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IN THE SUPREME COURT
OF FLORIDA

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CASE NO. 86,650

PHILLIP CAMPBELL,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

On Petition for Writ of Certiorari from a
Decision of the First District Court of Appeal

REPLY BRIEF OF THE PETITIONER

✓
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SUMMARY OF THE ARGUMENT

The roadblock in the instant case violated the Fourth and Fourteenth Amendments of the United States Constitution and Article I, Section 12 of the Florida Constitution. Reasonableness of the roadblock is determined by analyzing the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the intrusion on individual liberty.

First, the gravity of the public concerns of speeding and safety equipment violations served by the roadblock at which Phillip Campbell was stopped in this case is slight in comparison to more serious concerns, such as drunken driving. The lower the State's interest, the lower the degree of intrusion that will be tolerated. Education of the public and prevention of safety equipment violations is not sufficient to warrant the intrusive roadblock established in the instant case. Indeed, speeders and those with faulty vehicle equipment are not subjected to criminal sanctions as are drunken drivers.

Second, the degree to which the roadblock in this case advances the public interest is minimal. The use of radar units and the giving out of citations, as common sense and experience teaches, will result, at best, in temporary and isolated effects. Routine patrols will be just as effective without the unnecessary intrusion.

Third, the severity of the interference with individual liberty in this case is excessive because the roadblock was conducted in a congested, residential area during night hours under

circumstances that rendered the roadblock dangerous and surprising to the public. Officers at the scene possessed and exercised unlimited discretion because of the absence of adequate written guidelines. Further, the police could have employed less intrusive alternatives, such as routine patrols, rather than a discretionary roadblock to address speeding and equipment safety concerns.

Accordingly, the appellate court erred in affirming the denial of Mr. Campbell's dispositive Motion to Suppress Fruits of Illegal Arrest and this Court should vacate his conviction.

ARGUMENT

In its Answer Brief on the Merits, the State agrees with the petitioner, Phillip Campbell, that the factors to consider in determining the constitutional reasonableness of a roadblock are: (1) the gravity of the public concerns served by the seizure, (2) the degree to which the seizure advances that public interest, and (3) the severity of the interference with individual liberty. Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 455 (1990); Brown v. Texas, 443 U.S. 47, 50-51 (1979); State v. Jones, 483 So.2d 433, 435 (Fla. 1986). However, in applying these factors, the State improperly weighs such factors in favor of upholding its roadblock despite the clear guidance offered by the United States Court as well as the Florida courts.

I.

**THE STATE'S INTEREST IN SLOWING DOWN VEHICLES,
EDUCATING THE PUBLIC AND CHECKING FOR
EQUIPMENT PROBLEMS IS INSUFFICIENT TO SATISFY
CONSTITUTIONAL STANDARDS.**

The record unequivocally demonstrates that the purposes, i.e., the State's interest, in conducting the roadblock were to slow down vehicles, to educate and to check for equipment problems. [R. III, 51]. Even in the Directed Patrol Worksheet, which governed the challenged roadblock, the Jacksonville Sheriff's Office indicated two motivating public concerns: driving in excess of the posted speed limit and driving with safety equipment violations. [R. I, 30]. Based on this, the State inappropriately argues that its interest outweighs the intrusion into the individual privacy and liberty interests of motorists.

Specifically, the State relies on the argument that the Legislature "has heavily regulated the use of motor vehicles, including safety-related matters targeted in the checkpoint at issue," [Respondent's Answer Brief on the Merits, 13], to support its incorrect contention that the State's interest in the instant case is compelling.

