

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA.

DREW SCHLETER,

Appellant,

APPELLATE DIVISION (CRIMINAL)

Case No.: 502007AP900031AXXXMB

Co. Court Case No.: 502007CT001164AXXXMB

v.

STATE OF FLORIDA,

Appellee.

Opinion filed: September 10, 2008

Appeal from Joseph Marx,
County Court in and for Palm Beach County.

For Appellant, Jason T. Forman, Esq., 1209 Southeast 3rd Avenue, Ft. Lauderdale, FL 33316.

For Appellee, Michelle Zieba, Esq., Office of the State Attorney, 401 N. Dixie Highway, West
Palm Beach, FL 33401.

WENNET, J.

Drew Schleter appeals the denial of his Motion to Suppress the results of a search that took place after he was stopped at a police roadblock. Schleter argues that the roadblock violated the Fourth Amendment guarantee that all persons shall be free from unreasonable searches and seizures because the officers exercised unfettered discretion in determining how thorough an inspection to impose on each driver. We disagree and affirm.

At approximately 7:00pm on January 19, 2007, the Boynton Beach Police Department set up a roadblock at 2010 North Federal Highway in Boynton Beach, Florida. Schleter was stopped at the roadblock by Deputy Noel. Deputy Noel observed that Schleter had blood shot eyes, smelled of

alcohol, and slurred his speech. Schleter told the deputy where he was coming from, where he was going, and how much he had to drink. Schleter fumbled through his wallet looking for his driver's license and then looked into his glove box for the vehicle registration. Deputy Noel removed Schleter from the vehicle and took him to the videotaping area where Deputy Noel's patrol car was parked. Schleter was subsequently arrested and charged with Driving Under the Influence. Schleter moved to suppress the results of the search, which the trial court denied. Schleter then entered a plea of no contest, expressly reserving the right to appeal.

Review of a motion to suppress in Florida is a mixed question of law and fact. *Jones v. State*, 800 So. 2d 351, 354 (Fla. 4th DCA 2001). The standard of review on appeal for the trial judge's application of the law to the factual findings is *de novo*. *Id.*

Schleter contends that the trial court erred in denying his motion to suppress. Specifically, Schleter argues that the officers exercised unfettered discretion in determining how thorough an inspection to impose on each driver, rendering the plan unconstitutional. The issue before the Court is whether the roadblock in question violates the Fourth Amendment by providing too much discretion to the officers making contact with the drivers. We conclude that the plan used at the January 19th roadblock is constitutional because of the detailed written guidelines and the minimal discretion given to officers conducting the roadblock.

A comprehensive, written set of guidelines must be in place prior to a roadblock "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." *Jones v. State*, 800 So. 2d 351, 354 (Fla. 4th DCA 2001) citing *Campbell v. State*, 679 So. 2d 1168, 1172 (Fla. 1996). Because DUI roadblocks involve seizures made without any articulable

suspicion of illegal activity, the Fourth Amendment requires a showing that officers carry out the search pursuant to a plan embodying specific neutral criteria which limit the conduct of the individual officers. *Campbell*, 679 So.2d at 1170. Written guidelines should cover in detail the procedures which field officers are to follow at the roadblock. *Id.* Ideally, these guidelines should set out, with reasonable specificity, procedures regarding the selection of vehicles, detention techniques, duty assignments, and the disposition of vehicles. *Id.* Of course, if the guidelines fail to cover each of these matters they need not necessarily fail. Rather, courts should view each set of guidelines as a whole when determining the plan's sufficiency. *Id.*

The written guidelines here are sufficient when viewed as a whole. The written guidelines specify the purpose, procedures regarding the selection of vehicles, detention techniques, duty assignments, and disposition of vehicles. Moreover, every vehicle that came through the roadblock was stopped. Despite this fact, Schleter contends that the field officers had unbridled discretion and that the roadblock was unconstitutional. To the contrary, under the guidelines, every vehicle was stopped and the officers were to check the vehicle's turn signals, tail lights, high/low beams, headlights, and brake lights.

