

Constitutionality Of Police Roadblocks

by Adam J. Sheppard

Summer is here and the time is right for roadblocks in the street.¹ Roadblocks or, roadside “safety checkpoints,”² are especially prevalent over summer holiday weekends.³ And while the public interest in developing such roadblocks is compelling - they are primarily aimed at apprehending and deterring DUI offenders - the level of intrusion and inconvenience occasioned by these roadblocks must be examined in assessing whether they pass constitutional muster.⁴

Motorists enjoy a reasonable expectation of privacy on our nation's roadways.⁵ The Fourth Amendment to the United States Constitution guarantees motorists the right to be free from suspicionless seizures.⁶ As the United States Supreme Court has observed, “[u]ndoubtedly, many find a greater sense of security and privacy in traveling in an automobile than they do in exposing themselves by pedestrian or other modes of travel.”⁷

At roadblocks, police officers stop motorists without having any probable cause or individualized suspicion.⁸ However, the Illinois Supreme Court and the United States Supreme Court have held that such roadblocks are not per se unconstitutional: if the state's public purpose in setting up the roadblock is sufficient to outweigh the intrusion on the motorist, then the roadblock may be deemed constitutional.⁹

Roadblocks may not be established for the primary purpose of detecting “ordinary criminal wrongdoing” - e.g., drug interdiction points.¹⁰ In order for a roadblock to be constitutional, its primary purpose must be readily distinguishable from a “general interest in crime control.”¹¹ Roadblocks which bear a “close connection to roadway safety” are deemed to have a legitimate purpose.¹² In DUI roadblock cases, the public purpose behind the roadblock is obviously compelling.¹³ “The critical question” in such cases is the level of intrusion occasioned by the roadblock stop.¹⁴

Assessing the intrusiveness of a roadblock involves a dual inquiry: (1) the objective intrusion and (2) the subjective intrusion attendant to the roadblock stop.¹⁵ “The objective intrusion is measured by such factors as the length of the stop, the nature of the questioning, and whether a search is conducted.”¹⁶ Where the stop is brief and motorists are able to

remain in their cars, only being asked to produce credentials, the objective intrusion is minimal.¹⁷

Subjective intrusiveness relates to the level of “concern,” “fright,” or “annoyance,” generated by the roadblock.¹⁸ Although there is no “ironclad formula” for assessing the subjective intrusiveness of a roadblock,¹⁹ courts consider the following factors: (1) whether there were preexisting written guidelines for the operation of the checkpoint (such as a specific state police manual);²⁰ (2) whether there was advance publicity of the intention of the police to establish the checkpoint (such as publicizing the roadblock in a local newspaper or on local television);²¹ (3) whether the decision to establish the checkpoint and the selection of the site was made by a “politically accountable” or “policy-making level” official - e.g., a police captain or lieutenant as compared to a sergeant in the field;²² (4) whether the vehicles were stopped in a pre-established, systematic manner to avoid any concern by motorists that they are being singled out (such as stopping every approaching vehicle);²³ (5) whether there is a sufficient demonstration of the official nature of the roadblock - e.g., the presence of uniformed officer and squad cars or signs which alert approaching motorists of the roadblock;²⁴ and (6) whether it is obvious that the checkpoint in fact poses no safety risk and does not unduly backup traffic - e.g., conducting the roadblock in a lighted area on a main road and using police vehicles to funnel traffic through a single lane.²⁵

The above prophylactic measures serve to allay the intrusiveness, inconvenience, and alarm generated by a roadblock.²⁶ Accordingly, practitioners who find themselves defending a client whose arrest arose out of a roadblock stop, should carefully scrutinize the procedures used to establish and operate the roadblock to ensure that they are in compliance with the safeguards set forth above.²⁷

1 See *Martha & The Vandellas* (written by William Stevenson and Marvin Gaye), “Dancing in the Streets,” “Dance Party,” 1964, Motown Records.

2 See e.g., *People v. Maldonado*, 386 Ill.App.3d 964 (2d Dist. 2008); *People v. Edwards*, 285 Ill.App.3d 1 (3rd Dist. 1996); *People v. Scott*, 277 Ill.App.3d 579 (3d Dist. 1996).

3 See e.g. <http://blog.drivinglaws.org/2009/07/02/chicagoillinois-idot-illinois-state-police-and-illinois-lawenforcement-step-up-dui-patrols/> (@This July 4th motorists and hundreds of Illinois law enforcement agencies will join the Illinois State Police in conducting numerous additional, late-night roadside safety checks.); <http://www.highbeam.com/doc/1N1-11B73631B9B675B8.html> (Harwood Heights Police to set up roadblock over labor day weekend); <http://hdforums.com/forum/great-lakes/352041-illinoisstate-police-give-35-citations-to-motorcyclist.html> (Illinois State Police safety check over Memorial day weekend); <http://addisonadvantage.org/visitors/Releases/09-0610-CheckpointResults.shtm> (Addison Police Department checkpoint over Memorial Day weekend);

4 *People v. Bartley*, 109 Ill.2d 273 (1985); *Delaware v. Prouse*, 440 U.S. 648, 662, 99 S.Ct. 1391, 1400 (1979).

5 *Prouse*, 440 U.S. at 662, 99 S.Ct. at 1400.

6 *Id.*

7 *Id.*

8 See *Bartley*, 109 Ill.2d at 292.

9 *Id.*; accord *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 110 S.Ct. 2481 (1990).

10 *City of Indianapolis v. Edmond*, 531 U.S. 32, 41, 121 S.Ct. 447, 454, 458 (2000); accord *People v. Hacker*, 388 Ill.App.3d 346, 350 (4th Dist. 2009).

11 *Edmond*, 531 U.S. at 43, 121 S.Ct. at 455.

12 *Id.* at 43, 121 S.Ct. at 455.

13 *Bartley*, 109 Ill.2d at 288.

14 *Id.*

15 *Id.*

16 *Id.*

17 *Id.* at 287-288 (upholding delay of 15-20 seconds); accord *Illinois v. Lidster*, 540 U.S. 419, 428, 124 S.Ct. 885, 891 (2004) (contact with police was a few seconds.); (citing, *Sitz*, 496 U.S. at 448 (upholding delays of 25 seconds); also cf. *United States v. Martinez-Fuerte*, 428 U.S. 543, 96 S.Ct. 3074 (1976) (upholding stops of three-to-five minutes at a permanent immigration checkpoint).

18 *Id.* at 282.

19 *Id.* at 289.

20 *Id.* at 278.

21 *Id.* at 883; also see *People v. Adams*, 293 Ill.App.3d 180, 187 (2d Dist. 1997).

22 Compare *Bartley*, 109 Ill.2d at 288 with *Adams*, 293 Ill.App.3d at 187.

23 See e.g., *Sitz*, 496 U.S. at 453, 110 S.Ct. at 2487; see also *People v. Fullwiley*, 304 Ill.App.3d 44, 46 (2d. Dist. 1999) (every fifth vehicle).

24 See *Adams*, 293 Ill.App.3d at 187.

25 *Bartley*, 109 Ill.2d at 273; also see *Lidster*, 540 U.S. at 427, 124 S.Ct. at 891.

26 *Id.*; accord *Adams*, 293 Ill.App.3d at 187.

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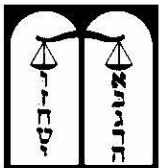
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