

[J-075-00]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 0259 M.D. Appeal Docket 1999
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court entered April 27, 1999, at No.
	:	2462PHL98, affirming the order of the
v.	:	Court of Common Pleas of Northampton
	:	County, Criminal Division, entered July 17,
	:	1998 at No. 2411-1997.
DAVID RONALD YASTROP,	:	
	:	
Appellant	:	
	:	ARGUED: MAY 2, 2000
	:	
	:	
	:	

OPINION ANNOUNCING THE JUDGMENT OF THE COURT

MADAME JUSTICE NEWMAN

DECIDED: March 26, 2001

We granted allowance of appeal in this case to address whether a systematic roadblock set up to detect drunken drivers is constitutional under Article I, Section 8 of the Pennsylvania Constitution.¹ Because this Court has held previously that roadblocks

¹ Article I, Section 8 of the Pennsylvania Constitution provides:

Security from searches and seizures

Section 8. The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or seize any person or things shall issue without describing

(continued...)

like the one conducted in the present case are permissible under the Pennsylvania Constitution, we hold that a systematic roadblock established to identify drunken drivers, which adheres to certain guidelines, is constitutional.

FACTS AND PROCEDURAL HISTORY

Police Officer Robert Hawke endeavored to institute a Driving Under the Influence (DUI) roadblock in the 1600 block of Main Street, Northampton Borough, Northampton County, Pennsylvania.² After reviewing Pennsylvania Department of Transportation records and information provided to him by local law enforcement authorities, Officer Hawke concluded that this location was a route likely to be traveled by drunken drivers. The area was one where drunk-driving accidents had occurred and where officers had made arrests for DUI in the past. Officer Hawke requested and received administrative authorization for the DUI roadblock, and notice of the time and place of the roadblock appeared in an area newspaper.

Supervised by Officer Hawke, Northampton Borough police officers conducted the roadblock from 11:30 p.m. on the evening of May 30, 1997 until 2:30 a.m. on the morning of May 31, 1997. The officers erected large signs to alert drivers of the roadblock ahead. The officers, using a predetermined, objective standard,³ stopped

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them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

Pa. Const. art. I, § 8.

² During the period in question, Officer Hawke served as the DUI Coordinator for the Lehigh Township Regional Checkpoint Expanded DUI Enforcement Program.

³ The officers stopped every car that came upon the roadblock.
(continued...)

drivers for approximately thirty seconds each and detained for field testing only those drivers who smelled of alcohol.

David Ronald Yastrop (Appellant) was driving an automobile in the 1600 block of Main Street in the early morning hours of May 31, 1997. Officers stopped Appellant at the roadblock and subsequently arrested him after they detected the smell of alcohol and after he failed field-testing designed to expose intoxication.

Prior to his trial on charges of DUI,⁴ Appellant filed a pre-trial motion seeking to suppress all the evidence procured as a result of the roadblock stop. Appellant averred that the roadblock amounted to an unconstitutional search and seizure. The trial court denied the suppression motion on April 3, 1998. Following a bench trial conducted on July 17, 1998, the trial court found Appellant guilty of DUI and sentenced him to serve not less than thirty days nor more than one-year imprisonment in Northampton County Prison. The Superior Court affirmed, and this Court allowed the present appeal.

DISCUSSION

On appeal, Appellant advances two arguments in support of reversing the decision of the trial court that denied his motion to suppress. Appellant first argues that DUI roadblocks are per se unconstitutional under the heightened protections against unreasonable searches and seizures of Article I, Section 8 of the Pennsylvania Constitution. Alternatively, Appellant asserts that even assuming that DUI roadblocks

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⁴ 75 Pa. C.S.A. § 3731.

are not per se unconstitutional under the Pennsylvania Constitution, the police administered the DUI roadblock in the present case in an unconstitutional manner.

