

No. 1-14-2173

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. YW 153993
)	
ERIC SIMMONS,)	Honorable
)	Ann F. Collins,
Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

ORDER

¶ 1 *Held:* We reversed the order granting defendant's amended motion to quash and suppress and remanded for further proceedings, finding that the roadblock stop pursuant to which he was arrested for driving under the influence did not violate the fourth amendment.

¶ 2 The State charged defendant, Eric Simmons, with driving under the influence of alcohol. Defendant filed an amended motion to quash his traffic stop and suppress evidence, which the trial court granted. The State appeals. We reverse and remand for further proceedings.

¶ 3 At a roadside safety check (roadblock) set by the Hillside police department on July 6, 2013, in the 200 block of North Mannheim Road, defendant was detained and arrested for driving under the influence (DUI) at 12:34 a.m.

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¶ 4 Defendant filed an amended motion to quash his traffic stop and suppress the evidence on the basis that the roadblock stop was an illegal seizure under the fourth amendment of the United States Constitution (U.S. Const., amend. IV).

¶ 5 At the hearing on defendant's amended motion to quash and suppress, Officer Christopher Mehl of the Hillside police department testified that he participated in the roadblock in the 200 block of North Mannheim Road during the overnight hours of July 5, 2013, to July 6, 2013.

¶ 6 On the evening of July 5, 2013, prior to participating in the roadblock, Officer Mehl attended a briefing during which Officer Villarreal informed the officers that they were to set up the roadblock on the 200 block of North Mannheim Road. One officer would be assigned to the street as a "counter," tasked with waving vehicles into a designated parking lot. The remaining officers would be in the parking lot, and they would ask those drivers waved in to produce their driver's licenses and proof of insurance. The drivers that presented those items would be allowed to pass through and go back onto Mannheim Road.

¶ 7 Although the Hillside police department has written guidelines for conducting roadblocks, Officer Mehl did not receive a copy of those written guidelines at the briefing.

¶ 8 During the roadblock, Officer Mehl was one of the officers in the parking lot. He testified that it took only "a few seconds" to wave a vehicle to the parking lot, check the driver's license and insurance, and allow the vehicle to pass back onto Mannheim Road.

¶ 9 Officer Chris Villarreal testified he has been a patrol officer for the Hillside police department for almost 14 years and has participated in at least 12 roadblocks. The chief of the Hillside police department (the highest ranking person in the department) authorized Officer Villarreal to organize the roadblock over the July 4 weekend and he was given the title of

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"Project Director for the Sustained Traffic Enforcement Program Grant from the Illinois Department of Transportation." Pursuant thereto, Officer Villarreal scheduled the roadblock, maintained all relevant paperwork, and organized the overtime sheets for officers to sign up and take part in the roadblock. The purpose of the roadblock was to "detect and arrest impaired drivers and also to enforce occupant protection laws."

¶ 10 Seven officers signed up for the roadblock, including Sergeant Abenante, the second highest-ranking officer in the Hillside police department, who acted as the supervisor. All seven officers were proficient in and trained to administer field sobriety tests. The site of the roadblock, in the 200 block of North Mannheim Road, was selected by Officer Villarreal in collaboration with the chief of police and Sergeant Abenante.

¶ 11 Prior to the roadblock, Officer Villarreal prepared a press release for immediate release on June 19, 2013, from a premade template provided by the Illinois Department of Transportation, which he submitted to Suburban Life newspaper. This press release was on Hillside police department letterhead and stated, in pertinent part, that the Hillside police department would be joining the Illinois State Police and hundreds of police and sheriff's departments in a statewide "crackdown" on drunk and unbuckled drivers on June 28, 2013, through July 7, 2013.

¶ 12 A publically accessible webpage, MySuburbanLife.com, published a summary of the press release on June 28, 2013, stating that the Hillside police department would be targeting drunk and unbuckled drivers from June 28, 2013, to July 7, 2013, as part of two statewide campaigns "especially during late-night hours, in the days leading up to and after the Fourth of July."

