Checkpoints for drugs?

INDIANAPOLIS v EDMOND

SUPREME COURT OF THE UNITED STATES
531 U.S. 32
November 28, 2000
[6 – 3]

OPINION: Justice O'Connor…We now consider the constitutionality of a highway checkpoint program whose primary purpose is the discovery and interdiction of **illegal narcotics**. In August 1998, the city of Indianapolis began to operate vehicle checkpoints on Indianapolis roads in an effort to interdict unlawful drugs. The city conducted six such roadblocks between August and November that year, stopping 1,161 vehicles and arresting 104 motorists. Fifty-five arrests were for drug-related crimes, while 49 were for offenses unrelated to drugs. The overall "hit rate" of the program was thus approximately nine percent.

…At each checkpoint location, the police stop a predetermined number of vehicles. Approximately 30 officers are stationed at the checkpoint. Pursuant to written directives issued by the chief of police, at least one officer approaches the vehicle, advises the driver that he or she is being stopped briefly at a drug checkpoint, and asks the driver to produce a license and registration. The officer also looks for signs of impairment and conducts an open-view examination of the vehicle from the outside. A narcotics-detection dog walks around the outside of each stopped vehicle.

The directives instruct the officers that they may conduct a search only by consent or based on the appropriate quantum of particularized suspicion. The officers must conduct each stop in the same manner until particularized suspicion develops, and the officers have no discretion to stop any vehicle out of sequence. The city agreed in the stipulation to operate the checkpoints in such a way as to ensure that the total duration of each stop, absent reasonable suspicion or probable cause, would be five minutes or less…

Checkpoint locations are selected weeks in advance based on such considerations as **area crime statistics** and traffic flow. The checkpoints are generally operated during daylight hours and are identified with lighted signs reading, "NARCOTICS CHECKPOINT ___ MILE AHEAD, NARCOTICS K 9 IN USE, BE PREPARED TO STOP." Once a group of cars has been stopped, other traffic proceeds without interruption until all the stopped cars have been processed or diverted for further processing. Sergeant DePew also stated that the average stop for a vehicle not subject to further processing lasts two to three minutes or less.

Does anyone question the location selection criteria?

Respondents James Edmond and Joell Palmer were each stopped at a narcotics checkpoint in late September 1998. Respondents then filed a lawsuit on behalf of themselves and the class of all motorists who had been stopped or were subject to being stopped in the future at the Indianapolis drug checkpoints. Respondents claimed that the roadblocks violated the Fourth Amendment of the United States Constitution…Respondents requested declaratory and injunctive relief for the class, as well as damages and attorney's fees for themselves…

[The District Court held] that the checkpoint program did **not** violate the Fourth Amendment. [The Court of Appeals]…**reversed**…We granted certiorari and now **affirm**…

We have…upheld brief, suspicionless seizures of motorists at a fixed Border Patrol checkpoint designed to intercept illegal aliens, *Martinez-Fuerte*, and at a sobriety checkpoint aimed at removing drunk drivers from the road, *Michigan v. Sitz* (1990). In addition, in *Delaware v. Prouse* (1979), we suggested that a similar type of roadblock with the purpose of verifying drivers' licenses and vehicle registrations would be permissible. In none of these cases, however, did we indicate approval of a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing…

It is well established that a vehicle stop at a highway checkpoint effectuates a seizure within the meaning of the Fourth Amendment. The fact that officers walk a narcotics-detection dog around the exterior of each car at the Indianapolis checkpoints does not transform the seizure into a search. *United States v. Place* (1983). Just as in *Place*, an exterior sniff of an automobile does not require entry into the car and is not designed to disclose any information other than the presence or absence of narcotics. Like the dog sniff in *Place*, a sniff by a dog that simply walks around a car is "much less intrusive than a typical search." **Rather, what principally distinguishes these checkpoints from those we have previously approved is their primary purpose.**

As petitioners concede, the Indianapolis checkpoint program unquestionably has the primary purpose of interdicting illegal narcotics…[O]ur checkpoint cases have recognized only limited exceptions to the general rule that a seizure must be accompanied by some measure of individualized suspicion…[E]ach of the checkpoint programs that we have approved was designed primarily to serve purposes closely related to the problems of **policing the border** or the necessity of ensuring **roadway safety**. Because the primary purpose of the Indianapolis narcotics checkpoint program is to uncover evidence of ordinary criminal wrongdoing, the program contravenes the Fourth Amendment.

