

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

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, GREENSPAN, JJ.

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
	:	RESUBMITTED: January 14, 2008

OPINION

MR. JUSTICE McCAFFERY*

DECIDED: OCTOBER 27, 2008

In this matter of first impression, we granted allowance of appeal to consider whether the temporary suspension of a police sobriety checkpoint to relieve traffic congestion, conducted pursuant to the on-site officer's discretion, complied with the dictates of the Fourth Amendment to the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution, as explicated by this Court's precedent. We hold that it did and, therefore, reverse the Superior Court and remand to the trial court for further proceedings.

* This matter was reassigned to this author.

The relevant facts of the instant case are not in dispute. On May 15, 2002, administrative officials of the Monroeville Police Department authorized a sobriety checkpoint for State Route 22 in Monroeville, Allegheny County, also known as the William Penn Highway. This location was chosen because of its high incidence of motor vehicle accidents and arrests for violations of the driving-under-the-influence (DUI) statutes. The memorandum of authorization for the checkpoint provided as follows:

You are hereby authorized to post notice and arrange for officers to work a sobriety checkpoint the night of the 24th of May, 2002. The checkpoint details shall start at 2300 hours, the 24th of May, 2002, and conclude no later than 0400 hours on the 25th of May, 2002. As per our conversation on the 15th of May, 2002[;] our review of the state accident statistics regarding drinking and driving accidents[;] and our department records showing the number of traffic stops resulting in driving under the influence arrests, you are authorized to set up a checkpoint on Route 22 westbound at Roomful Express, 3651 William Penn Highway in Monroeville, Pa. If circumstances would prevent you from using that primary location, you are authorized to move to 2420 Moss Side Boulevard, State Route 48 in Monroeville.

Memorandum of Authorization from Assistant Chief Doug Cole to Sergeant Ronald Harvey, dated 5/15/02 (read into Notes of Testimony Suppression Hearing (N.T.), 4/13/04, at 5-6).

On the night of May 24, 2002, on a long straight-away of Route 22, Sergeant Ronald Harvey and other police officers established the sobriety checkpoint as authorized by the memorandum. The officers posted large orange signs, illuminated with traffic flares and lights, several hundred feet in advance of the checkpoint. The checkpoint was visible to approaching motorists from approximately one-half mile away, and the officers stopped every vehicle. However, on three occasions when the traffic was heavy, resulting in an unreasonable delay, Sergeant Harvey temporarily suspended operation of the checkpoint and let all traffic pass through without stopping. During these pauses, the officers did not

stop any cars. When the traffic abated, the officers resumed checkpoint operations and again began to stop every vehicle. N.T. at 7-9 (testimony of Sergeant Harvey).

Appellee Mark S. Worthy was driving one of the vehicles stopped by an officer at the checkpoint. Based on the officer's determination that Appellee exhibited bloodshot eyes and slurred speech and emitted a strong smell of alcohol, the officer administered three field sobriety tests, all of which Appellee failed. Appellee also failed a breath test. The officer arrested Appellee and charged him with two DUI offenses.¹

Appellee filed an omnibus pretrial motion to suppress evidence obtained as a result of the stop at the sobriety checkpoint, contending that his rights under both the United States and Pennsylvania Constitutions to be free from unreasonable searches and seizures were violated because the sobriety checkpoint was not conducted in accordance with the guidelines promulgated by this Court in Commonwealth v. Blouse, 611 A.2d 1177 (Pa. 1992), and Commonwealth v. Tarbert, 535 A.2d 1035 (Pa. 1987) (plurality) (hereinafter the "Tarbert-Blouse guidelines"). In particular, Appellee argued that because the administrative approval for the checkpoint failed to delineate any fixed criteria as to the circumstances under which the checkpoint could be temporarily suspended and then restarted, it conferred upon the on-site officers unfettered discretion concerning which vehicles to stop, in conflict with the Tarbert-Blouse guidelines.

