2012 IL App (2d) 110268-U
No. 2-11-0268
Order filed March 23, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellant,	)	
v.	)	No. 10-DT-2212
STEVEN McGUIRK,	)	Honorable Neal W. Cerne,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

Held: The trial court erred in granting defendant's motion to quash arrest and suppress evidence, where the evidence presented at the hearing on the motion established that no fourth amendment search or seizure occurred prior to the officers' developing a reasonable suspicion that defendant was not wearing a seatbelt; no fourth amendment seizure occurred when officers stood in the middle of the street and defendant slowly drove by; no fourth amendment search occurred when officer shined a flashlight through driver's side window to illuminate the interior of defendant's vehicle.

¶ 1 Defendant, Steven McGuirk, was charged with driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2010)) and driving while the alcohol concentration in his blood or breath was 0.08 or more (625 ILCS 5/11-501(a)(1) (West 2010)). The trial court granted defendant's

motion to quash arrest and suppress evidence on the basis that officers had arrested defendant as the result of an unconstitutional seatbelt enforcement checkpoint. The State filed a certificate of impairment and appeals pursuant to Illinois Supreme Court Rule 604(a)(1) (eff. July 1, 2006). For the following reasons, we reverse and remand.

¶ 2 BACKGROUND

¶ 3 The evidence at the hearing on defendant's motion to quash arrest and suppress evidence revealed the following. On May 28, 2010, around 11:52 p.m., defendant drove out of his apartment complex and began traveling eastbound on West Devon Avenue in the Village of Bartlett, Illinois. Defendant turned left onto East Devon Avenue, which dead-ends into West Devon to form a "T" intersection. The only stop sign at the intersection was for traffic on East Devon approaching West Devon. There was no stop sign for traffic turning left from West Devon onto East Devon.

¶ 4 Two officers from the Bartlett police department were standing on the double-yellow line in the center of East Devon, a few feet from the intersection with West Devon. The officers were in uniform and wore bright yellow vests with the word "police" in black lettering on the front and back. Each held a flashlight. The squad car belonging to one of the officers was parked in the grass at the corner of the intersection, but did not have its flashing lights on.

¶ 5 As defendant negotiated the left turn, he was traveling approximately 5 to 10 miles per hour, and he did not encounter a stop sign. He passed within a few feet of the officers. The first officer shined his flashlight through the driver's side window of the car at defendant's shoulder. The officer observed that defendant had no seatbelt across his shoulder. The officer raised his free hand and yelled "Stop!" The second officer also yelled "Stop!" Defendant continued driving at a normal rate of speed.

¶ 6 The first officer got in his squad car while the second officer remained at the intersection. The officer pulled defendant over less than one mile down the road. As a result of the traffic stop, the officer arrested defendant for DUI. He also cited defendant for failure to wear a seatbelt (625 ILCS 5/12-603 (West 2010)) and for disobeying a police officer (625 ILCS 5/11-203 (West 2010)).

¶ 7 Defendant testified at the hearing that he saw flashlights as he drove through the intersection but that he did not recognize the two individuals standing in the road as police officers. Defendant testified that he saw flashing lights in his rearview mirror shortly after he passed through the intersection.

¶ 8 Only the first officer testified at the hearing. He testified that he and his partner were conducting seatbelt enforcement pursuant to an Illinois Department of Transportation grant. He had signed up to do seatbelt enforcement as an overtime activity from 11:00 p.m. to 4:00 a.m. According to the officer, the sign-up sheet posted in the police department indicated that officers were required to issue at least one ticket per hour. It also indicated that the officers were required to post seatbelt-enforcement-zone signs, but only if they "were going to do a specific location for the entire night." The officer testified that, besides the sign-up sheet, "[t]here was no operational guideline," and there were no other specific instructions.

¶ 9 No supervisor instructed the two officers on where they were to conduct seatbelt enforcement, so they selected the locations themselves. The officers would choose a location, spend about an hour there, then move to another location. The officers did not set up "safety lanes or anything like that." They did not block off any portion of the road. Although they were not required to post seatbelt-enforcement-zone signs unless they were going to remain in one location all night, there were "signs posted all over town regarding the seatbelt enforcement," including one "about 50

feet south" of the intersection of West and East Devon. Otherwise, there were no signs specifically notifying motorists that they were entering a seatbelt enforcement zone. The officers were not stopping every vehicle, but only those drivers they observed not wearing a seatbelt. The traffic that night was "light," and the officer did not recall whether he had issued any tickets prior to his encounter with defendant.

