TOURO COLLEGE
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Touro Law Review

Volume 28
Number 3 *Annual New York State Constitutional Law Issue*

Article 20

August 2012

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Cover Page Footnote

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VEHICLE CHECKPOINTS: THE EVER-EXPANDING ARRAY OF PURPOSES FOR WHICH A VEHICLE MAY BE STOPPPED

SUPREME COURT OF NEW YORK APPELLATE DIVISION, FOURTH DEPARTMENT

People v. Gavenda[1]
(decided October 7, 2011)

This case concerns the conviction of an intoxicated driver who was stopped at a sobriety checkpoint. The appellant, Donald Gavenda appealed his conviction of felony driving while intoxicated under Vehicle and Traffic Law § 1192[3][2] and § 1193[1][c].[3] The appellant contended that the DWI checkpoint at which he was stopped and arrested "constituted an unreasonable seizure in violation of the Fourth Amendment of the United States Constitution[4] and article I, section 12 of the New York Constitution."[5] The Appellate Division, Fourth Department, held that the trial court properly determined that the checkpoint in question was a constitutionally permissible seizure.[6] The court also found that the appellant's "vehicle was

[1] 930 N.Y.S.2d 393 (App. Div. 4th Dep't 2011).

[2] N.Y. VEH. & TRAF. LAW § 1192(3) (McKinney 2009) ("Driving while intoxicated. No person shall operate a motor vehicle while in an intoxicated condition.").

[3] N.Y. VEH. & TRAF. LAW § 1193(1)(c) (McKinney 2009) ("Felony offenses. (i) A person who operates a vehicle (A) in violation of subdivision . . . three . . . of section eleven hundred ninety-two of this article after having been convicted of a violation of subdivision two, two-a, three, four or four-a of such section . . . within the preceding ten years . . . shall be guilty of a class E felony, and shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.").

[4] The Fourth Amendment provides, in pertinent part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ." U.S. CONST. amend. IV.

[5] *Gavenda*, 930 N.Y.S.2d at 393. The New York Constitution reads, in pertinent part: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated. . . ." N.Y. CONST. art. I § 12.

[6] *Gavenda*, 930 N.Y.S.2d at 393.

stopped 'pursuant to a nonarbitrary, nondiscriminatory and uniform procedure, involving the stop of all vehicles' approaching the roadblock," and that "all of the police personnel involved were given explicit verbal instructions on the procedures to be used at the roadblock, including the nature of the questions to be asked . . . and those instructions 'afforded little discretion to [the] personnel.' "[7] As such, the court unanimously affirmed the trial court's judgment.[8]

This case note examines the law as it relates to vehicular stops made by law enforcement, with particular focus on vehicle checkpoint stops. Close attention is paid to the types of checkpoints that have been upheld, the specific law enforcement goals for which checkpoint stops may be operated, as well as the Fourth Amendment implications raised by vehicle checkpoint stops.

I. GENERAL FOURTH AMENDMENT IMPLICATIONS

The analysis of the legality of roadblocks and vehicle checkpoints must start with the associated Fourth Amendment implications. The Fourth Amendment protects against unreasonable searches and seizures.[9] According to the Supreme Court, seizure in a vehicle context, for Fourth Amendment purposes, occurs at the moment when the vehicle is stopped at a roadblock or checkpoint.[10] At that point, the driver and other occupants of the vehicle are no longer free to move about at their will, thus constituting a seizure under the Fourth Amendment.[11] The fact that the seizure is only temporary, the purpose of it is limited, and the duration of the resulting detention is very brief–sometimes only a few seconds–does not alter the resulting impact on Fourth Amendment protections.[12]

The Fourth Amendment does not protect against all searches and seizures, only those that are unreasonable. "The essential pur-

[7] *Id.* at 393-94 (quoting People v. John BB., 438 N.E.2d 864, 867 (N.Y. 1982); People v. Scott, 473 N.E.2d 1, 4 (N.Y. 1984)).

[8] *Id.* at 394.

