Police Officers' Exercise of Discretion in the Operation of Sobriety Checkpoints: The Need for Predetermined, Objective Guidelines for a Safe, Effective, and Constitutional Checkpoint: 

*Commonwealth v. Worthy*

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Police Officers’ Exercise of Discretion in the Operation of Sobriety Checkpoints: The Need for Predetermined, Objective Guidelines for a Safe, Effective, and Constitutional Checkpoint:

Commonwealth v. Worthy

AUTOMOBILES—OFFENSES—PROSECUTION—ARREST, STOP, OR INQUIRY; BAIL OR DEPOSIT—ROADBLOCK, CHECKPOINT, OR ROUTINE OR RANDOM STOP—The Pennsylvania Supreme Court held that a police officer’s exercise of discretion to temporarily suspend a sobriety checkpoint to relieve traffic congestion is not in conflict with the Tarbert guidelines and thus offends neither the Fourth Amendment of the United States Constitution nor Article 1, Section 8 of the Pennsylvania Constitution.


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I. INTRODUCTION

On-site police officers must operate a sobriety checkpoint in compliance with certain guidelines to ensure the roadblock is constitutional under the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution. Officers determine the constitutionality by using a balancing test, which focuses on protecting the individual from arbitrary invasions at the unfettered discretion of officers. These requirements for a constitutional Driving Under the Influence (“DUI”) roadblock were first adopted and applied by the Pennsylvania Supreme Court in the landmark 1987 case Commonwealth v. Tarbert. The issue of roadblock constitutionality has been addressed by the Pennsylvania courts since the time of Tarbert, including the following cases: Commonwealth v. Fioretti, Commonwealth v. Blouse, Commonwealth v. Yastrop, Commonwealth v. Beaman, In re J.A.K., and most recently in Commonwealth v. Worthy.

This Case Note examines Worthy’s decision and its failure to utilize the opportunity to remedy the problems established by Tarbert’s vague and arbitrary guidelines for law enforcement and the courts. First, this Case Note will discuss the factual history of Worthy. Next, this Case Note will present the procedural history of Worthy, which will describe the decisions of the trial court and Superior Court that the roadblock was unconstitutional due to the exercise of unfettered discretion by the on-site officers, and the

1. In this case note, the terms “DUI roadblock” and “sobriety checkpoint” are used interchangeably. See Commonwealth v. Beaman, 880 A.2d 578, 591 n.1. (Pa. 2005).

2. The Fourth Amendment to the United States Constitution protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. CONST. amend. IV. It requires law enforcement agents to use a reasonable exercise of discretion, preventing “arbitrary invasions” of individuals’ interests. Commonwealth v. Tarbert, 535 A.2d 1035, 1038 (Pa. 1987) (plurality opinion).


5. See infra Part V.


11. See infra Part II.
decision of the Supreme Court of Pennsylvania to hear the appeal.\footnote{This Case Note will then discuss the majority, concurring, and dissenting opinions of the Supreme Court.}{12} Next, this Case Note will discuss the precedent leading to Worthy, citing the Pennsylvania line of Tarbert cases and a few cases from other jurisdictions addressing the same issue.\footnote{Finally, this Case Note will analyze the decision of Worthy and its failure to provide detailed and objective guidelines that law enforcement and future courts could implement to minimize intrusion to individuals and minimize potential litigation of this recurring and avoidable issue.}{14} Finally, this Case Note will analyze the decision of Worthy and its failure to provide detailed and objective guidelines that law enforcement and future courts could implement to minimize intrusion to individuals and minimize potential litigation of this recurring and avoidable issue.\footnote{See infra Part VI.}{15}

II. THE FACTS OF WORTHY

On May 24, 2002, Sergeant Ronald Harvey and other police officers set up a sobriety checkpoint on State Route 22 in Monroeville, Allegheny County, Pennsylvania as stipulated in the Monroeville Police Department’s memorandum of authorization (hereinafter “administrative authority”) from Assistant Chief Doug Cole nine days earlier.\footnote{The memorandum provided as follows: You are hereby authorized to post notice and arrange for officers to work a sobriety checkpoint the night of the 24th of May, 2002. The checkpoint details shall start at 2300 hours, the 24th of May, 2002, and conclude no later than 0400 hours on the 25th of May, 2002. As per our conversation on the 15th of May, 2002[;] our review of the state accident statistics regarding drinking and driving accidents[,] and our department records showing the number of traffic stops resulting in driving under the influence arrests, you are authorized to set up a checkpoint on Route 22 westbound at Roomful Express, 3651 William Penn Highway in Monroeville, Pa. If circumstances would prevent you from using that primary location you are authorized to move to 2420 Moss Side Boulevard, State Route 48 in Monroeville. \textit{Id.} at 721-22.}{16} Oncoming motorists could see the checkpoint from “approximately one-half mile away.”\footnote{The Court stated that the area of the checkpoint was designated by, “large orange signs, illuminated with traffic flares and lights several hundred feet in advance of the checkpoint.” \textit{Id.}}{17}

The officers stopped every vehicle, except those that came through during three periods of traffic congestion, in which Sergeant Harvey had “temporarily suspend[ed] operation of the checkpoint” and let every car through without stopping.\footnote{Id. at 722.}{18} Once
the "unreasonable delay" from the traffic decreased, the officers restarted the checkpoint and stopped every vehicle again. 19

Officers at this checkpoint stopped the vehicle of Appellee Mark S. Worthy (hereinafter "Worthy"). 20 The officer arrested Worthy, after the officer observed Worthy exhibit signs of intoxication, 21 fail three field sobriety tests, and fail a breathalyzer test, charging him with two counts of DUI. 22 The facts of this matter were of first impression, and therefore were not in dispute. 23

III. THE PROCEDURAL HISTORY OF WORTHY

Worthy filed an omnibus pre-trial motion to suppress evidence acquired from the checkpoint. 24 Worthy claimed that his rights to be free from unreasonable searches and seizures under both the United States Constitution and the Pennsylvania Constitution 25 were violated as a result of the stop. 26 Worthy contended that the officers were granted "unfettered discretion" in stopping and starting vehicles, because the administrative authority did not specify the grounds on which the officers should operate such a checkpoint. 27 The discretion used in the temporary suspensions conflicts with the guidelines established by the Supreme Court of Pennsylvania in Commonwealth v. Tarbert 28 (hereinafter "Tarbert guidelines"). 29

