

EXAMINERS' ANALYSIS OF QUESTION NO. 10

1. The Constitutionality of Sobriety Checkpoints under the U.S. Constitution: The Fourth Amendment to the United States Constitution is binding on the states under the Due Process provisions of the Fourteenth Amendment. The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," and further provides that "no Warrants shall issue, but upon probable cause." Thus, the Fourth Amendment prohibits unreasonable searches and seizures in the absence of a warrant issued upon a showing of probable cause. A recognized exception to the warrant requirement permits an automobile to be searched or seized where there is probable cause to believe that evidence of a crime will be found in a lawfully stopped vehicle or that the vehicle contains or is itself contraband. *Florida v White*, 526 US 559 (1999).

A vehicle stopped at a highway checkpoint is a "seizure" within the meaning of the Fourth Amendment. *US v Martinez-Fuerte*, 428 US 543 (1976). Under these facts, no warrant was issued authorizing the sobriety checkpoint and no probable cause existed to justify it. Because the Fourth Amendment protects against "unreasonable searches and seizures," the dispositive issue regarding the constitutionality of the sobriety checkpoint is whether the seizure is reasonable. *Michigan State Police v Sitz*, 496 US 444, 450 (1990). A search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing, and the court has "recognized only limited circumstances in which the usual rule does not apply." *City of Indianapolis v Edmond*, 531 US 32, 37 (2000).

Sitz, *supra*, was one of those "limited circumstances" permitting a warrantless seizure without individualized suspicion of wrongdoing. In *Sitz*, the court employed a three-part balancing test derived from *Brown v Texas*, 443 US 47 (1979). Applying the *Brown* factors in the context of the facts presented, the court balanced (1) the state's interest in preventing accidents caused by drunk drivers; (2) the degree to which the sobriety checkpoint advances the state's interest; and (3) the level of intrusion on an individual's privacy caused by the checkpoints.

Regarding the first factor, the Supreme Court observed that states have a "grave and legitimate" interest in curbing drunk

driving, as thousands of deaths and billions of dollars in property damage are caused by intoxicated drivers. *Sitz, supra* at 451. Regarding the second factor, the Supreme Court concluded that sobriety checkpoints advanced the state's interests in diminishing drunk driving. The question of whether sobriety checkpoints are sufficiently "effective" was not synonymous with the question of whether sobriety checkpoints advanced the state's interest. So long as the chosen method was a "reasonable alternative law enforcement technique[]," deference must be given to local "governmental officials who have a unique understanding of, and a responsibility for, limited public resources, including a finite number of police officers." *Sitz, supra* at 454. The Supreme Court also concluded that the level of intrusion imposed upon motorists passing through the checkpoint was "slight" -- less than one minute. The Supreme Court emphasized that "the circumstances surrounding a checkpoint stop and search are far less intrusive than those attending a roving patrol stop. Roving patrols often operate at night on seldom-traveled roads, and their approach may frighten motorists. At traffic checkpoints, the motorist can see that other vehicles are being stopped, he can see visible signs of the Officers' authority, and he is much less likely to be frightened or annoyed by the intrusion." *Sitz, supra* at 453, quoting *People v Ortiz*, 422 US 891, 894-895 (1975).

Pursuant to *Sitz*, plaintiffs are unlikely to prevail in their claim that sobriety checkpoints violate the Fourth Amendment of the United States Constitution.

2. Constitutionality of the Checkpoints under the Michigan Constitution: That sobriety checkpoints do not violate the Fourth Amendment to the United States Constitution does not determine whether sobriety checkpoints are permissible under the Michigan Constitution. The Michigan Constitution of 1963 contains a provision prohibiting unreasonable searches and seizures. Specifically, Const 1963, art 1, § 11 provides in pertinent part:

"The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation."

While the provision is similar to the Fourth Amendment of the United States Constitution, it is not identical. When there is a clash of competing rights under the state and federal constitutions, the federal right prevails under the Supremacy Clause of the US Constitution. However, individual states are free to interpret their own constitutions as providing greater

protections than does the Federal Constitution. *California v Ramos*, 463 US 992 (1983); *California v Greenwood*, 486 US 35 (1988).

In *People v Collins*, 438 Mich 8, 25 (1991), the Michigan Supreme Court held that Const 1963, art 1, § 11 should "be construed to provide the same protection as that secured by the Fourth Amendment, absent 'compelling reason' to impose a different interpretation." A compelling reason exists where there is a "principled basis in this history of [Michigan] jurisprudence for the creation of new rights." *Sitz v Dep't of State*, 443 Mich 744 (1993). (*Sitz II*).

In *Sitz II*, the Michigan Supreme Court specifically considered the constitutionality of sobriety checkpoints and concluded there existed compelling reason to interpret Const 1963, art 1, § 11, as providing greater protection than the protection afforded under the Fourth Amendment to the United States Constitution. The Michigan Supreme Court reviewed several cases as well as the constitutional history of Michigan in holding that "the history of our jurisprudence conclusively demonstrates that, in the context of automobile seizures," Michigan's constitution "extended more expansive protection to our citizens than that extended" by the Fourth Amendment to the United States Constitution. Thus, the Michigan Supreme Court held that sobriety checkpoints violate Const 1963, art 1, § 11. *Sitz II*.

Pursuant to *Sitz II*, plaintiffs are likely to prevail in their claim that sobriety checkpoints violate the Michigan Constitution of 1963, art 1, § 11.