1994), reh'g overruled, (June 30, 1994), the court found that the state had failed to establish in the lower court that the roadblock at issue was reasonable under the Fourth Amendment. Specifically, the court held that the state had failed to establish the reasonableness of the roadblock in question by failing to, among other things, present any empirical evidence to demonstrate the effectiveness of the roadblock.

In the process of invalidating the roadblock under the state constitution, the court in City of Seattle v. Messiani, 755 P.2d. 775 (Wash. 1988), stated that there was no indication that the state objectives could not be achieved by another method that was not as intrusive as the sobriety checkpoint in question.

CUMULATIVE SUPPLEMENT

Cases:

Police officers were sufficiently qualified to serve as screening officers at roadblock, where driving under the influence (DUI) training for officers in police department generally began in police academy and continued periodically through department's annual in–service training program, and each officer was a member of motorcycle squad, which was a traffic unit that dealt with the driving public. Wrigley v. State, 248 Ga. App. 387, 546 S.E.2d 794 (2001).

Sobriety roadblock for motorists, established on State highway on Thanksgiving Eve, complied with the requirements of *Kirk* and its progeny; roadblock was established by command or supervisory authority of township police department, proper signs were posted and proper traffic and motorist safety procedures were used, due advance publication of sobriety checkpoint was given in local newspapers, and roadblock was reasonably efficacious or productive because it led to 13 drunk driving arrests in four–hour or five–hour period. State v. Thomas, 372 N.J. Super. 29, 855 A.2d 17 (Law Div. 2002), judgment aff'd, 372 N.J. Super. 1, 855 A.2d 1 (App. Div. 2004).

Police automobile sobriety checkpoint did not violate prohibition on unreasonable searches and seizures under Federal or State Constitution; state had great interest in reducing drunk driving, checkpoint proved effective in furthering that interest by removing at least one impaired driver from the road and by making many more drivers aware of the problem, and level of intrusion caused by checkpoint was objectively and subjectively minimal, in that law-abiding motorists were briefly detained at checkpoint and were not subjected to undue fear or surprise because checkpoint officers had minimal discretion in which vehicles to stop and checkpoint demonstrated visible signs of legal authority. U.S.C.A. Const.Amend. 4; Const. Art. 1, § 8. Martin v. North Dakota Dept. of Transp., 2009 ND 181, 773 N.W.2d 190 (N.D. 2009).

Statistical data indicating that roving patrols by police officers in detecting impaired driving were more efficient than sobriety checkpoints by showing that fewer man hours were utilized to effect individual stops based on individualized suspicion and resulted in higher percentage of arrests, by itself, did not establish that checkpoint constituted unreasonable seizure per se; checkpoint to detect impaired drivers was related to State's compelling interest in highway safety, and data could be misleading in that checkpoints served strong deterrent effect because of its heightened visibility to motoring public. U.S.C.A. Const.Amend. 4; Const. Art. 1, § 8. Com. v. Beaman, 880 A.2d 578 (Pa. 2005).

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[END OF SUPPLEMENT]

§ 12.5. Other factors

[Cumulative Supplement]

The following authority considered other factors in determining the validity of a police roadblock for the purpose of the discovery of alcoholic intoxication.

CUMULATIVE SUPPLEMENT

Cases:

Police officers' sobriety checkpoint stop of defendant's vehicle was reasonable, under Fourth Amendment, on grounds that primary purpose of checkpoint was to detect impaired driving, and checkpoint's advancement of public interest in preventing deaths and injuries caused by drunken drivers outweighed severity of interference with defendant's liberty, where checkpoint was approved by state judge, was on regularly used highway, was at hours and days when party-going would most likely generate drunk driving, and was at fixed location that involved stopping every car and investigating further only upon individualized suspicion. U.S.C.A. Const.Amend. 4. U.S. v. William, 603 F.3d 66 (1st Cir. 2010).

Police officers' checkpoint stop did not violate defendant's Fourth Amendment rights to be free from unreasonable search and seizure, even though officers lacked individualized suspicion of wrongdoing to support stop, since primary purpose of checkpoint was not general crime control, but rather, was to promote traffic safety by allowing officers to check drivers' licenses and vehicle registrations, and checkpoint was reasonable. U.S.C.A. Const.Amend. 4. U.S. v. Henson, 351 Fed. Appx. 818 (4th Cir. 2009).

For a sobriety checkpoint to be constitutional, the officers in the field must be governed by a set of neutral criteria so as to minimize the discretion of the field officers; written guidelines should cover in detail the procedures which field officers are to follow at the roadblock, including for the selection of vehicles, detention techniques, duty assignments, and the disposition of vehicles. U.S.C.A. Const.Amend. 4. Guy v. State, 993 So. 2d 77 (Fla. Dist. Ct. App. 2d Dist. 2008).

Primary purpose of driver's license checkpoint conducted by police department was to detect evidence of ordinary criminal wrongdoing, and thus checkpoint violated Fourth Amendment, though police officer testified that purpose of checkpoint was to target people without licenses; officer did not testify that targeting people without licenses was for purpose of improving roadway safety, and goals listed in written plan for the checkpoint program dealt with reducing illegal drugs, alcohol and prostitution, and did not mention roadway safety. U.S.C.A. Const. Amend. 4. Davis v. State, 788 So. 2d 1064 (Fla. Dist. Ct. App. 2d Dist. 2001).

Police roadblock where defendant was stopped was not employed for impermissible purpose of uncovering evidence of ordinary criminal wrong–doing, in violation of Fourth Amendment; rather, roadblock was implemented as safety checkpoint based on citizen complaints of drunken and reckless drivers in area. U.S. Const. Amend. IV. Hardin v. State, 587 S.E.2d 634 (Ga. 2003).