19. Id.
20. Worthy, 957 A.2d at 722.
21. Id. Worthy exhibited bloodshot eyes, slurred speech, and a strong odor of alcohol. Id. Worthy was charged under 75 PA. CONS. STAT. ANN. § 3731(a)(1) (1987) (repealed and replaced by 75 PA. CONS. STAT. ANN § 3802 (2003)), for driving under the influence of alcohol to a degree that rendered the person incapable of driving safely, and 75 PA. CONS. STAT. ANN. § 3731(a)(4)(i) (1987) (repealed and replaced by 75 PA. CONS. STAT. ANN § 3802 (2003)), for driving with a blood alcohol level of 0.10 % or greater. Id. at 722 n.1.
22. Id.
23. Worthy, 957 A.2d at 721.
24. Id. at 722.
26. Id.
27. Id. at 722.
29. Worthy, 957 A.2d at 722. The Tarbert guidelines are as follows:

[T]he conduct of the roadblock itself can be such that it requires only a momentary stop to allow the police to make a brief but trained observation of a vehicle's driver, without entailing any physical search of the vehicle or its occupants. To avoid unnecessary surprise to motorists, the existence of a roadblock can be so conducted as to be ascertainable from a reasonable distance or otherwise made knowable in advance. The possibility of arbitrary roadblocks can be significantly curtailed by the institution of certain safeguards. First, the very decision to hold a drunk-driver roadblock, as well as the decision as to its time and place, should be matters reserved for prior administrative approval, thus removing the determination of those matters from the
The trial court granted Worthy’s motion to suppress evidence and decided that “[t]he authority to conduct the checkpoint [as granted in the Memorandum of Authority] did not include authority to suspend the checkpoint when traffic backed-up.” 30 The trial court explicated that the checkpoint did not comply with the Tarbert guidelines because the on-site officers had broad control in deciding when to suspend the checkpoint due to traffic congestion, since there was no pre-established criteria issued to guide them. 31

The Commonwealth appealed, and the Superior Court affirmed the trial court’s decision to suppress the evidence on the grounds that the decision to temporarily stop and restart the checkpoint was made “by the arbitrary and unfettered discretion” of the on-scene officers instead of a pre-fixed and objective standard, as the Tarbert guidelines require. 32 The Supreme Court of Pennsylvania granted the Commonwealth’s petition for allowance of appeal to address whether the Superior Court and the trial court erred in affirming suppression on the grounds that the memorandum did not provide guidance for temporary suspension of the checkpoint resulting from traffic. 33

IV. THE PENNSYLVANIA SUPREME COURT OPINIONS IN WORTHY

A. Justice McCaffery’s Majority Opinion

Justice McCaffery authored the majority opinion, which provided the court’s ultimate holding that the on-site police officers’ use of discretion to temporarily stop and then restart the operation of the checkpoint due to traffic did not violate the Tarbert guidelines.

discretion of police officers in the field. In this connection it is essential that the route selected for the roadblock be one which, based on local experience, is likely to be travelled by intoxicated drivers. The time of the roadblock should be governed by the same consideration. Additionally, the question of which vehicles to stop at the roadblock should not be left to the unfettered discretion of police officers at the scene, but instead should be in accordance with objective standards prefixed by administrative decision.

Tarbert, 555 A.2d at 1043.

30. Id.
31. Id.
32. Commonwealth v. Worthy, 903 A.2d 576, 580 (Pa. Super. Ct. 2006). Justice Todd filed a concurring opinion in which she explained that Tarbert and Blouse provide a limited exception to the constitutional requirement of probable cause for a seizure that “may be allowed only under the most exacting standards.” Worthy, 903 A.2d at 581 (Todd, J., concurring). Justice Todd ultimately concluded the need for pre-fixed standards to determine which vehicles to stop was not met in the case at hand. Id.
33. Worthy, 957 A.2d at 723 (Pennsylvania Supreme Court opinion).
or the United States and Pennsylvania constitutions. Justice McCaffery set forth five similar criteria to those established in *Tarbert* that must be met in order to have a constitutional checkpoint under the Pennsylvania Constitution. The factor relevant to the issue at hand, the fifth criterion, required administrative conditions to be predetermined, so that the on-site officers were not left on their own with the judgment call of stopping and starting the checkpoint. Justice McCaffery agreed with Justice Eakin's concurrence to the extent that officers do not have to meet each and every criterion of the *Tarbert* guidelines, but rather must substantially comply with its guidelines.

The majority disagreed with the inference of the appeals and trial court, that the officers exercised "unfettered discretion" in deciding which vehicles to stop without established authority. Justice McCaffery emphasized that the decision to suspend and resume the checkpoint was not based on the drivers' characteristics or conduct, as evidenced by the fact that "every vehicle was stopped" by the officers while the checkpoint was operating and then "every vehicle [was allowed] to pass through" without stopping while the checkpoint was suspended. The court made the distinction, that while Sergeant Harvey did exercise his discretion in deciding to suspend the checkpoint based on his "trained observation" that the traffic volume was so heavy that it caused unreasonable delay, neither he nor any officer exercised discretion regarding which vehicles to stop. Justice McCaffery further ex-

34. *Id.* at 727.
35. *Worthy*, 957 A.2d at 725. The five criteria included:
   (1) vehicle stops must be brief and must not entail a physical search; (2) there must be sufficient warning of the existence of the checkpoint; (3) the decision to conduct a checkpoint, as well as the decisions as to time and place for the checkpoint, must be subject to prior administrative approval; (4) the choice of time and place for the checkpoint must be based on local experience as to where and when intoxicated drivers are likely to be traveling; and (5) the decision as to which vehicles to stop at the checkpoint must be established by administratively pre-fixed, objective standards, and must not be left to the unfettered discretion of the officers at the scene.

36. *Id.* at 725.
37. The majority explained that substantial compliance, not complete compliance, "with the guidelines is all that is required to reduce the intrusiveness of the search to a constitutionally acceptable level." *Id.* at 725. Justice Eakin clarified in his concurrence that "[i]f all five factors must be met, this would be "complete compliance" with the guidelines, not merely "substantial compliance" as Blouse requires." *Id.* at 729 (Eakin, J., concurring).
39. *Id.* at 725-26
40. *Id.* at 726. (emphasis in original).
41. *Id.*
explained that officers have the authority to exercise sufficient discretion, not unfettered discretion, on the scene to allow them to fulfill their responsibilities. The majority concluded that the operation and suspension of this sobriety checkpoint did not violate the Tarbert guidelines’s requirement of pre-established standards.