[9] U.S. CONST. amend. IV. While the Fourth Amendment only protects against actions of the Federal Government, it was incorporated to the States through the Due Process Clause of the Fourteenth Amendment in *Wolf v. Colorado*, 338 U.S. 25, 27-28 (1949) *overruled on other grounds by* Mapp v. Ohio, 367 U.S. 643, 660 (1961).

[10] Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 450 (1990).

[11] *See* Terry v. Ohio, 392 U.S. 1, 16 (1968).

[12] Delaware v. Prouse, 440 U.S. 648, 653 (1979).

pose of the proscriptions in the Fourth Amendment is to impose a standard of 'reasonableness' upon the exercise of discretion by government officials, including law enforcement agents, in order to safeguard the privacy and security of individuals against arbitrary invasions. . . ."[13] As such, motorists have only a diminished "expectation of privacy in an automobile . . . ," not an absolute right.[14] Individualized suspicion is not a prerequisite to a constitutional seizure of an automobile which is "carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers."[15] While the procurement of a warrant prior to a search or seizure is the preferred course of action, the Supreme Court has recognized certain "flexible, common-sense exceptions to this requirement."[16] Those include exigent circumstances,[17] the search of a person and the surrounding area–including the glove box of a vehicle[18]–incident to an arrest,[19] following a hot pursuit,[20] searches at the international border or its functional equivalent,[21] and, logically, with consent of the party to be searched.[22] There are other permissible intrusions that are "less severe than full-scale searches or seizures," which also do not require a warrant.[23] Those include a "stop and frisk,"[24] a seizure for questioning,[25] or at a roadblock or checkpoint.[26]

Once the vehicle has been stopped at a roadblock or checkpoint, the police still do not have unlimited authority to search or se-

[13] *Id.* at 653-54 (quoting Marshal v. Barlow's, Inc., 436 U.S. 307, 312 (1978) (internal quotation marks omitted)).

[14] United States v. Martinez-Fuerte, 428 U.S. 543, 561 (1976).

[15] Brown v. Texas, 443 U.S. 47, 51 (1979).

[16] Texas v. Brown, 460 U.S. 730, 735 (1983).

[17] Johnson v. United States, 333 U.S. 10, 14-15 (1948).

[18] New York v. Belton, 453 U.S. 454, 460 (1982) (" 'Container' here denotes any object capable of holding another object. It thus includes closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like. Our holding encompasses only the interior of the passenger compartment of an automobile and does not encompass the trunk."). *Id.* at n.4.

[19] United States v. Robinson, 414 U.S. 218, 235 (1973).

[20] Warden v. Hayden, 387 U.S. 294, 289-99 (1967).

[21] Almeida-Sanchez v. United States, 413 U.S. 266, 272 (1973) (quoting Carroll v. United States, 267 U.S. 132, 154 (1925)).

[22] Zap v. United States, 328 U.S. 624, 630 (1946).

[23] *Brown*, 460 U.S. at 736.

[24] *Terry*, 392 U.S. at 12, 30-31.

[25] United States v. Brignoni-Ponce, 422 U.S. 873, 881-82 (1975).

[26] *Prouse*, 440 U.S. at 663.

ize the content of the vehicle. The plain view doctrine, which "permits the warrantless seizure by [the] police of private possessions," applies to such searches.[27] This doctrine has three requirements:[28]

> First, the police officer must lawfully make an "initial intrusion" or otherwise properly be in a position from which he can view a particular area. Second, the officer must discover incriminating evidence "inadvertently," which is to say, he may not "know in advance of the location of [certain] evidence and intend to seize it," relying on the plain view doctrine only as a pretext. Finally, it must be "immediately apparent" to the police that the items they observe may be evidence of a crime, contraband, or otherwise subject to seizure.[29]

Under this doctrine, the police may seize, without a warrant, any weapons or contraband that are in plain view of the officers.[30] An article is also considered to be in plain view if it is visible to the police while shining a searchlight into a vehicle.[31]

II. THE LAW RELATING TO AUTOMOBILE STOPS

a. Federal

The Supreme Court held that the three-part test to determine the reasonableness of the seizure of a person which does not amount to a traditional arrest also applies to vehicular stops at roadblocks.[32] That test involves "a weighing of [1] 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

[27] *Brown*, 460 U.S. at 736-37.

