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

STATE OF FLORIDA,

Appellant,

v.

BRADLEY WING,

Appellee.
_____/

APPELLATE DIVISION (CRIMINAL)
Case No.: 502010AP900068AXXXMB
Co. Court Case No.: 502010MM006405AXXXMB

Opinion filed: SEP 16 2011

Appeal from Judge, Leonard Hanser
County Court in and for Palm Beach County.

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

For Appellee, Tom Odom, Esq., Office of the Public Defender, Criminal Justice Building/6th Floor, 421 3rd Street, West Palm Beach, FL 33401.

PER CURIAM.

On April 16, 2010, the Palm Beach Gardens police department held a DUI checkpoint to educate the public and detect impaired drivers. The Palm Beach Gardens police department issued a press release about the checkpoint prior to the date of the checkpoint which announced the date, location and time of the checkpoint.

Bradley Wing ("Appellee") entered the checkpoint at 1:40 a.m., driving a white truck. Two officers asked him to exit his vehicle. After asking him to exit the vehicle, one officer discovered a glass pipe in the vehicle. Appellee was asked to perform field sobriety tasks and after doing so, was arrested and declined a breathalyzer. Appellee was charged with Driving Under the Influence based

on probable cause developed as a result of the checkpoint.

Appellee filed a motion to suppress all evidence discovered as a result of the stop. A hearing on the motion to suppress was held on September 30, 2010. The court heard the testimony of Officer Hanton, the Palm Beach Gardens police officer in the DUI traffic enforcement division who developed and was in charge of the operational plan for the roadblock and then heard legal argument. The issue before the trial court was whether the officers were given too much discretion when questioning motorists stopped during the roadblock. The trial court found that the language used in the "Checkpoint Line Officer Questions" did not pass constitutional muster and relied on Ambrose v. State, 15 Fla. L. Weekly Supp. 343d (Fla. 20th Jud. Cir. Aug. 21, 2007), to grant the Appellee's motion to suppress. The State filed a timely notice of 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.

The State maintains that the trial court erred in granting the motion to suppress because the roadblock met the requirements of the Fourth Amendment. The Appellee argues that the roadblock resulting in Appellee's arrest permitted the police to detain drivers based on "other possible means [which] may be used for detecting impairment," and that these terms are undefined in the guidelines. Appellee contends that this language permitted the officers to detain citizens with relatively unbridled discretion.

The Florida cases governing the constitutionality of sobriety checkpoints, also called DUI roadblocks, are State v. Jones, 483 So.2d 433 (Fla.1986), and Campbell v. State, 679 So.2d 1168 (Fla.1996). The Florida Supreme Court has found it to be "essential that a written set of uniform

guidelines be issued before a roadblock can be utilized." Jones, 483 So.2d at 438. The officers in the field must be governed by a set of neutral criteria so as to minimize the discretion of the field officers. Id. "Written guidelines should cover in detail the procedures which field officers are to follow at the roadblock." Id. The guidelines should set out procedures regarding (1) the selection of vehicles, (2) detention techniques, (3) duty assignments, and (4) the disposition of vehicles. Id.

In Ambrose v. State, 15 Fla. L. Weekly Supp. 343d (Fla. 20th Cir. Ct. 2007), the case relied upon by the trial court in granting the motion to suppress, it was determined that a motion to suppress evidence should have been granted because the checkpoint plan of the Lee County Sheriff's office did not pass constitutional muster. The Court determined that the guidelines were insufficient to minimize the discretion of law enforcement officers because the list of factors an officer could consider in order to determine a driver's impairment allowed for too much discretion. Ambrose, 15 Fla. L. Weekly Supp. 343d. In Ambrose, the Court recognized, "The question becomes then what does the word 'impairment' mean to the officer doing the test? Do any one of the factors in C-G count, or does it take some combination of factors? There is no answer to that question [in the plan]." Id.

The sobriety checkpoint plan in the case at bar is in compliance with the holdings of the Florida Supreme Court, District Courts of Appeal and this Court. The checkpoint was conducted pursuant to a written, pre-determined plan which contained specific criteria to limit the conduct of the individual officers on the scene. Officer Hanton, an officer in the DUI traffic enforcement division testified that there was a press release announcing the location, time and place of the checkpoint and that she had developed an operational plan for that particular night. Every car was stopped and pursuant to the plan, if a police officer believed a driver was impaired, the driver was

asked to exit the vehicle and the driver was escorted to the DUI investigation area.

Officer Hanton testified that when the vehicle drives up to the check point, the driver side officer approached the driver, greeted them, identified themselves, stated that the driver was at a safety and sobriety checkpoint, asked the driver to place the vehicle in park and asked to see their driver's license. If the officer determined it was necessary, they would then question the driver as to where the driver was coming from, whether they had been drinking and where they were going. There was a list of standard indications of DUI in the plan. There is also a statement in the plan that says, "if deemed necessary other possible means may be used for detecting impairment." Officer Hanton testified that the "other possible means" are requesting that the driver perform roadside sobriety tasks or a portable breath test if the driver was under 21. Officer Hanton testified that the guidelines were followed on the night of the checkpoint, there were no deviations from the guidelines, no deviation was allowed from the guidelines and that the officers were allowed no discretion whatsoever.

This Court finds that our decision in Schleter v. State, 15 Fla. L. Weekly Supp. 1062b (Fla. 15th Jud. Cir. Sept. 10, 2008), is applicable to the instant case. In Schleter, the Appellant appealed the denial of his motion to suppress the results of a search that took place after he was stopped at a police roadblock, arguing that the officers exercised unfettered discretion in determining how thorough an inspection to impose on each driver, rendering the plan unconstitutional. Schleter 15 Fla. L. Weekly Supp. 1062b. The issue before the Court was whether the roadblock in question violated the Fourth Amendment by providing too much discretion to the officers making contact with the drivers. Id. This Court concluded that the plan used at the roadblock was constitutional because of the detailed written guidelines and the minimal discretion given to officers conducting the roadblock.

Id.

In the instant case, the testimony of Officer Hanton demonstrates the checkpoint was operated within the written guidelines and that the discretion of the officers was limited. Although Appellee argues that the "other possible means" to detect impairment were not defined by the guidelines and signify that the officers could use their own discretion to determine what these words meant, Officer Hanton testified that the "other possible means" to detect impairment meant roadside sobriety tasks or a portable breath test if the driver was under 21. Therefore, we hold that the plan in question did not violate the Fourth Amendment.

Accordingly, it is

ORDERED AND ADJUDGED that the Order granting the Appellee's Motion to Suppress is hereby REVERSED AND REMANDED for proceedings consistent with this opinion.

J. MARX, MILLER AND OFTEDAL, JJ. concur.