However, such regulations are unlike those imposed for other types of roadway-related problems. For example, the State undeniably has a vital interest in preventing drunken drivers on the State's roadways, and such an interest is evident from the strict criminal sanctions imposed from a violation of the State's interest. See § 316.193, Fla. Stat. (1995) (driving under the influence is punishable on the first offense by a fine of up to

\$500 and imprisonment up to 6 months; the fine and the term of imprisonment increase for each subsequent conviction). The regulations regarding vehicle equipment and speed limits cited by the State, §§ 316.234(1), 316.189, Fla. Stat., constitute noncriminal infractions which are not punishable by incarceration. §§ 316.655, 318.13-.14, Fla. Stat. (1995). If the State of Florida had a compelling interest in requiring that motorists have operational vehicle equipment and that motorists drive within the speed limit, the Florida Legislature could certainly express such an interest by imposing criminal sanctions on violators. However, the Legislature has implicitly decided that such violations are so minor as to not even constitute a criminal offense. Accordingly, the State does not have such a compelling or vital interest in preventing speeding or motorists with faulty vehicle equipment to outweigh a citizen's privacy and liberty interest.

The dissenting opinion below in Campbell v. State, ___ So.2d ___, 20 F.L.W. D2132 (Fla. 1st DCA Sept. 13, 1995) (VanNortwick, J. dissenting), explained the great difference between the interests advanced in other roadblocks and the interests allegedly advanced in the instant case:

As the advanced governmental interest becomes more compelling, logically, under the balancing test, it will carry more weight.

* * *

Even though the Florida Legislature has recognized a state interest in vehicle safety by adopting laws mandating certain motor vehicle equipment, sections 316.215-316.6105, Florida Statutes (1993), and by authorizing police officers to stop and inspect a motor

vehicle "upon reasonable cause to believe that a vehicle is unsafe or not equipped as required by law," section 316.610(1), Florida Statutes (1993), the Legislature has not concluded that the public's concern with vehicle safety is sufficiently grave to enact specific statutory authorization for advancing the enforcement of motor vehicle safety and equipment laws through the use of police roadblocks. Further, in 1981, the Legislature repealed Florida's statewide system of mandatory motor vehicle inspection and certification, Ch. 81-212, 1981 Fla. Laws 840, repealing sections 325.11-325.33, Florida Statutes (1979) [repealed]; and, even while the safety inspection system was in place, operation of an automobile without a valid inspection sticker was only a "noncriminal violation." State v. Webb, 335 So.2d 826, 827 (Fla. 1976). Thus, the state interest in preventing drunk driving, upheld in Sitz as a "grave and legitimate" state interest, 496 U.S. at 451, 110 S.Ct. at 2485-2486; in interdicting the flow of illegal drugs, upheld in Cardwell v. State, 482 So.2d 512 (Fla. 1st DCA 1986); or in detecting illegal aliens, upheld in Martinez-Fuerte, 428 U.S. at 562, 96 S. Ct. at 3085, all must be seen as more compelling governmental interests than the state's interest in motor vehicle safety or in general education of the driving public advanced here, given the Legislature's minimal regulation of this matter. This conclusion is significant when a court, as here, is required to measure the reasonableness of the Fourth Amendment seizure, because a less compelling state interest will only support a less intrusive interference with liberty.

Additionally, both the respondent and the Department of Highway Safety and Motor Vehicles as amicus curiae in their briefs give special attention to the fact that motor vehicles have been deemed "dangerous agencies or instrumentalities." However, it is the vehicle per se which is the dangerous instrumentality, not merely a vehicle with faulty equipment or a speeding vehicle. Indeed, the only logical conclusion that can be drawn from this

statement is that a motor vehicle in operation by one who is under the influence of alcohol or drugs is an even more dangerous agency, thus necessitating a higher stake interest. Thus, once again, the State's interest in the prevention of drunken drivers is far greater than the interests advanced in the instant case.

The State's interests are further minimized when considering the extent of the individual intrusion upon each motorists' Fourth Amendment rights. See infra Sections II and III. Based on the above considerations, it is clear that the intrusion upon the individual's Fourth Amendment right to be free from unreasonable searches and seizures outweighs the State's interest in preventing speeders, educating the public or checking for equipment problems. Accordingly, since the State's purported interests are not as great as other vehicular problems such as drunk driving and drug interdiction, this factor weighs in favor of declaring the roadblock unreasonable and unconstitutional.