[28] *Id.*

[29] *Id.* at 737 (quoting Coolidge v. New Hampshire, 403 U.S. 443, 465-66, 470 (1971)).

[30] Payton v. New York, 445 U.S. 573, 586-87 (1980).

[31] *Brown*, 460 U.S. at 739-40 (finding that police seizure of party balloon containing illicit substance that was observed in plain view while shining a searchlight into the vehicle at a traffic stop, even when the officer changed his position to get a better view, is not an unreasonable seizure).

[32] *Prouse*, 440 U.S. at 663.

individual liberty."[33] The test aims to strike "a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers."[34] The first part of the test establishes the need for the seizure; the second part evaluates the effectiveness of the seizure in achieving the goal established in part one; and the third part, the intrusion or interference with individual liberty, is evaluated for both the objective intrusion, "the stop itself, the questioning, and the visual inspection," and subjective intrusion, "the generating of concern or even fright on the part of lawful travelers. . . ."[35]

1. Roving Traffic Stops

In *Delaware v. Prouse*,[36] the Supreme Court held that roving traffic stops for which the police officer has no reasonable suspicion of a violation will itself violate the driver's Fourth Amendment protections.[37] While the purpose of the stop–to ascertain that the driver of the vehicle has a valid license, that the vehicle itself is licensed and has passed the necessary safety inspections, and is otherwise not in violation of the Vehicle and Traffic Laws–would be permissible if the police officer had some objective fact to constitute individualized reasonable suspicion, the absence of such reasonable suspicion renders the stop gratuitous, and as such, violative of the Fourth Amendment.[38] The Court also suggested that if the police were to develop other methods for conducting those checks that "involve less intrusion or that do not involve the unconstrained exercise of discretion [such as the] [q]uestioning of all oncoming traffic at roadblock-type stops . . ." that would not violate the Fourth Amendment, even if the officers have no suspicion of a particular violation.[39]

[33] *Brown*, 443 U.S. at 50-51. These three factors are commonly referred to as (1) the public interest advanced, (2) the effectiveness of the program, and (3) the level of intrusion.

[34] *Id.* at 50 (quoting Pennsylvania v. Mimms, 434 U.S. 106, 109 (1977)).

[35] *Martinez-Fuerte*, 428 U.S. at 558.

[36] 440 U.S. 648 (1979).

[37] *Prouse*, 440 U.S. at 663.

[38] *Id.* In a prior case the Court held that the level of suspicion required to perform a roving traffic stop need not rise to the level of probable cause, which is certainly sufficient to perform such a stop. *See Brignoni-Ponce*, 422 U.S. at 884. With this holding, the Court also established the minimum level of suspicion necessary to perform such a stop. *See Prouse*, 440 U.S. at 663.

[39] *Prouse*, 440 U.S. at 663.

2. Permanent Immigration Checkpoints

In *United States v. Martinez-Fuerte*,[40] the Supreme Court upheld the usage of a permanent roadblock on a major highway less than 100 miles from the Mexican border with the purpose of intercepting and apprehending undocumented aliens.[41] In contrast to a prior decision which held unconstitutional a roving patrol stop to search for undocumented aliens,[42] the Court here held that a permanent checkpoint, set up on a major highway running from the border to the interior, is constitutional, and its operators do not require individualized reasonable suspicion to stop vehicles passing through the checkpoint.[43] The operators of such checkpoints do not need prior authorization by a warrant to briefly question motorists passing through the checkpoint.[44] However, if the operators want to search a vehicle passing through the checkpoint beyond the scope of the plain-view doctrine, probable cause is required.[45]

3. Non-Permanent Sobriety Checkpoints

The Supreme Court first took up the issue of sobriety checkpoints in *Michigan Department of State Police v. Sitz*.[46] In that case, the Court found that "the State has 'a grave and legitimate' interest in curbing drunken driving . . ."[47] and that "the weight bearing on the other scale–the measure of the intrusion on motorists stopped briefly at sobriety checkpoints–is slight."[48] As to the degree of subjective

[40] 428 U.S. 543 (1976).

