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Inside Report: DWI checkpoints being challenged



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Police DWI checkpoints are a lot like airport security — nobody looks forward to potentially long waits and thorough examinations. But in the interest of public safety, most people just deal with it.

Two Baton Rouge lawyers, however, have decided to fight DWI checkpoints, each taking a different approach.

In May, City Court Judge Yvette Alexander suppressed all evidence needed to prosecute one of attorney Cliff Ivey's clients for DWI under the premise the Baton Rouge Police Department had goofed when conducting a checkpoint.

The case, awaiting an appellate court decision, hinges upon whether the same police officer completed two tasks that are perfectly legal — and necessary — if done by two officers and not one. According to neutral guidelines laid out by the Louisiana Supreme Court in 2000, the location, time and duration of a checkpoint should be in writing and must be established by supervisory or other administrative personnel rather than the field officers implementing the checkpoint.

In the case awaiting further review, Ivey, a former police officer who is now a lawyer, said he proved that the same officer was doing both duties — a clear violation of the court's ruling. He also said if this case is upheld, it would make unconstitutional a whole host of other checkpoints performed by police in the last few years.

“If that ruling gets affirmed by a higher court, that’s going to cause the city of Baton Rouge a lot of problems,” Ivey said.

Ivey said challenging the constitutionality of checkpoints themselves is “a losing battle,” noting state and federal Supreme Court cases have both validated the constitutionality of checkpoints, whether authorities are looking for expired inspection stickers or drunken drivers.

The Louisiana Supreme Court first found DWI checkpoints unconstitutional in 1989. But in 2000, in the decision that set up the neutral guidelines, the court reversed its 1989 decision.

Still, the guidelines make the rules abundantly clear, so depending on the outcome of Ivey’s case, many other local cases could face similar scrutiny.

Another local attorney, Jarrett Ambeau, has set out to fight DWI checkpoints by publishing their locations.

In August, Ambeau started a Facebook page, “Baton Rouge DWI Checkpoints,” which announces the locations of ongoing checkpoints.

“Do I condone being legally drunk and driving? No, I don’t,” Ambeau said.

But he said checkpoints infringe upon a person’s right to comfortably enjoy alcohol in a responsible manner.

“Clearly the state legislature does not think drinking and driving should be illegal,” Ambeau said, referring to the 0.08 blood alcohol content limit.

Ambeau, too, noted Ivey’s case has far-reaching potential, saying he’s noticed similar seemingly unconstitutional checkpoints.

“They have to decide who to stop off-site. The person that makes that decision cannot be present at the checkpoint stop,” Ambeau said. “It has to be completely random. That’s the thing they mess up all the time.”

Ambeau said he receives tips from the more than 3,000 people who have liked his Facebook page about where checkpoints are set up.

He doesn’t post the location until he receives a second confirmation that the checkpoint is active, he said.

“I don’t fancy checkpoints,” Ambeau said. “We’re criminalizing normal behavior at this point.”

Ben Wallace covers law enforcement for The Advocate. He can be reached at bwallace@theadvocate.com.

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