B. Chief Justice Castille’s Concurring Opinion

Chief Justice Castille filed a concurring opinion to express additional reasons why Worthy’s motion to suppress evidence from the stop at the checkpoint should not have been granted. He opined that the existing rule is incomplete and the police acted in good faith. Chief Justice Castille further explained that the Tarbert guidelines were adopted to address limited situations, not including the one at issue. Chief Justice Castille agreed with Justice Saylor’s dissent, insofar as admitting that the case at hand showed that traffic back up always would be a foreseeable condition of a sobriety checkpoint and that there should be a provision from the administrative authority addressing the issue. As distinguished from Justice Saylor’s opinion, however, Chief Justice Castille noted that suppression was proper because the police followed the Tarbert guidelines and made rational decisions when faced with an event not considered by the guidelines.

C. Justice Eakin’s Concurring Opinion

Justice Eakin filed a separate concurring opinion to clarify that the Tarbert guidelines should be construed as specific criteria that courts ought to consider in every case rather than those that are required to apply. Justice Eakin disagreed with the majority’s

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42. Worthy, 957 A.2d at 726. Justice McCaffery explained that contrary to the Superior Court’s reasoning, the fact that the memorandum authorizing the checkpoint did not include a sentence providing the police with discretion to suspend the checkpoint does not distinguish it from Commonwealth v. Fioretti, in which the court held a checkpoint constitutional where “the only discretion exercised by the police would be in deciding whether to discontinue the checkpoint if the traffic backed up.” Id. at 727 (citing Commonwealth v. Fioretti, 538 A.2d 570, 577 (Pa. Super. Ct. 1988)).
43. Worthy, 957 A.2d. at 727.
44. Id. at 728 (Castille, C.J., concurring).
45. Id.
46. Id.
47. Id.
48. Worthy, 957 A.2d at 728 (Castille, C.J., concurring).
49. Id. (Eakin, J., concurring).
conclusion that each guideline must be met with “substantial compliance,” as defined by the majority. Instead, Justice Eakin contended that the constitutionality of the checkpoint should be based on the “totality of the circumstances.”

D. Justice Saylor’s Dissenting Opinion

Justice Saylor dissented on the grounds that the Constitution requires pre-existing guidelines in order to make the decision of temporarily suspending and restarting a checkpoint because of traffic. He pointed out that the guidelines upon which the majority relied were intended to prevent the use of discretion that may cause problems in random traffic stops and to assure the inevitable examination of discretion exercised by the officers.

While Justice Saylor did not believe that the administrative authority for the sobriety checkpoint should stipulate what to do in every possible event, he did contend that it should address those events that are foreseeable, such as traffic congestion. Justice Saylor opined that suspend or resume guidelines established before the checkpoint would not only protect drivers’ constitutional rights, but would also address the majority’s concerns of on-site officers being able to maintain safety and allow for only reasonable delay. Justice Saylor reasoned that because the officers exceeded the administrative authority and used unfettered discretion to decide when to suspend and resume the checkpoint, the final criterion of the Tarbert guidelines was not satisfied.

Justice Saylor further explained that, contrary to Justice Eakin’s concurrence, case law requires that the checkpoint satisfy each guideline to meet the substantial compliance requirement. Justice Saylor also voiced his disagreement with the Commonwealth’s contention that an unconstitutional search demands suppression. Justice Saylor made clear that courts in the Common-
wealth of Pennsylvania are supposed to suppress evidence that was obtained as the result of such a search.  

Justice Saylor opined that the *Tarbert* guidelines relate to how a driver is stopped, and to how a checkpoint is conducted in line with objective criteria under the United States Constitution. Because Justice Saylor believed Worthy was not stopped at a checkpoint that complied with such pre-existing guidelines, he would have affirmed the Superior Court’s holding that Worthy’s constitutional rights were violated.

V. THE PRECEDENT LEADING TO WORTHY

A. Commonwealth v. Tarbert and the Institution of the Guidelines in Pennsylvania

The guidelines for a constitutional DUI roadblock were first adopted and applied by the Supreme Court of Pennsylvania in the 1987 case *Commonwealth v. Tarbert*, in which the court disposed of consolidated appeals of the Superior Court’s orders to suppress evidence of drunk driving obtained from DUI roadblocks because the roadblocks were found to be unlawful. In *Tarbert*, police established a roadblock to check all drivers traveling in both directions in a location chosen due to its high incidence of motor vehicle accidents and arrests for violations of the DUI statutes. A police officer stopped each vehicle, asked to see the driver’s license and registration, and looked for signs of intoxication. An officer asked Tarbert to pull over after the officer sensed an odor of alco-

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60. *Worthy*, 957 A.2d at 733 (Saylor, J., dissenting).
61. *Id.*
63. *Tarbert*, 535 A.2d at 1043. At the time of the roadblocks in *Tarbert*, as explained below by *Driving Under the Influence*, supra note 3, § 6308(b) of the Vehicle Code did not yet allow systematic motor vehicle checks: Although *Tarbert* upheld the constitutionality of drunk-driver roadblocks, it nevertheless held that because the 1983 version of § 6308(b) was in effect at the time of the disputed stops, the police lacked statutory authority to engage in systematic vehicle stops, but required ‘articulable and reasonable grounds’ to suspect a Vehicle Code violation prior to making the stop. Accordingly, although the motorists’ constitutional rights had not been violated, the checkpoints were still illegal because of an absence of specific statutory authority to engage in such activity. Had the checkpoints been conducted under the current version of § 6308, the Court’s determination most likely would have been different.

