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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs. Case No. 66,373

RONALD DEAN JONES,

Respondent.

RESPONDENT'S BRIEF

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OBJECTION BY RESPONDENT TO PETITIONERS CONCLUSION OF EVIDENCE NOT CONTAINED IN THE RECORD.

Petitioner has included in its brief evidence concerning the implementation of the subject roadblock that were never presented at any stage of these proceedings in the lower courts. Respondent has had no opportunity to examine these facts, test their accuracy or authenticity. As such, Respondent is unable to effectively reply to said material. Respondent's inability, therefore, to respond to that portion of Petitioner's brief is effectively curtailed unless this Honorable Court refuses to consider said evidence in this case. More specifically, said facts include all references to "Operation Waltz", Petitioner's brief, pp. 6, 11, 12, 15 including 12 pages in "appendix."

CERTIFIED QUESTION

> CAN A WARRANTLESS TEMPORARY ROADBLOCK WHICH IS ESTABLISHED TO APPREHEND PERSONS DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL AND STOPS AUTOMOBILES WITHOUT ANY ARTICULABLE SUSPICION OF ILLEGAL ACTIVITY PRODUCE CONSTITUTIONALLY PERMISSIBLE ARRESTS?

Both Petitioner and Respondent agree that the stopping of the Respondent under the circumstances of this case was a seizure of him, without any articulable suspicion of illegal activity. Delaware v. Prouse, 440 U.S. 648, 59 L.E.D. 2d 660, 99 S.Ct. 1391 (1979) (test of _____ So.2d at _____ 9FLW at 1902)

The obvious disagreement is whether such a stop is

constitutionally permissable, and whether such evidence obtained from such a stop can be used against the Respondent.

The historical standard by which warrantless seizures and searches would pass constitutional muster has been reasonable or articulable suspicion of criminal activity. Carroll v. United States 267 U.S. 132 (1925).

Petitioner argues that this standard should be done away with, suggesting that the common good of the people of this State would be furthered, a so called "balancing of the peoples interest in public safety and the individuals right to privacy."

The simply stated question is, "Does the law of this State or the law as decided by the United States Supreme Court allow the disposal of this standard" and the answer is no.

When the United States Supreme Court decided the case of Delaware v. Prouse, supra, the one solid rule from that opinion was that a founded or reasonable suspicion of criminal activity was needed to detain an automobile traveling on highways; and that a detention, however brief, was a seizure that invoked fourth Amendment rights.

The U.S. Supreme Court has not receded from that decision. After making the aforesaid ruling, the Supreme Court, in the dicta of the case, suggested that a State may enforce traffic regulations by a roadblock stopping of all oncoming traffic. The concern of the Court was the discretion used by police officers in making stops and in preventing unbridled discretion.

The roadblock type stop the Court was referring to was

regulatory stops, not stops to determine the commission of a crime. In Delaware v. Prouse, supra, a motorist was stopped and detained by police for a routine check of his driver's license and registration. Contraband was found in plain view and the motorist was arrested. The police officer who stopped the motorist testified he had no reason for the stop, no suspicion, but it was just to check for a driver's license and registration. The Court stated:

> "To insist neither upon an appropriate factual basis for suspicion directed at a particular automobile nor upon some other substantial and objective standard or rule to govern the exercise of discretion would invite intrusions upon constitutionally guaranteed rights based on nothing more than inarticulate hunches." Delaware v. Prouse, supra, citing, Terry v. Ohio, 392 U.S. at 22, 88 S.Ct 1880.

Though Delaware v. Prouse, supra, stands for the two propositions set out previously, there is a factual distinction in the case at bar. Here we have a roadblock situation as opposed to a stop of a single vehicle. The Supreme Court in Delaware v. Prouse, supra, went on to say:

> "This holding does not preclude.....states from developing methods for spot checks that involve less intrusion or that do not involve the unconstitutional exercise of discretion. Questioning of all on-coming traffic at roadblock-type stops is one possible alternative.

