



1980

Casenotes: Constitutional Law — Fourth Amendment — Random Stopping of Vehicles by Police for Routine Checks of License and Vehicle Registration Violates Fourth Amendment. *Goode v. State*, 41 Md. App. 623, 398 A.2d 801 (1979)

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Recommended Citation

Sfekas, Constantine James and Riley, Cynthia A. (1980) "Casenotes: Constitutional Law — Fourth Amendment — Random Stopping of Vehicles by Police for Routine Checks of License and Vehicle Registration Violates Fourth Amendment. *Goode v. State*, 41 Md. App. 623, 398 A.2d 801 (1979)," *University of Baltimore Law Review*: Vol. 9: Iss. 3, Article 8.

Available at: <http://scholarworks.law.ubalt.edu/ublr/vol9/iss3/8>

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CONSTITUTIONAL LAW — FOURTH AMENDMENT — RANDOM STOPPING OF VEHICLES BY POLICE FOR ROUTINE CHECKS OF LICENSE AND VEHICLE REGISTRATION VIOLATES FOURTH AMENDMENT. *GOODE v. STATE*, 41 Md. App. 623, 398 A.2d 801 (1979).

I. INTRODUCTION

In *Goode v. State*,¹ the Court of Special Appeals of Maryland held that the random stopping of an automobile to make a routine check of the driver's license and vehicle registration is a violation of the fourth amendment right against unreasonable seizures if the stop is not justified by a reasonable suspicion that some criminal activity is being committed, has been committed, or is about to be committed.² The court upheld as facially constitutional the provisions of the Maryland Transportation Code that require the motorist to display his license and registration,³ but held that these provisions were unconstitutionally applied in *Goode*.⁴

This casenote examines the impact of the *Goode* decision on prior Maryland case law and analyzes the recent Supreme Court decision in *Delaware v. Prouse*,⁵ which addressed the identical issue. The implications of these two cases for future automobile stops are also considered.

II. FACTUAL BACKGROUND

At approximately 11:10 p.m., a Baltimore City policeman on random patrol observed an automobile parked in an isolated area by an abandoned school.⁶ The officer watched the car for a few minutes until it drove away and then followed this "suspicious vehicle,"

1. 41 Md. App. 623, 398 A.2d 801, *cert. denied*, 285 Md. 730 (1979).

2. *Id.* at 628, 398 A.2d at 804.

3. MD. TRANSP. CODE ANN. §§ 13-409, 16-112 (1977). Section 13-409 states:
(a) *In general* — At all times, each registration card shall be carried:
(1) In the vehicle to which it refers; or
(2) By the individual driving or in control of the vehicle, who shall display it, on demand, to any police officer who identifies himself as such.

Section 16-112 provides in pertinent part:

(a) *Possession and display of license; writing sample* —

(1) In this subsection, "display" means the manual surrender of the licensee's license into the hands of the demanding officer for inspection.

(2) Each individual driving a motor vehicle on any highway in this State shall:

(i) Have his license with him;

(ii) Display the license to any uniformed police officer who demands it

4. 41 Md. App. 623, 627-28, 398 A.2d 801, 804, *cert. denied*, 285 Md. 730 (1979).

5. 440 U.S. 648 (1979).

6. *Goode v. State*, 41 Md. App. 623, 624, 398 A.2d 801, 802, *cert. denied*, 285 Md. 730 (1979).

intending to pull it over. The vehicle was halted although no traffic laws had been violated.⁷ After the driver was unable to produce either his driver's license or the vehicle registration, the officer asked the occupants to get out of the car.⁸ One of these passengers, when told to remove his hands from his pocket, unintentionally dropped his wallet on the ground. A glassine bag containing white powder fell out of the wallet. This passenger was informed that he was under arrest for possession of a controlled dangerous substance.⁹ The policeman returned to the vehicle and inspected the interior of the car, finding three weapons. Two of the passengers were subsequently charged with three handgun violations.¹⁰