Field officer's testimony that he stopped defendant's vehicle at approximately 12:47 a.m. did not establish that defendant was stopped outside the time that supervisory officer designed for roadblock, so as to make stop improper under Fourth Amendment, when considered with supervisory officer's testimony that he authorized roadblock "a little bit before one a.m."; evidence showed that supervisory officer was on the scene at roadblock's inception, that field officers did not commence roadblock on their own initiative, and that the time at which defendant was stopped was generally consistent with the time for the roadblock authorized by supervisory officer. U.S.C.A. Const.Amend. 4. Britt v. State, 668 S.E.2d 461 (Ga. Ct. App. 2008).

Pursuant to Fourth Amendment, the police may reasonably stop person at police roadblock when: (1) record reflects that decision to implement checkpoint in question was made by supervisory officers and not officers in the field and that the supervisors had a legitimate primary purpose, and phrase "decision to implement" includes deciding to have roadblock and where and when

to have it; (2) all vehicles were stopped as opposed to random stops; (3) the delay to motorists was minimal; (4) roadblock operation was well identified as police checkpoint; and (5) screening officer's training and experience were sufficient to qualify him to make an initial determination as to which motorists should be given field tests for intoxication. U.S.C.A. Const.Amend. 4. Baker v. State, 650 S.E.2d 786 (Ga. Ct. App. 2007), cert. denied, (Oct. 29, 2007).

To pass constitutional muster, a roadblock must: (1) have been implemented for a legitimate primary purpose by supervisory personnel, (2) involve stopping all vehicles, (3) result in minimal delay to motorists, (4) be clearly identified as a police checkpoint, and (5) be manned by officers sufficiently trained to determine whether motorists should be given field sobriety tests. U.S.C.A. Const.Amend. 4. Yingst v. State, 650 S.E.2d 746 (Ga. Ct. App. 2007).

For a roadblock to be valid, the evidence must show that: (1) a supervisor rather than field officers decided to implement the roadblock; (2) all vehicles were stopped; (3) any delay to motorists was minimal; (4) the roadblock is well identified as a police checkpoint; and (5) the screening officer's training and experience are sufficient to qualify him to make an initial determination as to which motorists should be given field tests for intoxication. Bennett v. State, 642 S.E.2d 212 (Ga. Ct. App. 2007).

Five factors must be considered in determining if a roadblock is lawful: (1) the decision to implement the roadblock was made by supervisory personnel for a proper primary purpose; (2) all vehicles are stopped as opposed to random vehicle stops; (3) the delay to motorists is minimal; (4) the roadblock is well identified as a police checkpoint; and (5) the screening officer's training and experience are sufficient to qualify him to initially determine which motorists should be given field sobriety tests. U.S.C.A. Const.Amend. 4. Gamble v. State, 641 S.E.2d 556 (Ga. Ct. App. 2007).

Roadblock was valid as decision to implement checkpoint was made by supervisory officer and not officers in field and supervisor had legitimate primary purpose; supervisor determined time and place of roadblock to check for drunk drivers, suspended licenses, and no insurance, he testified that, under department policy, supervisors had to make call to have roadblock, as lieutenant, he was such supervisor, he had received training concerning roadblocks, both upon reaching rank below lieutenant and again upon reaching rank of lieutenant, his superiors had not been in decision to implement roadblock, he followed protocols for roadblocks in department's field manual, and that he was present at roadblock as supervisor. Giacini v. State, 636 S.E.2d 145 (Ga. Ct. App. 2006).

Although two permissible programmatic purposes of a roadblock are verifying drivers' licenses and vehicle registrations, and sobriety enforcement, just mentioning a license or sobriety checkpoint is not sufficient to legitimize a plan that has as its aim ordinary criminal wrongdoing. State v. Morgan, 600 S.E.2d 767 (Ga. Ct. App. 2004).

Police roadblock set up to screen drivers for driving under influence was not illegal under Fourth Amendment; task force had specific authority to set up roadblock, checkpoint was for legitimate purpose, screening officer was certified and qualified to administer breath and field sobriety tests, every car that passed through roadblock was checked, delay to motorists was minimal, and roadblock was well identified with reflective signs and flashing lights, police cars, and officers dressed in reflective gear. U.S.C.A. Const. Amend. 4. Dale v. State, 267 Ga. App. 897, 600 S.E.2d 763 (2004), cert. denied, (Sept. 27, 2004).

Primary purpose of roadblock was general law enforcement, with emphasis on drug interdiction and driving under the influence (DUI) laws, and thus, roadblock was not established for a proper primary purpose; although officer testified that the purpose of roadblock was a license/DUI checkpoint, he unambiguously testified that the decision to implement the roadblock was as a result of an influx of drug cases and he added "any criminal activity that's what we're out there for," and written authorization indicated that purpose of checkpoint was general law enforcement, and sign posted on interstate said that it was "DUI/drug check point." State v. Morgan, 267 Ga. App. 728, 600 S.E.2d 767 (2004).

Requirement that all vehicles be stopped at roadblock site was met, where, other than supervising officer's testimony that he stopped and restarted the challenged roadblocks three times to safeguard his officers and the public, each time letting backed–up traffic clear the roadblocks, it was undisputed that all vehicles stopped at the roadblocks were checked. U.S. Const. Amend. IV. Ross v. State, 257 Ga. App. 541, 573 S.E.2d 402 (2002), cert. denied, (Jan. 13, 2003).

Police roadblock was sufficiently well–defined as a police checkpoint to support lawfulness of roadblock, even though officer did not use signs, which he had in the trunk of his vehicle, to alert traffic to a checkpoint ahead, where checkpoint was identified by police cars, flashing blue lights, officers in uniform wearing reflective vests, and orange cones. U.S. Const. Amend. IV. Perdue v. State, 256 Ga. App. 765, 578 S.E.2d 456 (2002), cert. denied, (Oct. 15, 2002).

