

14 Fla. L. Weekly Supp. 882a

Criminal law -- Search and seizure -- Roadblock -- DUI checkpoint -- Guidelines -- Sufficiency -- Guidelines for DUI checkpoint which provide no criteria for supervisor's adjustment of frequency of stops are insufficient -- Motion to suppress granted

STATE OF FLORIDA vs. ANTHONY LUKE. County Court, 4th Judicial Circuit in and for Nassau County. Case No. 06-1138-CT. July 2, 2007. Granville C. Burgess, Judge. Counsel: Joshua Taylor, State Attorney's Office, for Plaintiff. Christopher T. Wilson, Law Office of Gary Baker, Callahan, for Defendant.

ORDER ON MOTION TO SUPPRESS

This cause came on to be heard upon the Defendant's Motion to Suppress Evidence and Memorandum of Law in Support.

FACTS

The defendant, Anthony Luke, was stopped and arrested for DUI at a roadblock on September 2, 2006 in Nassau County, Florida. The roadblock was a sobriety checkpoint conducted pursuant to a set of written guidelines and operations directives issued by the Nassau County Sheriff's Office. These materials provide for the general guidelines as set forth in *State v. Jones*, 483 So. 2d 433 (Fla. 1986). In particular the documents provide under the Traffic Safety Checkpoint Guidelines as follows: "Traffic-1. The checkpoint will start by stopping every third vehicle. If needed the site supervisor will adjust the frequency of stops." When this provision is read in conjunction with operations directive 42.17.30 (B) 5 which provides that "5. The frequency of traffic stops that are flexible based upon traffic congestion; this can include stopping every motorist or every 6th motorist up to every 10th motorist."

In the instant case the sight supervisor within a short time after setting up the checkpoint determined that the traffic was light and changed the procedure to stopping every vehicle. During a four hour period 220 stops were made, by twenty officers, and two DUI arrests were made.

Legal Analysis

The question before the Court is whether a warrantless temporary stop met all the legal statutory standards and procedures, as not to violate defendant's Fourth Amendment Rights. The Fourth Amendment requires that the seizure must be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers. When such a stop is based on objective criteria, the risk of arbitrary and abusive police practices exceeds tolerable limits. *Brown vs. Texas*, 433 U.S. 47 (1979).

In *State v. Jones*, 483 So. 2d 433 (Fla. 1986) the Florida Supreme Court established standards for roadblock inspections. The roadblock must be established and operated according to guidelines as stated in *Campbell v. State*, 679 So.2d 1168 (Fla. 1996). The guidelines should be designed,

... to ensure that the police do not act with unbridled discretion in exercising the power to stop and restrain citizens who have manifested no conduct that would otherwise justify an intrusion on a citizen's liberty. *Id.* at 1172.

The guidelines should be written and should "cover in detail the procedures which field officers are to follow at the roadblock." *Jones*, 483 So. 2d 433, 438 (Fla. 1986). The guidelines are expected to set out

with "reasonable specificity" the procedures regarding the selection of vehicles. *Id.*

In the instant case the guidelines provide no criteria on which the supervisor was to adjust the frequency of the stops and accordingly it fails the standards set in *Jones*. See, *State v. Cook*, 14 Fla. L. Weekly Supp. 377, (Palm Beach Co. Ct. 15th Jud. Cir. 2007), *State v. Buchholz*, 12 Fla. L. Weekly Supp. 993a (Brevard Co. Ct. 18th Jud. Cir. 2005).

Accordingly, defendant's Motion to Suppress is GRANTED.

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