At a suppression hearing, the defendants asserted that their arrests were illegal and that any evidence seized was therefore inadmissible.¹¹ The trial court determined that the officer had the authority to stop the vehicle and request the operator to produce a driver's license and registration card.¹² The court further determined that, because the driver was unable to produce a license or registration, the police were authorized to order the occupants from their car. Regarding the subsequent search, the court stated that the activity of the defendants as a whole constituted sufficient probable cause to justify the officer's search of the car to see if it contained any controlled dangerous substances or weapons.¹³ Consequently, the evidence obtained from the automobile was held admissible, and the motion to suppress was denied. The defendants were each convicted of three handgun violations.¹⁴

III. THE FOURTH AMENDMENT AND RANDOM STOPS OF AUTOMOBILES

It is well established that the fourth amendment¹⁵ protects motorists from unreasonable searches and seizures.¹⁶ Automobile

7. *Id.* at 624-25, 398 A.2d at 802.

8. *Id.* at 625, 398 A.2d at 803.

9. *Id.* The person arrested for possession of a controlled dangerous substance was not an appellant in *Goode*. *Id.* at 625 n.3, 398 A.2d at 803 n.3.

10. The driver of the vehicle was charged and tried along with the appellants, but was acquitted by the jury. *Id.* at 625 n.1, 398 A.2d at 803 n.1.

11. *Id.* at 626, 398 A.2d at 803.

12. *Id.*

13. *Id.*

14. *Id.* at 624, 398 A.2d at 802.

15. U.S. CONST. amend. IV. The fourth amendment "was a reaction to the evils of the use of the general warrant in England and the writs of assistance in the Colonies, and was intended to protect against invasions of 'the sanctity of a man's home and the privacies of life' from searches under indiscriminate authority." *Warden v. Hayden*, 387 U.S. 294, 301 (1967) (quoting *Boyd v.*

(Footnote 15 Cont'd next page)

16. See *United States v. Martinez-Fuerte*, 428 U.S. 543 (1975); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975); *Carroll v. United States*, 267 U.S. 132 (1925).

stops raise two constitutional issues implicating the fourth amendment: (1) whether a particular stop constitutes a "seizure" and (2) whether the stop is reasonable within the meaning of the fourth amendment. The random stop, one of four types of automobile stops,¹⁷

United States, 116 U.S. 616, 630 (1886)). See generally J. LANDYNSKI, SEARCH AND SEIZURE AND THE SUPREME COURT (1966); N. LASSON, HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT 51-78 (1937). The safeguards of the fourth amendment developed almost simultaneously in England and in the American colonies. In England, general warrants issued by the secretary of state had been used to search for and arrest authors and publishers of seditious material. *Id.* at 37-38. The use of these warrants was not seriously questioned for over 125 years until the case of *Wilkes v. Woods*, 98 Eng. Rep. 489 (1763). Wilkes, a member of Parliament, had authored a series of monographs criticizing the King. After the seizure of his material, Wilkes brought suit challenging the validity of general warrants. The court eliminated the use of general warrants, holding them to be "totally subversive of the liberty of the subject." *Id.* at 498. At the same time that these warrants were being eliminated, however, writs of assistance were being issued in the Colonies under authority of the King empowering officers of the Crown to search indiscriminately the possessions of the colonists for smuggled goods. N. LASSON, *supra*, at 51-78. Subsequent acts by Parliament and the continued use of the writs was a source of friction between the colonists and England which proved to be one of the principal causes leading to the American Revolution. *Id.*

With the conclusion of the hostilities, the new nation sought to establish constitutional safeguards designed to eliminate many of the abuses previously experienced at the hands of their English rulers. The result was the enactment of the fourth amendment which states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizure, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

17. Automobile stops by police fall into four basic categories: the investigatory stop, the traffic violation stop, the roadblock stop, and the random stop. See Note, *Automobile Spot Checks and the Fourth Amendment*, 6 RUT.-CAM. L.J. 85 (1974) [hereinafter cited as *Automobile Spot Checks*]. The investigatory stop is a brief detention of the motorist to make inquiries into his possible criminal activities. *Id.* at 97. The constitutional standard for stopping an automobile in such a situation has been "reasonable suspicion." *United States v. Fallon*, 457 F.2d 15, 18 (10th Cir. 1972); *Young v. United States*, 435 F.2d 405, 408 (D.C. Cir. 1970). Reasonable suspicion requires that certain circumstances exist such that the officer is justified in briefly detaining the motorist and is not acting arbitrarily. *Wilson v. Porter*, 361 F.2d 412, 415 (9th Cir. 1966). For instance, when an officer stops a particular make and model of automobile that fits the general description of one used in a recent crime, his actions will be justified even though the vehicle stopped is not the one sought. See *Automobile Spot Checks*, *supra*, at 98.