…Without drawing the line at roadblocks designed primarily to serve the general interest in crime control, the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of American life.

Petitioners also emphasize the severe and intractable nature of the drug problem as justification for the checkpoint program. There is no doubt that traffic in illegal narcotics creates social harms of the first magnitude. The law enforcement problems that the drug trade creates likewise remain daunting and complex, particularly in light of the myriad forms of spin-off crime that it spawns. The same can be said of various other illegal activities, if only to a lesser degree. But the gravity of the threat alone cannot be dispositive of questions concerning what means law enforcement officers may employ to pursue a given purpose. Rather, in determining whether individualized suspicion is required, we must consider the nature of the interests threatened and their connection to the particular law enforcement practices at issue. **We are particularly reluctant to recognize exceptions to the general rule of individualized suspicion where governmental authorities primarily pursue their general crime control ends.**

Nor can the narcotics-interdiction purpose of the checkpoints be rationalized in terms of a highway safety concern similar to that present in *Sitz*. The detection and punishment of almost any criminal offense serves broadly the safety of the community, and our streets would no doubt be safer but for the scourge of illegal drugs. 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.

Petitioners also liken the anticontraband agenda of the Indianapolis checkpoints to the antismuggling purpose of the checkpoints in *Martinez-Fuerte*. Petitioners cite this Court's conclusion in *Martinez-Fuerte* that the flow of traffic was too heavy to permit "particularized study of a given car that would enable it to be identified as a possible carrier of illegal aliens," *Martinez-Fuerte*, and claim that this logic has even more force here. The problem with this argument is that the same logic prevails any time a vehicle is employed to conceal contraband or other evidence of a crime. This type of connection to the roadway is very different from the close connection to roadway safety that was present in *Sitz* and *Prouse*. Further, the Indianapolis checkpoints are far removed from the border context that was crucial in *Martinez-Fuerte*. While the difficulty of examining each passing car was an important factor in validating the law enforcement technique employed in *Martinez-Fuerte*, this factor alone cannot justify a regime of suspicionless searches or seizures. Rather, we must look more closely at the nature of the public interests that such a regime is designed principally to serve.

…We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes. 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.

Of course, there are circumstances that may justify a law enforcement checkpoint where the primary purpose would otherwise, but for some emergency, relate to ordinary crime control. For example,…**the Fourth Amendment would almost certainly permit an appropriately tailored roadblock set up to thwart an <u>imminent</u> terrorist attack or to <u>catch</u> a dangerous criminal who is likely to flee by way of a particular route.** The exigencies created by these scenarios are

far removed from the circumstances under which authorities might simply stop cars as a matter of course to see if there just happens to be a felon leaving the jurisdiction. While we do not limit the purposes that may justify a checkpoint program to any rigid set of categories, we decline to approve a program whose primary purpose is ultimately indistinguishable from the general interest in crime control.

Petitioners argue that our prior cases preclude an inquiry into the purposes of the checkpoint program. For example, they cite *Whren v. United States* (1996) and *Bond v. United States* (2000) to support the proposition that "where the government articulates and pursues a legitimate interest for a suspicionless stop, courts should not look behind that interest to determine whether the government's 'primary purpose' is valid." These cases, however, do not control the instant situation.