Roadblock conducted by police department's motorcycle squad, and backed up by a driving under the influence (DUI) countermeasures team, was not a checkpoint stop aimed primarily at detecting evidence of ordinary criminal wrongdoing, so as to violate Fourth Amendment; although roadblock was part of a department–wide operation aimed at cleaning streets of crime, primary purpose of roadblock was checking for driver's licenses and insurance cards, and presence of DUI countermeasures team also suggested at least a secondary purpose of detecting drunk drivers. U.S.C.A. Const. Amend. 4. Wrigley v. State, 248 Ga. App. 387, 546 S.E.2d 794 (2001).

Roadblock at which licensee was stopped and arrested for driving under the influence of alcohol (DUI) was not an illegal drug-interdiction checkpoint in violation of the Fourth Amendment, despite claim that arresting officer told licensee that officers were doing a drug checkpoint, where there was no other evidence that roadblock was a drug-interdiction checkpoint. U.S.C.A. Const.Amend. 4. People v. Hacker, 327 Ill. Dec. 671, 902 N.E.2d 792 (App. Ct. 4th Dist. 2009).

Police officer's request that defendant produce his driver's license and vehicle registration, at a police sobriety checkpoint, did not violate defendant's state constitutional right to be free from unreasonable searches or seizures, for the purpose of prosecution for operating a motor vehicle after privileges had been forfeited for life; fluorescent orange traffic signs 50 to 100 yards before entrance to checkpoint allowed drivers an opportunity to avoid checkpoint, the officer's request for a license and registration allowed the officer to check for signs of intoxication, the checkpoint location was chosen due to high levels of drunk driving arrests and alcohol related accidents in the area, and the officers did not have discretion in which vehicles were stopped. West's A.I.C. Const. Art. 1, § 11. Sublett v. State, 815 N.E.2d 1031 (Ind. Ct. App. 2004).

State police general order, which set forth protocols and guidelines governing police sobriety checkpoints and allowed the initial screening officer discretion to determine whether to divert motorists they reasonably suspect to be intoxicated to secondary screening, was constitutionally permissible; the guidelines allowed a vehicle to be diverted to secondary screening only when the officer has a reasonable suspicion, based on articulable facts, that the driver has committed an operating while under the influence of alcohol or drugs (OUI) violation or another violation of law. Com. v. Swartz, 454 Mass. 330, 910 N.E.2d 277 (2009).

Law enforcement roadblock set up as a sobriety checkpoint, at which defendant was arrested for driving under the influence (DUI), served legitimate public interest purpose which was not unconstitutional violation of defendant's personal security to be free from unreasonable seizure, where all persons approaching the roadblock were to be stopped, without exception, and nothing indicated that roadblock was executed in an unreasonable or overly intrusive manner. U.S.C.A. Const. Amend. 4. Graham v. State, 878 So. 2d 162 (Miss. Ct. App. 2004), cert. denied, 878 So. 2d 67 (Miss. 2004).

A defendant may challenge the introduction of evidence collected against him at sobriety checkpoint on grounds that it was collected unconstitutionally, but when addressing such a challenge, the trial court—be it the superior court or the district court—does not perform de novo the test used to determine whether the checkpoint is permissible under State Constitution; rather, it assesses the validity of the warrant authorizing the checkpoint in the same way it would assess the validity of a search warrant. U.S.C.A. Const.Amend. 4; Const. Pt. 1, Art. 19; RSA 265:1–a. State v. Hunt, 924 A.2d 424 (N.H. 2007).

Existence of other sobriety roadblocks for motorists on Thanksgiving Eve, in other municipalities within county, were not so numerous as to render township's sobriety roadblock on State highway invalid; there were five sobriety checkpoints in whole county and its 37 municipalities, there was only one roadblock in township, and no checkpoint was at township's boundary with a surrounding town. State v. Thomas, 372 N.J. Super. 29, 855 A.2d 17 (Law Div. 2002), judgment aff'd, 372 N.J. Super. 1, 855 A.2d 1 (App. Div. 2004).

Reasonableness of a driving while intoxicated (DWI) roadblock for Fourth Amendment purposes depends upon a balance of the gravity of the governmental interest or public concern served by the roadblock against the severity of the interference

with individual liberty, security, and privacy resulting from the roadblock. U.S.C.A. Const.Amend. 4. State v. Duarte, 2007-NMCA-012, 149 P.3d 1027 (N.M. Ct. App. 2006).

Stopping motorists for the purpose of detecting and apprehending drunk drivers constitutes a "seizure" under the Fourth Amendment; nonetheless, the police may stop drivers at sobriety checkpoints as long as the checkpoints comply with certain guidelines, established to ensure that the roadblocks are reasonable and to prevent the arbitrary treatment of motorists. U.S. Const. Amend. IV. State v. Villas, 2002-NMCA-104, 55 P.3d 437 (N.M. Ct. App. 2002), cert. denied, 55 P.3d 428 (N.M. 2002).

The lack of written guidelines does not invalidate a sobriety checkpoint; rather, the focus should be whether the procedure followed involving the actual stop was uniform and non-discriminatory. People v. Dongarra, 875 N.Y.S.2d 869 (County Ct. 2009).

Sobriety checkpoint represented unlawful search and seizure in violation of Fourth Amendment where officers conducting checkpoint failed to follow state police's written protocol for checkpoints, including "DWI program notification" message listing particulars as to time, location, personnel and system of stop, as well as after-the-fact "activity record" listing statistical information; program notification was not mere ministerial act but rather first step in obtaining requisite higher-echelon approval, and activity record allowed courts and police to have empirical data demonstrating effectiveness. U.S.C.A. Const.Amend. 4; McKinney's Const. Art. 1, § 12. People v. Dongarra, 865 N.Y.S.2d 517 (City Ct. 2008).

