[J-4-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA, :	No. 34 WAP 2004
:	
Appellee :	Appeal from the Order of the Superior
:	Court entered March 31, 2004 at No.
:	415WDA2003 affirming the Judgment of
v. :	Sentence of the Court of Common Pleas
:	of Allegheny County entered February 10,
:	2003 at No. CC 200110942.
GARY BEAMAN, :	
:	
Appellant :	
:	ARGUED: March 7, 2005

DISSENTING OPINION

MR. JUSTICE NIGRO   **DECIDED: AUGUST 15, 2005**

In my dissent in <u>Commonwealth v. Yastrop</u>, 768 A.2d 318 (Pa. 2001), I took the

position that roving police patrols are a much more effective way of catching and deterring

drunk drivers than suspicionless DUI checkpoints. As I stated in <u>Yastrop</u>:

> …I believe DUI roadblocks are a waste of limited resources and promote
> inefficient law enforcement because police officers are forced to spend
> innumerable hours stopping hundreds of vehicles for a comparatively low
> number of DUI arrests. It defies common sense to argue that by consolidating
> police resources on one section of one street, the police can catch more drunk
> drivers. This logic somehow presumes that drunk drivers will voluntarily line up
> at pre-determined checkpoints. The more realistic presumption, however, is
> that an unknown number of drunk drivers who would have easily attracted the
> attention of trained law officers on routine patrol evade detection simply by using
> roads other than those targeted for DUI roadblocks.

<u>Id.</u> at 328-29.

Of course, this matter provides the record evidence confirming this view.   The

empirical data before our Court establishes that during the years 1999-2001, only .71

percent of all drivers stopped at suspicionless checkpoints were charged with DUI whereas

the same charge was lodged against 7.69 percent of all drivers stopped by roving patrols (seven versus seventy-seven DUI arrests per 1000 stops). The majority attempts to explain this disparity away by calling the statistics "misleading" in that "it is expected that a higher percentage of stopped vehicles will lead to arrests in the roving patrol scenario" due to the fact that "every vehicle that passes through a roadblock is stopped, at least briefly, and a roving patrol only stops an automobile exhibiting signs of impaired driving." Slip Op. at 16. However, in my view, the black and white statistical evidence is in no way "misleading" as it unequivocally affirms that roving patrols are more effective than checkpoints and in fact, it is precisely because roving patrols target those who have exhibited some sign of impaired driving that they are the more effective tool for catching drunk drivers.

The other empirical data before this Court for the above-referenced time period shows that the total number of manpower-hours per arrest for suspicionless checkpoints was 28.77 whereas only 18.82 manpower-hours were required for each DUI arrest stemming from roving patrols. Again, the majority tries to explain away this considerable imbalance, this time saying that the manpower-hours per arrest statistic does not "tell the whole story" because checkpoints are likely to reduce drunk driving through deterrence. Slip Op. at 17. According to the majority, this deterrence stems from the fact that checkpoints are highly visible and are required to be advertised in advance, thereby giving drivers an opportunity to use alternative transportation. However, as noted above, the reality is that many people, rather than undergoing the inconvenience of finding alternative transportation, will drive after drinking and then simply avoid the advertised checkpoint location or, if they somehow did not get word of the pre-determined location, will attempt to turn around once they realize that a checkpoint is stationed ahead. As I stated in my dissent in Yastrop, "to effectively deter drunk drivers, the obvious remedy is to catch more

drunk drivers by utilizing routine police patrols and roving DUI patrols, rather than using one pre-determined and pre-announced location." Id. at 329.[1]

Finally, the majority attempts to dilute the power of the statistics which, in effect, prove Appellant's contention that roving patrols are far more effective than suspicionless checkpoints in stopping drunk driving by stating that the judiciary is in a poor position to make judgments concerning which law enforcement tools are the most effective. However, this Court cannot and should not ignore the cold hard facts before us. Contrary to what the majority suggests, we do not need to make judgments here because the statistics do it for us. The statistics Appellant has presented to the Court prove that roving patrols are more efficient and effective than DUI checkpoints. They show that checkpoints require more manpower-hours for each DUI arrest than do roving patrols and they show that a lower percentage of stops at checkpoints lead to DUI arrests than do stops stemming from roving patrols. In the end, the statistics tell the simple tale that if more police manpower had been allocated to roving patrols instead of checkpoints, more drunk drivers would have been removed from the roads and our roads would have been safer places to travel.

In the face of these statistics, I simply cannot agree with the majority that Appellant has not proven the ineffectiveness and hence, the unconstitutionality of suspicionless checkpoints. The bottom line here is that checkpoints are not the least intrusive or, as the statistics on this record leave no doubt about, the most effective means of catching and deterring drunk drivers. They should be deemed unconstitutional.

Mr. Justice Baer joins this dissenting opinion.

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[1] I do, however, agree with the majority that the statistics presented by Appellant do not, in one sense, "tell the whole story." Indeed, the statistics, while clearly proving the relative ineffectiveness of suspicionless checkpoints, do not in any way account for the substantial intrusion that those checkpoints impose on the lives of law-abiding motorists, who must often wait in the backlog of traffic caused by the checkpoints even before enduring the actual stop by police once they reach the checkpoint.