

Crash, Boom, Bang



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Court Changes Roadblock Law

In November 2009, the WV Supreme Court handed down *State v. Sigler*, (2009), forever changing the way law enforcement agencies can operate roadblocks in the state of WV.

Sigler and the “Safety Check”

On January 27, 2008, around 3:22 a.m., Linda S. Sigler, was traveling within the City of Gauley Bridge, Fayette County. As she approached an intersection, Sigler encountered the parked police car of a police officer blocking her path. The police car was parked in the road, with blue flashing lights. The officer was the only officer present. The officer had decided to set up the roadblock to conduct a “Safety Check” along this particular road because there had been little law enforcement activity that evening. The officer was not looking for drunk drivers but just making sure every driver had a driver’s license, registration and insurance.



The officer, who was not wearing a reflective vest but was holding a flashlight, motioned for appellant Sigler to stop. The officer then requested that she present her driver's license, vehicle registration and proof of insurance. The officer detected the odor of alcohol and saw two cans of beer in the console of Sigler’s truck.

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The officer questioned appellant Sigler, who then stated that she had consumed five to six beers earlier. The officer requested that Sigler pull to the side of the road and exit the truck. Sigler failed three field sobriety tests, and was given a preliminary breath test.

Sigler was then driven to Fayetteville where a secondary test was to be administered. Sigler refused to give a sample for use in this test. After the officer determined that appellant Sigler had two previous Driving Under the Influence convictions, the officer arrested Sigler for DUI 3rd.

Sigler was convicted of DUI 3rd and appealed her conviction based on the use of the roadblock.

Mullens and the “Administrative Road Check”

John R. Mullens was arrested for driving under the influence at about 8 p.m. on September 28, 2007, in Fayette County. Mullens was stopped as part of two officer checkpoint for “administrative checks.” An administrative check was a check for registration, proof of insurance and driver's license.

Mullens approached a split in the road where he encountered two deputies in the middle of the road. Each Deputy was wearing a uniform and holding a flashlight, but neither had on bright orange reflective safety vests that officers ordinarily wear in traffic situations. There was no roadside sign indicating the existence of a safety or administrative check or requesting that vehicles stop. There were no roadside flares in use or other cautionary lights to indicate that traffic needed to stop.

At the roadblock the deputy requested that Mullens produce his driver's license, vehicle registration and proof of insurance. Mullens complied with the request. The deputy requested that Mullens pull into the parking lot. Mullens was asked to exit the vehicle. The deputy smelled alcohol on Mullens. Mullens failed a preliminary breath test and after completing a secondary breath test, his blood alcohol content registered at .161.

Mullens was convicted of DUI and appealed.





Because neither of the roadblocks in the Sigler case or Mullens case were set up to determine the sobriety of the drivers neither of the roadblocks were conducted pursuant a valid checkpoint policy. Neither of the roadblocks had flares, adequate lighting or signs notifying the drivers of the stop.



Upon appeal to the WV Supreme Court the State argued that “Safety Checks” or “Administrative Road Checks” are manifestly different from sobriety or DUI checkpoints, in which law enforcement officers in the field are required to follow strict guidelines with a minimum of discretion in their actions. The WV Supreme Court disagreed with the State and over-turned the convictions of both defendants.



The Court ruled that a roadblock should be governed by the balancing test established in *Brown v. Texas*, 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979). As such these factors should be considered: (1) the gravity of the public concern that is being addressed or served by the checkpoint; (2) the degree to which the checkpoint is likely to succeed in serving this public interest; and (3) the severity with which the checkpoint interferes with individual liberty.



Suspicionless roadblocks are constitutional in West Virginia **only** when conducted 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.



So where does that leave law enforcement agencies in WV wanting to conduct a roadblock? The first question to answer is “will the checkpoint be suspicionless?” If there is a public emergency that requires a roadblock (fugitive loose, public safety, etc.) this case does not apply. This case dealt only with suspicionless roadblocks.



If the agency would like to set up a suspicionless roadblock where they will stop every car or every arbitrary number of cars to check for the specific violation then the agency must have a written policy.



The agency is now faced with several options. First, if they have a valid written DUI checkpoint policy, they may wish to conduct only DUI checkpoints. Or they may take a valid DUI check-



point policy, make minor changes to it and create additional policies that would govern other checkpoints such as safety checkpoints, seatbelt checkpoints, etc.

Attached is a copy of a Model Checkpoint Policy that can be quickly and easily modified to fit any type of suspicionless checkpoint.

If there are any questions please feel free to contact the Traffic Safety Resource Prosecutor at the Prosecuting Attorney's Institute by email @ brian.j.lanham@wv.gov, or phone 304-558-3348.



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