In *Whren,* we held that an individual officer's subjective intentions are irrelevant to the Fourth Amendment validity of a traffic stop that is justified objectively by probable cause to believe that a traffic violation has occurred. We observed that our prior cases "foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved." In so holding, we expressly distinguished cases where we had addressed the validity of searches conducted in the absence of probable cause. ("An inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence"), *Colorado v. Bertine* (1987) (suggesting that the absence of bad faith and the lack of a purely investigative purpose were relevant to the validity of an inventory search), and *Burger* (observing that a valid administrative inspection conducted with neither a warrant nor probable cause did not appear to be a pretext for gathering evidence of violations of the penal laws).

Whren therefore reinforces the principle that, while "subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis," programmatic purposes may be relevant to the validity of Fourth Amendment intrusions undertaken pursuant to a general scheme without individualized suspicion. Accordingly, *Whren* does not preclude an inquiry into programmatic purpose in such contexts. It likewise does not preclude an inquiry into programmatic purpose here.

Last Term in *Bond*, we addressed the question whether a law enforcement officer violated a reasonable expectation of privacy in conducting a tactile examination of carry-on luggage in the overhead compartment of a bus. In doing so, we simply noted that the principle of *Whren* rendered the subjective intent of an officer irrelevant to this analysis. While, as petitioners correctly observe, the analytical rubric of *Bond* was not "ordinary, probable-cause Fourth Amendment analysis," *Whren*, nothing in *Bond* suggests that we would extend the principle of *Whren* to all situations where individualized suspicion was lacking. Rather, subjective intent was irrelevant in *Bond* because the inquiry that our precedents required focused on the objective effects of the actions of an individual officer. By contrast, our cases dealing with intrusions that occur pursuant to a general scheme absent individualized suspicion have often required an inquiry into purpose at the programmatic level.

Petitioners argue that the Indianapolis checkpoint program is justified by its lawful secondary purposes of keeping impaired motorists off the road and verifying licenses and registrations. If

this were the case, however, law enforcement authorities would be able to establish checkpoints for virtually any purpose so long as they also included a license or sobriety check…

Our holding also does not affect the validity of border searches or searches at places like airports and government buildings, where the need for such measures to ensure public safety can be particularly acute. Nor does our opinion speak to other intrusions aimed primarily at purposes beyond the general interest in crime control. Our holding also does not impair the ability of police officers to act appropriately upon information that they properly learn during a checkpoint stop justified by a lawful primary purpose, even where such action may result in the arrest of a motorist for an offense unrelated to that purpose. Finally, we caution that the purpose inquiry in this context is to be conducted only at the programmatic level and is not an invitation to probe the minds of individual officers acting at the scene.

Because the primary purpose of the Indianapolis checkpoint program is ultimately indistinguishable from the general interest in crime control, the checkpoints violate the Fourth Amendment. The judgment of the Court of Appeals is accordingly affirmed. It is so ordered.

DISSENT: Chief Justice Rehnquist/Thomas/Scalia…The State's use of a drug-sniffing dog, according to the Court's holding, annuls what is otherwise plainly constitutional under our Fourth Amendment jurisprudence: brief, standardized, discretionless, roadblock seizures of automobiles, seizures which effectively serve a weighty state interest with only minimal intrusion on the privacy of their occupants. Because these seizures serve the State's accepted and significant interests of preventing drunken driving and checking for driver's licenses and vehicle registrations, and because there is nothing in the record to indicate that the addition of the dog sniff lengthens these otherwise legitimate seizures, I dissent…These stops effectively serve the State's legitimate interests; they are executed in a regularized and neutral manner; and they only minimally intrude upon the privacy of the motorists. They should therefore be constitutional… Efforts to enforce the law on public highways used by millions of motorists are obviously necessary to our society. The Court's opinion today casts a shadow over what had been assumed, on the basis of stare decisis, to be a perfectly lawful activity. Conversely, <u>if the Indianapolis police had assigned a different purpose to their activity here, but in no way changed what was done on the ground to individual motorists, it might well be valid</u>. The Court's non-law-enforcement primary purpose test simply does not serve as a proxy for anything that the Fourth Amendment is, or should be, concerned about in the automobile seizure context…I would reverse the decision of the Court of Appeals…