The trial court conducted a suppression hearing on April 13, 2004, during which the only witness was Sergeant Harvey, the individual who had obtained authority for and then

¹ Specifically, Appellee was charged with 75 Pa.C.S. §§ 3731(a)(1) and 3731(a)(4)(i), which prohibited, respectively, driving under the influence of alcohol to a degree that rendered the person incapable of driving safely, and driving with a blood-alcohol level of 0.10 % or greater. See Commonwealth v. Hess, 810 A.2d 1249, 1251 & n.1 (Pa. 2002). Subsequent to Appellee's arrest, Section 3731 was repealed and replaced by 75 Pa.C.S. § 3802. See Act of September 30, 2003, P.L. 120, No. 24, § 14, effective February 1, 2004. The repeal and reenactment have no relevance to the issue presented here.

supervised the sobriety checkpoint. Sergeant Harvey testified that on three occasions during the operation of the checkpoint he had made a decision to “open the checkpoint and let traffic flow” in order to “avoid unreasonable delay for the traffic that was in line.” N.T. at 9. After reviewing the parties’ briefs, the trial court granted Appellee’s suppression motion, concluding that, although the officers had the authority to stop every vehicle that came through the checkpoint, they did not have the authority or the discretion to stop and then restart the checkpoint. In the trial court’s words, “[t]he authority to conduct the checkpoint [as granted in the Memorandum of Authority] did not include authority to suspend the checkpoint when traffic backed-up.” Trial Court Opinion, dated 2/4/05, at 3-4. The trial court further explained its logic as follows: “[T]he sobriety checkpoint did not satisfy the Tarbert-Blouse requirements because the question of which vehicles to stop at the checkpoint and which vehicles to allow to proceed through when traffic backed-up [sic] was left to the unfettered discretion of the police officers at the scene. There was no pre[-]fixed administrative decision with objective criteria of when to suspend the sobriety checkpoint to allow traffic to flow through.” Id. at 3.

The Commonwealth appealed, pursuant to Pennsylvania Rule of Appellate Procedure 311(d).² The Superior Court affirmed the ruling of the trial court, concluding that the decision to suspend temporarily and then resume the sobriety checkpoint was controlled by the arbitrary and unfettered discretion of the officers at the scene, rather than by established administrative procedures. Commonwealth v. Worthy, 903 A.2d 576, 580 (Pa.Super. 2006). The Superior Court advised that “the very decision of how many cars [must be] backed-up [in order to suspend temporarily the checkpoint] should be reserved for prior administrative approval, thus removing the determination from the discretion of the

² As required to take an appeal as of right under Pa.R.A.P. 311(d), the Commonwealth certified that the suppression order substantially handicapped the prosecution of the case.

police officers in the field.” Id. In sum, in the Superior Court’s view, “the Commonwealth failed to establish that there was a pre[-]fixed, objective standard for suspending and resuming the sobriety checkpoint,” and therefore the evidence obtained as a result of Appellee’s being stopped at the checkpoint was properly suppressed. Id. at 581.³

We granted the Commonwealth’s petition for allowance of appeal to address the following issue:

Did the Superior Court and the suppression court err in concluding that suppression was warranted because the written administrative authority for the sobriety checkpoint did not specify when the checkpoint might be temporarily shut down due to traffic back-up?

Commonwealth’s Brief at 4.⁴

When the Commonwealth appeals from a suppression order, we consider only the evidence of the defense and the evidence of the Commonwealth that remains uncontradicted when read in the context of the entire record. Commonwealth v. Gaul, 912 A.2d 252, 254 (Pa. 2006), cert. denied, 128 S.Ct. 43 (U.S. 2007). At the suppression

³ Judge (now Madame Justice) Todd filed a concurring opinion in which she joined the majority opinion “reluctantly.” She noted that “there is no suggestion in the record that the officer in this case, in periodically alleviating traffic congestion by temporarily suspending the checkpoint, was doing anything other than attempting to fulfill his duty to ensure that traffic flow was managed as safely and as efficiently as possible.” Worthy, supra at 581 (Todd, J., concurring). However, Judge Todd also stressed that “the limited exception to the constitutional requirement of probable cause to effect a seizure, permitted by Tarbert and Blouse, is so extraordinary that it may be allowed only under the most exacting standards.” Id. She concluded that the need for pre-fixed, objective standards as to which vehicles to stop was not met in the instant case, and accordingly she joined the majority opinion. Id.