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¶ 13 Officer Villarreal also provided the press release to the person who administers the Hillside police department's website. Officer Villarreal identified a printout of the HillsidePolice.com website from June 22, 2013, that stated:

"The Hillside Police Department (HPD) will join the Illinois State Police and hundreds of police and sheriff's departments in a statewide enforcement effort that begins June 28 and runs through July 7th, 2013. During this time frame, HPD will be conducting roadside safety checks and saturation patrols focusing on impaired drivers as well as seat belt enforcement."

¶ 14 On the date of the roadblock, July 5, 2013, Sergeant Abenante conducted a briefing in the roll call room for the officers involved and reviewed the Hillside police department's written guidelines and procedures for conducting the roadblock, relevant laws, and the overall goals of the roadblock. None of the officers voiced any questions or concerns.

¶ 15 The roadblock took place in the 200 block of North Mannheim Road in Hillside. This location had been used at least 10 prior times for roadblocks, and consists of four lanes, with two lanes going north and two lanes going south. Officer Villarreal testified the officers "were able to take one lane down and allow traffic to flow through in the other lane." There was also "easy ingress and egress from the secondary parking lot where [the officers performed] additional observation and inspection of the vehicles and drivers."

¶ 16 When conducting the roadblock, the officers used a marked squad car with emergency overhead flashing lights activated, orange traffic cones, LED flairs flashing and blinking in different patterns on the roadway, and a fold-up sign stating: "Stop, police checkpoint." The officers were in "full uniform."

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¶ 17 Officer Villarreal was the officer who waved vehicles into the parking lot. He wore a reflective vest and had a flashlight. Pursuant to Sergeant Abenante's instructions, Officer Villarreal directed every fourth car into the parking lot, advising the driver that the purpose of the stop was to perform a roadside safety check. The location at which he was redirecting vehicles was about two feet from the parking lot.

¶ 18 A line of cones was placed down the middle of the parking lot entrance and exit to clearly delineate where cars would go in and go out. The officers in the parking lot also told the drivers where to go. Each driver was directed to one of three lanes in the parking lot, where an officer asked to see the driver's license and proof of insurance. If the driver produced those items and did not appear to be under the influence of alcohol or unbuckled, he was directed to leave the parking lot and exit onto Mannheim Road. Officer Villarreal estimated that it took only about two or three minutes for an unimpaired driver to be flagged into the parking lot, produce the driver's license and proof of insurance and exit onto Mannheim Road.

¶ 19 If the driver appeared impaired or unbuckled or was unable to produce his license or proof of insurance, he was directed to a nearby "secondary area" in the parking lot, where "appropriate enforcement action" was taken.

¶ 20 Sergeant Abenante testified he was the supervisor of the July 5 and July 6 roadblock on the 200 block of North Mannheim Road and had previously supervised 10 to 12 roadblocks at that location. As a sergeant, his rank in the Hillside police department was just below that of the chief of police, above the other patrol officers.

¶ 21 Approximately 15 minutes prior to the roadblock, Sergeant Abenante held a briefing in the roll call room with the other officers and with whom he reviewed the Hillside police department's written guidelines and protocol for performing the roadblock. He assigned each

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officer a specific duty. The officers were not permitted to reassign themselves to other duties. Sergeant Abenante subsequently positioned himself in the parking lot where he could watch all of the officers. None of the officers violated any of the roadblock guidelines or reassigned themselves to other duties.

¶ 22 During the July 5 and July 6 roadblock at issue here, the Hillside police department made three arrests and issued 22 traffic citations.

¶ 23 Following all the evidence, the trial court granted defendant's amended motion to quash his traffic stop and suppress evidence. The trial court found "no evidence" that the press release containing notification of the Hillside police department's crackdown on drunk and unbuckled drivers was released to the public prior to the roadblock. The trial court further found that the notice of the crackdown on drunk and unbuckled drivers contained in the press release and on the MySuburban.com webpage, and the notice of the roadblock contained on the Hillside police department's website, failed to give the precise date and location of the roadblock and, thus, defendant was unreasonably seized under the fourth amendment. The State filed a motion to reconsider, which the trial court denied.