The Court had earlier stated:

> "otherwise, regulatory inspections unaccompanied by a quantum of individualized, articulable suspicion must be undertaken pursuant to previously specified neutral criteria." (emphasis added)

In the instant case there was no reasonable suspicion. The State has argued that reasonable suspicion can be supplanted by the State's need and interest in highway safety. There is no

Florida law, codified nor judicially created, which authorizes the detaining of a motor vehicle absent any suspicion to determine if its driver is violating the law. If we conclude that the Supreme Court in Delaware v. Prouse, supra, created real guidelines to be followed as law in Florida and if we conclude that the stop of Petitioner was within such guidelines, then we should go one step further. Delaware v. Prouse, supra, was concerned with a "Regulatory stop". Petitioner was stopeed not to check his driver's license, not to check his registration, nor his vehicle safety equipment, but to determine if he was committing a crime.

It has been recognized on numerous occasions that the legitimate interests of law enforcement can be served by the establishment of a roadblock to inspect highway traffic. The courts have spent a great amount of effort on balancing the legitimate interests of law enforcement and traffic regulations against the right of citizens to "be secure in their persons, places and effects."

The bulk of the roadblock case law deals with three distinct types of roadblocks:

1. A roadblock for enforcement of immigration laws, i.e., a border search.

2. A roadblock usually established on an escape route to apprehend prepetrators of a particular crime.

3. A roadblock to inspect driver's licenses, auto registrations, and safety equipment.

In Petitioner's case we have a fourth type of roadblock

established to apprehend persons suspected of driving while under the influence of alcohol or controlled substances.

The Courts have stated that the necessity for the State to regulate the highways and the motorists who use them can outweigh the 4th Amendment intrusion when a motorist is stopped to check his driver's license and registration at an appropriate roadblock. U.S. v. Prichard, 645 F2nd 854 (1981); State v. Severance, 237 A2nd 683 (1968).

In the "Hornbrook" case of State v. Severance, supra, the Supreme Court of the State of New Hampshire discussed the use of roadblocks conducted for license checks. The Court framed the issue:

> "This test case challenges the legality and constitutionality of the practice of road checks by the State Police in which all motorists in one lane of traffic are stopped for routine inspection to ascertain whether the operator has a license and the motor vehicle is registered."(supra).

The Court reasoned that the State had a legitimate interest in roadworthiness of automobiles and said that the State's interest encompassed "both the technical fitness of the driver and the mechanical fitness of the machine". State v. Severance, (supra).

The court concluded that the good faith purpose of inspecting motor vehicle licenses and registrations was a constitutionally valid method of insuring public safety. The Court added:

> "...so long as the road check is not used as a subterfuge for uncovering evidence of other crimes..." (emphasis added)

The Severance Court determined that the facts that were stipulated to in the lower tribunal were such that the road check

was for the valid purpose of checking drivers' licenses and vehicle registrations. The Court noted, however, that the roadblock occurred on December 31, 1965, New Years Eve.

> "... which may have been an evening devoted by some to gaiety and revelry. This raises the question whether the road check was a bona fide endeavor to enforce the license and registration provisions of our law or was being conducted for the purpose of discovering evidence of other crimes."

Other crimes obviously being drunken driving. An intent which the Court clearly considered improper.

The "subterfuge" is not present in Petitioner's case. The statement by the Police was out and out -- "we are checking for DWI's." Nonetheless, exactly what the Court in Severance was concerned about. Petitioner was arrested on July 4, 1982, perhaps no less a day of gaiety and revelry than December 31st.

To routinely check for licensing of drivers and registration of cars may not be a severe intrusion of a motorist's 4th Amendment privileges. But to stop cars without any suspicion to check for DWI's is clearly a violation of constitutional guarantees.

In U.S. v. Beale, 674 F2d 1327 (1982) the Court discussed the use of dog sniffing canines at airport luggage facilities, and reasoned that though the dog sniffing is a 4th Amendment intrusion, it is a minor one in the contest of an airport baggage facility. The Court made reference to the Delaware v. Prouse, supra, decision:

> "And it goes without saying that the reasonable alternative to random checkpoint stops cited in Delaware v. Prouse, i.e. "questioning all oncoming traffic at roadblock type stops, (citation omitted) is totally unpalatable in the canine

> sniffing context. Nothing would invoke the spectre of a totalitarian police State as much as the indiscriminate, blanket use of trained dogs at roadblocks..."