¶ 10 The trial court granted defendant's motion to quash arrest and suppress evidence. The court first found the officer to be credible. The court then referenced *People v. Bartley*, 109 Ill. 2d 273 (1985), the first case in which the Illinois supreme court held that a DUI checkpoint was constitutional under the fourth amendment to the United States Constitution. The trial court concluded as follows:

> "And the Bartley case, in my mind, gave a lot of credence or a lot of support for allowing roadblocks and intrusions because of the idea that drunk driving is bad and that they need to do these stops. Roadblocks are needed to detect drunk drivers in order to save other people's lives is my interpretation. And I don't see the same interests that the State has when it comes to seat belts.
>
> So, with that said, with regards to this—to the—to the checkpoint, if you want to call it a checkpoint, it was not done according to what the law says and what the case says. There has to be warnings, plenty of light, so on and so forth.
>
> I think it was a checkpoint in the sense that the officer was in the middle of the road. He had to use a flashlight. And I think that is a search. It was not something that was in plain view.

If he was on the side of the road in the daylight and he saw a person without a seatbelt, then I agree that's perfectly fine. It's not—it's not a checkpoint. But I think the way this was conducted, I think it does fall within that definition.

***

In my mind, I don't know why the officer would be required to do a seatbelt initiative at night where it's going to require the flashing of flashlights into people's cars in order to see what's going on. In my mind that is intrusive and is, therefore, a checkpoint.

So, I am going to grant the motion to quash the arrest ***. But my view is that it was an improper checkpoint. And therefore, any evidence that was obtained as a result of the shining of the flashlight into the car would be suppressed and all that followed from that."

¶ 11 The trial court subsequently denied the State's motion to reconsider, and this timely appeal followed.

¶ 12 ANALYSIS

¶ 13 The State raises three issues on appeal: (1) whether the trial court erred in characterizing the officers' conduct as a checkpoint or roadblock; (2) whether the court erred in treating the officer's shining of the flashlight into the car as a search; and (3) whether, assuming *arguendo* that the officers' conduct amounted to a checkpoint, the officers' actions were reasonable in light of the state's important interest in enforcing the seatbelt law. Because the first two issues are dispositive, we do not address the third issue.

¶ 14 In reviewing a trial court's ruling on a motion to quash arrest and suppress evidence, we apply a two-part standard of review. *People v. Geier*, 407 Ill. App. 3d 553, 556 (2011) (citing *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006)). We review a trial court's findings of historical

fact only for clear error, and we give due weight to any inferences drawn from those facts. *Geier*, 407 Ill. App. 3d at 556 (citing *Luedemann*, 222 Ill. 2d at 542). Accordingly, we will reverse the court's factual findings only if they were against the manifest weight of the evidence. *Luedemann*, 222 Ill. 2d at 542. We review *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted. *Geier*, 407 Ill. App. 3d at 556 (citing *Luedemann*, 222 Ill. 2d at 542-43).

¶ 15 The fourth amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend IV. Because the fourth amendment protects individuals against unreasonable searches and seizures, the first step in a fourth amendment analysis is to determine if a search or a seizure has occurred. See U.S. Const., amend. IV. " 'Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred.' " *People v. Murray*, 137 Ill. 2d 382, 387-88 (1990) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968)), *abrogated on other grounds by People v. Luedemann*, 222 Ill. 2d 530, 548 (2006). Only when an officer's investigative activities have intruded upon a citizen's legitimate expectation of privacy may we conclude that a "search" has occurred. *People v. Hobson*, 169 Ill. App. 3d 485, 490 (1988) (citing *Illinois v. Andreas*, 463 U.S. 765, 771 (1983); *Katz v. United States*, 389 U.S. 347, 351-52 (1967)). If a search or a seizure has occurred, the second step in a fourth amendment analysis is to determine whether the search or seizure was reasonable. See *People v. Gherna*, 203 Ill. 2d 165, 176 (2003) (" '[W]hat the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures.' " (quoting *Elkins v. United States*, 364 U.S. 206, 222 (1960))).