¶ 24 The State appeals.

¶ 25 When reviewing a ruling on a motion to quash and suppress, we accord great deference to the trial court's findings of fact and will reverse them only if they are against the manifest weight of the evidence. *People v. Walter*, 374 Ill. App. 3d 763, 765 (2007). However, we review *de novo* the ultimate question of whether the motion to quash and suppress should be granted on a given set of facts. *Id.*

¶ 26 The fourth amendment to the United States Constitution guarantees "[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. In a motion to suppress, defendant bears the burden of establishing that the search or seizure was unreasonable or unlawful. *People v. Juarbe*, 318 Ill. App. 3d 1040, 1049 (2001). After defendant has made a *prima facie* case, the burden shifts to the State to provide evidence to justify the stop. *Id.*

¶ 27 The issue here is whether the trial court erred in finding that defendant's roadblock stop was an unlawful seizure and in granting the amended motion to quash and suppress.

¶ 28 *People v. Bartley*, 109 Ill. 2d 273 (1985), is dispositive and, therefore, we analyze it in depth. In *Bartley*, officers set up a roadblock on a five-lane highway, using police vehicles with flashing lights to "funnel the westbound traffic into a single lane." *Id.* at 277-78. The decision to establish the roadblock was made in advance by supervisory personnel, and their objective was to stop every westbound vehicle to check driver's licenses and identify drivers driving under the influence. *Id.* The defendant there, Jimmy L. Bartley, was detained at the roadblock and arrested for DUI. *Id.* at 276. The circuit court granted Mr. Bartley's motion to suppress and the appellate court affirmed. *Id.* The State appealed to the supreme court. *Id.* at 276-77.

¶ 29 Our supreme court noted that a roadblock stop is a seizure for fourth amendment purposes (*id.* at 280), and that determining whether Mr. Bartley's seizure was a reasonable one under the fourth amendment required balancing the public interest in the purpose of the roadblock against the objective and subjective intrusion to the drivers stopped. *Id.* at 285. The supreme court explained that the objective intrusion is measured by such factors as the length of the average stop, the nature of the questioning of the drivers, and whether searches of the drivers were conducted. *Id.* at 282. The subjective intrusion relates to the generating of fright or annoyance on the part of the motorists stopped. *Id.*

¶ 30 Addressing the public interest factor, our supreme court held that "drivers under the influence of alcohol pose a substantial threat to the welfare of the citizenry of Illinois" such that it would "justify some intrusion on the unfettered movement of traffic in order to reduce alcohol-related accidents and deter driving under the influence." *Id.* at 285.

¶ 31 Turning to the objective intrusiveness of the roadblock, our supreme court held that it had been minimal. *Id.* at 287. Motorists had been detained only 15 to 20 seconds unless further questioning was necessary, they were able to remain in their cars, and they were asked to produce "driving credentials," a legitimate request. *Id.* at 287-88.

¶ 32 Addressing the degree of subjective intrusion occasioned by the roadblock, our supreme court stated that "[i]t is manifest that the fundamental evil to be avoided is the 'roving patrol.'" *Id.* at 288. Specifically, the court stated that the fear and annoyance felt by drivers subject to "roadblock stops which operate like roving patrols may, in some cases, invalidate such roadblocks." *Id.* However, where the officers' discretion is circumscribed, and the roadblock is established and operated in a safe manner, the subjective intrusion on drivers is minimal because they have no reason to fear that their safety is endangered or that they are being singled out for discriminatory enforcement. *Id.*

¶ 33 Our supreme court held that the "crucial inquiry" was "whether the field officers [were] acting with unbridled discretion." *Id.* at 289. It looked to several factors pertinent to this inquiry, including: whether the decision to establish the roadblock, and where to locate it, was made by supervisory-level personnel; whether vehicles were stopped in a preestablished, systematic manner; and whether guidelines were in place for operating the roadblock. *Id.* at 289-90.