⁴ We have reworded the Commonwealth’s issue for clarity. The Commonwealth also raised, in the alternative, a second issue: Whether the suppression of evidence resulting from the sobriety checkpoint was a proper remedy. Because of our resolution of the first issue, we need not address the second issue.

hearing in the instant case, the only evidence presented was the testimony of Sergeant Harvey, who testified for the Commonwealth. Sergeant Harvey's testimony was uncontested and uncontradicted. Thus, no relevant facts are in dispute, and the question presented for this Court is purely one of law. Accordingly, our standard of review is de novo. Commonwealth v. Beaman, 880 A.2d 578, 581 (Pa. 2005).

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 to the United States Constitution or Article I, Section 8 of the Pennsylvania Constitution.⁵ See Beaman, supra at 581-85 (summarizing the development of decisional law in this area and citing, inter alia, Michigan Department of State Police v. Sitz, 496 U.S. 444 (1990), and Blouse, supra). In Sitz, the United States Supreme Court concluded that sobriety checkpoints do not offend the Fourth Amendment because they are a reasonable means of advancing a vital public interest, involving only a modest intrusion on the privacy and liberty of motorists. Sitz, supra at 451-55 (discussed in Beaman, supra at 583). Similarly, we have held that systematic, non-discriminatory, non-arbitrary checkpoints do not offend the Pennsylvania Constitution.⁶ Blouse, supra at 1180; see also Beaman, supra at 585 (explaining Blouse).

⁵ The Fourth Amendment to the United States constitution protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. Article I, Section 8 of the Pennsylvania Constitution provides that “[t]he people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures.” Pa. Const. Art. I, § 8.

⁶ Although we have held that Article I, Section 8 affords greater individual privacy protection than does the Fourth Amendment, we have also concluded that this distinction does not compel a different result with regard to the constitutionality of sobriety checkpoints under state law as compared to federal law. See Beaman, supra at 583-85 (citing Commonwealth v. Edmunds, 586 A.2d 887 (Pa. 1991)).

In Blouse, we formally adopted guidelines to ensure that checkpoints are carried out in a constitutionally acceptable manner. See Blouse, supra at 1180 (expressly adopting the guidelines set forth in Tarbert, supra). The guidelines adopted are as follows:

The conduct of the roadblock itself can be such that it requires only a **momentary stop** to allow the police to make a **brief but trained observation** of a vehicle's driver, without entailing any physical search of the vehicle or its occupants. To avoid unnecessary surprise to motorists, the existence of a roadblock can be so conducted as to be ascertainable from a reasonable distance or otherwise made knowable in advance. The possibility of arbitrary roadblocks can be significantly curtailed by the institution of certain safeguards. First[,] the very 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. In this connection it is essential that the route selected for the roadblock be one which, based on local experience, is likely to be travelled by intoxicated drivers. The time of the roadblock should be governed by the same consideration. Additionally, **the question of which vehicles to stop at the roadblock should not be left to the unfettered discretion of police officers at the scene, but instead should be in accordance with objective standards pre[-]fixed by administrative decision.**

Blouse, supra at 1180 (quoting Tarbert, supra at 1043) (emphasis added).

