Indianapolis v. Edmond:
A Supreme Mistake Which Changed Drug Interdiction Forever

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September 5, 2010

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A Supreme Mistake

In August 1998 two men, James Edmond and Joell Palmer, were stopped in separate vehicles along with hundreds of other vehicles while passing through a narcotics interdiction check point planned and conducted by the Indianapolis Police Department. Although these men were not arrested they filed suit against the Indianapolis Police Department claiming these checkpoints were a violation of their civil rights, the 4th amendment in particular. The case was ultimately passed up to the United States Supreme Court and Justice Sandra Day O'Connor, whose decision would alter police checkpoint operations and policy for the foreseeable future. In this decision Justice O'Connor agreed that the defendants' civil rights had been violated. She determined that law enforcement checkpoints, where the primary purpose is narcotics interdiction, are indistinguishable from the general interest of crime control and differ from lawful sobriety checkpoints and drivers' license checkpoints (Oyez Project, 2000). The only differences between the operation conducted that August and drivers' license-sobriety checkpoints of the past were specific intent (a sign labeled "narcotics checkpoint") and a K-9 unit with narcotics detection capabilities.

In August 1998, The Indianapolis Police Department, in response to neighborhood complaints of heavy drug traffic, planned and conducted 6 narcotics interdiction checkpoints throughout separate areas of the city. During this operation signs were placed in the roadway informing drivers "Narcotics Checkpoint ___ miles ahead." Officers stopped 1,161 vehicles out of which 104 people were arrested, including 55 people for drug related violations during these operations (O'Connor, 2000). Two men, James Edmond and Joell Palmer, in separate vehicles, were stopped in these checkpoints along with over one thousand other people. These two men, although not arrested, filed suit against the City of Indianapolis on the grounds that their 4th amendment rights against unreasonable search and seizure had been violated during the course of these operations. The suit was passed from court to court through the appeals process until ultimately coming to rest in the court of last resort: The United States Supreme Court.

In an opinion written by Justice Sandra Day O'Connor, the Supreme Court affirmed that the Indianapolis Police Department had been in violation of the 4th amendment while conducting these checkpoints. In her opinion, Justice O'Connor gave vague reasoning that checkpoints designed for narcotics interdiction were virtually indistinguishable from the general interest of crime control although the Indianapolis Police Department had followed guidelines established in the 1990 case Michigan State Police v. Sitz (O'Connor, 2000).

The guidelines for the checkpoints were established well ahead of time by the commanding officers of the Indianapolis Police Department and adopted into policy

shortly after. It was established that the checkpoints would be run according to the following guidelines:

1. At each checkpoint a predetermined number of cars will be stopped.
2. Each checkpoint will be manned by approximately 30 law enforcement officers.
3. Pursuant to written directives, at least one officer (contact officer) will approach the vehicle and inform the operator of the nature of the vehicle checkpoint and request a valid driver's license and vehicle registration.
4. While interacting with the operator, the contact officer would look for signs of impairment in the operator as well as conducting an open view exam of the interior of the vehicle from the outside.
5. During the contact officer's interaction with the driver, a properly trained and certified K9 officer with a narcotics detecting K9 unit would walk the outside of the vehicle.
6. Physical search may only be conducted through owner-operator consent OR particularized suspicion.
7. Each stop must be conducted in the same manner and no vehicle may be stopped out of sequence.
8. System was established to limit stops to five minutes or less, absent probable cause or reasonable suspicion.

It would seem that with these well established guidelines the Indianapolis Police Department would have been in the clear. They had clearly a established policy, a record of performing similar checkpoints for driving under the influence violations and drivers' license violations, and the stops were performed in under the mandated 5

minutes in most instances, barring probable cause or reasonable suspicion. So where did they go wrong? The differences, I believe, lie in the intent of the checkpoint or assistance of the canine.

This point was argued in the dissenting opinion of Chief Justice William H. Rehnquist. In his dissenting opinion, Chief Justice Rehnquist argued that the narcotics checkpoint was, in fact, legal and precedent had been set in several prior decisions regarding checkpoints and roadblocks with the exception of the use of the canine unit (O'Connor, 2000). The Edmond court responded by stating the charges made by Rehnquist were "Erroneous" (O'Connor, 2000).

Reading the opinion of the Edmond court leaves you feeling like you have spent the last hour attempting to solve quantum physics equations after finishing a basic math class. The decision in Edmond is a slight-of-hand and legal dodging at it's finest.

In U.S. v. Martinez-Fuerta, the court held that checkpoints used to detect illegal immigrants were not a violation. MI State Police v. Sitz demonstrates that sobriety checkpoints are essential to immediate public safety (Scheb & Scheb II, 2009). Delaware v. Prouse states that law enforcement officers could constitutionally block the roads to affirm the status of a driver's license and vehicle registration, and the ultimate legal seizure, Vernonia School District v. Acton allows random drug testing of student athletes. In her opinion Justice O'Connor writes that these cases were not intended to indicate the approval of checkpoints where the primary focus was to detect criminal wrong doing (O'Connor, 2000). But before Justice O'Connor writes this she tells us in the same opinion: "Securing the border and apprehending drunk

drivers are an effort to combat criminal activities and authorities employ arrests and criminal prosecutions to pursue these goals" (O'Connor, 2000)