¶ 34 Our supreme court noted that in the case before it, the decision to establish the roadblock, and where to locate it, was made by supervisory personnel, a captain and lieutenant of the Illinois State Police. *Id.* at 289. Each westbound vehicle was stopped; such a procedure was "sufficiently systematic to avoid any concern by motorists that they were being singled out." *Id.* Further, the Illinois State Police held a briefing immediately prior to the roadblock in which they discussed the guidelines established by the State Police manual on the proper procedure for operating the roadblock. *Id.* at 290.

¶ 35 Accordingly, our supreme court held the individual officers involved in the roadblock did not have unlimited discretion, nor did the roadblock have the characteristics of a roving patrol. *Id.* at 292. The supreme court further held that "[i]n addition to procedures which guard against unbridled discretion of police officers, the anxiety to motorists which may result from a roadblock is allayed if there is a sufficient show of the official nature of the operation and if it is obvious that the roadblock in fact poses no safety risk." *Id.* at 291. Our supreme court noted that in the case before it, the several police vehicles with flashing lights and the uniformed officers sufficiently demonstrated the official nature of the operation. *Id.* The safety features also were adequate because the roadblock was set up in a well-lighted, moderately trafficked area. *Id.*

¶ 36 Finally, our supreme court held that "[a]dvance publicity of the intention of the police to establish DUI roadblocks, without designating specific locations at which they will be conducted, also serves to minimize any apprehension motorists may otherwise experience upon encountering one." *Id.* In the case before it, the police did not publicize that the roadblock was to detect and deter drunken drivers; however, our supreme court found that, given all the other factors serving to reduce the subjective intrusion: "the lack of advance publicity is not sufficient to invalidate this roadblock." *Id.* 292.

¶ 37 Accordingly, our supreme court held that "[i]nasmuch as the State interest here is compelling and both the objective and subjective intrusion were minimal, the roadblock did not violate the strictures of the fourth amendment." *Id.* at 292-93. Therefore, our supreme court reversed the suppression order and remanded for further proceedings. *Id.* at 293.

¶ 38 We proceed to apply the *Bartley* factors to determine whether the roadblock at issue here passes constitutional muster.

¶ 39 First we consider the public interest in the purposes for which the roadblock was conducted. The roadblock on July 5 and July 6 on the 200 block of North Mannheim Road was conducted to "crackdown" on drunk and unbuckled drivers. Given the "substantial threat to the welfare of the citizenry of Illinois" posed by drunk drivers, our supreme court has found a legitimate public purpose for a roadblock designed to deter driving under the influence. *Id.* at 285-87. See also *People v. Wells*, 241 Ill. App. 3d 141 (1993) (finding a roadblock passed constitutional muster where its purpose was, in part, to check for seat belt violations in addition to intoxicated drivers). Accordingly, we find the roadblock here was in the public interest.

¶ 40 Defendant argues that the roadblock was ineffective in protecting the public interest because only a very small percentage of all drivers stopped were cited or arrested for violations. Defendant forfeited review of this argument by failing to cite any relevant authority holding that a set minimum percentage of drivers must be cited or arrested by police officers in order for a roadblock stop to satisfy the fourth amendment. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016).

¶ 41 Next, we address the objective intrusiveness of the roadblock, which, as discussed, is measured by the length of the average driver's stop, the nature of the questioning of the drivers, and whether searches of the drivers were conducted. *Bartley*, 109 Ill. 2d at 282. During the roadblock, the average motorist was detained only a few seconds, according to Officer Mehl, or

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two or three minutes, according to Officer Villarreal, unless further questioning was necessary due to his appearing impaired or unbuckled or due to an inability to produce his driver's license or proof of insurance. The motorists were able to remain in their cars, they were only asked to produce their driver's license and proof of insurance, a legitimate request (*id.* at 288), and their vehicles were not searched. We find the roadblock was not objectively intrusive. See *People v. Bruni*, 406 Ill. App. 3d 165 (2010) (finding that a roadblock stop in which drivers were asked for their license and insurance card and that was a "few" minutes in length was not objectively intrusive).

