

"Georgia Supreme Court Issues Latest DUI/Drunk Driving Opinion in Checkpoint Cases"

CASE: Brown v State (Opinion No. S12G1287; October 21, 2013)

FACTS:

In or around April 16, 2010, precinct commander captain Charles Cox emailed precinct officers instructing them to conduct a directed traffic enforcement at a location in Cobb County, Georgia. Cox referenced a citizen complaint about speeding, racing and littering on Groover Road. The next day, Sergeant Andrew Marchetta sent an officer to survey Groover Road for its applicability for a traffic checkpoint. The officer reported back to Sergeant Marchetta that the road was not conducive to traffic enforcement using speed detection devices due to the limited sight distances on the road. Sergeant Marchetta then decided a few days later to set up a traffic safety checkpoint on Groover Road. Sergeant Marchetta's plan was to stop every vehicle approaching the checkpoint from either direction and check the driver's license, vehicle registration and proof of insurance. Officer David Smith assisted Sergeant Marchetta with the checkpoint. The checkpoint/road block began on April 9, 2010, at approximately 6:45 p.m. while it was still daylight outside. The checkpoint was marked by two traffic cones, two patrol cars that were parked with their blue lights on, and the officers themselves who were wearing bright yellow vests.

At around 7:05 p.m., the appellant (Douglas Brown), approached the checkpoint in a Nissan Maxima vehicle with a pizza delivery sign on it. He initially attempted to drive around the checkpoint, but when Officer Smith yelled at him to stop, he did so. Officer Smith told Sergeant Marchetta that he smelled the odor of marijuana coming from the appellant's vehicle. Ultimately, Brown was arrested for DUI/drunk driving and a drug offense.

PROCEDURAL HISTORY:

The appellant initially filed a motion to suppress with the trial court on the grounds that the checkpoint violated the 4th Amendment. After an evidentiary hearing, the trial court granted appellant's motion. In granting the appellant's motion, the trial court noted that "from the evidence presented Sergeant Marchetta had decided to implement the checkpoint in question while acting as an officer in the field and that no evidence was presented that it was planned in advance to occur at a specific time." The trial court also went on to note that the checkpoint was not adequately staffed as required by law "to safely and efficiently conduct the checkpoint."

The state appealed the trial court's suppression order to the Georgia Court of Appeals, which reversed the trial court in a 4-3 decision. In reversing the lower court, the Court of Appeals noted that "the record reveals without dispute that Sergeant Marchetta decided to implement the road block two days before and even sent another officer to survey the road before implementing it." The majority added that "officers are not precluded as a matter of law from acting simultaneously as a supervisor and also as a field officer."

This appeal followed.

ISSUE:

Did the Court of Appeals employ the correct legal analysis in assessing whether the decision to implement the road block was made by supervisory personnel rather than field officers?

HOLDING:

No. The correct legal analysis regarding the checkpoint at issue was employed by the trial court; and accordingly, the Court of Appeals decision is reversed. The stop of the appellant's vehicle at the checkpoint on Groover Road was unconstitutional; and the trial court correctly suppressed the appellant's arrest and all other evidence arising from the illegal stop of his vehicle at the checkpoint.

"Absent individualized suspicion of criminal activity, a seizure of a vehicle is ordinarily unreasonable and therefore unconstitutional." However, the United States Supreme Court has recognized a narrow exception to the individualized suspicion requirement for automobile/vehicle stops which are made pursuant to a "plan" embodying explicit and neutral limitations on the conduct of individual officers. Brown v Texas, 443 U.S. 47, 51 (99 SCt 2637, 61 LE2d 357)(1979). Under the check point exception articulated in Brown, the reasonableness of the initial stop depends not on individualized suspicion that the driver has committed a traffic violation, but instead on the balance between the public interest served by the checkpoint program and the right of individuals to personal security free from arbitrary and oppressive interference by government officials.

Subsequent to the Brown decision, the United States Supreme Court has approved checkpoint programs designed to intercept illegal immigrants near the border, to keep unlicensed drivers and unsafe vehicles off the road, and to remove drunk drivers from behind the wheel. In each of those cases, the Court distinguished the checkpoint programs at issue from a regime of suspicionless stops made by roving patrols in the pursuit of the same violations.