The question of whether DUI roadblocks were per se unconstitutional pursuant to the United States Constitution was addressed in Michigan Dep't. of State Police v. Sitz, 496 U.S. 444 (1990). The Sitz Court acknowledged that a roadblock was a seizure; thus, it focused its examination on whether such a seizure was unreasonable. In examining whether a DUI roadblock was an unreasonable seizure, the Court utilized a three-pronged balancing test derived from its decision in Brown v. Texas, 443 U.S. 47 (1979). The United States Supreme Court “balanc[ed] the state’s interest in preventing accidents caused by drunk drivers, the effectiveness of sobriety checkpoints in achieving that goal, and the level of intrusion on an individual’s privacy caused by the checkpoints.” Sitz, 496 U.S. at 449. Ultimately, the Court concluded that the momentary seizure of a DUI roadblock was not unreasonable, stating that “the balance of the State’s interest in preventing drunken driving, the extent to which this system can reasonably be said to advance that interest, and the degree of intrusion upon individual motorists who are briefly stopped, weighs in favor of the state program.” Id. at 455.

In Commonwealth v. Blouse, 611 A.2d 1177 (Pa. 1992), this Court examined the constitutionality under our state Constitution of systematic, nondiscriminatory, nonarbitrary roadblocks instituted to detect registration, licensing, and equipment violations. As the United States Supreme Court did in Sitz, this Court recognized that a roadblock stop was a seizure. The focus of this Court in Blouse, therefore, was whether such a seizure was unreasonable under the heightened constitutional protections of our state Constitution.

The Blouse Court assessed the reasonableness of the roadblock in question using the balancing analysis of the United States Supreme Court. See Brown, supra, (utilizing balancing test to examine reasonableness of seizure not based on reasonable suspicion or probable cause); United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (applying balancing test to scrutinize reasonableness of systematic border seizures not based on reasonable suspicion or probable cause); see also Sitz, 496 U.S. at 449 (1990) (adopting lower court’s characterization of Brown balancing test as “analytical framework prescribed by [the United States Supreme] Court for determining the constitutionality of seizures less intrusive than traditional arrests”). In balancing the minimal intrusion occasioned upon an individual by a systematic, nondiscriminatory, nonarbitrary roadblock against the Commonwealth’s interest in insuring the safety of its highways, this Court concluded that a roadblock intended to detect registration, licensing, or equipment violations was reasonable under the Pennsylvania Constitution. Blouse, supra.

While Blouse did not specifically address drunken driver roadblocks, that decision relied considerably on this Court’s previous decision in Commonwealth v. Tarbert, 535 A.2d 1035 (Pa. 1987), which directly addressed the type of roadblocks at issue here.⁵ In Tarbert, a plurality of this Court commented that roadblocks set up to detect drunken drivers would be constitutionally permissible, as long as authorities established and conducted the roadblocks in compliance with prescribed guidelines.

⁵ The precise issue of whether drunken driver roadblocks were constitutional under our state Constitution eluded the Court in Tarbert. However, “it is clear that of the six [justices] who participated [in Tarbert], four [justices] expressed the view that systematic roadblocks are constitutional.” Blouse, 611 A.2d at 1179.

Our decision in Blouse expressly adopted the Tarbert plurality's rationale, along with the guidelines espoused by the plurality. Blouse, 611 A.2d at 1179-80 ("In applying Tarbert to the case sub judice, the rationale behind upholding the constitutionality of drunk driving roadblocks applies equally to all systematic roadblocks"); see also Commonwealth v. Cass, 709 A.2d 350, 360-61 (Pa. 1998) (discussing balancing test derived from Tarbert and Blouse). Thus, in reading Blouse, most notably its express adoption of the standards set forth in the Opinion Announcing the Judgment of the Court in Tarbert, it is clear that this Court has already concluded that roadblocks like the present one are not per se unconstitutional in this Commonwealth.