Sobriety checkpoint at which defendant was arrested for driving while intoxicated was not invalid due to lack of empirical evidence of prior alcohol–related arrests or accidents at that site; police directive setting forth criteria to be used in planning a sobriety checkpoint did not require that site selection be based on prior alcohol–related arrests or incidents. McKinney's Vehicle and Traffic Law § 1192, subd. 3. People v. Sears, 769 N.Y.S.2d 708 (J. Ct. 2003).

Where no evidence was brought forward in defendant's driving while impaired (DWI) case to suggest that the stated purpose of vehicle checkpoint was a mask for another, unconstitutional purpose, trial court was in error in holding that the lack of such evidence required it to exclude the evidence obtained by the stop; the actual purpose of the checkpoint was the same as its stated purpose: to check for sobriety. U.S.C.A. Const.Amend. 4. State v. Burroughs, 648 S.E.2d 561 (N.C. Ct. App. 2007).

The stopping of a motor vehicle at a license checkpoint, does not constitute an unreasonable detention of its operator, in violation of the Fourth Amendment, if all oncoming traffic is stopped; this is so without regard to whether the officer conducting the checkpoint has received approval from a supervisor or whether the law enforcement agency has a written plan in effect with respect to establishing and conducting these checkpoints. U.S.C.A. Const. Amend. 4. State v. Mitchell, 571 S.E.2d 640 (N.C. Ct. App. 2002).

Even if true, allegation that the officers who actually observed defendant, administered alcohol screening test, and arrested him were members of a law enforcement agency other than agency that made the plan for impaired driving checkpoint where defendant was stopped did not require suppression of evidence obtained at checkpoint. G.S. § 20–16.3A. State v. Colbert, 553 S.E.2d 221 (N.C. Ct. App. 2001).

Defendant, who challenged the constitutionality of sobriety checkpoint, had ample opportunity to notice advance-warning sign; advance-warning signs were placed at a distance that timely informed approaching motorists of the impending intrusion, there were other signs directing drivers to merge into one lane, officer stated that the standard procedure was to place warning signs at least 750 feet in advance of the checkpoint to provide for timely notification, the warning sign for the southbound lane was placed even farther than what was required, and placing the sign any closer to the checkpoint would have jeopardized timely notification requirements under the checkpoint-procedure manual. U.S.C.A. Const.Amend. 4. State v. Williams, 2009-Ohio-970, 909 N.E.2d 667 (Ohio Ct. App. 1st Dist. Hamilton County 2009).

Law enforcement agency's "good faith" in conducting sobriety roadblock is irrelevant in concluding whether roadblock is an unreasonable seizure. U.S.C.A. Const.Amend. 4; West's T.C.A. Const. Art. 1, § 7. State v. Varner, 160 S.W.3d 535 (Tenn. Crim. App. 2004).

Constitutionality of a driving under the influence (DUI) checkpoint will depend upon reasonableness of seizure, determined by weighing public interest in seizure against degree of intrusion into personal privacy. U.S.C.A. Const.Amend. 4; Const. C. 1, Art. 11. State v. Williams, 933 A.2d 239 (Vt. 2007).

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[END OF SUPPLEMENT]

IV. AVOIDANCE OF ROADBLOCK

§ 13. Permissible to chase and detain

[Cumulative Supplement]

In the following cases, the courts indicated that, based on the facts presented, it was permissible to chase and detain the driver of a motor vehicle that appeared to attempt to avoid the sobriety checkpoint.

In Smith v. State, 515 So. 2d 149 (Ala. Crim. App. 1987), a trooper, taking part in a roadblock established for the purpose of, among other things, detecting drunk drivers, observed the defendant's vehicle approaching the checkpoint, saw it turn rapidly into a driveway approximately 200 yards from the roadblock, stop approximately 50 feet away from the house, turn off its lights, and sit with its engine on. Based on these observations, the trooper suspected that the defendant was attempting to avoid the roadblock and could be guilty of some traffic violation. As a result, the trooper drove his vehicle to where the defendant was parked, approached the defendant, and proceeded to ask certain investigatory questions. The defendant was ultimately arrested and charged with driving while intoxicated. In upholding the trooper's actions, the court declared that the aforementioned observations alone justified the investigatory questioning of the defendant, which in turn led to the discovery of further evidence that amounted to probable cause to make an arrest.

In Coffman v. State, 26 Ark. App. 45, 759 S.W.2d 573 (1988), a senior police trooper ordered a reserve deputy to stop anyone who turned around to avoid the sobriety checkpoint and direct them to go back through the roadblock. The deputy subsequently observed the defendant, who was traveling toward the checkpoint, pull into a driveway, back out, and head back in the direction from which he came. The deputy then pursued and stopped the defendant, determined that he was intoxicated, and arrested him. The deputy testified that he did not observe the defendant to be driving erratically and did not suspect that the defendant had committed or was committing any criminal activity. The deputy stopped the defendant solely because he was attempting to avoid the roadblock. The Court of Appeals of Arkansas upheld the stop and declared that the defendant's mere avoidance of the roadblock was sufficient to give rise to a reasonable suspicion on the part of the deputy that the defendant was trying to hide some form of criminal activity.

