

# Constitutionality Of Police Roadblocks

by Adam J. Sheppard

Summer is here and the time is right for roadblocks in the street.<sup>1</sup> Roadblocks or, roadside “safety checkpoints,”<sup>2</sup> are especially prevalent over summer holiday weekends.<sup>3</sup> 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.<sup>4</sup>

Motorists enjoy a reasonable expectation of privacy on our nation’s roadways.<sup>5</sup> The Fourth Amendment to the United States Constitution guarantees motorists the right to be free from suspicionless seizures.<sup>6</sup> 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.”<sup>7</sup>

At roadblocks, police officers stop motorists without having any probable cause or individualized suspicion.<sup>8</sup> 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.<sup>9</sup>

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

Assessing the intrusiveness of a roadblock involves a dual inquiry: (1) the objective intrusion and (2) the subjective intrusion attendant to the roadblock stop.<sup>15</sup> “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.”<sup>16</sup> 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.<sup>17</sup>

Subjective intrusiveness relates to the level of “concern,” “fright,” or “annoyance,” generated by the roadblock.<sup>18</sup> Although there is no “ironclad formula” for assessing the subjective intrusiveness of a roadblock,<sup>19</sup> 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);<sup>20</sup> (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);<sup>21</sup> (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;<sup>22</sup> (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);<sup>23</sup> (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;<sup>24</sup> 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.<sup>25</sup>

The above prophylactic measures serve to allay the intrusiveness, inconvenience, and alarm generated by a roadblock.<sup>26</sup> 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.<sup>27</sup>

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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).