This view is consistent with the view held by the vast majority of our sister jurisdictions, which have recognized DUI roadblocks as a constitutional and necessary tool of law enforcement and deterrence. See People v. Rister, 803 P.2d 483 (Colo. 1991); State v. Record, 548 A.2d 422 (Vt. 1988); Ingersoll v. Palmer, 743 P.2d 1299 (Cal. 1987); State v. Deskins, 673 P.2d 1174 (Kan. 1983); State v. Bates, 902 P.2d 1060 (N.M. Ct. App. 1995). Sharing this mainstream view are many states that, like this one, extend greater protections against unreasonable searches and seizures under their state constitutions than those extended by our shared constitution. See State v. Downey, 945 S.W.2d 102 (Tenn. 1997); Lowe v. Commonwealth, 337 S.E.2d 273 (Va. 1985); Commonwealth v. Trumble, 483 N.E.2d 1102 (Mass.1985); Little v. State, 479 A.2d 903 (Md. 1984); State v. Boisevert, 671 A.2d 834 (Conn. App. Ct. 1996).

In support of his position, Appellant draws our attention to other states that have rejected DUI roadblocks based on their state constitutions. He notes that the Supreme Court of Michigan stated: "This court has never recognized the right of the state, without any level of suspicion, whatsoever, to detain members of the population at large for

criminal investigatory purposes.” Sitz v. Dept. of State Police, 443 Mich. 744, 776, 506 N.W.2d. 209, 223. The Rhode Island Supreme Court reached the same conclusion in Pimental v. Dept. of Transportation, 561 A.2d 1348 at 1353 (R.I. 1989):

We believe that allowing such roadblocks or checkpoints would diminish the guarantees against unreasonable searches and seizures contained in the Rhode Island Constitution. It is illogical to permit law enforcement officers to stop fifty or a hundred vehicles on the speculative chance that one or two may be driven by a person who has violated the law in regard to intoxication. . . .

In reaching this conclusion, we agree that the state has a compelling interest in detecting drunk drivers. It is well beyond dispute that drunk drivers are a grave menace to the public and that stronger measures are needed to cope with this problem. . . . [T]he state [also] has a significant interest in apprehending and bringing to punishment individuals who commit other serious criminal offenses, such as murder, robbery, burglary and drug selling, to mention a few.

However, it would shock and offend the framers of the Rhode Island Constitution if we were to hold that the guarantees against unreasonable and warrantless searches and seizures should be subordinated to the interest of efficient law enforcement. Once this barrier is breached in the interest of apprehending drivers who violate sobriety laws, the tide of law enforcement interest could overwhelm the right to privacy. We decline to take the step of approving roadblocks, even for the purpose of apprehending drunk drivers.

In City of Indianapolis v. Edmond, 121 S.Ct. 447 (2000), the United States Supreme Court held that an Indianapolis checkpoint program that had as its main purpose the interdiction of illegal narcotics, violates the Fourth Amendment requirement that searches and seizures be reasonable. The Court recognized that it has upheld brief, suspicionless searches at fixed checkpoints to intercept illegal aliens, United States v. Martinez-Fuerte, 428 U.S. 543 (1976) and at highway checkpoints to detect drunk drivers, Michigan Dept. of Transportation v. Sitz, 496 U.S. 444 (1990). However, the Court noted:

We have never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing. Rather, our checkpoint cases have recognized only limited exceptions to the general rule that a seizure must be accompanied by some measure of individualized suspicion. ...[E]ach of the checkpoint programs that we have approved was designed primarily to serve purposes closely related to the problems of policing the border or the necessity of ensuring roadway safety. Because the primary purpose of the Indianapolis narcotics checkpoint program is to uncover evidence of ordinary criminal wrongdoing, the program contravenes the Fourth Amendment.

Edmond at 454. The Court recognized that the DUI roadblocks in Sitz were “clearly aimed at reducing the immediate hazard posed by the presence of drunk drivers on the highways, and there was an obvious connection between the imperative of highway safety and the law enforcement practice at issue.” Edmond at 453. We believe that the distinction the United States Supreme Court has drawn between suspicionless searches designed to remove drunk drivers from the road, and those intended to detect ordinary criminal activity, sufficiently protect citizens from the untoward results that the Rhode Island Supreme Court feared in Pimental.