The Check Point Coordinator, Officer Pichiano, testified that the check point line officer greets the drivers, asks for a driver's license, scans the interior for officer safety, looks for impairment, and conducts a quick inspection of the vehicle including lights, signals, tags, tint, windshield, and other minor infractions.

The Line Check Officer, Deputy Noel, testified that he was instructed to make contact at the driver's side of the vehicles, to make observations, and proceed from there. Deputy Noel would make contact with the drivers and look for any discrepancies with the vehicle such as broken

headlights or tail lights. He would generally stop each vehicle for a period of approximately thirty seconds unless an infraction was observed. He also stated that he checked every vehicle's headlights and tires. Deputy Noel did not ask for credentials from every driver. Schleter argues that Deputy Noel's not asking for a license or other credentials from every driver constitutes unbridled discretion. We find it does not.

Viewing the plan as a whole, these guidelines suffice to limit the discretion of the field officers. *See Campbell*, 679 So. 2d at 1170. These guidelines ensure that the police do not act with unbridled discretion in exercising the power to stop and restrain citizens. *Jones v. State*, 800 So. 2d at 354. The purpose of the plan is not to limit every bit of discretion, but to limit unbridled discretion. This plan does just that. The guidelines specify the purpose of the roadblock, the procedures regarding the selection of vehicles, detention techniques, duty assignments, disposition of vehicles, and specify that every vehicle must be stopped. Even if Deputy Noel had some discretion, the plan is nevertheless sufficient. Similarly, the fact that Deputy Noel may not have checked every individual's driver's license or every vehicle's brake lights is not indicative of unbridled discretion. In addition, the dissent's reliance on *Jones* is misplaced. In *Jones*, there were no written guidelines addressing the narcotics checks. 800 So. 2d at 353. Further, not all of the vehicles stopped were checked for narcotics because of the limited number of officers. *Id.* Conversely, in this case all stopped drivers were inspected to determine if they were under the influence of alcohol *pursuant to written guidelines*. We do not interpret the law as requiring that officers must inspect every windshield wiper and every tire on every vehicle that is stopped in an effort to avoid exercising unbridled discretion. The guidelines in this case were sufficient, and Schleter's stop followed these guidelines.

Deputy Noel followed the plan until he had probable cause for further investigation. The guidelines were followed and the minimal discretion Deputy Noel had does not invalidate the plan as a whole. Therefore, we hold that the plan in question does not violate the Fourth Amendment. The lower court's decision is hereby AFFIRMED.

(BURTON, J. concur.) (BROWN, J. dissents with opinion).

I respectfully dissent. The plan actually followed was insufficient to limit the discretion of the officers regarding the extent to which each driver was questioned and searched. There is no question that the written guidelines are sufficient when viewed as a whole; however, the guidelines were not followed in this case. The procedures actually used at the checkpoint allowed abuse and gave the field officers too much discretion.

In assessing the sufficiency of sobriety checkpoint plans, courts generally focus on the amount of discretion police officers at the scene are allowed to exercise. *Rinaldo v. State*, 787 So. 2d 208, 211 (Fla. 4th DCA 2001). It cannot be left to the officer's discretion to decide what type of questions will be asked with no limit on invasion of privacy interests. *U.S. v. Huguenin*, 154 F.3d 547, 562-63 (6th Cir. 1998) (finding checkpoint unreasonable because the potential for randomly targeting individual motorists was great). In *Huguenin*, the officer was free to decide which motorists would be detained for more extensive questioning and which would not. *Id.* at 562. Also, the questions in *Huguenin* were not standardized, and the officer had discretion to decide how intimidating he wished to be. *Id.* at 562.

