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THE UNIVERSITY of TENNESSEE
MUNICIPAL TECHNICAL ADVISORY SERVICE
...in cooperation with the Tennessee Municipal League

TECHNICAL bulletin

January 7, 2010

CONDUCTING EFFECTIVE ROADBLOCKS

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Many law enforcement agencies conduct roadblocks aimed at reducing the number of intoxicated drivers and alcohol-related accidents on our roads. It may be months before these agencies learn whether the arrests and seizures made at those roadblocks will be upheld. Based on numerous Supreme Court rulings over the years, it is likely that arrests and seizures will be found unconstitutional and charges brought will be dismissed. To avoid this outcome, law enforcement agencies must plan carefully and conduct roadblocks in such a manner that the prosecution of charges brought against persons arrested in the operation will be sustained.

The United States Supreme Court and the Tennessee Supreme Court have held that stopping a vehicle and questioning its occupants constitutes a seizure, even if the purpose of the stop is limited and the questioning is brief. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971); *State v. Simpson*, 968 S.W.2d 776 (Tenn. 1998). The Fourth Amendment requires that searches and seizures be reasonable. Generally, for the seizure of a vehicle to be reasonable, there must be some type of individualized suspicion of wrongdoing justifying the stop.

A sobriety checkpoint aimed at removing drunk drivers on the road has been found permissible by the court, as well as a similar roadblock with the purpose of verifying drivers' licenses and vehicle registration. *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990); *Delaware v. Prouse*, 440 U.S. 648 (1979). The court has clarified such opinions, stating "in none of these cases, however, did we indicate approval of a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing." *Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000).

A central concern of the courts is whether the public interest served by the roadblock outweighs the interference with individual liberty. The only constitutionally allowed roadblocks are those carried out pursuant to a plan containing explicit, neutral limitations on the conduct of the individual officers executing the roadblock.

In *State v. Downey*, 945 S.W.2d 102 (Tenn. 1997), the Tennessee Supreme Court held that a sobriety roadblock that was not established and operated in accordance with predetermined guidelines resulted in an unreasonable search and seizure of the defendant. The court clarified that the ruling does not void all sobriety roadblocks, stating:

> a highway roadblock which is established and operated in accordance with predetermined guidelines and supervisory authority that minimize the risk of arbitrary intrusions on individuals and limit the discretion of law enforcement officers at the scene is valid under the Tennessee Constitution. *Downey* at 112.

What guidelines should be followed? The courts cite the Tennessee Department of Safety General Order 410-1*, as containing the appropriate guidelines for sobriety checkpoints. The General Order, applies only to the Highway Patrol, but it serves as a good form to follow for local jurisdictions drawing up their own procedures. Generally, the guidelines require that:

- Clear notice of the roadblock must be given to both the public at large and advancing motorists.
- Uniformed officers and patrol cars with flashing lights should be present.
- The area should be safe and visible and all cars traveling in both directions should be stopped, subject to traffic congestion. *Downey*, at 110-12.

In the Tennessee Supreme Court's view, a very important criterion is that the decision to conduct the roadblock must not be made by the officers participating in the exercise, and officers on the scene cannot decide for themselves the procedures to be used in operating the roadblock. An opinion by the Supreme Court further emphasizes that the stated, predetermined purpose for the roadblock must be the actual purpose, and not merely a ruse used by the agency to detect ordinary criminal wrongdoing. *State v. Hicks*, 55 S.W.3d 515 (Tenn. 2001).

In *State v. Hicks*, municipal officers were participating in a roadblock organized by the Tennessee Highway Patrol to check drivers' licenses and registration. A drug sniffing dog was present and some municipal officers were questioning motorists regarding a felon authorities were pursuing on rape charges. The defendant was directed to pull over by a municipal officer, not a trooper. The officer questioned him while a drug dog circled his car and alerted the officers to the presence of marijuana. The court found the seizure to be unconstitutional due to the unlawful delegation of State Highway Patrol authority to local officers, and also because the roadblock did not follow General Order guidelines in most respects.

If roadblock procedures adequately limit field officer discretion, the next test applied by the courts is whether the roadblock posed a risk of arbitrary intrusion on individual rights and liberties. The United States Supreme Court explains that the constitutionality of roadblock arrests requires a three-pronged test: (1) "a weighing of the gravity of the public concerns served by the seizure," (2) "the degree to which the seizure advances the public interest," and (3) "the severity of the interference with individual liberty." *Brown v. Texas*, 443 U.S. 47, 50 (1979). In the *Downey* opinion the Tennessee Supreme Court determined that sobriety roadblocks, in particular, satisfy the first two requirements of this test. [Note: This determination was not extended to roadblocks to check drivers' licenses and registration, for which the State must satisfy the first two requirements of the three-pronged test.] When reviewing sobriety checkpoints, the courts now focus on the third requirement, analyzing the "severity of the interference with individual liberty," when deciding to uphold or dismiss charges.

This analysis of whether a sobriety checkpoint posed the risk of a severe intrusion on individual liberty focuses on the following factors:

(a) "whether cars traveling in both directions were stopped, unless traffic congestion requires permitting some motorists to pass through;
(b) whether adequate safety precautions, such as warning approaching motorists of the roadblock and stopping cars in a safe and visible area, were taken;
(c) whether uniformed officers with marked patrol cars with flashing emergency lights conducted the checkpoint; and
(d) whether the public received advance publicity of the checkpoint, separate from, and in addition to, any warnings given approaching motorists."

State v. Hicks, 55 S.W.3d at 533.

Not all of the above factors must be present for a sobriety roadblock to pass constitutional muster,

however, as the Supreme Court states, "the absence of any of these factors does not necessarily invalidate a roadblock …" *Id.* The primary issue is whether the roadblock was operated in a manner that minimized the intrusion on individual liberty.

Roadblocks used for purposes other than catching drunk or impaired drivers must meet all three prongs of the test established by the U.S. Supreme Court in *Brown v. Texas* [(1) "a weighing of the gravity of the public concerns served by the seizure," (2) "the degree to which the seizure advances the public interest," and (3) "the severity of the interference with individual liberty."]. Checkpoints set up to reduce crime or to enforce drivers' license laws must have more specific purposes, which should be supported by statistical evidence that establishes compelling governmental interests served by such roadblocks. In the case *State v. Hayes*, 188 S.W.3d 505 (Tenn. 2006), the Tennessee Supreme Court ruled that an identification checkpoint at the entrance to a public housing development was unconstitutional. The Court found that the State's asserted interest in establishing the checkpoint to ensure residential safety by detecting and deterring unauthorized visitors was insufficient. The State offered no statistics or other evidence establishing a causal relationship between unauthorized visitors and risk or harm to residents. The court also found that the checkpoint failed the *Downey* test, as no predetermined guidelines or supervisory authority existed, and the discretion of field officers was not sufficiently limited. The *State v. Hayes* opinion provides ample warning to law enforcement agencies to be very cautious and diligent when planning and executing identification checkpoints.

Although roadblocks can be effective in removing drunk drivers from the roads and for other purposes, careful planning and execution are vital to the overall effectiveness of the operation. Internal rules and procedures used by municipal police departments should be compared to General Order 410-1, and amended or revised accordingly, before planning a sobriety checkpoint. If a roadblock is used for other purposes, careful consideration should be given to the reasons for the roadblock, and whether the roadblock will meet the government's purpose without violating constitutional rights.

**The General Order can be found in Knowledgebase on the MTAS Web site at www.mtas.tennessee.edu.*

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