The traffic violation stop occurs when an observable traffic violation is committed by a motorist or an equipment problem exists and a police officer pulls the vehicle over. *Id.* at 101. There is little difficulty with regard to the constitutionality of these stops because the violation itself provides probable cause for the stop. *Id.*

The roadblock stop is used by police to stop all the oncoming traffic in order to check for a valid driver's license and registration and for possible equipment problems. *Id.* at 99-100. This procedure has been recognized as constitutional under the fourth amendment when used to regulate illegal alien traffic near the Mexican border. See *United States v. Martinez-Fuerte*, 428 U.S. 543 (1975). The indiscriminate stopping of all vehicles removes the possibility of police authorities abusing their discretion while at the same time reducing the fear and anxiety caused by a sudden show of authority. *Id.* at 559-60.

has raised significant fourth amendment problems. A random stop occurs when a vehicle is stopped at the discretion of a police officer for a license and registration check.¹⁸ The stop is made in the absence of any observable traffic violation, equipment problem, or reasonable suspicion of criminal activity.¹⁹ Virtually all jurisdictions have statutes granting police officers the authority to check the validity of the license and vehicle registration of motorists.²⁰ While this type of statute is facially constitutional, it is subject to abuse in practice because it is interpreted by police to extend an unlimited right to stop motorists at any time.²¹ These statutes have provided an excuse for police to stop cars capriciously or in accordance with a personal prejudice.²²

Initially, some jurisdictions concluded that no fourth amendment issue was involved in random stops because such stops did not constitute an arrest.²³ In *Terry v. Ohio*,²⁴ however, the Supreme Court considered the issue of what type of conduct by a police officer constitutes a seizure of the individual, holding that "whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person."²⁵ The Court, in *United States v. Brignoni-Ponce*,²⁶ extended this rule to automobile stops, stating that a seizure occurs whenever a motorist is detained by a show of authority.²⁷ Thus, a random stop is a seizure within the meaning of the fourth amendment.²⁸

Once it has been determined that a seizure has occurred, the next factor to be considered is the reasonableness of such action. In *Camara v. Municipal Court*,²⁹ the Supreme Court stated that there is "no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which

18. For the purposes of this article, the definition of random stop is limited to those occasions when a police officer stops a vehicle to check the driver's license and registration. See *Automobile Spot Checks*, *supra* note 17, at 98-99.

19. *Delaware v. Prouse*, 440 U.S. 648, 655 (1979).

20. See, e.g., MD. TRANSP. CODE ANN. §§ 13-409, 16-112 (1977). See generally Comment, *Interference With The Right To Free Movement: Stopping And Search Of Vehicles*, 51 CAL. L. REV. 907, 916 n.76 (1963).

21. *Delaware v. Prouse*, 440 U.S. 648, 661 (1979); *Goode v. State*, 41 Md. App. 623, 630, 398 A.2d 801, 805, *cert. denied*, 285 Md. 730 (1979).

22. *Delaware v. Prouse*, 440 U.S. 648, 661 (1979); *Goode v. State*, 41 Md. App. 623, 630, 398 A.2d 801, 805, *cert. denied*, 285 Md. 730 (1979).

23. See, e.g., *Rodgers v. United States*, 362 F.2d 358 (8th Cir. 1966); *State v. Fish*, 280 Minn. 163, 159 N.W.2d 786 (1968).

24. 392 U.S. 1 (1968).

25. *Id.* at 16.

26. 422 U.S. 873 (1975).