*Driving Under the Influence*, supra note 3 (footnotes omitted).
64. *Tarbert*, 535 A.2d at 1036.
65. *Id.*
hol from the car and observed other signs of intoxication, as well as an open beer bottle near Tarbert’s seat.\textsuperscript{66} Tarbert was arrested and later charged and convicted of drunk driving after failing two of three field sobriety tests and providing a breath sample that yielded a blood alcohol content reading of 0.12%.\textsuperscript{67} The Superior Court reversed the judgment of Tarbert’s sentence for driving under the influence after finding the roadblock unconstitutional.\textsuperscript{68}

In the companion case, \textit{Commonwealth v. Dannaker, III}, police established a roadblock, stopping motorists in groups of three.\textsuperscript{69} Dannaker, one such motorist, was asked to step out from his vehicle after officers observed signs of intoxication.\textsuperscript{70} Officers arrested Dannaker and administered a breath test, which yielded a 0.11% blood alcohol content reading.\textsuperscript{71} The trial court granted his motion to suppress the test results, and the Superior Court affirmed.\textsuperscript{72}

Chief Justice Nix wrote the Pennsylvania Supreme Court’s plurality opinion, which was joined by Justice McDermott.\textsuperscript{73} The plurality adopted a balancing test to determine the constitutionality of a roadblock, weighing the state’s interest in the safety and welfare of its citizens from drunk drivers against a checkpoint’s invasive nature.\textsuperscript{74} The plurality applied this balancing test and concluded that the roadblocks are constitutional if carried out in substantial compliance with certain guidelines.\textsuperscript{75} These guidelines provide a means to manage and operate a checkpoint in a manner

\textsuperscript{66} \textit{Id.}
\textsuperscript{67} \textit{Id.} The relevant statutory language is as follows:
An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual’s blood or breath is at least 0.08% but less than 0.10% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.
\textsuperscript{75} \textit{PA. CONS. STAT. ANN. § 3802(a)(2) (West 2006).}
\textsuperscript{68} \textit{Tarbert}, 535 A.2d at 1036.
\textsuperscript{69} \textit{Id.} at 1036-37.
\textsuperscript{70} \textit{Id.} Dannaker exhibited signs of intoxication including bloodshot eyes and an odor of alcohol on his breath. \textit{Id.} at 1037.
\textsuperscript{71} \textit{Id.}
\textsuperscript{72} \textit{Id.}
\textsuperscript{73} \textit{Tarbert}, 535 A.2d at 1035.
\textsuperscript{74} \textit{Id.} at 1041-43. The balancing test is derived from \textit{Brown v. Texas}, in which the reviewing court weighed “the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty.” \textit{Beaman}, 880 A.2d at 582 (quoting \textit{Brown v. Texas}, 443 U.S. 47, 50 (1979)). This balancing test was first used by a court when a roadblock used to detect illegal aliens at the border was at issue in \textit{United States v. Martinez-Fuerte}. \textit{State v. Downey}, 945 S.W.2d 102, 107 (Tenn. 1997) (citing \textit{United States v. Martinez-Fuerte}, 428 U.S. 543 (1976)).
\textsuperscript{75} \textit{Tarbert}, 535 A.2d at 1043.
that is constitutional and less intrusive.\textsuperscript{76} Predetermined authority regarding the actual operation of the sobriety checkpoint is necessary to remove the exercise of discretion of on-site officers.\textsuperscript{77} The checkpoint should be held at a location and time where and when drunk driving is most common.\textsuperscript{78} In addition, the administrative authority should provide objective conditions that guide officers in making the decision of which vehicles to stop.\textsuperscript{79} Because the roadblock at issue did not comply with the guidelines, it was deemed unconstitutional.\textsuperscript{80}

Justices Papadakos and Zapalla filed concurring opinions.\textsuperscript{81} Both Justice Papadakos and Justice Zappalla agreed with the plurality's conclusion that the roadblock was improper due to the officer's failure to operate it according to the predetermined instruction.\textsuperscript{82} Justice Papadakos concurred because he believed the court should not have addressed the constitutional issues.\textsuperscript{83} Justice Zapalla disagreed with the court's constitutional analysis.\textsuperscript{84} He found the roadblock unconstitutional since it lacked probable cause, a constitutional pre-requisite for such seizures.\textsuperscript{85} Justice Zapalla explained that he must disagree with the majority's adoption of the later-rejected majority decision in \textit{United States v. Place},\textsuperscript{86} which applied the balancing test to validate the operation of the checkpoint.\textsuperscript{87}

While Justice Larsen dissented because he would have reversed the Superior Court's order of no statutory bar to systematic checkpoints, he agreed with Chief Justice Nix's conclusion that the roadblocks were constitutionally valid.\textsuperscript{88} Notably, though only one
justice joined the *Tarbert* opinion in full, four of the six participating justices agreed that systematic roadblocks are constitutional.89

B. Application of Tarbert in Pennsylvania

One year after *Tarbert*, the Pennsylvania Superior Court applied the *Tarbert* guidelines in *Commonwealth v. Fioretti*.90 In *Fioretti*, the roadblock at issue was set-up according to the location's safety features and statistics that showed the times and places of the most frequent drunk driving accidents and arrests.91 The police operated the checkpoint in line with a pre-approved written procedure, and stopped every car heading east.92

The *Fioretti* court held the checkpoint to be constitutional, because it satisfied the *Tarbert* guidelines, given that the on-site police officers conducted themselves in compliance with the written procedure that gave them the authority to stop every car heading east with the discretion to decide whether to suspend the checkpoint if the traffic backed up.93 Judge Montemuro, who authored the opinion, concluded that potential discretion by on-site officers in deciding to temporarily suspend the checkpoint due to traffic was removed by the stopping of every car.94

In 1992, the Pennsylvania Supreme Court in *Commonwealth v. Blouse*,95 adopted the *Tarbert* guidelines as applicable to all "systematic, nondiscriminatory, nonarbitrary roadblocks" set up to detect license, registration, and equipment violations.96 In *Blouse*, the roadblock was held at a location based on a high number of these violations, properly authorized, and included sufficient warning to motorists.97

The court recognized the roadblock stop as a seizure and focused on whether it was unreasonable under the Fourth Amendment of

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89. *Beaman*, 880 A.2d at 584-85 (quoting *Blouse*, 611 A.2d at 1179). "The views of Chief Justice Nix, Mr. Justice McDermott, Mr. Justice Papadakos, and myself [Mr. Justice Larsen], as expressed in the *Tarbert* decision are evidence of this Courts willingness to uphold the constitutionality of systematic roadblocks." *Blouse*, 611 A.2d at 1179 n.2.
91. *Id.* at 576.
92. *Id.* at 577.
93. *Id.*
94. *Id.* at 576.
96. *Blouse*, 611 A.2d at 1180. "In applying *Tarbert* to the case sub judice, the rationale behind upholding the constitutionality of drunk driving roadblocks applies equally to all systematic roadblocks ..." *Id.* at 1179.
97. *Id.* at 1180.
the United States Constitution. The majority relied heavily on the *Tarbert* opinion in determining the reasonableness of the roadblock. The majority focused on whether a person's “reasonable expectation of privacy” was exposed to the invasiveness resulting from on-site officers' exercise of unfettered discretion. Using the same balancing test as applied in *Tarbert*, the court in *Blouse* weighed the intrusion upon an individual by a “systematic, nondiscriminatory, nonarbitrary” roadblock against the Commonwealth's interest in the safety of its highways. Because the degree of intrusion of the systematic roadblock was offset by the state's significant interest in the safety of its roads, the court concluded that such a roadblock was reasonable under Article I, Section 8 of the Pennsylvania Constitution.