¶ 16 The State first argues that the officers were not conducting a checkpoint because a checkpoint "requires a driver to at least slow down, if not entirely stop, his or her vehicle." The State further argues that checkpoints involve situations in which officers stop vehicles without any reasonable suspicion that the drivers are subject to seizure for a violation of law. According to the State, because the Bartlett police officers took no action to stop defendant until after one of the officers had observed a seatbelt violation, the officers' actions did not amount to a checkpoint.

¶ 17 We note that the State opens its reply brief by stating that "the officers were conducting a 'seatbelt enforcement zone'—a checkpoint, or a temporary roadblock." It then recasts its argument to be that "this is not a 'roadblock,' or even a 'checkpoint,' case; it is a traffic stop case." The State maintains that "while the officers attempted to conduct a 'check' at the checkpoint *** defendant was not stopped at the checkpoint."

¶ 18 The State's reply brief borders on both contradicting the central argument that it relies upon in its opening brief by stating that the officers were conducting a checkpoint, and raising an argument that the State did not include in its opening brief. To contend that the officers' conduct did not amount to a checkpoint because the officers did not stop defendant's vehicle is a different argument than to contend that the officers did conduct a checkpoint but that it was immaterial because they did not stop defendant at the checkpoint. We caution the State that Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008) provides that "[p]oints not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." However, we decline to find forfeiture to the extent that the two arguments share a common thread—that the officers did not stop defendant until after they had observed a suspected seatbelt violation. Additionally, while it contradicts the State's argument in its opening brief, the statement that the officers were conducting

a checkpoint is not a judicial admission, and it does not bind our analysis. See *Smith v. Pavlovich*, 394 Ill. App. 3d 458, 468 (2009) (judicial admissions are "deliberate, clear, unequivocal statements" by a party or a party's attorney about a concrete fact within that party's knowledge, and the statement must not be a matter of opinion, estimate, appearance, inference, or uncertain summary).

¶ 19 We agree with the State that no fourth amendment seizure of defendant occurred prior to the officers' developing a reasonable suspicion that defendant was not wearing a seatbelt. "It is well settled that a fourth amendment seizure occurs when a vehicle is stopped at a roadblock or checkpoint." *People v. Adams*, 293 Ill. App. 3d 180, 184 (1997) (citing *People v. Scott*, 277 Ill. App. 3d 579, 583 (1996) (citing *Sitz*, 496 U.S. at 450)). However, the logical corollary to this well-settled rule is that, where a vehicle is not stopped or even slowed down at a roadblock or checkpoint, no fourth amendment seizure has occurred. This corollary rule finds support in well-established fourth amendment case law. " 'Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred.' " *Murray*, 137 Ill. 2d at 387-88 (quoting *Terry*, 392 U.S. at 19 n.16). The test is whether, "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *United States v. Mendenhall*, 446 U.S. 544, 554 (1980); see also *People v. Kveton*, 362 Ill. App. 3d 822, 834 (2005). " 'So long as a reasonable person would feel free 'to disregard the police and go about his business,' [citation], the encounter is consensual and no reasonable suspicion is required.' " *Kveton*, 362 Ill. App. 3d at 834 (quoting *Florida v. Bostick*, 501 U.S. 429, 434 (1991) (quoting *California v. Hodari D.*, 499 U.S. 621, 628 (1991))). "[T]he analysis hinges on an objective evaluation of the police conduct and not upon the subjective perception of the individual approached." *Kveton*, 362 Ill. App. 3d at 834 (citing *Hodari D.*, 499 U.S. at 628).

¶ 20 As the State argues in its opening brief, the circumstances here were distinguishable from the circumstances surrounding the checkpoints described in other cases, and there was no "physical force or show of authority" that restrained defendant's liberty in any significant way. In *Sitz*, the seminal DUI checkpoint case, the officers had been instructed that "[a]ll vehicles passing through [the] checkpoint would be stopped and their drivers briefly examined for signs of intoxication." *Sitz*, 496 U.S. at 447. It cannot be questioned that the drivers approaching the checkpoint in *Sitz* knew that they were submitting to a show of police authority—the roadblock forced each vehicle to come to a complete stop, and a uniformed officer approached each vehicle for questioning. *Sitz*, 496 U.S. at 453. In *Bartley*, the first DUI checkpoint case to reach the Illinois supreme court, "[t]he plan was to stop every westbound vehicle unless traffic backed up." *Bartley*, 109 Ill. 2d at 277. The checkpoint was set up on a five-lane highway, and officers used police vehicles with flashing lights to "funnel the westbound traffic into a single lane." *Bartley*, 277 Ill. 2d at 277-78. As in *Sitz*, this was a show of authority that gave drivers no option but to stop their vehicles.

