

**IN THE COUNTY COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA
CRIMINAL DIVISION**

STATE OF FLORIDA,

Petitioner,

v.

**COLIN KEARNS
TED HAYES
JEREMY HORN
PAULINE SWAN
YESSANIA AVILES
PATRICIA DONOVAN
NICHOLAS GRAHAM
THOMAS HOYT
MEGAN MACGREGOR
JEFFERY SZUTS
KIMBERLY SIMPSON
EDWARD MATTIUZZI
LAUREN GRUBBS,**

**CASE NO. 2008 CT 15888
2008 CT 13979
2006 CT 20427
2008 CT 6500
2008 CT 15879
2008 CT 13980
2007 CT 5356
2007 CT 5339
2008 CT 15881
2008 CT 13983
2008 CT 6501
2008 CT 8995
2008 CT 13987**

Defendant.

ORDER ON DEFENDANT'S MOTION TO SUPPRESS

THIS MATTER was heard on the consolidated cases of the Defendant's Motion to Suppress on January 14, 2009, and the court having heard the testimony presented, argument of counsel, and after otherwise being fully advised of the premises, hereby finds as set forth below.

ISSUE

Does the Sarasota County Sheriff's Department DUI/Safety Checkpoint Operational Plan used in conjunction with the arrests of the above-named Defendants fail to comply with *State v. Jones*, 483 So.2d 433 (Fla. 1986), and *Campbell v. State*, 679 So.2d 1168 (Fla. 1996), in that it did not set out sufficient neutral criteria so as to minimize the discretion of the officers at checkpoint?

For reasons set forth below, the Defendant's Motion to Suppress is GRANTED.

FACTS

All of the above-named Defendants drove into a DUI/Safety Checkpoint conducted by the Sarasota County Sheriff's Department (SSO) culminating in their arrests for Driving While Under the Influence. The checkpoints involved five (5) different dates and locations, however the parties stipulated that the same DUI/SAFETY CHECKPOINT OPERATIONAL PLAN (hereinafter referred to as PLAN) was used and followed in each case. This PLAN was admitted into evidence by stipulation of the parties.

The only witness to testify at the hearing was the Checkpoint Supervisor, Sgt. D. Seckendorf. The testimony of the checkpoint supervisor established that the PLAN was followed as drafted, with the caveat that the actual end time for each checkpoint varied.

ANALYSIS

DUI roadblocks involve seizures without any articulable suspicion of illegal activity. Their constitutionality therefore rests on requiring a set of written guidelines that cover in detail the procedures which the law enforcement officers are to follow. These guidelines are necessary to restrict the discretion of the officers and the potential for abuse. *State v. Jones*, 483 So.2d 433 (Fla. 1986); *Campbell v. State*, 679 So.2d 1168 (Fla. 1996). In so doing, the Florida Supreme Court noted that the requirement of written guidelines was not merely a formality and the courts should view each set of guidelines as a whole when determining the plan's sufficiency." *Campbell v. State*, 679 So.2d 1168 at 1170 (Fla. 1996).

The critical considerations in determining the lawfulness of warrantless temporary roadblocks established to apprehend persons driving under the influence of alcohol are (1) whether the roadblock is conducted pursuant to a written set of guidelines which substantially restrict the discretion of the field officers as to both operating procedures and the selection of vehicles; (2) whether the roadblock procedures assure the safety of motorists through the use of proper means such as adequate lighting, warning signs or signals, and clearly identifiable police officers; and (3) the degree of intrusion upon motorists including the length of detention of each motorist. *Campbell v. State*, 679 So.2d 1168 at 1170 (Fla. 1996).