II.

THE ROADBLOCK ADVANCED THE STATE'S INTEREST, IF AT ALL, ONLY MINIMALLY.

The State improperly argues that having a roadblock which results in the unnecessary intrusion of each passing motorist's liberty and privacy interest is a reasonable alternative to other less intrusive and yet more effective methods. The State maintains that the petitioner demands that the State employ the "most effective" alternative. This is simply untrue. The petitioner demands, pursuant to United States Supreme Court precedent, that

the State employ an available reasonable alternative in lieu of the unconstitutional roadblock which the State established in the instant case. Patrolling officers can commonly spot such blatant equipment violations as broken brake lights, cracked windshields, missing rear view mirrors, loud mufflers, and improper window tint, and "anything else that may have been visible." [R. II, 27]. The United States Supreme Court advised in Delaware v. Prouse, 440 U.S. 648, 659 (1979):

The foremost method of enforcing traffic and vehicle safety regulations, it must be recalled, is acting upon observed violations.

The State would have this Court forget this basic principle in order to save its unconstitutional roadblock. However, it is beyond dispute that the most effective means of preventing vehicle safety violations is by routine patrol monitoring, not intrusive roadblocks.

In an attempt to rationalize the roadblock's advancement of the State's interest, the State devotes much of its argument to calculating, what it calls, "effectiveness ratings." [Respondent's Answer Brief on the Merits, 18-20]. However, these figures are simply a speculative guess. Contrary to the Sitz decision in which the exact number of stopped automobiles was known, the instant case does not contain any true empirical data. It is merely conjecture that 1,000 or 1,200 automobiles were stopped. This is a situation, similar to Prouse, in which there is an absence of empirical data. See Prouse, supra; see also Sitz, supra at 454. Also, despite the State's tactics, statistical data is not dispositive nor does it

make an overly intrusive roadblock constitutional. The United States Supreme Court in Prouse did not consider any statistical information and in United States v. Martinez-Fuerte, 428 U.S. 543 (1976), it only mentioned such calculations in passing. Reasonableness of an intrusion caused by a roadblock should be ascertained on a case by case basis looking at all of the relevant circumstances, but this does not take the form of a statistical abstract. Cardwell v. State, 482 So.2d 512, 514 (Fla. 1st DCA 1986).

Had the State wanted to obtain significantly better results, it could have issued citations during routine patrol. Officers have the authority to stop motorists who have faulty safety equipment or who are speeding. Accordingly, the "effectiveness rating" for such stops, it can be assumed would be nearly 100 percent. Since the equipment problems were readily visible or detectable, law enforcement officers would only have to stop and/or detain those who violated safety equipment regulations, instead of every motorist.

The State maintains that the speeders will be "impressed" by the presence of two radar units on either side of the roadblock and a non-threatening chat with the roadblock officers. Although the State could espouse its "effectiveness ratings," it is unable to provide any corroborating data that motorists seeing a radar unit before and after a checkpoint are much more likely to be "impressed" with the importance of speeding. Assuming that the motorists even saw the radar units, common sense does not dictate

that the motorist will be permanently "impressed." Rather, common sense and experience teach that the sight of a radar unit affects the motorists only temporarily.

Certainly, motorists will not be "impressed" by another speeder's citation, especially in a roadblock. When the speeding motorists is given a citation, the drivers behind that speeder will not know exactly why the citation was given; it could be for any number of civil infractions. Surely, the State is not surmising that this will give a lasting impression. Moreover, assuming that those stopped with equipment violations were given citations, the desired result that the roadblock educate and induce other violators to repair or replace faulty equipment in their own vehicles is pure speculation. Accordingly, the State's argument that the roadblock was effective as a general deterrent is clearly guesswork.

