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Conducting Effective Roadblocks

During this holiday season, many law enforcement agencies will 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 past couple years, it is very likely that the arrests and seizures will be found unconstitutional and that charges brought will be dismissed. To avoid this outcome, law enforcement agencies must plan carefully and conduct the roadblock 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 an automobile 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 more recently addressed such cases, and explained: "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 that 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 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. A very recent 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.

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.

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