¶ 21 In contrast to the coercive measures used to stop vehicles in *Sitz* and *Bartley*, the Bartlett police officers in the present case were not blocking any part of the roadway, did not utilize the flashing lights on their vehicles, and were not stopping any cars unless they observed a seatbelt violation. Defendant simply drove past the officers as he negotiated the left turn from West Devon to East Devon. He encountered no stop sign. He admitted to seeing flashlights as he passed through the intersection, but he did not recognize the individuals holding the flashlights to be police officers. Given these circumstances, we cannot agree with the trial court that defendant was "seized" at a checkpoint for purposes of the fourth amendment. A reasonable driver passing officers standing in a roadway holding flashlights would not feel that "he was not free to leave" (*Mendenhall*, 446 U.S.

at 554), or that he was not free " 'to disregard the police and go about his business' " (*Kveton*, 362 Ill. App. 3d at 834 (quoting *Bostick*, 501 U.S. at 434 (quoting *Hodari D.*, 499 U.S. at 628))). There was no testimony that the officers directed defendant to slow down as he traversed the intersection, or that the officers impeded defendant's travel in any significant way.

¶ 22 Our research has uncovered one checkpoint case in which drivers were not necessarily brought to a complete stop. In *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976), the Supreme Court held that brief stops of vehicles for questioning at fixed checkpoints near the United States-Mexico border did not violate the fourth amendment. *Martinez-Fuerte*, 428 U.S. at 562. The Court noted that a border agent would "visually screen[] all northbound vehicles, which the checkpoint brings to a virtual, if not a complete halt." *Martinez-Fuerte*, 428 U.S. at 546. In a footnote, the Court stated that "[t]he parties disagree as to whether vehicles *** are brought to a complete halt or merely 'roll' slowly through the checkpoint." *Martinez-Fuerte*, 428 U.S. at 546 n.1. However, the Court further stated that "[r]esolution of this dispute is not necessary here, as we may assume, [a]rguendo, that all motorists passing through the checkpoint are so slowed as to have been 'seized.' " *Martinez-Fuerte*, 428 U.S. at 546 n.1.

¶ 23 The circumstances of the checkpoint in *Martinez-Fuerte* were distinguishable from the circumstances in the present case. Like the checkpoints in *Sitz* and in *Bartley*, the checkpoint in *Martinez-Fuerte* involved a show of authority that demanded compliance. Drivers approaching the checkpoint passed " 'a large black on yellow sign with flashing yellow lights *** stating 'ALL VEHICLES, STOP AHEAD, 1 MILE.' ' " *Martinez-Fuerte*, 428 U.S. at 545 (quoting *United States v. Ortiz*, 422 U.S. 891, 893 (1975) (a case involving the same checkpoint)). The checkpoint itself then had " 'two large signs with flashing red lights suspended over the highway,' " which stated

" 'STOP HERE U. S. OFFICERS.' " *Martinez-Fuerte*, 428 U.S. at 546 (quoting *Ortiz*, 422 U.S. at 893). Official U.S. Border Patrol vehicles with flashing lights blocked the unused lanes of the highway. *Martinez-Fuerte*, 428 U.S. at 546. Even if the vehicles approaching the checkpoint in *Martinez-Fuerte* may have been brought only "to a virtual, if not a complete halt" (*Martinez-Fuerte*, 428 U.S. at 546), the circumstances surrounding the checkpoint undeniably were such that a reasonable person would not have felt free " 'to disregard the police and go about his business.' " *Kveton*, 362 Ill. App. 3d at 834 (quoting *Bostick*, 501 U.S. at 436 (quoting *Hodari D.*, 499 U.S. at 628)). Similar circumstances establishing a show of authority and forced compliance were not present here.

¶ 24 Defendant offers several arguments for why the officers' conduct did amount to a checkpoint violative of the fourth amendment.[1] Defendant cites *Mirriam-Webster*'s definition of "checkpoint" as "a point at which a check is performed." Defendant contends that the officers were at a fixed location, which was a "point," and that the officers were inspecting drivers for compliance with the seatbelt law, which was a "check." The problem with defendant's generic definition is that it encompasses a broad range of police activity that does not constitute a fourth amendment seizure.