In other words, to be constitutionally acceptable, a checkpoint must meet the following five criteria: (1) vehicle stops must be brief and must not entail a physical search; (2) there must be sufficient warning of the existence of the checkpoint; (3) the decision to conduct a checkpoint, as well as the decisions as to time and place for the checkpoint, must be subject to prior administrative approval; (4) the choice of time and place for the checkpoint must be based on local experience as to where and when intoxicated drivers are likely to be traveling; and (5) the decision as to which vehicles to stop at the checkpoint

must be established by administratively pre-fixed, objective standards, and must not be left to the unfettered discretion of the officers at the scene. See id.

We adopted the above guidelines because they “achieve the goal of assuring that an individual’s reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field.” Id. In addition, we concluded that “[s]ubstantial compliance with the guidelines is all that is required to reduce the intrusiveness of the search to a constitutionally acceptable level.” Id. (citing Tarbert, supra). We note our agreement with Justice Eakin’s concurring opinion in so far as it emphasizes that substantial--and not complete--compliance with the guidelines is all that is required under Tarbert-Blouse.

In the instant case, the Superior Court, in agreement with the trial court, held that the sobriety checkpoint at issue did not comply with the fifth and final Tarbert-Blouse guideline, i.e., the need for pre-fixed, objective standards for determining which vehicles to stop. Worthy, supra, 903 A.2d at 579. More specifically, the Superior Court determined that the supervising police officer had “unfettered discretion” as to when to suspend the checkpoint due to traffic back-up and when to resume operation. It is undisputed that, on three occasions during the evening of the checkpoint, Sergeant Harvey, the supervising officer, opened the checkpoint to allow all the traffic to pass through unimpeded in order to alleviate a traffic back-up. It is also undisputed that the administrative authorization for the checkpoint did not specifically set forth criteria by which Sergeant Harvey would determine when traffic was sufficiently backed up such that temporary suspension of the checkpoint was warranted. Based on these undisputed facts, the Superior Court, as well as the trial court, inferred that the decision as to which vehicles to stop at the checkpoint was controlled by the arbitrary discretion of the officers at the scene and not by pre-fixed objective standards. We cannot agree with this inference, as explained below.

Critical to our resolution is the fact that when the checkpoint was in operation, **every** vehicle was stopped to allow the officers to briefly observe the driver. Only when the traffic volume became heavy and the resulting back-up caused an unreasonable delay did Sergeant Harvey temporarily suspend operation of the checkpoint and allow **every** vehicle to pass through unimpeded. Such a temporary suspension and resumption of checkpoint operations occurred only three times during the course of the evening. There was no allegation--much less any evidence--that Sergeant Harvey or any other police personnel, based the decision as to when to suspend or when to resume operation of the checkpoint on the characteristics or actions of any particular vehicle or driver.⁷ Rather, Sergeant Harvey's uncontradicted and uncontested testimony indicated that he ordered suspension, followed by resumption of the checkpoint, based on his experience and trained observations of the traffic conditions at the location of the checkpoint. Thus, while Sergeant Harvey did exercise his informed and knowledgeable discretion regarding when to suspend and when to resume the checkpoint, neither he nor any other officer exercised **any** discretion as to which vehicles to stop when the checkpoint was in operation because all vehicles were stopped at such times. Contrary to the Superior Court and the trial court, we cannot conclude that this procedure violated the Tarbert-Blouse proscription against placing unfettered discretion with the on-site officers as to which vehicles to stop at the checkpoint.

⁷ Of course, constitutional constraints would be violated if the temporary suspension and resumption of a checkpoint were used to circumvent the requirement that a checkpoint be systematic, non-discriminatory, and non-arbitrary, with objective pre-fixed standards governing which cars are stopped. But that is not the issue presented here. We emphasize that in the instant case there is not an iota of evidence that Sergeant Harvey or any other police officer suspended or resumed checkpoint operations for improper reasons, and indeed Appellee did not allege such conduct.