¶ 42 Next, we address the subjective intrusiveness of the roadblock, which, as discussed, is measured by whether the officers involved were acting with unbridled discretion such that the motorists feared their safety was endangered or that they were being singled out for discriminatory enforcement. *Bartley*, 109 Ill. 2d at 288-89.

¶ 43 The first factor to consider in determining whether the officers were acting with unbridled discretion is whether the decision to establish the roadblock, and where to locate it, was made by supervisory-level personnel. *Id.* at 289. The decision here to establish the roadblock was made by the chief of police of the Hillside police department, the highest ranking person in the department. The decision where to locate it was made jointly by the chief of police, Sergeant Abenante, the second-highest ranking member of the department, and Officer Villarreal, who had been authorized by the chief of police to organize the roadblock and given the title of Project Director. We find that the decision to establish the roadblock, and where to locate it, was made by supervisory-level personnel.

¶ 44 The next factor is whether the vehicles were stopped in a preestablished, systematic manner. *Id.* Sergeant Abenante instructed Officer Villarreal "to direct every fourth car that

came down the roadway into the secondary area," *i.e.*, into the nearby parking lot, where another officer asked the driver for his license and proof of insurance. Officer Villarreal had a hand-held counter to assist him in counting every fourth car, and he complied with Sergeant Abenante's instructions and waved every fourth car into the parking lot. We find that the vehicles were stopped in a preestablished, systematic manner.

¶ 45 The third factor in determining whether the officers were acting with unbridled discretion is whether guidelines were in place for operating the roadblock. *Id.* at 289-90. Fifteen minutes prior to the roadblock, Sergeant Abenante held a briefing for the officers involved and reviewed the Hillside police department's written guidelines for conducting the roadblock.

¶ 46 Defendant contends the written guidelines were too general to prevent "unfettered discretion" by the officers taking part in the roadblock.

¶ 47 We disagree. The written guidelines, which were admitted at the hearing and are contained in the record on appeal, state in relevant part:

"The frequency of vehicles stopped will be determined by the supervisor, taking into account traffic conditions and personnel. The frequency of vehicles will be changed only by the supervisor, and the reason for the change will be documented in the follow-up report. Officers assigned have *no discretion* in the frequency of stopping cars."
(Emphasis added.)

In addition, the written guidelines state:

"Motorists stopped will be directed into a secondary area, out of traffic, and officers will request drivers licenses and proof of insurance. A valid drivers license on its face shall be deemed as valid. If the requested documents are produced and are valid, lacking any other violations, the motorist will be released without unreasonable delay."

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The written guidelines authorize the officers who observe violations to cite the drivers or issue warnings, "as appropriate."

¶ 48 Thus, these written guidelines contain language mandating that only the supervisor (Sergeant Abenante) will determine the frequency with which vehicles are stopped; setting forth where the vehicles are to be directed and the precise items the assisting officers will request from drivers; and directing the officers as to when they must allow the drivers to go without delay, and when they can issue citations or warnings. Sergeant Abenante reviewed these written guidelines with the officers involved in the roadblock and testified that the officers had no discretion to deviate from the guidelines.

¶ 49 We find that the individual officers involved in the roadblock did not have unlimited or unbridled discretion, nor did the roadblock have the characteristics of a roving patrol that would be violative of the fourth amendment.

¶ 50 In addition, when considering the subjective anxiety of the motorists resulting from the roadblock, we also consider whether there was a sufficient showing of the official nature of the operation and whether it was obvious that the roadblock posed no safety risk. *Id.* at 291. In this case, the presence of uniformed police officers, a marked squad car with emergency lights flashing, LED flairs flashing and blinking, orange traffic cones helping to direct traffic into and out of the parking lot, and a sign stating: "Stop, police checkpoint," all served to adequately demonstrate the official nature of the roadblock.