[41] *Martinez-Fuerte*, 428 U.S. at 566.

[42] *Almeida-Sanchez*, 413 U.S. at 273 (stating that simply being in the general vicinity of the border does not permit roving patrol stops of vehicles to search for illegal aliens. Law enforcement or immigration enforcement officers require individualized reasonable suspicion to make a roving patrol stop of a vehicle traveling on public roads, which is the same rule that applies to a stop that occurred in the interior – the proximity of the border is irrelevant to roving patrol stops). The difference being that a roving patrol stop requires individualized reasonable suspicion, but a checkpoint stop, at which all vehicles are stopped, can be operated without individualized reasonable suspicion as to the vehicles being stopped.

[43] *Martinez-Fuerte*, 428 U.S. at 562.

[44] *Id.* at 566.

[45] *Id.* at 567.

[46] 496 U.S. 444 (1990).

[47] *Sitz*, 496 U.S. at 449 (quoting Sitz v. Dep't of State Police, 429 N.W.2d 180, 183 (Mich. Ct. App. 1988)).

[48] *Id.* at 451.

intrusion, and the fear and surprise generated thereby, the Court noted that "[t]he 'fear and surprise' to be considered are not the natural fear of one who has been drinking over the prospect of being stopped at a sobriety checkpoint but, rather, the fear and surprise engendered in law-abiding motorists by the nature of the stop."[49]

> [T]he circumstances surrounding a checkpoint stop and search are far less intrusive than those attending a roving-patrol stop. Roving patrols often operate at night on seldom-traveled roads, and their approach may frighten motorists. At traffic checkpoints the motorist can see that other vehicles are being stopped, he can see visible signs of the officers' authority, and he is much less likely to be frightened or annoyed by the intrusion.[50]

The Court also found that the effectiveness of sobriety checkpoints in apprehending drunk drivers was sufficient, and at least as effective[51] as, if not more than, the *Martinez-Fuerte* checkpoints for illegal aliens.[52] As such, the Court upheld the sobriety checkpoints as compliant with the Fourth Amendment.[53]

4. Drug Interception Checkpoints and the Primary Purpose Rule

In *City of Indianapolis v. Edmond*,[54] the Supreme Court held that a roadblock with the primary purpose of "uncover[ing] evidence of ordinary criminal wrongdoing" contravenes the Fourth Amendment.[55] There, the City of Indianapolis set up checkpoints to inter-

[49] *Id.* at 452.

[50] *Id.* at 453 (quoting United States v. Ortiz, 422 U.S. 891, 894-95 (1975)).

[51] *Id.* at 455. The number of drunken drivers arrested at the *Sitz* checkpoint, as a percentage of the total number of drivers passing through that checkpoint, was approximately 1.6 percent. By comparison, the number of undocumented aliens detected at the *Martinez-Fuerte* checkpoints, as a percentage of the total number of vehicles passing through that checkpoint, was approximately 0.5 percent. Thus, the *Sitz* sobriety checkpoint was at least as effective as, if not more than, the *Martinez-Fuerte* checkpoint, which the Court had previously held was sufficient to satisfy the effectiveness part of the *Brown v. Texas* test.

[52] *Sitz*, 496 U.S. at 455.

[53] *Id.*

[54] 531 U.S. 32 (2000).