Justices McDermott and Papadakos joined Justice Larsen's majority opinion, along with Chief Justice Nix. Justice Papadakos filed a concurring opinion to draw attention to the potential of the police officers' ability to abuse their authority while conducting these roadblocks. Justice Flaherty filed a dissent to explain the requirement of probable cause, since a roadblock is a “seizure” under the Pennsylvania Constitution. Justice Flaherty disagreed with the majority's reasoning that the balancing test could be applied to a checkpoint based on less than probable cause, as it would otherwise impede achievement of the goal of protecting citizens from drunk drivers. He further explained that the balancing test was applied in *Johnston* only after the court determined the search was permissible based on the officers' explanation of reasonable grounds for suspecting drug activity. Probable cause is always a requirement under Article 1, Section 8 of the Pennsylvania Constitution, and the circumstances in *Blouse* provided no exception to Justice Flaherty. Justice Flaherty conversely asserted that although the *Johnston* court conducted a balancing test to determine whether the search was constitutional, it deter-

98. *Id.* at 1178.
99. *Id.* at 1180.
100. *Blouse*, 611 A.2d at 1180
101. *Id.*
102. *Id.*
103. *Id.*
104. *Id.* at 1181 (Papadakos, J., concurring).
105. *Blouse*, 611 A.2d at 1182 (Flaherty, J., dissenting). Justices Zappalla and Cappy joined in this dissent. *Id.* at 1182.
106. *Id.* at 1179 (majority opinion).
107. *Id.* at 1181 (Flaherty, J., dissenting).
108. *Id.* at 1181-82.
mined that the search was reasonable and thus permissible because it was based on probable cause.\textsuperscript{109} Justice Zappalla filed a dissent that similarly explained the Article I, Section 8 requirement of probable cause before applying the balancing test.\textsuperscript{110} Justice Zappalla reiterated his discontent with checkpoints from his earlier dissent in \textit{Tarbert}.\textsuperscript{111}

Five years after \textit{Blouse}, the Superior Court of Pennsylvania again found that because the \textit{Tarbert} guidelines were met, the checkpoint at issue in \textit{Commonwealth v. Pacek}\textsuperscript{112} was constitutional, while addressing whether notice of a checkpoint was sufficient.\textsuperscript{113} In \textit{Pacek}, even though on-site officers stopped and started the checkpoint three or four times due to traffic congestion, the majority still determined that the officers’ decision of which vehicles to stop complied with the \textit{Tarbert} guidelines and created a constitutional roadblock.\textsuperscript{114}

In the 2001 case, \textit{Commonwealth v. Yastrop},\textsuperscript{115} the Supreme Court of Pennsylvania explained they would affirm the trial court’s decision that the DUI roadblock was constitutional, as long as the roadblock substantiality complied with the \textit{Tarbert} guidelines and the decision was premised on sufficient evidence of record.\textsuperscript{116} The roadblock at issue in \textit{Yastrop} was authorized, notice of its operation was given, and the location was one where drunk driving accidents had occurred and where officers had made arrests for DUI in the past.\textsuperscript{117} Specifically, officers stopped each vehicle and conducted field-sobriety tests when they sensed an odor of alcohol in accordance with prefixed authority.\textsuperscript{118} In line with the procedure, officers stopped Yastrop and conducted a field test once the smell of alcohol was detected.\textsuperscript{119} Yastrop failed the tests and was arrested.\textsuperscript{120}

Justice Newman, joined by Justice Castille, a two-justice plurality, similar to the plurality in \textit{Tarbert}, concluded that there remained no constitutional barrier to DUI roadblocks under Article

\begin{footnotes}
\textsuperscript{109} \textit{Id.} at 1181-82 (quoting \textit{Johnston}, 530 A.2d at 79).
\textsuperscript{110} \textit{Blouse}, 611 A.2d at 1183 (Zappalla, J., dissenting).
\textsuperscript{111} \textit{Id.} (Zappalla, J., dissenting).
\textsuperscript{112} 691 A.2d 466 (Pa. Super. Ct. 1997).
\textsuperscript{113} \textit{Pacek}, 691 A.2d at 471.
\textsuperscript{114} \textit{Id.} at 468 n.2.
\textsuperscript{115} 768 A.2d 318, 323-24 (Pa. 2001).
\textsuperscript{116} \textit{Yastrop}, 768 A.2d at 319.
\textsuperscript{117} \textit{Id.}
\textsuperscript{118} \textit{Id.} at 319-20 & n.3.
\textsuperscript{119} \textit{Id.} at 320.
\textsuperscript{120} \textit{Id.}
\end{footnotes}
1, Section 8 of the Pennsylvania Constitution.\textsuperscript{121} The court broadened \textit{Blouse}'s analysis regarding registration, licensing, and equipment roadblocks to sobriety checkpoints, increasing its authoritative weight to that of \textit{Tarbert}.\textsuperscript{122}

Justice Cappy concurred and expressed his concern that roadblocks would not satisfy the "compelling state interest" any better than law enforcement's standard procedures.\textsuperscript{123} Recognizing that Justice Newman was unable to address the inevitable issue regarding law enforcement's intent to continue using general searches, he joined in the majority's result and in Justice Saylor's concurrence.\textsuperscript{124} Justice Saylor concurred with the plurality's decision, despite his belief that sobriety roadblocks lack effectiveness, because he thought the case at hand was not the appropriate means of overturning \textit{Tarbert} and \textit{Blouse}.\textsuperscript{125}

