

"In Ogburn vs Alabama the Alabama Court of Appeals Clarifies DUI Checkpoints"

The Alabama Court of Criminal Appeals held on Friday June 29th, 2012, in a split 3-2 decision, that roadblocks are illegal if the police agency conducting them fail to operate the checkpoint under strict guidelines. The Court strongly suggested that these guidelines and policies should be written down. In Ogburn vs Alabama the Court was considering the constitutionality of the July 4th holiday weekend roadblock set up by Alabama state troopers in Elmore County. It was at this checkpoint where the defendant, Charles Edward Ogburn Jr., was arrested and charged with driving under the influence of alcohol (DUI).

The facts in the Ogburn case were as follows: On July 2, 2011, Ogburn was stopped at a traffic checkpoint in rural Elmore County. After Ogburn was stopped, he was approached by Alabama State Trooper Eric Salvador. Trooper Salvador noticed the smell of alcohol coming from the vehicle. Trooper Salvador noticed some unopened beer containers in the extended cab of Ogburn's truck. Ogburn admitted to having drunk "a couple" drinks, at which point Trooper Salvador asked Ogburn to pull into the parking lot of a nearby store. After pulling into the parking lot, Ogburn was approached by trooper Kenneth Day. Trooper Day observed that Ogburn's eyes were bloodshot and that his breath smelled like alcohol. Based on Trooper Day's observations, he told Ogburn to get out of the vehicle. Trooper Day testified that after performing four field-sobriety tests, he determined that Ogburn was under the influence of alcohol. Ogburn was arrested and taken to the Elmore County jail. At the jail, Ogburn was administered a breath-alcohol-analysis test which revealed Ogburn's blood-alcohol level to be .14 and Ogburn was ultimately convicted of driving under the influence of alcohol (DUI).

The appellate court conducted an inquiry into whether this checkpoint had been operated in a legal manner. Corporal Jesse Thornton had been in charge of the checkpoint and chose the Friendship Road at Cherokee Trail location because he thought it would yield DUI arrests and generate tickets for failure to produce a driver's license or proof of insurance. At trial, Corporal Thornton was asked: "Do the troopers have any established policies in regard to establishing the checkpoint?" Corporal Thornton replied: "We Do." However, Corporal Thornton did not give any further testimony concerning those policies. Trooper Salvador testified that he believed he had the discretion to wave through important people, such as judges, so they would not be hassled by the stop. Trooper Salvador added he always stopped everyone regardless of who they were.

It is well settled that stopping a vehicle at a police checkpoint constitutes a seizure within the meaning of the Fourth Amendment. *United States v. Martinez-Fuerte*, 428 U.S. 543, 556 (1976). Therefore, the Alabama Court of Criminal Appeals relied on the seminal case of *Brown v. Texas*, 443 U.S. 47, 50-51 (1979). In *Brown*, the United States Supreme Court held that the reasonableness of such seizures, which are less intrusive than a traditional arrest, depends "on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." Furthermore, the United States Supreme Court noted that a central concern in balancing the foregoing competing considerations has been to make certain that "an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officer's in the field."

To avoid constitutionally impermissible infringements on privacy, a roadblock must be carried out pursuant to a plan or practice which is explicit,

contains neutral criteria, and limits the conduct of the officers undertaking the roadblock. Such a plan serves to insure that one's "reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field." *Brown, 443 U.S. at 51.*

Ogburn argued there were no specific limitations on the Alabama troopers' conduct at the roadblock, despite the claim that "policies" were in place. Furthermore, Ogburn argued that the State did not carry its burden of proving that his initial stop at the checkpoint was reasonable under the Fourth Amendment. Specifically, that the State did not prove that the checkpoint was "carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers," as required by *Brown v. Texas*.

The Alabama Court of Criminal Appeals agreed with Ogburn. Specifically, Judge Liles Burke, in the written opinion, noted that "Although we hold today that a written plan is not required by the Fourth Amendment, we strongly suggest that having a previously established plan that is in writing before the execution of the checkpoint is the best practice.... If no previously established written plan is submitted into evidence, a witness for the State must specifically articulate the full details of the previously established plan that limits the discretion of the individual officers at the checkpoint in accordance with *Brown v. Texas*." The case at hand lacked both written guidelines, and Trooper Salvador's testimony that he had discretion to let a judge go free proved fatal to the prosecution's attempt to claim that limitations were in place. "In the present case, the state did not present any evidence of the limits on the field officers' discretion," Judge Burke wrote. "Therefore, the warrantless stop of Ogburn at the checkpoint without any individualized suspicion of wrongdoing was unreasonable; thus, the evidence obtained pursuant to that stop

should have been suppressed. Without that evidence, there is no evidence to support Ogburn's conviction for driving under the influence of alcohol (DUI).

The Court's decision adheres to the roadblock parameters as set forth in the 2000 U.S. Supreme Court decision of *Indianapolis v. Edmond* 531 U.S. 32 (2000) which limited the use of roadblocks to issues of life or death. In *Edmond*, the City of Indianapolis operated vehicle checkpoints on its roads in an effort to interdict unlawful drugs. Edmond, who was stopped at such a checkpoint, filed suit, claiming that the roadblocks violated the Fourth Amendment. The District Court denied Edmond a preliminary injunction, but the Seventh Circuit reversed, holding that the checkpoints contravened the Fourth Amendment. In a 6-3 opinion authored by Justice Sandra Day O'Connor, the United States Supreme court agreed with the Seventh Circuit. "We cannot sanction stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime," wrote Justice O'Connor. "Only with respect to a smaller class of offenses, however, is society confronted with the type of immediate, vehicle-bound threat to life and limb that the sobriety checkpoint in *Sitz* was designed to eliminate."

The Alabama Court of Criminal Appeals, applying *Brown v. Texas*, and following the ruling from *Indianapolis v. Edmond* reversed the trial court's judgment and rendered a judgment of acquittal as to Ogburn's conviction for driving under the influence of alcohol (DUI).

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