In Snyder v. State, 538 N.E.2d 961 (Ind. Ct. App. 4th Dist. 1989), transfer denied, (Feb. 23, 1990), the defendant drove to within 100 yards of the sobriety checkpoint and turned around. The defendant testified that he thought that the roadblock was an accident and was simply trying to avoid a delay. Although he did not observe the defendant driving erratically or committing any traffic violations, a state trooper pulled the defendant over, determined that he was intoxicated, and arrested him. The trooper stopped the defendant solely because he appeared to be attempting to avoid the roadblock. The court approved of the trooper's actions, holding that, while drivers approaching a sobriety checkpoint are not "seized" until they actually reach the roadblock, an attempt to avoid a checkpoint by turning around amounts to a "specific and articulable fact" that gives rise to a reasonable suspicion on the part of a police officer and authorizes the officer to make an investigatory stop. The court did state, however, that the act of a driver simply turning off a road while approaching a sobriety checkpoint may not, without other specific and articulable facts, necessarily give rise to the requisite reasonable suspicion. Reasonable suspicion, the court concluded, must be determined on a case–by–case basis.

In Steinbeck v. Com., 862 S.W.2d 912 (Ky. Ct. App. 1993), the court found it permissible for the police to stop a car that turned away from a roadblock. In comparing states that allow the police to pursue a driver who attempts to avoid a roadblock

with states that do not allow such pursuit, the court reasoned that the better rule is that, while a driver approaching a roadblock is not "seized" until actually reaching the roadblock, a driver's attempt to avoid a roadblock, by making a turnaround, does raise a "specific and articulable fact" that gives rise to a reasonable suspicion on the part of a police officer that the driver might be committing a crime. The court did go on to note that other factors (e.g., time of day and the roadway turned onto by the driver seeking to avoid the roadblock) were also considered in reaching the decision that specific and articulable facts existed for the police to stop the driver. The court concluded that if police officers stationed at roadblocks were not permitted to stop such drivers, the very drivers the police seek to deter could flagrantly avoid the roadblocks and the stops would lose their deterrent value.

In State v. Patterson, 582 A.2d 1204 (Me. 1990), a police officer observed a switch in drivers when the defendant's truck stopped approximately 100 yards before a vehicle safety road check. When the vehicle resumed travel and approached the road check, the police officer asked the defendant, who had previously been driving and was now in the passenger seat, for his license, which turned out to be under suspension. After considering and upholding the constitutionality of the vehicle safety road check itself, the court went on to declare the police officer's stop of the defendant's truck and request for his license permissible as well. The court found that the switch in drivers within sight of the roadblock gave rise to an objective, reasonable, and articulable suspicion that the defendant was either intoxicated or driving with a suspended license.

In State v. D'Angelo, 605 A.2d 68 (Me. 1992), the defendant was observed to pull in to the driveway of a two–family dwelling approximately 75 yards from a roadblock. The defendant then turned off the lights of the car and, along with his two companions, sat in the car and turned to look in the direction of the checkpoint. The observing officer testified that, while he did not know all of the residents of the two–family dwelling, he knew one of the families that resided at that address and had never seen the defendant's vehicle parked there before. After observing the vehicle for approximately 30 seconds, the officer approached the vehicle and ultimately arrested the defendant for operating under the influence of intoxicating liquor. The court first declared that its prior decisions indicated that the stop of the defendant could be upheld if the roadblock was constitutional and the stop was supported by a reasonable and articulable suspicion. Then, after noting that the trial court had upheld the constitutionality of the roadblock, the court went on to find that the facts presented to the arresting officer in this case gave rise to a reasonable and articulable suspicion of illegal activity.

In Oughton v. Director of Revenue, State of Mo., 916 S.W.2d 462 (Mo. Ct. App. E.D. 1996), the court upheld a police officer's stop and subsequent arrest of the defendant, who had attempted to avoid a roadblock. The defendant drove his vehicle toward the roadblock, then executed a U–turn at the first sign announcing the checkpoint. The officer followed the defendant, stopped him, and ultimately arrested him after observing signs of intoxication.

In State v. Hester, 245 N.J. Super. 75, 584 A.2d 256 (App. Div. 1990), where the defendant was stopped solely for making a perfectly lawful U–turn about 300 to 400 feet before the sobriety roadblock and ultimately arrested for driving while his license was under suspension, the court held that the constitutionality of a roadblock does not hinge on whether the police provide motorists with an opportunity to avoid the checkpoint. The court stated that permitting motorists to decide not to proceed through a checkpoint would reduce its effectiveness and possibly even create safety concerns. The court did suggest, however, that the presence of a procedure for alerting motorists of the sobriety checkpoint was integral.

In City of Las Cruces v. Betancourt, 105 N.M. 655, 735 P.2d 1161 (Ct. App. 1987), the court held that a police officer had sufficient articulable facts on which to stop, and probable cause to arrest, the defendant, whom the officer observed to drive through the checkpoint at a high rate of speed without stopping. The officer first noticed the defendant's vehicle between two and three o'clock in the morning at a set of traffic lights before the roadblock. The headlights to the defendant's vehicle were not on at that point. The defendant drove toward the roadblock with the lights to her vehicle now on, ignored the police officer's order to stop, and ran through the checkpoint, nearly hitting that officer and one other policeman. The defendant was pursued, stopped, and eventually charged with driving while intoxicated.

In People v. Chaffee, 183 A.D.2d 208, 590 N.Y.S.2d 625 (4th Dep't 1992), a roadblock was established at which every vehicle was to be stopped and police vehicles were to be stationed at each end of the checkpoint to pursue any vehicles attempting to avoid the roadblock. The defendant's vehicle was observed, as it came within sight of the road flares set up on the approach to

the checkpoint, to make a quick turn into a motel parking lot. A police officer followed the defendant's vehicle and observed it to make two trips around the motel parking lot, passing several vacant parking spaces. The officer also observed the occupants of the vehicle looking in the direction of the roadblock. The trooper then activated his roof lights, at which point the defendant pulled the vehicle into a parking space. The defendant was ultimately arrested for DWI. The court declared the stop of the defendant's vehicle valid, noting that the officer's suspicion that the defendant was attempting to evade the roadblock was confirmed when it became evident that he was not a patron of the motel. The court also appeared to place emphasis on the fact that there was a "nonarbitrary uniform procedure" for stopping all vehicles that reasonably appeared to be avoiding the roadblock.