Notably, despite the State's strained argument, none of the motorists in the stopped vehicles were informed that the roadblock was to educate them about speeding. Lieutenant Weintraub testified that it was "immediately explained to the drivers of the vehicles what the purpose was, told them that there had been a bad accident, we were doing a traffic safety stop, [and asked] if they had their drivers license." [R. II, 10]. Such a discussion could not advance any notion of general deterrence.

The State's arguments as to the degree of the advancement of the State's interest are based on speculation and assumption.

However, common sense and experience demonstrate that the advancement of the State's interest was slight, if at all.

III.

THE SEVERITY OF THE INTRUSION UPON INDIVIDUAL MOTORISTS WAS SO EXCESSIVE AS TO VIOLATE CONSTITUTIONAL STANDARDS.

A. The Roadblock Lacked Detailed Written Guidelines.

The United States Supreme Court in Delaware v. Prouse, 440 U.S. 648, 661 (1979), acknowledged that "unreviewable discretion would be abused by some officers in the field." Accordingly, the Supreme Court held that a roadblock must have either a factual basis for suspicion or the existence of objective standards governing the exercise of discretion. Id.

Likewise, this Court has recognized the importance of limiting the amount of discretion by imposing objective standards:

Written guidelines should cover in detail the procedures which field officers are to follow at the roadblock. Ideally, these guidelines should set out with reasonable specificity procedures regarding the selection of vehicles, detention techniques, duty assignments, and the disposition of vehicles. . . . [C]ourts should view each set of guidelines as a whole when determining the plan's sufficiency.

State v. Jones, 483 So.2d 433, 438 (Fla. 1986). Despite the State's arguments, the requirement for written detailed guidelines is not a per se approach to the Fourth Amendment. The mere existence of such guidelines will not validate a roadblock. The guidelines must be analyzed to determine whether such guidelines adequately limit the discretion of field officers.

This Court is not presented with the question of whether the mere existence of guidelines will validate the roadblock. In the instant case, there were guidelines. However, the guidelines were so inadequate and so unspecific as to permit unbridled discretion. Realizing the inadequacy of its written guidelines, the State attempts to save its roadblock by arguing:

Even though the form did not detail how discretion will be "eliminated," which the law does not require and which probably is impossible in the arena of human affairs, discretion in the field was well-within acceptable limits.

[Respondent's Answer Brief on the Merits, 26]. This statement completely ignores this Court's ruling in State v. Jones, 483 So.2d 433, 438 (Fla. 1986):

Paramount among all other considerations, the fourth amendment requires that all seizures be based on either: (1) specific evidence of an existing violation; (2) a showing that reasonable legislative or administrative inspection standards are met; or (3) a showing that officers carry out the search pursuant to a plan embodying specific neutral criteria which limit the conduct of the individual officers. Because DUI roadblocks involve seizures made without any articulable suspicion of illegal activity, most states examining this issue have ruled that such roadblocks stand or fall based on some set of neutral criteria governing the officers in the field. Courts requiring such a neutral plan do so out of a fear that unbridled discretion in the field invites abuse. We agree and find that it is essential that a written set of uniform guidelines be issued before a roadblock can be utilized.

Jones, supra at 438 (internal citations omitted). This Court has held, explicitly following the Fourth Amendment, that advance written procedural guidelines for roadblocks are necessary to limit

the discretion of field officers and thus, to restrict "the potential intrusion into the public's constitutional liberties." Id.

Pursuant to its own Operational Order 12.1.1(IV), the Jacksonville Sheriff's Office was to provide a Directed Patrol Worksheet, which was to contain clear guidelines including the procedures regarding the selection of vehicles, detention techniques, and specific duty assignments for officers at the scene. [R. I, 47-48]. However, the entire description of the "roadblock strategy" was:

Stop motorists on Mandarin Rd. for a traffic safety check. Have a motorcycle with radar on each end of the check to monitor speed.

[R. I, 30].

