

## **Virginia Court of Appeals Addresses Use of Roadblocks**

The Virginia Court of Appeals held on Tuesday June 5<sup>th</sup>, 2012, that the use of roadblocks is constitutional so long as some “plan” exists which is filed in advance. On May 27, 2009, Michael Anthony Desposito was arrested during a supervised traffic checkpoint conducted by the Hanover County Sheriff’s Office.

Sergeant Drew Darby of the Hanover County Sheriff’s Office supervised a traffic checkpoint at which Desposito was arrested. Hanover County has a policy and procedure directive addressing its checkpoint policy (the “Hanover plan”). The plan directed the commander of the uniform operations to prepare a list of checkpoint sites. It further provided that the checkpoint should be operated for no less than thirty minutes; that all vehicles would be stopped; and that the team leader shall not participate in the actual stopping/screening of vehicles. Pursuant to the plan, Lieutenant Epling, a supervisor, selected the specific site from the list appended to the plan and named Sergeant Darby as checkpoint supervisor. Lieutenant Epling advised Sergeant Darby to “run it during the lunchtime,” with no specific hours given. Based on that directive, Sergeant Darby held a briefing at 11:00 a.m. and began the checkpoint at 11:10 a.m. Darby stopped the checkpoint at 12:45 p.m., because most of his officers were occupied with other vehicles. Thus, he lacked the personnel needed to maintain the checkpoint. Darby had intended to stop at 1:00 p.m.

During the checkpoint, in accordance with the Hanover plan, all vehicles were stopped. The officers had no discretion as to which vehicles were stopped. Deputy Russell Snook testified that

he operated the checkpoint. When Desposito drove into the checkpoint, Deputy Snook asked Desposito for his driver's license. Desposito handed Deputy Snook a Virginia identification card and said he left his driver's license at home. A Department of Motor Vehicles check revealed that Desposito was an habitual offender.

Desposito filed a motion to suppress, challenging the constitutionality of the checkpoint. He argued at the suppression hearing that the open-ended time frame (a minimum of 30 minutes without setting forth an upper limit) and the "lunchtime" time frame afforded the officers too much discretion.

The trial court denied his motion to suppress and Desposito was convicted of driving after having been declared a habitual offender. He appealed his conviction arguing that the Hanover plan allowed officers to set up roadblocks intended to target individual motorists. The Court's inquiry was whether the "lunchtime" designation and the absence of a maximum duration for the checkpoint afforded the field officers unbridled discretion. These omissions, Desposito contended, rendered the checkpoint constitutionally unsound, thus violating his Fourth Amendment rights.

The Virginia Court of Appeals upheld Desposito's conviction. It is well settled that stopping a vehicle at a police checkpoint constitutes a seizure within the meaning of the Fourth Amendment. *United States v. Martinez-Fuerte*, 428 U.S. 543, 556 (1976). Therefore, the Virginia Court of Appeals relied on the seminal case *Brown v. Texas*, 443 U.S. 47, 50-51 (1979). In *Brown*, the United States Supreme Court held that the reasonableness of such seizures, which are less intrusive than a traditional arrest, depends "on a balance between the public interest and

the individual's right to personal security free from arbitrary interference by law officers." Furthermore, the United States Supreme Court noted that a central concern in balancing the foregoing competing considerations has been to make certain that "an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officer's in the field."

To avoid constitutionally impermissible infringements on privacy, a roadblock must be carried out pursuant to a plan or practice which is explicit, contains neutral criteria, and limits the conduct of the officers undertaking the roadblock. Such a plan serves to insure that one's "reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field." *Brown, 443 U.S. at 51.*

The Virginia Court of Appeals held that "there were ample safeguards present in the case now before us." Specifically, Judge Robert P. Frank, in his written opinion, noted that "Sergeant Darby was instructed precisely where and approximately when to set up the roadblock" and that "it would have been virtually impossible for him to target anyone while working within those parameters." The Court found Sergeant Darby's decision to conduct the roadblock between 11:10 a.m. to 12:45 p.m. comported with the "lunchtime" mandate and would not subject an individual to an arbitrary invasion of his reasonable expectation of privacy. Desposito also argued that the plan's failure to place a maximum on the duration of the operation rendered the checkpoint unconstitutional. Again, the court disagreed, citing Sergeant Darby's testimony that in the many checkpoints set up, "we've never gone over two hours, and that's the general understanding.

The Court's decision greatly expands the roadblock parameters set forth in the 2000 U.S. Supreme Court decision *Indianapolis v. Edmond 531 U.S. 32 (2000)* which limited the use of roadblocks to issues of life or death. In *Edmond*, the City of Indianapolis operated vehicle

checkpoints on its roads in an effort to interdict unlawful drugs. Edmond, who was stopped at such a checkpoint, filed suit, claiming that the roadblocks violated the Fourth Amendment. The District Court denied Edmond a preliminary injunction, but the Seventh Circuit reversed, holding that the checkpoints contravened the Fourth Amendment. In a 6-3 opinion authored by Justice Sandra Day O'Connor, the United States Supreme court agreed with the Seventh Circuit. "We cannot sanction stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime," wrote Justice O'Connor. "Only with respect to a smaller class of offenses, however, is society confronted with the type of immediate, vehicle-bound threat to life and limb that the sobriety checkpoint in *Sitz* was designed to eliminate."

The Virginia Court of Appeals greatly expanded the ruling from *Indianapolis v. Edmond* 531 U.S. 32 (2000) and upheld Desposito's conviction for driving while prohibited to do so under the habitual offender statute.