[55] *Id.* at 41-42.

cept illegal narcotics.[56] In addition to checking driver's licenses and vehicle registrations, "a narcotics-detection dog walks around the outside of each stopped vehicle" to sniff for illegal drugs.[57] The Court held that while the public interest in intercepting illegal narcotics is substantial, and the intrusion caused by the vehicle being stopped at the checkpoint is minimal, "the gravity of the threat [of illegal narcotics] alone cannot be dispositive of questions concerning what means law enforcement officers may employ to pursue a given purpose."[58]

The Court cautioned that the inquiry to establish the primary purpose of the checkpoint should "be conducted only at the programmatic level and is not an invitation to probe the minds of individual officers acting at the scene."[59] The subjective intent of the officer making the stop is irrelevant to its Fourth Amendment validity if the stop is justified objectively by probable cause to believe that a traffic violation has occurred.[60]

The Court also declined "to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes."[61] "[S]tops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime" is not an interest sufficient to overcome Fourth Amendment protections.[62] "When law enforcement authorities pursue primarily general crime control purposes at checkpoints . . . [such] stops can only be justified by some quantum of individualized suspicion."[63]

5. Information Gathering Checkpoints

In *Illinois v. Lidster*,[64] the Court upheld a checkpoint established on a public road for the purpose of gathering information re-

[56] *Id.* at 35.
[57] *Id.*
[58] *Id.* at 42.
[59] *Edmond*, 531 U.S. at 48.
[60] *Id.* at 45.
[61] *Id.* at 44.
[62] *Id.*
[63] *Id.* at 47.
[64] 540 U.S. 419 (2004).

garding a crime that had occurred on that road one week prior, to which motorists using that road could likely have knowledge of.[65] The Court found that the purpose of the checkpoint in question was for a "special law enforcement concern[]" as opposed to the "general interest in crime control," the latter of which the Court held violative of the Fourth Amendment in *Edmond*.[66] Due to the fact that such information-seeking stops do not have a tendency to intrude on, or provoke anxiety in, the motorist, and because "[t]he police are not likely to ask questions designed to elicit self-incriminating information," such stops do not warrant the application of the *Edmond*-type primary purpose rule, and do not violate the Fourth Amendment.[67]

b. New York

The New York test for analyzing the constitutionality of a roadblock or vehicle checkpoint, adopted in *People v. Ingle*,[68] is much the same as the federal test.[69] The test calls for a "balancing of the State and individual interests involved."[70] "[T]he State has a vital and compelling interest in safety on the public highways . . . [and] non-compliance with licensing and registration requirements, as well as many equipment violations, are not effectively detectable or deterrable without some form of on-the-spot inspection procedure."[71] Motorists also have a "general right to be free from arbitrary State intrusion on [their] freedom of movement even in an automobile."[72] In addition to this balancing test, the court required that, in the absence of reasonable suspicion, where the police want to set up a roadblock or checkpoint, it must be done according to some general programmatic scheme that is uniform, non-arbitrary, non-discriminatory, and leaves little discretion with the operating personnel.[73]

Much like the Supreme Court decision in *Prouse*, the New York Court of Appeals four years earlier held, in *Ingle*, that arbitrary

[65] *Id.* at 422, 428.
[66] *Id.* at 424.
[67] *Id.* at 425-26.
[68] 330 N.E.2d 39 (N.Y. 1975).
[69] *Id.* at 43.
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Ingle*, 330 N.E.2d at 41.

or gratuitous stops of motorists for routine checks are violative of the Fourth Amendment if they are made without reasonable suspicion.[74] The court held that where the police want to conduct routine checks of automobiles, be it for licensing or inspection purposes, there must either be some reasonable suspicion that a particular motorist, selected at random, is in violation of the Vehicle and Traffic Law, or the check must be conducted as part of a routine, non-arbitrary, systematic procedure.[75] The latter may be done randomly, but if so, "by some system or uniform procedure, and not gratuitously or by individually discriminatory selection."[76] The court suggested that doing a "uniform inspection of all vehicles at a roadblock or checkpoint" would be permissible.[77]

> It is assumed that any other kind of stopping without cause or reason or by arbitrary caprice or curiosity is an impermissible intrusion on the freedom of movement. The difficulty is the separation of the permissible from the impermissible without unduly frustrating legitimate police purposes or encroaching unduly on the rights of individuals even as motorists.[78]