In 1998, the US Supreme Court identified five minimum requirements that a particular checkpoint must satisfy to be upheld as constitutional:

"A road block is satisfactory where:

- (1) a decision to implement the road block was made by supervisory personnel rather than the officers in the field;
- (2) all vehicles are stopped as opposed to random vehicle stops;
- (3) the delay to motorists is minimal;
- (4) the road block operation is well identified as a police checkpoint; and
- (5) the screening officer's training experience is sufficient to qualify him to make an initial determination as to which motorist should be given field tests for intoxication." Mich. Dept. of State Police v. Sitz, 496 U.S. 444, 447 (110 SCt 2481, 110 LE2d 412) (1990); in accord, LaFontaine v. State, 269 Ga. 251, 253 (497 SE2d 367)(1998)

In 2000, the US Supreme Court added another layer to the requirements outlined above and added that a checkpoint program must have, in addition to safe guards on the implementation and operation of the checkpoint, a primary purpose other than "the general interest in crime control" City of Indianapolis v Edmond, 531 U.S. 32, 48 (121 SCt 447, 148 LE2d 333)(2000). The Court recognized the problems inherent in determining a checkpoint program's "primary purpose" but concluded that this limitation was critical, because without drawing the line at road blocks designed primarily to serve the general interest in crime control, the 4th Amendment would do little to prevent such intrusions from becoming a routine part of American life." "...and for this reason, we examine the available evidence to determine to primary purpose of the checkpoint program," the Court said.

The "supervisory personnel" requirement ensures that a police checkpoint cannot be set up at the "standardless and unrestrained discretion of the official in the field." The decision as to where and when to conduct a checkpoint must instead be made in advance by a supervisor, thus removing such

discretion from every officer patrolling out in the field." The "supervisory personnel" and "primary purpose" requirements are separate and distinct; and if either of these requirements are not met then the checkpoint would be unconstitutional.

In sum, the five Sitz/LaFontaine requirements and the Edmond appropriate "primary purpose" requirement address different issues in the 4th Amendment analysis and should be addressed separately by courts reviewing disputed checkpoint/road check stops. It should also be noted that compliance with the Edmond and LaFontaine requirements does not necessarily end the 4th Amendment analysis of a checkpoint case.

The ultimate question also remains as to whether or not, under the totality of the circumstances, the challenged stop was reasonable. Baker, 252 Ga. App. At 701. Thus, even if the checkpoint program and the particular checkpoint at which the driver was stopped satisfy the formal requirements noted above, the reviewing court may consider evidence that the checkpoint basis for the stop was pre-textual, used to harass, or was otherwise in some form arbitrary or oppressive.

As noted above, the LaFontaine first requirement works to control the potential for arbitrary stops that would exist if every officer in the field could implement a checkpoint by moving the implementation decision up and away from the field to a supervisor. The first LaFontaine requirement and the Edmond "appropriate primary purpose" requirement can be more easily understood and applied when the two questions below are presented:

1. Was the police checkpoint at issue implemented pursuant to a checkpoint program that had, when viewed at the appropriate pragmatic programmatic level, and appropriate primary purpose other than general crime control?
2. If so, was the decision to implement that specific checkpoint made by a supervisor in advance rather than by an officer in the field?

Turning to the case at bar, the Court then applied these legal principles to the facts of the appellant's case. First, the appellant does not dispute that the Cobb County police department's checkpoint policy had a primary purpose other than "general crime control." Additionally, the appellant did not challenge any of the final four factors of the LaFontaine requirements nor the appellant challenge that the stop of his vehicle was unreasonable under the totality of the circumstances present. Thus, if the appellant was to prevail, he must do so based upon his contention that the state failed to prove that the first LaFontaine requirement was satisfied - that "the decision to implement the road block was made by supervisory personnel rather than officers in the field." The appellant advanced two arguments on this point: First, he maintained that Sergeant Marchetta did not qualify as "supervisory personnel" under the LaFontaine case because the state failed to prove that the sergeant was a "programmatic level executive." Second, the appellant claimed that the state failed to prove that Sergeant Marchetta made the decision to implement the checkpoint in advance while acting in a supervisory role, instead of while acting as an officer in the field. The first argument was meritless, but the second argument was correct according to the Georgia Supreme Court. In the record on appeal, the Court noted that the trial court made a factual finding that Sergeant Marchetta had decided to implement the checkpoint "while acting as an officer in the field."; and that this finding was supported by some evidence at the suppression hearing and therefore should be affirmed. The Georgia Supreme Court agreed. Critically, the record before the Court showed that the decision was made to actually implement a road block on Groover Road (at 6:45 p.m. on April 9th). This was not disputed. Relevant evidence put forward by the appellant shows that the decision to actually implement the road block in question was not made until "April 9th at

6:45 p.m." The record supports the trial court's express factual findings that Sergeant Marchetta made the decision to implement the checkpoint while acting as an officer in the field and that the state had failed to prove that the checkpoint was planned in advance to occur at a specific time.

In conclusion, based upon its adequately supported finding that the state had not proved compliance with the first LaFontaine requirement, the trial court correctly concluded that the checkpoint at which the appellant was stopped violated the 4th Amendment. Consequently, the Court of Appeals erred in reversing the trial court's suppression ruling.

AND IT IS SO ORDERED.