27. *Id.* at 878. Accord, *Delaware v. Prouse*, 440 U.S. 648 (1979); *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976); *United States v. Nicholas*, 448 F.2d 622 (8th Cir. 1971); *Carpenter v. Sigler*, 419 F.2d 169 (8th Cir. 1969).

28. *Delaware v. Prouse*, 440 U.S. 648, 653 (1979); *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975).

29. 387 U.S. 523 (1967).

the search [or seizure] entails.”³⁰ This requires weighing the state’s interest in the seizure against the degree of intrusion upon the constitutionally protected rights of the individual.³¹ Generally, the state interest asserted in justification for random stops is the promotion of highway safety.³² The individual interests asserted are the right to be free from arbitrary state interference, the right to free passage on the roadways, and the right to privacy.³³

The state courts are split over the results of balancing these competing interests. Jurisdictions that have held that individual rights outweigh the state interest³⁴ have done so by reasoning that, because it is unconstitutional to give the police absolute and unreviewable discretion to stop motorists at random, there must be specific facts justifying an intrusion.³⁵ According to these jurisdictions, to allow discretionary stops could result in the police attempting to detect crimes in an arbitrary manner rather than add to roadway safety.³⁶ Without some limitations, police could use the license check as a pretext, justifying stops actually made to investigate motorists suspected of criminal activity.³⁷

Those jurisdictions that have upheld random stops³⁸ have concluded that the licensing laws are valid safety measures and that the benefits of their enforcement outweigh any limited intrusion

30. *Id.* at 536–37. *Accord*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 554–55 (1975).

31. *Brown v. Texas*, 443 U.S. 47, 50–51 (1980); *Delaware v. Prouse*, 440 U.S. 648, 654 (1979).

32. In *Delaware v. Prouse*, 440 U.S. 648, 658–59 (1979), the state argued that a strong interest in public safety exists and that a legitimate means of insuring safety is to permit random stops to verify that the motorist has a valid driver’s license and registration card. *Accord*, Comment, *Interference With The Right To Free Movement: Stopping And Search Of Vehicles*, 51 CAL. L. REV. 907 914–15 (1963).

33. *Delaware v. Prouse*, 440 U.S. 648, 662–63 (1979); *Brinegar v. United States*, 338 U.S. 160 (1949); *Carroll v. United States*, 267 U.S. 132 (1925); *Commonwealth v. Swanger*, 453 Pa. 107, 307 A.2d 875 (1973).

34. See, e.g., *United States v. Montgomery*, 561 F.2d 875 (D.C. Cir. 1977); *United States v. Cupps*, 503 F.2d 277 (6th Cir. 1974); *United States v. Nicholas*, 448 F.2d 622 (8th Cir. 1971); *State v. Ochoa*, 23 Ariz. App. 510, 534 P.2d 444 (1975), *rev’d on other grounds*, 112 Ariz. 582, 544 P.2d 1097 (1976); *People v. Ingle*, 36 N.Y.2d 413, 330 N.E.2d 39, 369 N.Y.S.2d 67 (1975); *Commonwealth v. Swanger*, 453 Pa. 107, 307 A.2d 875 (1973).

35. Typical of these cases is the decision in *Commonwealth v. Swanger*, 453 Pa. 107, 111, 307 A.2d 875, 878 (1973), in which the court held that a random stop in the absence of specific facts justifying the intrusion violated the individual’s fourth amendment rights.

36. See, e.g., *id.* at 110, 307 A.2d at 879.

37. *Id.*

38. See, e.g., *Palmore v. United States*, 290 A.2d 573 (D.C. 1972), *aff’d*, 411 U.S. 389 (1973); *State v. Holmberg*, 194 Neb. 337, 231 N.W.2d 672 (1975); *State v. Allen*, 282 N.C. 503, 194 S.E.2d 9 (1973); *Leonard v. State*, 496 S.W.2d 576 (Tex. Crim. App. 1973).

upon the individual's rights.³⁹ Under this view, the slight intrusion occasioned by a random stop does not warrant fourth amendment protection.