The State inappropriately contends that the Operational Order, the Directed Patrol Worksheet, and the oral commands given at the roadblock were sufficient to limit discretion. However, the substance of Operational Order 12.1.1, which in pertinent part specifies only detention techniques, was not reviewed with the field officers on the scene of the roadblock. [R. III, 55-56]. Vehicle selection procedures were never specified in writing. [R. I, 30]. Even if officers were instructed orally to stop every car, that instruction was neither reduced to writing nor followed, as officers on the scene used unbridled discretion to wave unknown numbers of cars through the roadblock unchecked.¹ [R. II, 9-11,

¹ The Respondent recognizes that a traffic back-up is a safety problem. However, the traffic back-up was created by the State's discretionary procedure. The law enforcement agency, under

34-37; III, 47]. Additionally, the written instructions fail to indicate detention techniques or duty assignments as required by the Operational Order. Further, the scant written instructions set forth no procedures for disposition of vehicles in express violation of this Court's decision in Jones. Therefore, the roadblock at issue was wholly discretionary and in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Section 12 of the Florida Constitution.

B. The Roadblock Was Surprising and Dangerous.

The State baldly asserts that the roadblock was actually safe and not surprising to motorists despite the fact that the roadblock was conducted mostly at night between two curves with a volume of traffic. [R. II, 17, 29].

Furthermore, the roadblock was conducted, according to Lieutenant Weintraub, in a "100 percent residential area." [R. II, 17]. The State would have this Court ignore this testimony as it is fatal to its position. The State improperly contends that the roadblock was not conducted in a residential area "as it is commonly understood." [Respondent's Answer Brief on the Merits, 31 n.7]. According to the State, a residential area cannot have a volume of traffic or a church or church parking lot. [Respondent's Answer Brief on the Merits, 31 n.7]. This concocted definition of "residential area" is clearly self-serving and wrong.

the Operational Order and within the Directed Patrol Worksheet, should have provided guidance, especially since part of the roadblock would have been conducted during a time when "residents were going home from work." [R. II, 38].

In State v. Landfald, 571 So.2d 10, 11 (Fla. 2d DCA 1990), a roadblock initiated to apprehend drug users was determined to be unreasonable, because it was located in an essentially residential area. The court reasoned that the degree of intrusion upon the liberty interest of the individuals in that area was too severe. Id. The State ignores the significance of this decision and inappropriately argues that the petitioner is using Landfald to claim that a roadblock could never be used in a residential area. [Respondent's Answer Brief on the Merits, 31]. This is patently false. Landfald is instructive in establishing that despite the State's compelling interest in drug interdiction, it is not sufficient to outweigh the liberty interest of citizens in this kind of setting. See Landfald, supra at 11. Similarly, a State's lesser interest in a "safety check" certainly cannot outweigh the citizens' liberty interests in this residential area.

C. Other Less Intrusive Alternative to the Roadblock Were Available.

The U.S. Supreme Court in Delaware v. Prouse, 440 U.S. 648, 659 (1979), determined that a discretionary spot check for driver's licenses and car registrations was not a "sufficiently productive mechanism to justify the intrusion upon Fourth Amendment interest which such stops entail." The Court found that a state could use less intrusive means that did not allow officers to use unconstrained discretion. "Many violations of minimum vehicle-safety requirements are observable, and something can be done about them by the observing officer, directly and immediately." Id. at 660. The roadblock in the instant case was excessively intrusive

as it lacked detailed written guidelines, was conducted in a manner as to be surprising and dangerous, and was unnecessary in light of other less intrusive alternatives.

CONCLUSION

For the foregoing reasons, specifically that the challenged roadblock constituted an unreasonable seizure in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Article I, section 12 of the Florida Constitution, this Court should reverse the district court's order affirming the denial of Mr. Campbell's dispositive Motion to Suppress Fruits of Illegal Arrest and vacate his conviction.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to **Stephen R. White, Esquire**, Assistant Attorney General, The Capitol, Tallahassee, Florida 32399-1050, by mail this 11th day of April, 1996.



ATTORNEY