1. Roving Roadblocks

Similarly, in *People v. John BB.*,[79] the Court of Appeals upheld a roving roadblock when applied uniformly.[80] In that case, there had been a series of burglaries in a sparsely populated area.[81] In response, the police established a roving roadblock in which officers on patrol would stop all vehicles found driving in the area.[82] The court found that the stops were not arbitrary due to the sparsely populated nature of the location and the numerous burglaries that had occurred in the area, and was conducted according to a uniform proce-

[74] *Id.* at 40-41, 44.
[75] *Id.* at 41.
[76] *Id.*
[77] *Id.*
[78] *Ingle*, 330 N.E.2d at 41.
[79] 438 N.E.2d 864 (N.Y. 1982).
[80] *Id.* at 867. This holding was limited to the circumstances of the case, "a sparsely populated area in which there has been a recent series of burglaries." *Id.*
[81] *Id.* at 866.
[82] *Id.*

dure.[83] The court also found that the State's interest in acquiring information regarding the burglaries outweighed the individual's interest to be free from inquisitorial interference by the police.[84] As such, the roving roadblock did not violate the Fourth Amendment.[85]

2. Temporary Checkpoints

In *People v. Scott*,[86] the Court of Appeals upheld a temporary sobriety checkpoint that was set up for roughly twenty minutes at a time before moving to a different location, during a time of night when there was a high number of drunk drivers on the road.[87] With the constitutionality of sobriety checkpoints clearly established, the court turned to the issue of whether the plan under which the checkpoints were conducted complied with the Fourth Amendment.[88] The court held that "[t]he fact that the plan contemplated situations in which not every car would be stopped did not affect its validity in view of the specific non-discriminatory pattern of selection it called for, and of the reasonableness of allowing some cars to pass when traffic became congested."[89] The court also held that the checkpoint's purpose of being a deterrent to drunken driving did not invalidate its constitutionality.[90] Nor did its shifting after short periods of time in order to not have its location established and drunken drivers simply avoiding it.[91]

[83] *John BB.*, 438 N.E.2d at 867.

[84] *Id.*

[85] *Id.*

[86] 473 N.E.2d 1 (N.Y. 1984).

[87] *Id.* at 3, 6. While most, if not all, sobriety checkpoints are innately temporary by their nature, as compared to the permanent checkpoints that were upheld in *Martinez-Fuerte*, the checkpoints considered in *Scott* shifted location multiple times on a single night of operation. This is different from the sobriety checkpoints the Supreme Court upheld in *Sitz*, six years after *Scott* was decided, which remained in the same location for the entire time of their operation.

[88] *Id.* at 4.

[89] *Id.*

[90] *Id.*

[91] *Scott*, 473 N.E.2d at 4.

3. Checkpoints Without a Stated Primary Purpose

In *People v. Jackson*,[92] the Court of Appeals held that a checkpoint that was set up for an array of non-prioritized purposes, most of which were general crime control purposes, did not meet the *Edmond* primary purpose requirements, and as such, violated the Fourth Amendment.[93] The court in *Jackson* interpreted *Edmond* as "a refinement of the grave public interest/concern prong of the *Brown v. Texas*[94] balancing process."[95] *Edmond* requires the court to "consider the *nature* of the *interests threatened* and their connection to the particular law enforcement practices at issue . . . [and to] look more closely at the nature of the *public interests* that such a regime is designed principally to serve."[96] The Court of Appeals further noted that

> the People have the burden of establishing that the primary *programmatic* objective (not the subjective intent of the participating officers) for initiating a suspicionless vehicle stop procedure was not merely to further general crime control. The Court [in *Edmond*] did not undertake comprehensively to delineate the kinds of particularized governmental interests for which suspicionless stops could be utilized. The Court noted that they could encompass "a smaller class of offenses . . . [where] society [is] confronted with [a] type of immediate, vehicle-bound threat to life and limb." Furthermore, the Court held that a qualifying secondary purpose of the police in setting up a roadblock would not serve to validate suspicionless stops primarily motivated by general crime control ends.[97]

As such, the court held that without a specifically identified primary purpose "addressing some 'type of immediate, vehicle-bound threat