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[1]Regarding defendant's brief, we caution defense counsel that he failed to comply with Illinois Supreme Court Rule 341(c) (eff. July 1, 2008), which states, in pertinent part, "The attorney *** shall submit with the brief his or her signed certification that the brief complies with the form and length requirements of paragraphs (a) and (b) of this rule ***." Defense counsel's certificate of compliance was unsigned. We caution defense counsel that compliance with the Supreme Court Rules regarding the form and content of appellate briefs is mandatory; "[t]hese rules are not merely suggestions." *First National Bank of Marengo v. Loffelmacher*, 236 Ill. App. 3d 690, 691 (1992).

For example, an officer parked on the shoulder of a road using a radar gun to detect speeders would fall under defendant's definition of a "checkpoint," but would not qualify as a fourth amendment seizure.

¶ 25 Defendant next argues that the officers' conduct "had similarities to what have traditionally been identified as checkpoints in the minds of the public." Defendant notes that "turning within 100 feet of an intersection, or making a U-turn across double-yellow lines, or driving in reverse are generally prohibited activities," and therefore contends that "the location of the activity gave left-turning motorists no opportunity to avoid police contact." Defendant's argument misses the mark. A fourth amendment seizure occurs "only when there is a governmental termination of freedom of movement *through means intentionally applied*." (Emphasis in original.) *Brower v. County of Inyo*, 489 U.S. 593, 596-97 (1989). There was no evidence that the officers intentionally chose to conduct seatbelt enforcement at the intersection of West and East Devon based on the inability of drivers to make U-turns or to drive in reverse.

¶ 26 Defendant also argues that, "like traditional checkpoints, the seatbelt enforcement zone had a pre-arranged purpose—to randomly and systematically make contact with drivers at a fixed location in order to determine their compliance with the law." Defendant further contends that "like traditional checkpoints, there was an overarching goal for interference with the motorist's liberty—to issue at least one ticket per hour." However, as alluded to above, simply "making contact" with drivers is not sufficient to constitute a fourth amendment seizure, regardless of an officer's "goal." See *Murray*, 137 Ill. 2d at 387-88 (" 'Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred.' " (quoting *Terry*, 392 U.S. at 19 n.16)); see also *Gherna*, 203 Ill. 2d at 178 ("It is well

settled that a seizure does not occur simply because a law enforcement officer approaches an individual and puts questions to that person if he or she is willing to listen." (citing *United States v. Drayton*, 536 U.S. 194, 200 (2002); *Florida v. Royer*, 460 U.S. 491, 497 (1983))). The "contact" that occurred here in the form of defendant's driving past an officer holding a flashlight was not a fourth amendment seizure.

¶ 27 Defendant cites *Adams*, a case which defendant contends "described similar police activities as a form of checkpoint or roadblock." In *Adams*, Waukegan police officers were conducting a checkpoint to determine whether city residents had current city stickers on their vehicles. *Adams*, 293 Ill. App. 3d at 181. Four officers stood at a four-way intersection, with one officer at each stop sign observing traffic. *Adams*, 293 Ill. App. 3d at 182. If an officer observed a vehicle without a city sticker, the officer would direct the vehicle to pull over. *Adams*, 293 Ill. App. 3d at 182. The defendant in *Adams* was pulled over as a result of the checkpoint and charged with driving while license revoked. *Adams*, 293 Ill. App. 3d at 181. The court in *Adams* cited the rule that "[i]t is well settled that a fourth amendment seizure occurs when a vehicle is stopped at a roadblock or checkpoint." *Adams*, 293 Ill. App. 3d at 184 (citing *Scott*, 277 Ill. App. 3d at 583 (citing *Sitz*, 496 U.S. at 450)). The court ultimately held that the "checkpoint stop" of the defendant violated the fourth amendment's prohibition against unreasonable searches and seizures. *Adams*, 293 Ill. App. 3d at 190.

¶ 28 *Adams* is distinguishable. In *Adams*, the court did not address the issue of whether vehicles passing through the checkpoint were "seized" for purposes of the fourth amendment at the moment they passed by the officer standing next to the stop sign. In fact, resolution of that issue was unnecessary, since the defendant in *Adams* was actually pulled over at the intersection. More

importantly, the officers in *Adams* pulled vehicles over before they had developed any reasonable suspicion that the drivers were violating the law, since only city residents were required to display city stickers. See *Adams*, 293 Ill. App. 3d at 182. Only once an officer pulled over a vehicle could the officer determine if the driver was a city resident. *Adams*, 293 Ill. App. 3d at 182. The suspicionless stops that occurred in *Adams* make it distinguishable from the present case, in which the Bartlett police officers did not direct any vehicle to stop until they had developed a reasonable suspicion that the driver was committing a seatbelt violation.