¶ 51 The roadblock posed no safety risk, as the location of the roadblock had been used at least 10 times before and consisted of four lanes of traffic in a light-to-moderately trafficked area, two lanes in either direction, and Officer Villarreal testified the officers "were able to take one lane down and allow traffic to flow through in the other lane." There was also "easy ingress

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and egress from the secondary parking lot where [the officers performed] additional observation and inspection of the vehicles and drivers." Additionally, Officer Villarreal testified the area where he was standing, flagging cars into the parking lot, was lit by streetlights and the flashing lights from the squad car, as well as from the flashlight he was holding to help direct traffic. The parking lot to which every fourth car was directed was lit by several mounted lights.

¶ 52 Finally, in considering the subjective intrusiveness of the roadblock, we consider any advance publicity of the intention of the Hillside police department to establish the roadblock. *Id.* As discussed, Officer Villarreal prepared a press release for immediate release on June 19, 2013, which he submitted to the Suburban Life newspaper, which stated that the Hillside police department would be joining with the Illinois State Police and hundreds of police and sheriff's departments in a statewide "crackdown" on drunk and unbuckled drivers from June 28, 2013, through July 7, 2013. A publically accessible webpage, MySuburbanLife.com, published a summary of the press release on June 28, 2013, noting that the Hillside police department would be targeting drunk and unbuckled drivers from June 28, 2013, to July 7, 2013, as part of two statewide campaigns "especially during late-night hours, in the days leading up to and after the Fourth of July." Finally, HillsidePolice.com provided this same information as of June 22, 2013, regarding the Hillside police department's participation in a statewide crackdown on drunk and unbuckled drivers from June 28, 2013, to July 7, 2013, and additionally stated that the Hillside police department would be "conducting roadside safety checks and saturation patrols focusing on impaired drivers as well as seat belt enforcement."

¶ 53 The trial court found that these notices of the Hillside police department's crackdown on drunk and unbuckled drivers did not state the precise date or location of the roadblock and

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therefore that defendant's stop constituted a fourth amendment violation. Defendant argues we should affirm the trial court's finding.¹

¶ 54 The trial court's finding of a fourth amendment violation was erroneous as a matter of law, where our supreme court specifically held in *Bartley* that advance publicity of the roadblock need *not* designate the specific location at which it will be conducted. *Id.* Further, in *Bartley*, our supreme court held that the complete lack of advance publicity was not sufficient to invalidate a roadblock where other factors served to reduce the subjective intrusion. *Id.* at 292. See also *People v. Little*, 162 Ill. App. 3d 6 (1987) (citing *Bartley* and holding that the lack of advance publicity does not invalidate a roadblock stop where other factors serve to reduce the subjective intrusion).

¶ 55 In the present case, as discussed above, all the *Bartley* factors served to reduce the subjective intrusion here.

¶ 56 On this record, the State's interest was compelling and both the objective and subjective intrusions were minimal, and therefore the roadblock did not violate the strictures of the fourth amendment. Therefore, we reverse the suppression order and remand the cause to the circuit court for further proceedings.

¶ 57 Reversed and remanded.

¹ The trial court additionally stated there was "no evidence" that the press release was actually released to the public prior to the roadblock. The trial court's finding was against the manifest weight of the evidence, where Officer Villarreal testified that he submitted the press release to the Suburban Life Newspaper prior to the July 5 and 6, 2013, roadblock and where the MySuburbanLife.com webpage published a summary of the press release on June 28, 2013. Officer Villarreal also testified he submitted the press release to the administrator of the Hillside police department's website, and he identified a printout of that website from June 22, 2013, which contained a summary of the press release. Defendant makes no argument on appeal that we should affirm the trial court's finding that the press release was not released to the public prior to the roadblock.