In the instant cases, the PLAN is 5 pages long and divided into 6 separate sections. The first section sets out the location, date, and start and stop time for the checkpoint. The next section states the policy of the Sarasota County Sheriff's Department. The third section provides the objectives of the plan. The fourth section is entitled Job Descriptions which includes descriptions for the Checkpoint Line Officers, Secondary Screening Officers in Charge, Secondary Screening Officers, Vehicle Inventory and Tow Officers, Intoxylizer Operator, Roving Patrol Officers and Checkpoint Supervisor. The next section is entitled procedures and the final section covers the matter in which they provide areas for media and spectators to observe. The portion of the PLAN addressed by the Defendants is the section labeled Job Descriptions.

In delineating the job description of the Checkpoint Supervisor, the PLAN provided:

"The lead member of supervisory rank designated to coordinate all checkpoint activities, including briefing, debriefing, staffing, operations, and overall supervision. The Checkpoint Supervisor will also be responsible for ensuring the safety of motorists and officers participating in the checkpoint operation. The Checkpoint Supervisor will ensure the smooth operation of staging area and a smooth transition from(sic) checkpoint to secondary screening areas. *The checkpoint supervisor (OIC) has the authority to make changes during the checkpoint as needed.*"¹

Also, the very end of the written PLAN provides that "...Officer discretion will not be used in adjusting the plan with the exception of the checkpoint supervisor who will document the reason(s) for any adjustments."

Under a simple reading of the PLAN, the provisions noted above give the Supervisor the authority to modify the PLAN² at any time with undeveloped contingency plans which is contrary to the mandate in *Jones* and *Campbell*. See *Guy v. State*, 993 So.2d 77 at 78 (Fla. 2d DCA 2008). Written neutral criteria is necessary to limit the

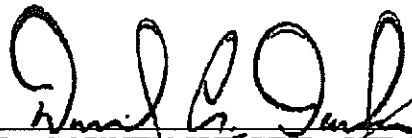
¹ The italics and underlining is exactly how it is written in the actual PLAN that was introduced into evidence and thus one would argue indicates its importance as it relates to that paragraph and to the plan as a whole.

² Including but not limited to the vehicle selection procedure.

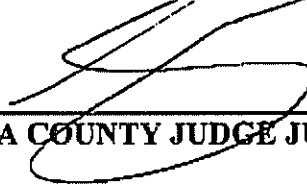
conduct of the officers at these checkpoints. *Guy v. State*, 993 So.2d 77 (Fla. 2d DCA 2008). In the absence of an operational plan that adequately limits the actions of the checkpoint supervisor as to the selection of vehicles, safety of motorists, safety of officers participating, and the transition from checkpoint to secondary screening, this court is compelled to follow *Guy* and find the PLAN to be legally insufficient.

IT IS THEREFORE ORDERED AND ADJUDGED that Defendant's Motion to Suppress is Granted and the State of Florida shall be precluded from introducing any evidence of the standardized field sobriety tests, statements made by the Defendant, the results of any breath/blood tests taken as a result of the stop, and any observations of the Defendant made after the stop at the checkpoint.

DONE AND ORDERED in Chambers in Sarasota, Sarasota County, Florida, January 26, 2009.



SARASOTA COUNTY JUDGE DAVID L. DENKIN



SARASOTA COUNTY JUDGE JUDY GOLDMAN

Copies Furnished To:

Assistant State Attorney, Olivier F. Lindeman by fax
Defense Attorney, Tom Hudson, Darren Finebloom, Derek Byrd by fax



STATE OF FLORIDA
TWELFTH JUDICIAL CIRCUIT

P.O. Box 48927
SARASOTA, FLORIDA 34230
TELEPHONE (941) 861-7895
FACSIMILE (941) 861-7919

DAVID L. DENKIN
COUNTY JUDGE

DATE: January 26, 2009

TO:	Olivier F. Lindeman, Assistant State Attorney	#861-4342
	✓ Tom Hudson, Esquire	#358-5477
	Darren Finebloom	#365-6579
	Derek Byrd	#954-0880

FROM: Joann – Judge David L. Denkin

RE: Order on Defendant's Motion to Suppress heard January 14, 2009

5 pages including cover sheet.

Thank you.
Joann