In Com. v. Frombach, 420 Pa. Super. 498, 617 A.2d 15 (1992), a police officer observed the defendant approach the sign announcing the sobriety checkpoint, which was approximately 600–700 feet before the roadblock itself, at a high rate of speed, stop in the middle of the intersection, make an abrupt right turn without using a turn signal, and drive off at a high rate of speed. While it was not the ultimate issue to be decided in the case, the court did find that, based on the aforementioned observations, the police officer had a reasonable suspicion that the defendant was violating the vehicle code and therefore was authorized to make an investigatory stop.

In State v. Thill, 474 N.W.2d 86 (S.D. 1991), the court held that avoiding a roadblock allows a police officer to reasonably infer criminal activity has occurred or is about to occur. In the instant case, when the defendant came within 350 feet of the roadblock, he turned his car in another direction. The police officer began to follow the defendant, who made a few turns and again began driving in the direction of the roadblock. The court upheld the stop, stating that the officer's suspicions were appropriately aroused on these facts.

In Brown v. Com., 17 Va. App. 694, 440 S.E.2d 619 (1994), the defendant stopped 150 yards before the roadblock. The police officer saw the driver change seats with the passenger and turn away from the roadblock. Based on these observations, the court indicated that the police officer had a reasonable belief that the defendant had committed a criminal violation.

CUMULATIVE SUPPLEMENT

Cases:

Police officer working at driver's license checkpoint had reasonable suspicion justifying investigatory stop of vehicle when he observed the vehicle approach the checkpoint, turn around, and drive away, where no other vehicles were in front of the subject vehicle, thus eliminating the possibility that driver turned to avoid any delay caused by the checkpoint. U.S.C.A. Const.Amend. 4. State v. White, 28 So. 3d 827 (Ala. Crim. App. 2009).

Defendant's failure to stop at police roadblock gave police officer reasonable suspicion of criminal activity to justify investigatory stop. U.S.C.A. Const. Amend. 4. Dale v. State, 600 S.E.2d 763 (Ga. Ct. App. 2004).

Police officer had a reasonable suspicion that criminal activity was afoot sufficient to justify stop of defendant's vehicle; defendant came to an abrupt stop 100 feet from roadblock where officers were checking for intoxicated drivers and turned onto side road, there was no line at the roadblock at that time, defendant drove down the road, bypassed the roadblock, and then re-entered the highway, and officer's training and experience indicated that defendant was avoiding the roadblock to evade arrest or detection. U.S.C.A. Const.Amend. 4; Const. § 10. Bauder v. Com., 299 S.W.3d 588 (Ky. 2009).

Directive of driving while intoxicated (DWI) checkpoint plan was invalid, and thus, directive could not operate as constitutionally adequate substitute for reasonable suspicion, as would justify stop of defendant who made proper U-turn within sight of checkpoint; language of directive allowed officer to evaluate conduct of oncoming vehicle and to determine whether person driving vehicle exhibited apparent intention to avoid checkpoint, and directive stated that if officer evaluated driver's behavior and concluded that driver had intention to evade checkpoint, that officer was deemed to have reasonable suspicion. U.S.C.A. Const.Amend. 4. State v. Anaya, 2008-NMCA-077, 185 P.3d 1096 (N.M. Ct. App. 2008), cert. granted, (May 30, 2008).

Officer observed sufficient activity to raise reasonable and articulable suspicion of criminal activity, where officer observed vehicle make quick left turn away from driving while impaired (DWI) checkpoint at precise point where defendant, who was driver of vehicle would have first become aware of presence, and defendant voluntarily parked in residential driveway and remained hidden in car until officer approached vehicle. State v. Foreman, 351 N.C. 627, 527 S.E.2d 921 (2000).

Traffic stop was justified as occurring after motorist entered sobriety checkpoint, and therefore did not have to be supported by reasonable suspicion, where motorist tried to avoid checkpoint by driving in the left–turn lane but was directed by officer to re–enter the lane that went through the checkpoint. Com. v. Kendall, 2001 PA Super 42, 767 A.2d 1092 (Pa. Super. Ct. 2001).

Experienced police officer stationed at traffic checkpoint had reasonable, articulable suspicion that driver was attempting to avoid checkpoint, because he was unlicensed or otherwise in violation of law, sufficient to justify investigative stop; driver's turn into private driveway approximately 35 yards from roadblock, although intrinsically lawful, was suspicious, as driver stopped and hesitated, looking toward the roadblock, and then turned into driveway, proceeding more than half–way through, before returning toward the street with no sign of stopping. Lovelace v. Com., 37 Va. App. 120, 554 S.E.2d 688 (2001).

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[END OF SUPPLEMENT]

§ 14. Impermissible to chase and detain

[Cumulative Supplement]

In the following cases, the courts indicated that, based on the facts presented, it was not permissible to chase and detain the driver of a motor vehicle that appeared to attempt to avoid a sobriety checkpoint.

In Howard v. Voshell, 621 A.2d 804 (Del. Super. Ct. 1992), a case involving an appeal of a license revocation due to a DUI stop, the police officer stopped a driver who avoided a roadblock. Indicating that "a legal U–turn made 1,000 feet before a roadblock is beyond the purview of the roadblock," the court held that "as to the general issue of avoiding police confrontations, the majority of jurisdictions which have addressed the issue of flight have held that the mere act of avoiding confrontation does not create an articulable suspicion." As such, the stop was ruled impermissible.