¶ 29 Finally, defendant characterizes the officers' conduct as a "roving patrol," which must be discouraged. Discussing the constitutionality of a DUI checkpoint, the Illinois supreme court in *Bartley* stated that "[i]t is manifest that the fundamental evil to be avoided is the 'roving patrol.' " *Bartley*, 109 Ill. 2d at 288. The concern over "roving patrols" can be traced to *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975), and *Delaware v. Prouse*, 440 U.S. 648 (1979), both of which involved officers making discretionary traffic stops of vehicles not suspected of any wrongdoing. In *Brignoni-Ponce*, U.S. Border Patrol agents made "roving-patrol stops" of vehicles near the border "without any suspicion that a particular vehicle [was] carrying illegal immigrants." *Brignoni-Ponce*, 422 U.S. at 882. In *Prouse*, state police officers conducted "discretionary spot checks" by sporadically and randomly pulling vehicles over to check for drivers' licenses and registrations. *Prouse*, 440 U.S. at 650, 659. In both cases, the Supreme Court held that the government's interest in either preventing illegal immigration (*Brignoni-Ponce*) or promoting public safety upon the roads (*Prouse*) did not justify the intrusion upon individuals' fourth amendment interests occasioned by the unsettling and disruptive nature and of random, suspicionless traffic stops. See *Prouse*, 440 U.S. at 657 (describing "the physical and psychological intrusion visited upon the occupants of a vehicle

by a random stop to check documents"); *Brignoni-Ponce*, 422 U.S. at 882 (stating that "roving-patrol stops *** would subject the residents of these and other areas to potentially unlimited interference with their use of the highways, solely at the discretion of Border Patrol officers"). In contrast to the "roving-patrol stops" in *Brignoni-Ponce* and the "discretionary spot checks" in *Prouse*, there were no traffic stops in this case, let alone "roving patrol" traffic stops, until the officers had developed a reasonable suspicion that a driver was violating the seatbelt law. Without suspicionless stops, there is no "fundamental evil" to be avoided.

¶ 30 Defendant argues that, even if we conclude that the officers were not conducting an unlawful checkpoint, the traffic stop of defendant was unlawful because the officers "stopped the defendant based on the mistaken belief that it was illegal to drive a vehicle in Illinois without wearing a shoulder harness." We note that defendant cites no Illinois authority for the proposition that section 12-603.1(a) of the Illinois Vehicle Code (625 ILCS 5/12-603.1(a) (West 2010)) does not require use of a shoulder harness. Moreover, defendant's argument is without merit. The record reflects that defendant's vehicle was a 2007 model, and the front outboard seats in all passenger vehicles manufactured after September 1, 1996, must be equipped with a seatbelt that "is a combination of pelvic and upper torso restraints." See 49 CFR §§ 571.208, S4.1.5.1(a)(3); 571.209, S3 (West 2010). Observing that a driver is not wearing a shoulder harness would certainly give rise to a reasonable suspicion that the driver was not "wear[ing] a properly adjusted and fastened seat safety belt" (625 ILCS 5/12-603.1(a) (West 2010)). We need not decide whether the failure to wear a seat safety belt that includes a shoulder harness ultimately is a violation of section 12-603.1(a), since the officer's observation that defendant was not wearing a shoulder harness would give rise to a reasonable suspicion that defendant also was not wearing a lap belt.

¶ 31 We also agree with the State that no fourth amendment "search" occurred when the officer shined his flashlight through the driver's side window of defendant's vehicle. "It is well settled that the use of a flashlight to illuminate a vehicle located on a public way is not a fourth amendment search." *Luedemann*, 222 Ill. 2d at 561 (citing *Texas v. Brown*, 460 U.S. 730, 739-40 (1983)). This is so because " '[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.' " (Emphasis omitted.) *Hobson*, 169 Ill. App. 3d at 490 (quoting *Katz*, 389 U.S. at 351). In stating this rule, the *Katz* Court cited *United States v. Lee*, 274 U.S. 559 (1927), a case in which the U.S. Coast Guard seized cases of alcohol from a boat. *Hobson*, 169 Ill. App. 3d at 491 (citing *Katz*, 389 U.S. at 351 (citing *Lee*, 274 U.S. at 563)). The *Lee* Court stated:

> " '[N]o search of the high seas is shown. The testimony of the boatswain shows that he used a searchlight. It is not shown that there was any exploration below decks or under hatches. For aught that appears, the cases of liquor were on deck and, like the defendants, were discovered before the motor boat was boarded.' " (Emphases omitted.) *Hobson*, 169 Ill. App. 3d at 491 (quoting *Lee*, 274 U.S. at 563).