In her opinion, O'Connor justified allowing other checkpoints, such as those for sobriety, by saying there is an immediate public safety exception to removing these offenders and that the narcotics checkpoint lacks the immediate danger that alcohol impaired drivers impose (O'Connor, 2000). While this may be true to a certain extent, if you ask any law enforcement officer in the field they will tell you that drugs and weapons go hand in hand. Where you find one you will often find the other. Prevention of either the drugs or weapon from reaching their final destination is paramount to the goal of public safety. And in the interest of public safety, how do we justify operating a vehicle without a license as an immediate danger? Does every illegal alien pose an immediate threat to public safety or are the majority hard working individuals looking to better themselves through menial labor in an environment that is growing increasingly more hostile to their presence? The answer is, No. Justice O'Connor's answer, "these (checkpoints) are indistinguishable from general crime control," lacks credibility. The Edmonds opinion explains this through the statement "past checkpoint cases have recognized only limited exceptions to the rule that a seizure must be accompanied by some measure of particular suspicion". How then, do these stops differ from ANY checkpoint which has been given the "limited exception"? Chief Justice Rehnquist may have been correct in his observation that the problem was something far more obvious. According to Chief Justice Rehnquist, it may have been the city's use of a canine that caused the court to rule in favor of Edmond, regardless of the fact that Justice O'Connor herself tells us

in her opinion for U.S .v. Place that the canine sniff holds absolutely no constitutional triggers (Rehnquist, 2000). In an article written for the Memphis Law Review, Kevin Meehan and George Drery III also note the obvious inclusion of the canine sniff and its effect on the opinion of the court. "For all similarities between Edmond and Sitz, one detail in Edmond stands out: The canine sniff. As indicated in U.S. v. Place the canine sniff has no constitutional significance for it does not constitute a search" (Meehan & Drery III, 2002).

Of course, O'Connor couldn't state this outright. The reason was that she had already written in the 1983 decision U.S. v. Place that the use of the canine sniff to detect narcotics was NOT a search within the meaning of the 4th amendment of the constitution (Feledy, n.d.).

Not only did O'Connor agree in 1983 that canine sniffs were not a 4th amendment violation, but she confirmed this by joining Justice John Paul Stevens in his 2005 opinion of Illinois v. Caballes which again stated that given the nature of what the dog is detecting, contraband (i.e. narcotics), and the limited invasion of privacy, canine sniffs are perfectly legal under the 4th amendment of the United States Constitution.

Justice O'Connor, it would appear according to her opinions and record of support, feels that the canine sniff is a tool to be used freely by law enforcement because it is considered a minimal invasion of privacy, at worst. Justice O'Connor has also shown through her agreement in Michigan State Police v. Sitz that she values the use of a checkpoint as a valid tool to be used to insure public safety. So if it was not an issue of the use of the canine, and it was run according to policy and federal

guidelines established for the use of checkpoints, and it undoubtedly passed the "two prong" test established by the decision in Brown v. Texas (time stopped and limited intrusion), what was it that caused O'Connor and the Edmonds court to rule as they did?

Ann Mulligan suggests that the courts focus has shifted from its originally established precedent regarding seizures to the primary purpose of the checkpoints altogether. "In light of previous roadblock cases, the government should have upheld the Indianapolis checkpoints as a valid exercise of government power. Instead, the court ignored the Brown v. Texas balancing test and introduced an analysis focused on the primary purpose of the checkpoint program (Mulligan, 2002)."

On several occasions Justice O'Connor has shown she is willing to do the right thing regarding public and officer safety. She has demonstrated support of the use of canines employed in law enforcement activities as we have seen in her opinion on Place and her support of Caballes. The question is, if Justice O'Connor really does recognize the threat that narcotics pose to our communities, including spin off crimes, why is she reluctant to allow members of the law enforcement community to utilize maximum effort in order to gain control of the situation?

This decision has, in essence, forced law enforcement managers to rewrite policy and dance around issues that are directly related to public safety. In the article "Drug Road Blocks Redefined," Joseph E. Scuro states, "It is clear from Indianapolis v. Edmond that checkpoints and/or road blocks ARE permitted and constitutional in narrowly specified areas of law enforcement activity. The burden of the duty now rests with law enforcement management to construct policies in a manner consistent

with this new Supreme Court mandate" (Scuro, 2001). Charles Friend expands on this topic in the February, 2001 issue of Police Chief Magazine: "This decision has induced many police executives to assess whether they need to modify policy on traffic checkpoints or discontinue them altogether" (Friend, 2001).

As of November 28, 2000, we, as law enforcement officers, can no longer conduct narcotics checkpoints. Officers can have D.U.I. checkpoints. Officers can have driver's license checkpoints. Officers can have a checkpoint for illegal aliens and they can also have a checkpoint to search for an escaping felon. If by chance, Officers find narcotics in a vehicle while at these checkpoints, they have the ability to charge the offender. They can even invite their four-legged assistants to stand by and, as long as they can articulate probable cause, join in. But, the moment the "N" word is used in describing the checkpoint, Justice O'Connor and the majority of the Supreme Court will be there to remind you that you're wrong; that you have violated the 4th amendment of the constitution providing relief from unlawful search and seizure. Regardless of precedent and decisions made by the same Justice who was adamant that a canine sniff held no possible way to trigger a 4th amendment violation, justification for the decision can be summed up in one word: Narcotics.

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