An on-site officer's determination as to when to suspend or when to resume a 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. With regard to the second requirement, the Tarbert-Blouse guidelines specify that a checkpoint should necessitate only a "momentary stop" for a "brief ... observation" of each vehicle's operator, in order to keep the intrusion to a minimum. Blouse, supra at 1179-80. An unreasonable delay in passing through the checkpoint would constitute more than a minimal intrusion, and accordingly must be avoided. The police officers at the scene are ultimately responsible for ensuring both that any delay in passing through the checkpoint is reasonable and that the checkpoint is conducted safely. Accordingly, the officers must have the authority to exercise sufficient discretion on the scene to allow them to fulfill these responsibilities. Discretion so severely limited by the requirements of maximum safety and minimum delay is **not** unfettered.

There is no question that delays to the traveling public as well as safety challenges can result from swift and unexpected changes in traffic conditions in the vicinity of a checkpoint (or anywhere else, for that matter). Furthermore, it is obvious that many factors influence traffic volume and flow through a checkpoint, such as the characteristics of the roadway, including the number of traffic lanes, the presence or absence of traffic lights and intersections, and posted speed; the nature of the adjacent real estate, and whether it is rural or urban, business or residential; environmental conditions, including weather and light intensity or glare; the number and experience of the officers on the scene; and any unexpected or emergency event along or in the roadway, such as a motor vehicle accident or passing ambulance. The officers on the scene must continually observe and evaluate the net effect of all the interacting influences on traffic volume and flow through the checkpoint. The officers on the scene are the only ones who can integrate the effect of all

the conditions on the ground and make an informed and educated decision as to when traffic conditions require temporary suspension of a checkpoint to ensure that safety is paramount and delay is reasonable.⁸

We reject the Superior Court's suggestion that the decision as to when to suspend a checkpoint can be reduced to a single, quantitative, pre-determined standard, i.e., the specific number of vehicles backed up behind a checkpoint. See Worthy, supra at 580. While such a standard may appear "objective," it does not and cannot incorporate all of the complexities involved in assessing traffic conditions for the criteria of ultimate importance here, i.e., minimizing delay and maximizing safety around a checkpoint. Requiring officers to count the number of vehicles approaching the checkpoint on a continual basis, and then to rely primarily on this quantitative measure in deciding when to suspend operations, would constitute an ill-advised and unnecessary distraction from the responsibility at hand: i.e., conducting a sobriety checkpoint safely, efficiently, and with only reasonable delay to the traveling public.

In sum, we hold that on-site police officers may exercise their discretion to suspend temporarily the operation of a sobriety checkpoint because of traffic back-up that has

⁸ In Commonwealth v. Fioretti, 538 A.2d 570, 577 (Pa.Super. 1988), the Superior Court held constitutional a checkpoint procedure in which "[t]he only discretion exercised by the police would be in deciding whether to discontinue the checkpoint if the traffic backed up." In the instant case, the Superior Court attempted to distinguish Fioretti by noting that the Fioretti checkpoint procedure was in written format, approved by the chief of police. Worthy, supra at 581. We cannot accept the Superior Court's reasoning. Specifically, we do not deem it determinative that the memorandum authorizing the checkpoint at issue in the instant case failed to include a sentence providing that police had the discretion to suspend the checkpoint if the traffic backed up. Such very general language does not provide any real guidance or delineate any relevant factors to aid in the exercise of the granted discretion, but merely--and without any helpful explanatory detail--provides authorization for the officers to use their training, experience, and common sense in deciding when to suspend the checkpoint for heavy traffic.

created unreasonable delay or safety concerns. The exercise of such discretion during the operation of a checkpoint is not in conflict with the Tarbert-Blouse guidelines, and accordingly offends neither the Fourth Amendment to the United States Constitution nor Article 1, Section 8 of the Pennsylvania Constitution.

Reversed and remanded to the trial court for proceedings consistent with this opinion. Jurisdiction relinquished.

Mesdames Justice Todd and Greenspan did not participate in the consideration or decision of this case.

Mr. Chief Justice Castille files a concurring opinion.

Mr. Justice Eakin files a concurring opinion.

Mr. Justice Saylor files a dissenting opinion in which Mr. Justice Baer joins.