

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2013-2014

1130535

Ex parte Cartez Woolen

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS

(In re: Cartez Woolen

v.

State of Alabama)

(Jefferson Circuit Court, CC-12-3519;
Court of Criminal Appeals, CR-12-1434)

BOLIN, Justice.

The petition for the writ of certiorari is denied.

1130535

In denying the petition for the writ of certiorari, this Court does not wish to be understood as approving all the language, reasons, or statements of law in the Court of Criminal Appeals' opinion. Horsley v. Horsley, 291 Ala. 782, 280 So. 2d 155 (1973).

WRIT DENIED.

Stuart, Parker, Murdock, Shaw, Main, Wise, and Bryan, JJ., concur.

Moore, C.J., dissents.

1130535

MOORE, Chief Justice (dissenting).

Because I believe that the State provided insufficient evidence of a preexisting plan by which to measure the conduct of the roadblock at issue in this case, I would grant the petition for a writ of certiorari to review this issue.

I. Facts and Procedural History

City of Birmingham police officers arrested Cartez Woolen at a roadblock and charged him with unlawful possession of a controlled substance. § 13A-12-212(a)(1), Ala. Code 1975. He entered a guilty plea, reserving for appeal the issue of the legality of the search at the roadblock. The Court of Criminal Appeals found that the roadblock search did not violate the Fourth Amendment. Woolen v. State, [Ms. CR-12-1434, Dec. 20, 2013] ___ So. 3d ___ (Ala. Crim. App. 2013). Woolen then sought a writ of certiorari from this Court to review the decision of the Court of Criminal Appeals.

II. Standard of Review

"Where the evidence before the trial court was undisputed the ore tenus rule is inapplicable, and the Supreme Court will sit in judgment on the evidence de novo, indulging no presumption in favor of the trial court's application of the

1130535

law to those facts." Stiles v. Brown, 380 So. 2d 792, 794 (Ala. 1980). Additionally, because individualized suspicion for stopping a vehicle is not present at a roadblock where every driver is questioned, the State has the burden of proving that the roadblock was reasonable under the Fourth Amendment. Ex parte Jackson, 886 So. 2d 155, 163 (Ala. 2004).

III. Analysis

A. Purpose of the Roadblock

Because the use of police roadblocks implicates the Fourth Amendment interest in being free from unreasonable searches and seizures,¹ the United States Supreme Court has limited the use of such roadblocks to certain specified purposes. See Illinois v. Lidster, 540 U.S. 419 (2004) (seeking information concerning a recent crime); Michigan Dep't of State Police v. Sitz, 496 U.S. 444 (1990) (checking for sobriety); Texas v. Brown, 460 U.S. 730 (1983) (checking driver's licenses); and United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (intercepting illegal aliens). However, a roadblock whose primary purpose "is ultimately

¹The Fourth Amendment "generally bars officials from undertaking a search or seizure absent individualized suspicion." Chandler v. Miller, 520 U.S. 305, 308 (1997).

1130535

indistinguishable from the general interest in crime control ... violate[s] the Fourth Amendment." City of Indianapolis v. Edmond, 531 U.S. 32, 48 (2000). See also Hagood v. Town of Town Creek, 628 So. 2d 1057 (Ala. Crim. App. 1993) (noting that the "general interest in law enforcement simply does not outweigh the liberty interests of those seized, however brief the seizure may be"). On appeal to the Court of Criminal Appeals Woolen argued that "the roadblock in this case was established solely for the impermissible purpose of creating a police presence in a high-violence area as a deterrent of violent crime and, thus, was unconstitutional." Woolen, ___ So. 3d at ___. His petition for a writ of certiorari, however, does not raise the issue whether the purpose of the roadblock was impermissible. Instead he challenges, as he did below, the constitutionality of the manner in which the roadblock was conducted.

B. Manner of Conducting the Roadblock

A roadblock "'carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers'" is reasonable under the Fourth Amendment. Ogburn v. State, 104 So. 3d 267, 270 (Ala. Crim. App. 2012) (quoting

1130535

Brown v. Texas, 443 U.S. 47, 51 (1979)). Although the Ogburn court did not require the State to produce a preexisting written plan for conducting a roadblock, it did require, in conformity with Brown, that "a witness for the State must specifically articulate the full details of the previously established plan that limits the discretion of the individual officers at the checkpoint" 104 So. 3d at 275 (emphasis added).²

The State's testimony in the trial court established only that the officers conducting the roadblock had an oral briefing "on what we're going to go do and these are the hours we're going to do it . . . during this time span." The Court of Criminal Appeals held that this sparse testimony, which it conceded was "weak," satisfied the Ogburn requirement to "specifically articulate the full details of the previously established plan." Although this conclusion seems puzzling, the Court of Criminal Appeals, viewing the State's testimony in light of "the totality of the circumstances" inferred the existence of the unarticulated plan from the officers' actions

²Woolen suggests that "the neutral pre-existing plan, in effect, acts as a substitute for the detached and neutral magistrate requirement of the Fourth Amendment." Woolen's petition, at 7 n.2.

1130535

at the roadblock, e.g., a well-lit stopping area, blinking emergency lights on the police vehicles, and a minimally intrusive detention to examine driver's licenses and proof of insurance.

Because the State presented no evidence on the details of the plan or how it controlled the officers' discretion, it failed to meet its burden of demonstrating that "the checkpoint was in accordance with a plan embodying explicit, neutral limitations on the officers' conduct." Ogburn, 104 So. 3d at 275 (emphasis added). As Woolen argues in his petition, the State "offered absolutely no testimony about what [the officers] were actually instructed to do, or whether what they actually did was in accordance with a pre-established plan." By inferring the existence of a plan from the officers' actions, the Court of Criminal Appeals in effect relieved the State of its burden as articulated in Ogburn.

IV. Conclusion

Because the decision of the Court of Criminal Appeals in this case conflicts with the standard stated in Ogburn for determining the reasonableness of a roadblock under the Fourth

1130535

Amendment, I would grant Woolen's petition for a writ of certiorari to clarify the law in this area.