The majority looks only to whether every vehicle was stopped in analyzing the officers' discretion. That every vehicle is stopped is merely one factor in evaluating the reasonableness of a checkpoint. *See State v. Rose*, 612 S.E.2d 336, 343 (N.C. Ct. App. 2005). While stopping every

vehicle does eliminate discretion as to whom the officer stops, it does not eliminate the discretion as to the officer's conduct during the stop. *Id.* The issue is not just who is stopped, but what the field officers choose to do after the stop. *Id.* See *Jones v. State*, 800 So. 2d 351 (Fla. 4th DCA 2001) (reversing lower court because the plans did not specify which vehicles would be checked for narcotics or the procedures to be used). In *Jones*, despite the fact that the plans addressed which vehicles would initially be stopped, the court focused on the failure of the plans to address the procedures and officers duties. *Id.* at 355. In holding that the plan was insufficient, the *Jones* court relied on testimony of officers admitting that not all drivers were asked about narcotics. *Id.* That court further noted that “[t]he failure of the written guidelines to address this aspect of the inspection left the crucial decisions of which drivers would be questioned about drugs and how they would be questioned solely to the discretion of the officers on the scene.” Such is the case here.

In this case, Deputy Noel was not even aware of the written guidelines or any neutral procedures to be used in making contact with the drivers that were stopped. He admitted to not receiving any specific instructions about how to proceed with each vehicle. He testified that the instructions he did receive were to “make our contacts, make our observations, and go from there.” (Motion to Suppress Hearing, Tr. at 40). This lack of instruction gave Deputy Noel unbridled discretion in choosing how extensively to question and search the drivers he stopped. Although he testified that he checked every vehicle's headlights and tires, such limitations were self-imposed. In addition, in direct contravention of the express written guidelines, Deputy Noel arbitrarily checked proofs of insurance and registrations. Unfortunately, Officer Pichiano did not relay his extensive knowledge of the written guidelines to Deputy Noel. Field officers should be aware of the written guidelines or at a bare minimum have a working knowledge of the procedures to be used in their

specific job function. Even if not knowledgeable about the entire plan, the field officers should have a clear knowledge of their specific duties under the plan.

Moreover, if the plan was actually written to allow as much discretion as Deputy Noel exercised, there would be no question that the plan could not stand. The guidelines specify that for every vehicle stopped, the field officer must request a driver's license, inspect the vehicle's turn signals, tail lights, high/low beams, headlights, and brake lights. Vehicle registrations and proofs of insurance were not to be requested. These procedures were not known by Deputy Noel, even though they pertained specifically to his duties. As a result, he was unaware of the correct procedure and determined for himself what to check on every vehicle; this happened to be headlights and tires. Accordingly, Deputy Noel further decided that he had discretion whether to check for driver's licenses, vehicle registrations, proofs of insurance, tail lights, break lights, tag lights, tint, and any vehicle malfunction. This is exactly the unfettered discretion that creates unreasonable searches and seizures in violation of the Fourth Amendment, and is the reason that courts require neutral criteria to limit the conduct of these officers. *See Jones*, 800 So. 2d at 354; *Campbell v. State*, 679 So. 2d 1168 (Fla. 1996); *Delaware v. Prouse*, 440 U.S. 648 (1979); *Brown v. Texas*, 443 U.S. 47 (1979).

Such broad discretion invites abuse. Suppose the officer used his discretion to search individuals based on race, color, creed, and ethnicity. An officer could stop all vehicles, but subject some to cursory inspections, while others could be subject to searches involving driver's licenses, vehicle registrations, proofs of insurance, tail lights, turn signals, high/low beams, headlights, brake lights, tag lights, tint, and any vehicle malfunction. Searching for *any vehicle malfunction* is only limited by the imagination of the officer. The concerns here are similar to those in *Huguenin* and *Jones*, where the broad discretion in allowing officers to arbitrarily choose to extensively search

some individuals but not others created a potential for abuse. This seems to be the reason the lower court was troubled by the manner in which the officer carried out the plan. I would reverse the lower court and remand for suppression of the fruits of this search.