Justice Flaherty dissented, acknowledging the hazard of drunk drivers while emphasizing the need to still apply the constitutional restraint of probable cause to sobriety checkpoints.\textsuperscript{126} He goes as far as stating that \textit{Blouse} should be overruled, as it upheld the use of a roadblock, which allows officers to stop vehicles without probable cause, to somehow enforce the motor vehicle code, which no longer requires "articulable and reasonable grounds" for a stop.\textsuperscript{127} He notes that a checkpoint's infringement on the security and privacy of Pennsylvania citizens is more important than the efficiency of law enforcement that results from its use.\textsuperscript{128} Another dissent was filed by Justice Nigro and joined by Justice Zapalla, in which Justice Nigro expressed his disagreement with the majority's conclusion that sobriety checkpoints are essential to officers' prevention of drunk driving.\textsuperscript{129} Justice Nigro contended that there are methods available that simultaneously increase effectiveness and decrease restrictiveness when protecting individuals from drunk drivers. Justice Nigro's dissent maintained that if the majority correctly estimated the intrusion to motorists, it would out-

\begin{itemize}
\item \textsuperscript{121} \textit{Yastrop}, 768 A.2d at 319.
\item \textsuperscript{122} \textit{Id.} at 322-23.
\item \textsuperscript{123} \textit{Id.} at 324-25 (Cappy, J., concurring).
\item \textsuperscript{124} \textit{Id.} at 325.
\item \textsuperscript{125} \textit{Id.} at 325 (Saylor, J., concurring).
\item \textsuperscript{126} \textit{Yastrop}, 768 A.2d at 326 (Flaherty, J., dissenting).
\item \textsuperscript{127} \textit{Id.} at 328.
\item \textsuperscript{128} \textit{Id.}
\item \textsuperscript{129} \textit{Id.} (Nigro, J., dissenting).
\end{itemize}
weigh the Commonwealth’s interest to keep drunk drivers off of the road.\textsuperscript{130}

In 2005, the Supreme Court of Pennsylvania, in \textit{Commonwealth v. Beaman},\textsuperscript{131} like the court in \textit{Yastrop}, re-affirmed the notion that it is proper to apply the balancing test to constitutional challenges to systematic roadblocks.\textsuperscript{132} The appellant in \textit{Beaman} was stopped at a sobriety checkpoint and charged with two counts of DUI.\textsuperscript{133} Basing his appeal on the grounds that the balancing test should not have been applied, he argued that the balancing test is only appropriate where there are no other feasible options for a stop without probable cause.\textsuperscript{134} The appellant explained that roving patrols\textsuperscript{135} are more effective than roadblocks creating an alternative, the existence of which prevents the application of the balancing test.\textsuperscript{136} The court disagreed and affirmed the idea that sobriety checkpoints are constitutional, further explaining the notion that roving police patrols were more efficient than roadblocks in reducing drunk driving and did not affect the constitutional validity of roadblocks.\textsuperscript{137}

The Pennsylvania Superior Court in the 2006 case of \textit{In re J.A.K.}\textsuperscript{138} held that the traffic safety roadblock was constitutional because the officers conducted the roadblock in compliance with the prefixed standard of the administrative authority.\textsuperscript{139} The written guidelines included such instructions as to stop every third car, to check restraint usage, and to check the vehicle operator’s license, registration, and insurance.\textsuperscript{140}

\textbf{C. Other Jurisdictions’ Determinations of Constitutional Roadblocks}

Other jurisdictions have addressed the issue of a constitutional roadblock as well. In the 1997 Tennessee case, State v. Downey,\textsuperscript{141} officers either stopped vehicles or let every vehicle pass dependent

\begin{itemize}
\item \textsuperscript{130} \textit{Yastrop}, 768 A.2d at 329.
\item \textsuperscript{131} 880 A.2d 578 (Pa. 2005).
\item \textsuperscript{132} \textit{Beaman}, 880 A.2d at 587.
\item \textsuperscript{133} \textit{Id.} at 586.
\item \textsuperscript{134} \textit{Id.}
\item \textsuperscript{135} \textit{Id.} at 580. A roving DUI patrol requires police officers patrolling roadways for drunk drivers to have probable cause before stopping a vehicle. \textit{Id.} at 581 n.3.
\item \textsuperscript{136} \textit{Beaman}, 880 A.2d at 586.
\item \textsuperscript{137} \textit{Id.} at 587-88.
\item \textsuperscript{138} 908 A.2d 322 (Pa. Super. Ct. 2006).
\item \textsuperscript{139} \textit{In re J.A.K.}, 908 A.2d at 326-27.
\item \textsuperscript{140} \textit{Id.}
\item \textsuperscript{141} 945 S.W.2d 102 (Tenn. 1997).
\end{itemize}
on traffic.\textsuperscript{142} The Supreme Court of Tennessee in \textit{Downey} held that the roadblock was unconstitutional after explaining that matters of time, place, and which vehicles to stop should be in compliance with the administrative authority's pre-established standards, and "should not be left to the unfettered discretion of the officers at the scene."\textsuperscript{143}

Similarly, in 2002, the Indiana Supreme Court in State v. Gerschoffer\textsuperscript{144} applied comparable guidelines to those in \textit{Tarbert} and held a roadblock was unconstitutional when officers were found to have exercised a great degree of discretion due to the lack of authority on how each officer should approach and screen motorists.\textsuperscript{145}

\section{The Failure of \textit{Worthy}}

Justice Zappalla's concurrence in \textit{Tarbert} revealed great foresight when he characterized the court's majority opinion as creating "what is \textit{perceived} to be a constitutionally sound legislative scheme for establishing roadblocks."\textsuperscript{146} This perception has not survived contact with reality in Pennsylvania, as evidenced by the contention in cases such as \textit{Blouse, Yastrop}, and, most recently, \textit{Worthy}. The court in \textit{Tarbert} set forth guidelines, with the purpose of establishing objective procedures, to protect an individual's right to be free from arbitrary intrusions pursuant to the United States Constitution and the Pennsylvania Constitution.\textsuperscript{147} However, the guidelines' arbitrary and vague language proved problematic to police and courts attempting to define and approach the issue of constitutional roadblocks.

