

**[J-39-2008]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 1 WAP 2007
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered June 29, 2006 at No. 1877
	:	WDA 2004, affirming the Order of the
v.	:	Court of Common Pleas of Allegheny
	:	County entered October 19, 2004, at CP-
	:	02-CR-0012387-2002.
MARK S. WORTHY,	:	
	:	
Appellee	:	903 A.2d 576 (Pa. Super. 2006)
	:	
	:	ARGUED: September 10, 2007
	:	RE-SUBMITTED: January 14, 2008

**CONCURRING OPINION**

**MR. CHIEF JUSTICE CASTILLE**

**DECIDED: OCTOBER 27, 2008**

I join Mr. Justice McCaffery's learned Majority Opinion in its entirety. I write only to express some supplemental thoughts on why I believe there is no basis for suppression in this case.

What this case reveals, more than anything else, is an unavoidable deficiency in the constitutional rules courts are called upon to fashion. The guidelines set forth in Commonwealth v. Tarbert, 535 A.2d 1035 (Pa. 1987) (plurality) and Commonwealth v. Blouse, 611 A.2d 1177 (Pa. 1992) were adopted in the context of particular cases and controversies, and the facts of those cases necessarily acted to limit the comprehensiveness of the constitutional rule fashioned going forward. This case has revealed an unanticipated (though it now looks predictable) real-world complication.

Mr. Justice Saylor's Dissenting Opinion states that traffic back-up at a checkpoint is "sui generis, in that it is always a foreseeable condition, as it stems from the nature of the activities that take place there[.]" Dissenting Slip Op. at 3. I agree that this case has revealed that fact. Notably, however, traffic buildup was not so foreseeable as to be factored into the Tarbert-Blouse guidelines. Going forward, I would have no difficulty with adopting the Dissenting Opinion's perfectly reasonable view that, in the administrative authorization for future roadblocks, there can and should be some provision for the contingency that revealed itself -- and revealed a gap in our rule -- in the crucible of this case -- a contingency that, I agree, will likely be common with roadblocks. But I would not fault the police here, who tried to adhere to the rule then in existence, and then acted reasonably in the face of a contingency we had not accounted for. Police did not seek to skirt the rule we fashioned: the Tarbert-Blouse guidelines were followed to the letter and, as all agree, the police here acted in good faith.

The fact of the incompleteness of our existing rule, and police good faith do, I believe, implicate the question of whether suppression should be deemed available. The central command of the Fourth Amendment, and Article I, Section 8, is reasonableness. Where police follow the existing case decisional guideline, and act reasonably in the face of an un contemplated factor, I see no basis for suppression. In my judgment, the roadblock in this case having been properly authorized, and the stop having been reasonably conducted under the circumstances, the windfall of suppression should not be made available.