In State v. Powell, 591 A.2d 1306 (Me. 1991), the defendant was stopped after he turned his vehicle around some 700 yards before a sobriety checkpoint and 500 yards before the first cones or signs warning of that roadblock. The defendant was stopped by a police officer whose specific duty was to stop vehicles avoiding the roadblock. The officer did not observe the defendant to be driving erratically or violating any traffic laws. Indeed, the defendant pulled over immediately after the police officer activated the lights of his cruiser. Based on these facts, the Supreme Judicial Court of Maine upheld the trial court's earlier suppression order and rejected the state's argument that the defendant's lone act of turning around as he approached the checkpoint gave rise to a reasonable and articulable suspicion of criminal wrongdoing. In addition, the court held that the stop at issue did not fall within the scope of the roadblock itself, which would have negated any requirement of individualized suspicion. The court noted, however, that it was not deciding whether avoidance of a roadblock gives rise, per se, to an articulable suspicion of criminal conduct.

In People v. Rocket, 595 N.Y.S.2d 568, 156 Misc.2d 641 (Just. Ct. 1992), the court declared that making a U–turn or turnoff to avoid a sobriety checkpoint does not, without more, give rise to the requisite articulable suspicion necessary to stop a vehicle. Based on this premise, the court invalidated the stop of the defendant's vehicle where the defendant had merely turned off of the highway on which the roadblock was established onto an adjoining roadway. The court noted that there were many potential, legitimate reasons for people to be turning onto the adjoining public way.

The court in Com. v. Scavello, 734 A.2d 386 (Pa. 1999), held that when police are conducting a sobriety roadblock, they may not stop and detain a driver simply because he has turned to avoid passing through the roadblock. The motorist, who was driving toward the sobriety roadblock, saw it ahead and made a legal u-turn in order to avoid the roadblock. A state trooper

gave chase and stopped the motorist a short distance away from the roadblock. The trooper smelled alcohol on his breath and gave him a field sobriety test. The motorist failed the test, and was subsequently convicted of underage drinking and driving under the influence of alcohol. The court below [18] held that because avoidance of a roadblock does not give rise to reasonable suspicion, the stop was illegal. The Commonwealth argued that the lower court erred for two reasons. The first was that the Motor Vehicle Code, 75 Pa. Cons. Stat. § 6308(b) authorizes such stops without individualized suspicion of illegal activity. However, the court noted that since being engaged in a systematic program of checking vehicles is something that occurs at the roadblock, it does not occur at some other location distant from the roadblock, for at that location there is no systematic program of checking, and that if a stop is to be made at a location away from the roadblock, the officer may stop a vehicle, as provided for in the statute, only if he has "reasonable grounds to suspect a violation of this title." The Commonwealth also argued that avoidance of the roadblock is itself sufficient justification for the traffic stop. The court noted that although there is statutory authority in the Motor Vehicle Code at 75 Pa. Cons. Stat. § 6308(b) for police to conduct roadblocks, and although the court to date has declined to rule this practice unconstitutional, as noted in Com. v. Tarbert, 517 Pa. 277, 535 A.2d 1035 (1987) (plurality opinion), discussed in § 4, and Com. v. Blouse, 531 Pa. 167, 611 A.2d 1177 (1992) (implementing the guidelines set out in *Tarbert*), an opinion concerning the constitutionality of systematic, non-discriminatory, non-arbitrary roadblocks for the purpose of insuring safety on the highways by disclosing registration, licensing and equipment violations, a case out of scope for this annotation, there is no requirement that a driver go through a roadblock. Failing to go through the roadblock in and of itself, therefore, the court held, provides no basis for police intervention.

In State v. Binion, 900 S.W.2d 702 (Tenn. Crim. App. 1994), while the court indicated that the mere act of avoiding a roadblock may, by itself, constitute sufficient reasonable suspicion to warrant a police officer in chasing and detaining a motorist, the court held that such suspicion was not present in the instant case. What amounts to reasonable suspicion, the court said, must be determined on a case–by–case basis, applying a totality of the circumstances standard. One of the factors to consider in making this determination is whether there is any objective evidence that the motorist was intentionally attempting to avoid the sobriety checkpoint. Such evidence may include how far the motorist was from the roadblock when the motorist made the evasive maneuver, whether the motorist could see the roadblock from that distance, and the manner in which the individual operated the vehicle. The police officer's experience may also be considered as a factor in making this determination. Applying these factors to the instant case, the court found that the police officer did not have reasonable suspicion to chase and detain the defendant. The court took particular notice of the fact that the defendant turned around some 1,000 feet before the roadblock and the absence of any other evidence to suggest that the defendant was intentionally attempting to avoid the checkpoint. The court further noted that it was significant that the roadblock was not "controlled": approaching drivers could avoid the roadblock by making safe, legal U–turns.

In State v. Talbot, 792 P.2d 489 (Utah Ct. App. 1990), the defendant was pursued, stopped, and arrested after being observed turning his vehicle around approximately ¼ mile before a roadblock purportedly established for the purpose of checking for driver's licenses and registrations. The arresting officer followed the defendant for a period of time before stopping him, and did not observe the defendant driving erratically or in violation of any traffic codes. The state argued that the stop was justified because the defendant's act of appearing to avoid the roadblock, by itself, created a reasonable suspicion of criminal activity. The court disagreed. In reaching its conclusion, the court first adopted what the court viewed as the opinion of a majority of other jurisdictions—that flight, without more, is never sufficient to create a reasonable suspicion for stopping and detaining an individual. The court then cited the United States Supreme Court's position that, absent reasonable, objective grounds for detention, individuals are not obligated to listen to or answer a police officer's questions and are free to go on their way. Indeed, the mere act of refusing to listen to or answer questions, without more, the court noted, does not give rise to such reasonable, objective grounds. If an individual can avoid and ignore a police officer when approached on the street, the court continued, then it only makes sense that an individual can do the same when confronted by a sobriety checkpoint. In so ruling, the court readily acknowledged that its decision was at odds with the opinions handed down by courts in several other states.