[92] 782 N.E.2d 67 (N.Y. 2002).
[93] *Jackson*, 782 N.E.2d at 71.
[94] 443 U.S. 47 (1979).
[95] *Jackson*, 782 N.E.2d at 70.
[96] *Id.* (quoting *Edmond*, 531 U.S. at 42-43) (emphasis in original).
[97] *Id.* at 71 (quoting *Edmond*, 531 U.S. at 43).

to life and limb' " that would comply with the *Edmond* rule, the checkpoint violated the Fourth Amendment.[98]

4. Pursuance of Vehicles Avoiding Checkpoints

The Appellate Division, Fourth Department, in *People v. Chaffee*,[99] held that the police may pursue and stop vehicles seen to be avoiding roadblocks and checkpoints.[100] In that case, patrol cars were stationed a short distance from a sobriety checkpoint to watch for vehicles making a sudden U-turn once they saw the checkpoint to subsequently pursue and stop such vehicles.[101] The court held that when, "as an integral part of a sobriety checkpoint, the police have established a non-arbitrary uniform procedure to stop all motorists at the checkpoint or who reasonably appear to be avoiding the checkpoint, we should give deference to the enforcement procedures established by the police agency."[102] Further, "public policy weighs heavily in favor of upholding a non-arbitrary uniform procedure which prevents motorists from attempting to evade or avoid a DWI roadblock or checkpoint."[103]

5. Checkpoints as Part of a Greater Programmatic Scheme

In a decision broadening the *Edmond* primary purpose rule, the Appellate Division, Fourth Department, in *People v. Trotter*,[104] held that a checkpoint that by itself is permissible, can be rendered unconstitutional if it forms part of a greater programmatic scheme, which has a primary purpose that is impermissible when applied to a checkpoint.[105] The checkpoint in question "was conducted as an integral component of the 'Rochester Initiative. . . .' "[106] The purpose of the program "was to deter violent crimes and drug trafficking in an

[98] *Id.* at 71-72 (quoting *Edmond*, 531 U.S. at 43).
[99] 590 N.Y.S.2d 625 (App. Div. 4th Dep't 1992).
[100] *Id.* at 627.
[101] *Id.* at 626.
[102] *Id.* at 627.
[103] *Id.*
[104] 810 N.Y.S.2d 610 (App. Div. 4th Dep't 2006).
[105] *Id.* at 614.
[106] *Id.* at 610.

identified target area of Rochester. . . ."[107] Even though the checkpoint was operated as a routine highway safety-related checkpoint, the court held that the primary purpose is not determined by the particular manner in which it is being conducted, but rather by the underlying reasons for which the police established it.[108] As such, even though the checkpoint itself in isolation would be permissible, its inseparability from the greater programmatic scheme, which has a general crime control purpose, contravenes the *Edmond* rule, and thus violates the Fourth Amendment.[109]

III. COMPARISON AND SUMMARY OF THE LAW AS IT STANDS TODAY

The New York rule governing the constitutionality of roadblocks and vehicle checkpoints, established in *Ingle*, is an almost complete adoption of the federal *Brown v. Texas* rule. The only real difference is that New York requires that all roadblocks be set up under a uniform, non-discriminatory, and non-arbitrary program, which is not explicitly mandated under the federal rule, but can reasonably be implied from the Supreme Court's language in *Brown v. Texas* and *Prouse*.[110] The constitutional provisions implicated are the same between the federal and State constitutions.[111] A breach of one would automatically constitute a breach of the other as well, and, as such, roadblocks are typically only evaluated under the Fourth Amendment.

As it stands today, the law permits vehicle checkpoints to be established either at a permanent location,[112] a non-permanent location that may shift multiple times on the same night of operation,[113] or even roving checkpoints that stop every vehicle travelling on cer-

[107] *Id.*

[108] *Id.* at 614.

[109] *Trotter*, 810 N.Y.S.2d at 614.

[110] *Brown*, 443 U.S. at 51; *Prouse*, 440 U.S. at 663.