Therefore, as a matter of stare decisis, and in recognition of the overwhelming authority in support of DUI roadblocks, we conclude that DUI roadblocks are not per se offensive to the Pennsylvania Constitution. The balancing analysis performed by the Blouse Court in the context of roadblocks established to detect registration, licensing, and equipment violations is equally availing with respect to the DUI roadblock at issue in the present case. As such, we affirm our decision in Blouse and extend that decision to encompass roadblocks instituted for the purpose of detecting drunken drivers.

Appellant also asserts that even if DUI roadblocks are not per se unconstitutional, the police officers established and conducted the roadblock at issue in this case in an unconstitutional manner. In support of this argument, Appellant directs this Court's attention to the guidelines first established in Tarbert and subsequently adopted in Blouse. In essence, Appellant contends that the police officers failed to adhere to various aspects of the Tarbert-Blouse guidelines and that, therefore, this particular roadblock was unconstitutional.

In Tarbert, this Court offered the following guidelines to insure the constitutionality of a DUI roadblock:

[T]he 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 the 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 traveled 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 the objective standards prefixed by administrative decision.

Tarbert, 535 A.2d at 1043; see also Blouse, 611 A.2d at 1180 (adopting Tarbert guidelines in context of non-DUI roadblock).

Appellant submits that the DUI roadblock at issue here failed to adhere to the Tarbert-Blouse criteria on numerous grounds. To begin, Appellant argues that the

roadblock involved more than a momentary stop and was not ascertainable from a reasonable distance or otherwise made knowable in advance. In addition, Appellant argues that the roadblock violated the Tarbert-Blouse standards because the decision to hold the roadblock, as well as the decision as to its time and place, were not reserved for prior administrative approval and because the question of which vehicles to stop was not administratively fixed with objective standards. Finally, Appellant contends that the police officers failed to establish that the route and time selected for the roadblock were such that it was likely that drunken drivers would be traveling this route at the time of the roadblock.

Substantial compliance with the Tarbert-Blouse guidelines is all that is necessary to minimize the intrusiveness of a roadblock seizure to a constitutionally acceptable level. Blouse, 611 A.2d at 1180 (citing Tarbert). Thus, where the trial court's factual findings support the conclusion that the roadblock substantially complied with the guidelines, and where the trial court's findings are premised on sufficient evidence of record, this Court will not disturb the trial court's conclusion of substantial compliance.

In the present case, Officer Hawke testified that his research revealed that this location was a route likely to be traveled by drunken drivers because the area was one where drunk-driving accidents had occurred and where officers had made DUI arrests in the past. In addition, Officer Hawke testified that, based on this information, he requested and received administrative authorization for the DUI roadblock. With regard to the conducting of the roadblock, Officer Hawke stated that the officers erected large signs to alert drivers of the roadblock ahead. Moreover, the officers stopped every car that came upon the roadblock, as was administratively approved prior to the police officers instituting the roadblock. Officer Hawke also testified that the police officers

stopped drivers for approximately thirty seconds each and detained for field testing only those drivers who smelled of alcohol.

This testimony clearly supports the conclusion of the trial court that the police officers established and conducted the DUI roadblock in compliance with the Tarbert-Blouse guidelines. Accordingly, Appellant's argument that police acted in an unconstitutional manner has no merit.

CONCLUSION

In conclusion, we hold that systematic, nondiscriminatory, nonarbitrary roadblocks for the purpose of detecting drunken drivers, if established and conducted in substantial compliance with the Tarbert-Blouse guidelines, are constitutional under Article I, Section 8 of the Pennsylvania Constitution.

Mr. Justice Castille joins this opinion.

Mr. Justice Cappy files a concurring opinion.

Mr. Justice Saylor files a concurring opinion in which Mr. Justice Castille joins.

Mr. Chief Justice Flaherty files a dissenting opinion in which Mr. Justice Zappala joins.

Mr. Justice Nigro files a dissenting opinion in which Mr. Justice Zappala joins.