

DWI Checkpoints and Chase Cars

The basic regulations governing DWI checkpoints were laid out many years ago by the US Supreme Court in *Michigan State Police v. Sitz*, 496 US 444 (1990), and the New York State Court of Appeals in *People v. Scott*, 63 NY2d 518 (1984), which ruled that the use of DWI checkpoints by law enforcement is permissible under the Fourth Amendment of the US Constitution if certain criteria are followed. These criteria can be summarized as follows:

- a. First, the DWI checkpoint must be conducted pursuant to explicit regulations which circumscribe the discretion of the officers in terms of site selection for the location of the roadblock.
- b. Second, the regulations must require that vehicles be stopped according to wholly uniform and neutral criteria, such as the stopping of every car or every fourth car.
- c. Third, the initial observation and questioning must be brief and limited to inquiries regarding the driver's license, vehicle registration, insurance and proof of inspection; *see Sitz* at pp. 453; *Scott* at pp. 526-27.

Based on these and other court rulings, most law enforcement agencies have adopted written regulations for use in conducting their DWI checkpoints. Checkpoints conducted pursuant to such guidelines insure that totally objective and neutral criteria are utilized by the officers in determining who gets stopped and that the intrusion on the motorist remains minimal.

When DWI checkpoints are conducted pursuant to such regulations, one of the few remaining areas of contention is the validity of stops made by "chase cars" stationed at the checkpoint to pull over drivers who make U-turns or otherwise attempt to evade the checkpoint. Whether these chase cars can pull over a vehicle for evading the checkpoint if that vehicle has not committed a Vehicle and Traffic violation is an issue on which New York State courts have split.

In the seminal checkpoint case in New York State, *People v. Scott*, 63 NY2d 518 (1984), the Court of Appeals noted that "two patrol cars were stationed in the area *to follow and observe for possible violations any vehicle that avoided the roadblock* by making a U-turn," *Scott* at p. 524. The design of this checkpoint, which was approved by the Court of Appeals, apparently did not involve pulling over cars merely for avoiding the checkpoint, but instead only involved following such drivers to observe their driving. As a result, the question was left open as to whether drivers *could* be pulled over merely for avoiding the checkpoint.

In *People v. Chaffee*, 183 AD2d 208 (4th Dept. 1992), a driver was stopped by a chase car under the following circumstances:

the vehicle made a "very quick stop" in the road and turned right into a motel parking lot. The Trooper followed that car into the lot and observed that it circled the lot two times, passing numerous parking spaces. The occupants were looking toward the roadblock. It was only after the Trooper activated his roof lights that the car pulled into a parking space.

Chaffee at p. 209.

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The Appellate Division, Fourth Department found that “[i]n the circumstances of this case, we conclude that the Trooper properly pursued defendant's vehicle, which appeared to be avoiding the checkpoint. When it appeared that defendant was not a patron of the motel, the Trooper's suspicions were confirmed, thus rendering the stop lawful,” *Chaffee* at p. 211.

This view, however, has not been supported in all New York State courts. For example, in *People v. Rocket*, 156 Misc2d 641 (Pleasant Valley Just. Ct. 1992), the court dismissed an arrest made by a chase car, noting that:

While there are a number of cases which suggest that the avoidance of a checkpoint is in fact an articulable reason for a stop (*Snyder v State*, 538 NE2d 961 (Ind 1989); *State v Thill*, 474 NW2d 86 (SD 1991); *Commonwealth v Metz*, 412 Pa Super 100, 602 A2d 1328 (1992); *Commonwealth v Eaves*, 13 Va App 162, 408 SE2d 925 (1991)) it appears that the prevailing view and that more consistent with the articulations made by the United States Supreme Court is that the mere making of a U-turn or a turnoff to avoid a DWI checkpoint is not, in and of itself, sufficient basis for a stop. (See, *Murphy v Commonwealth*, 9 Va App 139, 384 SE2d 125 (1989); *Howard v Voshell*, Del Super Ct, June 19, 1992, Ridgely, J.; *State v Powell*, 591 A2d 1306 (Me 1991).)

Rocket at p. 644.

In *People v. Bigger*, 2 Misc3d 937 (Webster Just. Ct. 2004), the court noted that *Chaffee, supra*, was the law of the Fourth Department, but found the stop of a driver who was avoiding a checkpoint flawed on the following grounds:

First, the officer did not have an objective articulable reason to stop the defendant's vehicle [because the vehicle had not committed any traffic infraction in avoiding the checkpoint]. Thus, he lacked "reasonable suspicion" as required by C.P.L. Section 140.50(1) to stop the vehicle in question. Second, the officer executing the stop was not part of the sobriety checkpoint. Third, there was no written established procedure for the stopping of vehicles that appeared to be avoiding said sobriety checkpoint. Therefore, the charges against the defendant are dismissed, because the stop of the defendant's vehicle was not justified.

Bigger at p. 943.

While the issues surrounding chase cars have not been completely clarified in New York State, it appears that members of law enforcement should, minimally, consider the following steps to help avoid having stops made by chase cars dismissed:

1. Incorporate into the written criteria for operation of the checkpoint the duties of the chase cars in stopping vehicles.
2. Make sure the checkpoint is clearly marked from a distance away so that drivers cannot claim they turned around because they thought some other activity was occurring up ahead, such as emergency vehicle response to a car accident.
3. Inform chase car officers that if they pull over a vehicle that has not committed a traffic infraction, they should be able to articulate *why* they believed the vehicle was deliberately avoiding the checkpoint (*e.g.*, if a vehicle pulls onto a side street, the chase cars may wish to ascertain that the driver does not live on that street before making a stop).
4. Only have chase cars pull over vehicles that appear to be avoiding the checkpoint. Do not have other law enforcement members that may be in the area pull over vehicles.