Citing this passage from *Lee*, the Supreme Court in *Brown* held that "[i]t is likewise beyond dispute that [the officer's] action in shining his flashlight to illuminate the interior of [the defendant's] car trenched upon no right secured to the latter by the Fourth Amendment." *Brown*, 460 U.S. at 739-40. The Court further stated, "Numerous other courts have agreed that the use of artificial means to illuminate a darkened area simply does not constitute a search, and thus triggers no Fourth Amendment protection." *Brown*, 460 U.S. at 740.

¶ 32 The Illinois supreme court has stated the rule that "[w]hether the use of a flashlight constitutes a fourth amendment seizure depends upon whether the officer engaged in other coercive behavior." *Luedemann*, 222 Ill. 2d at 561. As an example of "other coercive behavior," the court cited *People v. Bunch*, 207 Ill. 2d 7 (2003), in which an officer ordered the defendant to exit the vehicle in which he was a passenger, had him stand next to the handcuffed and arrested driver, and shined a flashlight in his face, saying " 'What's your name? Where are you coming from?' " *Luedemann*, 222 Ill. 2d at 561 (quoting *Bunch*, 207 Ill. 2d at 19). The court also gave the example of using "a light accompanied by *** blocking a car in its parking place." *Luedemann*, 222 Ill. 2d at 562.

¶ 33 It is clear that the Bartlett police officer who shined his light into defendant's driver's side window was not conducting a search or a seizure that triggered fourth amendment protection. What can be seen through the windows of a vehicle is visible to the public, and the use of a flashlight to illuminate the interior of the vehicle does not amount to a search. *Luedemann*, 222 Ill. 2d at 561. Moreover, the shining of the flashlight was not accompanied by "other coercive behavior" that rose to the level of blocking a car in its parking space or ordering defendant from his vehicle and shining the flashlight in his face. See *Luedemann*, 222 Ill. 2d at 561-62. While the officers did raise their hands and yell, "Stop!," they did not do so until after they had observed a suspected seatbelt violation.

¶ 34 Defendant refers to the "plain view exception" and argues that "the law requires that the officer be in a position where he legally was allowed to be when he used the flashlight," and that the officers had no right to stand in the middle of the street. Defendant's argument fails for two reasons. First, the plain view exception applies to fourth amendment seizures of property, not to fourth

amendment searches. See *Brown*, 460 U.S. at 738 n.4 ("It is important to distinguish 'plain view,' as used in *Coolidge* [*v. New Hampshire*, 403 U.S. 443 (1971)] to justify *seizure* of an object, from an officer's mere observation of an item left in plain view."). "Plain view" for purposes of fourth amendment searches simply refers to the rule from *Katz* that "[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." *Katz*, 389 U.S. at 351; see also *Brown*, 460 U.S. at 738 n.4 (citing *Katz*).

¶ 35 Second, the requirement that an officer view a seized object from a lawful vantage point requires that the officer not have infringed upon an individual's fourth amendment expectation of privacy in accessing the vantage point. See *Brown*, 460 U.S. at 738 (" '[P]lain view' provides grounds for seizure of an item when an officer's access to an object has some prior justification under the Fourth Amendment."). Defendant has cited no case, and our research has uncovered none, holding that an officer must avoid violating simple traffic ordinances (such as a law prohibiting standing in the middle of the street) while observing objects in plain view.

¶ 36 Because no fourth amendment search or seizure of defendant's vehicle occurred until after the officers had developed a reasonable suspicion that defendant was violating the seatbelt law, we conclude that the trial court erred when it granted defendant's motion to quash arrest and suppress evidence on the basis that the officers were conducting an improper checkpoint.

¶ 37 CONCLUSION

¶ 38 For the reasons stated, we reverse the decision of the circuit court of Du Page County and remand for further proceedings.

¶ 39 Reversed and remanded.