[111] The Fourth Amendment states, in pertinent part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ." U.S. CONST. amend. IV. The New York Constitution states, in pertinent part: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated. . . ." N.Y. CONST. art. I § 12.

[112] *Martinez-Fuerte*, 428 U.S. at 566.

[113] *Scott*, 473 N.E.2d at 5.

tain roads in a sparsely populated area.[114] Checkpoints do not require individualized reasonable suspicion to stop vehicles passing through the checkpoint.[115] Checkpoints may be operated for the purpose of intercepting illegal aliens,[116] checking drivers' licensing and vehicle registration and inspection certification,[117] to gather information regarding recent criminal activity on that road,[118] as well as sobriety checkpoints to intercept drunken drivers.[119] However, checkpoints may not be established with a primary purpose of general crime control or prevention.[120] Furthermore, checkpoints, which, in isolation, are permissible can be rendered unconstitutional if they form part of a greater program or scheme that has general crime control as its primary purpose.[121] Thus, vehicles seen deliberately avoiding checkpoints may be pursued by the police, because the avoidance itself will give rise to reasonable suspicion.[122]

IV. CURRENT TRENDS IN THE USAGE OF VEHICLE CHECKPOINTS

While checkpoints on the roads, be it general highway safety checkpoints or sobriety checkpoints, are certainly an annoyance to drivers due to the congestion they cause in heavily populated areas, no one can argue their effectiveness in promoting highway safety and combatting drunken driving. For anybody living in a large metropolitan area, checkpoints are a part of everyday life. The fact that other violations, such as illegal narcotics or weapons possession, are often discovered as a result of a highway safety or sobriety checkpoint furthers the public interest of having such checkpoints in heavily populated areas. While studies have found that sobriety checkpoints are not widely used due to a lack of police resources and community support, the areas where they are used certainly reap the

[114] *John BB.*, 438 N.E.2d at 867.
[115] *Martinez-Fuerte*, 428 U.S. at 562.
[116] *Martinez-Fuerte*, 428 U.S. at 552, 566.
[117] *Prouse*, 440 U.S. at 663.
[118] *Lidster*, 540 U.S. at 428.
[119] *Sitz*, 496 U.S. at 455.
[120] *Edmond*, 531 U.S. at 42.
[121] *Trotter*, 810 N.Y.S.2d at 614.
[122] *Chaffee*, 590 N.Y.S.2d at 627.

benefits.[123]

In modern times, especially in cities like New York that face the threat of terrorism, checkpoints are becoming an invaluable part of both law enforcement and terror prevention. The Supreme Court suggested in *Edmond*, prior to the terrorist attacks of September 11, 2001, that "the Fourth Amendment would almost certainly permit an appropriately tailored roadblock set up to thwart an imminent terrorist attack or to catch a dangerous criminal who is likely to flee by way of a particular route."[124] There can be no doubt that this remains true today, with checkpoints set up around bridges, tunnels, and other places considered probable targets in and around New York City on almost every holiday, practically bringing traffic to a halt.

While public opposition to checkpoints may be greater in other areas, the same certainly cannot be said of residents of New York City and the surrounding areas, who tolerate a much greater and much more frequent intrusion on freedom of movement, especially on such holidays.[125] Whether this same tolerance also applies to sobriety checkpoints is a separate question, but given their widespread use, it is reasonable to determine that the general public has grown to accept it as a part of life. Either way, sobriety checkpoints have been upheld by the Supreme Court and have been found to be effective, both in apprehending drunken drivers, and as a deterrent to drunken driving.

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[123] *See Lidster*, 540 U.S. at 426 (citing James C. Fell, Susan A. Ferguson, Allan F. Williams & Michele Fields, *Why Aren't Sobriety Checkpoints Widely Adopted As An Enforcement Strategy In The United States?*, 35 ACCIDENT ANALYSIS & PREVENTION 896, 899 (Nov. 2003)).

[124] *Edmond*, 531 U.S. at 44.

[125] Al Baker, *Sweeping Security Effort Planned for 9/11 Events*, N.Y. TIMES, Sept. 11, 2011, at A17.

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