After \textit{Tarbert}, law enforcement officers and the courts still did not have definite and clear rules by which to operate or review a

\begin{itemize}
  \item \textsuperscript{142} \textit{Downey}, 945 S.W.2d at 105.
  \item \textsuperscript{143} \textit{Id.} at 110-11 (citing \textit{Tarbert}, 535 A.2d at 1043).
  \item \textsuperscript{144} 763 N.E.2d 960 (Ind. 2002).
  \item \textsuperscript{145} \textit{Gerschoffer}, 763 N.E.2d at 969. The court considered the following factors:
    \begin{itemize}
      \item (1) whether the roadblock was staged pursuant to a formal, neutral plan approved by appropriate officials;
      \item (2) the objective, location, and timing of the checkpoint, taking these factors into account to determine whether the seizure was well calculated to effectuate its purpose;
      \item (3) the amount of discretion exercised by field officers conducting the checkpoint, with a goal of minimal discretion to ensure against arbitrary or inconsistent actions by the screening officers;
      \item (4) degree of intrusion and whether the roadblock was avoidable;
      \item (5) whether the surrounding conditions of the checkpoint were safe; and
      \item (6) whether the checkpoint was effective.
    \end{itemize}
  \item \textsuperscript{146} \textit{Tarbert}, 535 A.2d at 1046 (Zappalla, J., concurring) (emphasis added).
  \item \textsuperscript{147} \textit{Id.} at 1043.
\end{itemize}
roadblock. The court in *Worthy* had the opportunity to provide a solution to the very problem that *Tarbert* presented, and it failed to do so. After *Worthy*, “discretion” was still undefined, leaving courts to determine its meaning on a case-by-case basis. The majority in *Worthy* left no opportunity for a consistent interpretation and implementation of its opinion by future courts or law enforcement. Justice Castille explained the problem succinctly in his concurrence: “What this case reveals, more than anything else, is an unavoidable deficiency in the constitutional rules courts are called upon to fashion.”

This deficiency was recognized and addressed by the National Highway Traffic Safety Administration (“NHTSA”) and International Association of Chiefs of Police (“IACP”) in September 2004, more than four years before the Supreme Court of Pennsylvania’s decision in *Worthy*, through their publication of guidelines to aid police administrators in executing legal, effective, and safe sobriety checkpoints. These guidelines suggest that officers should develop a procedure that ensures constitutional protections to motorists who are stopped. The guidelines further suggest implementing a system that complies with the United States Supreme Court’s decision in *Delaware v. Prouse* by ensuring that every car has an equal chance of being selected. This could be done by either stopping every vehicle, or by stopping every tenth or every twentieth vehicle so that the officer does not exercise individual discretion in deciding which vehicle is to be stopped.

Pennsylvania case law supports the NHTSA and IACP’s contention that compliance with these suggestions will result in a constitutional roadblock in most jurisdictions. This is evidenced by cases involving roadblocks in which all vehicles were stopped in a systematic fashion, which significantly reduced, if not eliminated, the discretion of on-site officers, and, in turn, the subjective intru-

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150. Id.
151. *Id.*
152. *Prouse*, 440 U.S. 648 (1979). In *Prouse*, the Court stated that “the essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of ‘reasonableness’ upon the exercise of discretion by government officials, including law enforcement agents, in order to ‘safeguard the privacy and security of individuals against arbitrary invasions.’” *Prouse*, 440 U.S. at 653-54 (citations and footnote omitted).
Cases such as In re J.A.K. illustrate the effective application of predetermined, objective standards like those suggested by the NHTSA and IACP, as it held that the traffic safety roadblock was constitutional because the officers conducted the roadblock in compliance with the prefixed standards, such as stopping every third car. If courts mandated and police administration enforced such guidelines for the operation of roadblocks, officers would operate a consistent and non-arbitrary roadblock. Such a roadblock would leave little room for the argument that police officers’ exercise of discretion rendered the roadblock unconstitutional, thereby greatly reducing litigation of the matter.

The attorneys’ briefs and the court’s opinion in Worthy failed to cite any persuasive case law on these national guidelines. As Justice Saylor explained, the majority “missed the point” in finding it not determinative whether the administrative authorization failed to include a sentence providing police with the discretion to suspend the checkpoint if traffic backed-up. The majority is correct in explaining that such “general language does not provide any real guidance or delineate any relevant factors to aid in the exercise of the granted discretion[;]” however, this statement illustrated the need for specific instructions, more explicit than those of Tarbert. Such detailed guidelines would prevent the exercise of unlawful discretion to officers while preserving their need for legitimate on-scene discretion.

Justice Saylor wisely asserted the belief, shared by the majority of other courts, that the administrative authorization for future roadblocks should include provisions about foreseeable contingencies, such as traffic back-up, and must be set up in accordance

154. See State v. Deskins, 673 P.2d 1174, 1185 (Kan. 1983) (roadblock was constitutional where every car was stopped); Little v. State, 479 A.2d 903, 913 (Md. 1984) (same); People v. Scott, 473 N.E.2d 1, 4 (N.Y. 1984) (same). Contra State ex rel. Ekstrom v. Justice Court of State, 663 P.2d 992 (1983) (roadblocks were unconstitutional because they were set up at the discretion of a local highway patrolman and were operated without specific directions or guidelines).
156. 957 A.2d at 730 n.1 (Saylor, J. dissenting).
157. Id. at 727 n.8.
158. See Gerschoffer, 763 N.E.2d at 969 (finding the roadblock unreasonable because on-site officers were not given standardized guidelines for its operation); Crouch v. Commonwealth, 494 S.E.2d 144, 146 (Va. App. 1997) (stating the established principle of Virginia that the discretion of on-site officers be limited through predetermined procedures and objective standards); State v. Sigler, 687 S.E.2d 391, 405 (W. Va. 2009) (stating “suspicionless, checkpoint roadblocks are constitutional in West Virginia only when conducted in a random and non-discriminatory manner within predetermined written operation guidelines which minimize the State’s intrusion into the freedom of the individual and which strictly limits the discretion vested in police officers at the scene”).
with objective criteria, operated in a manner that minimizes intrusiveness and the discretion of officers. The implementation of such requirements would properly limit the discretion from law enforcement and save a great deal of time and money spent on litigation of the matter. In litigation, officers' use of discretion strengthens the argument of a defendant stopped at a checkpoint, while the majority of courts continue to presume an abuse of that discretion unless the state can prove otherwise.

The plurality in Tarbert and the majority in Worthy both recognized the purpose of the Fourth Amendment and Article I, Section 8 requirement to impose a "reasonableness" standard on law enforcement agents' exercise of discretion. Nonetheless, neither provided enough clarity to ensure such safeguards that protect individuals from arbitrary invasions. To compare, the Indiana Supreme Court in State v. Gerschoffer explained that because the state did provide sufficient guidance "to ensure against arbitrary intrusions or inconsistent actions by the screening officers," such failure weighed heavily against the reasonableness of the roadblock. This holding in Gerschoffer is consistent with the holding of the Superior Court in Worthy, which should have been affirmed by the Supreme Court of Pennsylvania. By affirming the Superior Court's decision that the roadblock was unconstitutional due to the high level of discretion exercised by the officers, the court would have issued an opinion that would successfully ensure the safeguards both the United States Constitution as well as the Pennsylvania Constitution seek to protect. It would also provide a clear answer to officers and courts: that discretion outside the bounds of the pre-determined and administrative authority will most likely lead to a finding of an unconstitutional roadblock.