CUMULATIVE SUPPLEMENT

Cases:

"Chase car" police procedure of stopping all vehicles that lawfully turned onto a public way in advance of a sobriety checkpoint violated State Constitution's prohibition against unreasonable searches and seizures, as procedure resulted in suspicionless stops made in advance of the checkpoint. (Per Acoba, J., with one justice concurring and two justices concurring in judgment.) Const. Art. 1, § 7. State v. Heapy, 113 Haw. 283, 2007 WL 70235 (2007).

Police officer lacked objective articulable reason to stop defendant's vehicle on ground that defendant turned around in attempt to evade sobriety checkpoint, where officer was not part of sobriety checkpoint detail, there was no written established procedure for stopping motorists that appeared to be evading sobriety checkpoints, and defendant was driving his vehicle in no apparent violation of any law. U.S. Const. Amend. IV. People v. Bigger, 771 N.Y.S.2d 826 (J. Ct. 2004).

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[END OF SUPPLEMENT]

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1 This annotation supersedes 37 ALR4th 10, § 4.

2 This article also will not address other decisions by the Supreme Court that affect drunk driving issues, e.g., the forcible extraction of blood over the objection of the defendant, Schmerber v. California, 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966); blood and breath tests for employees involved in train accidents, Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602, 109 S. Ct. 1402, 103 L. Ed. 2d 639, 4 I.E.R. Cas. (BNA) 224, 130 L.R.R.M. (BNA) 2857, 13 O.S.H. Cas. (BNA) 2065, 49 Empl. Prac. Dec. (CCH) ¶38791, 111 Lab. Cas. (CCH) ¶11001, 1989 O.S.H. Dec. (CCH) ¶28476 (1989); and admission into evidence in a DWI trial of a defendant's refusal to take a breathalyzer test, South Dakota v. Neville, 459 U.S. 553, 103 S. Ct. 916, 74 L. Ed. 2d 748 (1983).

3 See Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990).

4 7A Am Jur 2d, Automobiles and Highway Traffic § 11.

5 See, generally, O'Kelley v. State, 210 Ga. App. 686, 436 S.E.2d 760 (1993), State v. Barker, 252 Kan. 949, 850 P.2d 885 (1993), and City of Las Cruces v. Betancourt, 105 N.M. 655, 735 P.2d 1161 (Ct. App. 1987).

6 See Sitz v. Department of State Police, 443 Mich. 744, 506 N.W.2d 209 (1993); Ascher v. Commissioner of Public Safety, 519 N.W.2d 183 (Minn. 1994); State v. Church, 538 So. 2d 993 (La. 1989), reh'g denied, (Mar. 2, 1989); State v. Boyanovsky, 304 Or. 131, 743 P.2d 711 (1987); Pimental v Dept. of Transp., 561 A.2d. 1348 (R.I. 1989); City of Seattle v. Mesiani, 110 Wash. 2d 454, 755 P.2d 775 (1988).

7 See, e.g., State v. Downey, 945 S.W.2d 102, 74 A.L.R.5th 729 (Tenn. 1997); People v. Banks, 6 Cal. 4th 926, 25 Cal. Rptr. 2d 524, 863 P.2d 769 (1993); State v. Barker, 252 Kan. 949, 850 P.2d 885 (1993).

8 Workman v. State, 235 Ga. App. 800, 510 S.E.2d 109 (1998), reconsideration denied, (Dec. 17, 1998) and cert. denied, (Apr. 9, 1999).

9 In State v. Henderson, 114 Idaho 293, 756 P.2d 1057 (1988), a roadblock was invalidated due, in part, to the police officers' testimony that more drunk drivers are caught via routine police patrols than by setting up roadblocks.

10 U.S. v. Trevino, 60 F.3d 333 (7th Cir. 1995), reh'g denied, (Aug. 16, 1995).

11 McGann v. Northeast Illinois Regional Commuter R.R. Corp., 8 F.3d 1174, 8 I.E.R. Cas. (BNA) 1697, 9 I.E.R. Cas. (BNA) 827 (7th Cir. 1993), reh'g and suggestion for reh'g en banc denied, (May 4, 1994).

12 U.S. v. O'Mara, 963 F.2d 1288 (9th Cir. 1992).

13 Romo v. Champion, 46 F.3d 1013 (10th Cir. 1995).

14 U.S. v. Maestas, 2 F.3d 1485 (10th Cir. 1993).

15 U.S. v. Morales-Zamora, 914 F.2d 200 (10th Cir. 1990).

16 Merrett v. Moore, 58 F.3d 1547 (11th Cir. 1995), suggestion for reh'g en banc denied, 77 F.3d 1304 (11th Cir. 1996).

17 In reaching this conclusion, the Supreme Court of Minnesota overruled the earlier decisions of the Court of Appeals of Minnesota in State v. Muzik, 379 N.W.2d 599 (Minn. Ct. App. 1985), and Chock v. Commissioner of Public Safety, 458 N.W.2d 692 (Minn. Ct. App. 1990).

18 Com. v. Scavello, 703 A.2d 36 (Pa. Super. Ct. 1997), appeal granted, (Oct. 30, 1998) and aff'd, 734 A.2d 386 (Pa. 1999).

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