The Court implies that action which may be acceptable under 4th Amendment guidelines in one context may not in another. Roadblocks for routine driver license and registration checks may be acceptable where roadblock to check for DWI's is not.

In U.S. v. Harper, 617 F2d 35 (4th Cir 1980), the Circuit Court approved a roadblock that was established immediately after a drug smuggling operation was discovered and the only road exiting the area of the operation was sealed with a roadblock. The Court made an important distinction:

> "The purpose of these stops was to arrest suspects for a known crime, not to discover evidence of undetected crimes by visual search."

The roadblock established in Petitioner's case was not regulatory in manner as discussed by the Court in Delaware v. Prouse, supra, nor was it to apprehend suspects of a specific known crime, nor was it a border search. It was admittedly to arrest drivers for DWI. The Judge of the Lower Court declared that the State, because of a need and interest in highway safety, could systematically stop motorists at a roadblock to check for DWI's and not intrude on their 4th Amendment protections.

Though there is no denial of the purpose in Petitioner's case, this type of activity smacks of the "subterfuge" cited by the Court in Severance, (supra).

Have our 4th Admendment rights been erroded so much that where in 1965, the police would call a roadblock to check for

DWI's a "license check" and now they call it what it is -- and perhaps because of the public outcry against DWI's, dare the Courts to continue to uphold the Constitution.

The Court in Delaware v. Prouse, supra, discussed the role of a police officer's discretion in the roadblock type stop. Of course, there is little discretion if at a roadblock all cars are stopped, and even less discretion if the purpose is driver's license and registration checks. Any deviance from stopping all cars at a roadblock allows discretion as to who is selected to stop, and the intention to investigate DWI's allows the complete and total use of discretion by the officer with little objective standards imposed on making an arrest.

The further potential for abuse of discretion is in the method and manner by which the officer investigates to determine if one is intoxicated. Such subjective standards are acceptable when coupled with a reasonable suspicion of illegal activity, but when no suspicion of illegal activity has given rise to the stop, then the discretion of a police officer in determining who is and who not drunk is unbridled.

Petitioner argues that once stopped, it takes "but seconds in the encounter for a police officer to note blurry eyes, slurred speech, or the odor of alcohol." Petitioner overlooks the use of field sobriety tests that take ten to fifteen minutes to administer. Petitioner's argument that these roadblock stops are nominal instrusions is inaccurate; as a motorist may be "waived through" after twenty or thirty minutes of inspection

interrogation and sobriety tests, surely this is not a nominal intrusion.

Petitioner further argues that a DWI roadblock stop is administrative in nature. The U.S. Supreme Court has not relaxed fourth Admendment Scrutiny to Administrative Searches, Camara v. Municipal Court 387 U.S. 523 (1967). Surely, Petitioner does not argue that a roadblock is necessary before we can pass out of a neighborhood and onto the major streets and highways of our land.

Petitioner has presented facts, statements and statutes to this Honorable Court attempting to show that our present methods of enforcing DWI laws are not adequate; that many drunk drivers go undetected, and that roadblocks are desirable by the majority of our citizens. Respondent objects to these allegations of Petitioner's, since no opportunity has been afforded Respondent to cross examine, question or scrutinize these alleged facts.

The thought of having to pass through a roadblock to have to show you papers is repugnant to the ideas that separate our great country from the rest of the world. Our difficulty in dealing with a wide variety of social problems should not be the catalyst that makes us succumb to the pacification of the majority over the rights of individuals.

The sacrifice of individual rights in order to create a greater peace will fail. The solutions to our problems are not placing the need of the people above the sanctity of individualism.

Unfortunately, it is this concept of individual rights that

makes America better than any other country on Earth. The continual sacrifice of individual rights in the race of security is not only ineffectual but a serious danger to the continuation of the American way of life. The value of our freedom dictates a different solution to our problems. This Court should affirm the decision of the lower court and answered the certified question in the negative.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail to William I. Munsey Jr., Esquire, Assistant Attorney General, 1313 Tampa Street, Suite 804, Park Trammell Building, Tampa, Florida 33602 this 12th day of February, 1985.

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