The Pennsylvania Superior Court in In re J.A.K., after holding that the roadblock was constitutional because the officers conducted the roadblock in compliance with the pre-determined standard of the administrative authority, and thus the Tarbert

159.  Worthy, 957 A.2d at 730. Chief Justice Castille agreed with this notion. Id. at 728. (Castille, C.J., concurring). See Downey, 945 S.W.2d at 109. Other states' guidelines have established specific times, places, warnings, publicity, safety precautions, and overall objective procedures. See, e.g., Ingersoll v. Palmer, 743 P.2d 1299 (Cal. 1987); State v. Loyd, 530 N.W.2d 708 (Iowa 1995); Deskins, 673 P.2d 1174.
160.  2 CRIM. PRAC. MANUAL § 30:6 (West 2011).
162.  Gerschoffer, 763 N.E.2d at 969.
163.  Worthy, 903 A.2d at 580-81.
guidelines, then cited the Superior Court’s decision in Worthy. The Superior Court’s decision in Worthy provided the consistent alternative to the holding in In re J.A.K. in finding that the sobriety checkpoint was unconstitutional because it did not comport with established procedures governing operation of the roadblock. The Superior court in Worthy found the decision to suspend the checkpoint and resume the checkpoint was instead controlled by the arbitrary discretion of the police officers, rather than a prefixed, objective standard. The Pennsylvania Supreme Court’s reversal of that holding created a conflicting result and worsened already deficient guidelines.

The facts of the 1997 Tennessee case of Downey are strikingly similar to those of Worthy, yet the Tennessee court reached the opposite and better conclusion. In both Worthy and Downey, officers stopped every motorist and, once traffic became congested, let every motorist pass. The Downey court held that the roadblock was unconstitutional because the roadblock was operated through the officer’s unfettered discretion. Tennessee roadblocks must be operated according to predetermined guidelines and administrative authority that reduces potential invasiveness. Four years after Downey, the Tennessee Supreme Court in State v. Hicks did exactly what the Pennsylvania Supreme Court in Worthy should have done: complied with precedent and clarified it for future courts to follow. The Hicks court gave further direction by providing two facts critical to finding that the officers' discretion was appropriately limited:

1. the decision to set up the roadblock in the first instance cannot have been made by the officer or officers actually establishing the checkpoint, and
2. the officers on the scene cannot decide for themselves the procedures to be used in operating the roadblock.
Tennessee courts that later addressed the issue of constitutional roadblocks were able to apply both of the courts’ holdings effectively to ensure a constitutional roadblock has occurred.\textsuperscript{172} In addition to the Tennessee courts, nearly every court addressing the issue of a constitutional roadblock has applied \textit{Brown’s} balancing analysis.\textsuperscript{173} Those courts applying the balancing test recognize that states have a significant and legitimate interest in restricting drunk driving.\textsuperscript{174} The effectiveness of roadblocks in furthering that interest is a controversial issue amongst many jurisdictions.\textsuperscript{175} The majority of states, such as Indiana in \textit{Gerschoffer} and Tennessee in \textit{Downey}, recognized how critical a factor the degree of discretion exercised by field officers is while conducting a roadblock.\textsuperscript{176} Many states, such as California, Iowa, and Kansas already have developed guidelines that minimize intrusiveness and limit discretion specifying such things as the time, place, safety measures, and notice.\textsuperscript{177} Pennsylvania needs to do the same.

\textbf{VII. CONCLUSION}

The decision in \textit{Tarbert} resulted in a line of fractured opinions from Pennsylvania courts dealing with the same issue of the constitutionality of roadblocks. Cases like \textit{Worthy} merely provide a brace for the break in Pennsylvania courts, instead of providing an opinion that will remedy the issue, so it could be applied effectively in the future. It is well-established that “police procedure is less threatening to [constitutional] values when the discretionary authority of the police (and thus the risk of arbitrary action) is kept at an absolute minimum.”\textsuperscript{178} Pennsylvania courts need to adopt specific guidelines like those proscribed by the NHTSA and IACP and applied by other jurisdictions like Tennessee that will

\begin{itemize}
\item \textsuperscript{172} See State v. Hayes, 188 S.W.3d 505, 513 (Tenn. 2006); \textit{Hicks}, 55 S.W.3d at 520.
\item \textsuperscript{173} See United States v. Regan, 218 F. App’x 902, 903 (11th Cir. 2007); United States v. Faulkner, 450 F.3d 466, 471 (9th Cir. 2006); Collins v. Ainsworth, 382 F.3d 529, 538 (6th Cir. 2004); \textit{Beaman}, 880 A.2d at 582; State v. Sigler, 687 S.E.2d 391, 400 (W. Va. 2009).
\item \textsuperscript{174} See \textit{Downey}, 945 S.W.2d at 109; Regan, 218 F. App’x at 903; Faulkner, 450 F.3d at 471; Ainsworth, 382 F.3d at 538; \textit{Beaman}, 880 A.2d at 582; Sigler, 687 S.E.2d at 400).
\item \textsuperscript{175} \textit{Id.} at 109.
\item \textsuperscript{176} \textit{Gerschoffer}, 763 N. E. 2d at 968-69.
\item \textsuperscript{177} \textit{Downey}, 945 S.W.2d at 109-10. See Mich. Dep’t of State Police v. Sitz, 496 U.S. 444, 447 (1990) (emphasizing the roadblock’s operation under written guidelines regarding actual operation, site selection, and publicity left nearly no discretion to on-site officers); \textit{Brown}, 443 U.S. at 52 (requiring a plan of specific limitations on the conduct of officers); \textit{Palmer}, 743 P.2d at 1299; \textit{Loyd}, 530 N.W.2d 708; \textit{Deskins}, 673 P.2d 1174.
\item \textsuperscript{178} \textit{Downey}, 945 S.W.2d at 109.
\end{itemize}
result in consistent implementation by law enforcement and later courts that address this issue. By holding the exercise of discretion by the officers was not unfettered and the roadblock constitutional, the Supreme Court of Pennsylvania improperly addressed the issue and missed an ideal opportunity to establish guidelines for Pennsylvania law enforcement and courts that will ensure a safe, effective, and constitutional roadblock.

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