Prior to *Goode v. State*,⁴⁰ Maryland courts upheld random stops, finding them to be a legitimate means of promoting the state's interest in highway safety.⁴¹ For example, in *Kraft v. State*,⁴² the Court of Special Appeals of Maryland stated that the licensing provisions⁴³ gave police the absolute right to stop a motorist at any time and demand the display of his driver's license and vehicle registration.⁴⁴ The court implied that the propriety of a stop is subject solely to the police officer's discretion.⁴⁵ *Goode* expressly overruled all prior decisions insofar as they sanctioned random stops.⁴⁶

IV. THE COURT'S REASONING

Relying primarily on the language of *Terry v. Ohio*,⁴⁷ the *Goode* court reasoned that there may be a forcible stop of a motorist only "if the stop is based upon 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion.'"⁴⁸ The court further explained that there must be reasonable suspicion that a crime is being committed, is about to be committed, or has been committed, stating that a contrary holding would give police absolute discretion to invade the privacy of motorists on the outside chance that the operator of the vehicle would be unlicensed or driving an improperly registered vehicle.⁴⁹

39. See, e.g., *State v. Holmberg*, 194 Neb. 337, 342, 231 N.W.2d 672, 675 (1975) ("The inconvenience experienced by the individual motorist is relatively slight compared to the benefits to be derived from strict enforcement of our licensing laws.").

40. 41 Md. App. 623, 398 A.2d 801, cert. denied, 285 Md. 730 (1979).

41. *Kraft v. State*, 18 Md. App. 169, 305 A.2d 489 (1973); *Glover v. State*, 14 Md. App. 454, 287 A.2d 333, cert. denied, 265 Md. 737 (1972); *Byrd v. State*, 13 Md. App. 288, 283 A.2d 9 (1971), cert. denied, 264 Md. 746 (1972); *Taylor v. State*, 9 Md. App. 402, 264 A.2d 870 (1970); *Burkett v. State*, 5 Md. App. 211, 245 A.2d 911 (1968), cert. denied, 252 Md. 730 (1969).

42. 18 Md. App. 169, 305 A.2d 489 (1973).

43. MD. ANN. CODE art. 66½, §§ 3-409(a), 6-112 (recodified as MD. TRANSP. CODE ANN. §§ 13-409(a), 16-112 (1977)).

44. 18 Md. App. 169, 173, 305 A.2d 489, 492 (1973).

45. *Id.*

46. 41 Md. App. 623, 628, 398 A.2d 801, 804, cert. denied, 285 Md. 730 (1979).

47. 392 U.S. 1 (1968).

48. 41 Md. App. 623, 631, 398 A.2d 801, 806, cert. denied, 285 Md. 730 (1979) (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)).

49. 41 Md. App. 623, 630, 398 A.2d 801, 805, cert. denied, 285 Md. 730 (1979).

In determining whether a random stop is warranted, the court balanced the state's interest against the individual rights of the motorist.⁵⁰ While recognizing that the state has a valid and vital interest in highway safety, the court emphasized the overriding importance of the motorist's right to be protected from unreasonable seizure. Applying the balancing test, it was evident to the court that, in light of the fourth amendment, the individual's interest weighed more heavily than the state's interest, especially because the state has other adequate means of protecting the public's interest in highway safety. The court emphasized that the factual basis necessary to justify stopping a motorist for a routine check is minimal: "An actual violation of the motor vehicle sections of the Transportation Article need not be detected. 'All that is required is that the stop be not the product of mere whim, caprice, or idle curiosity.'"⁵¹ Reviewing the facts in *Goode*, the court concluded that this minimal standard had not been met and the stop was therefore unconstitutional.⁵²

V. EVALUATION OF THE COURT'S HOLDING

A. *The Prouse Decision*

Less than three weeks after the *Goode* opinion was issued, the Supreme Court decided the case of *Delaware v. Prouse*.⁵³ The issue before the Court in *Prouse* was the same as that decided in *Goode*. Therefore, an evaluation of *Goode* requires consideration of the decision in *Prouse*.

In *Prouse*, a police officer made a random stop of a vehicle to check the driver's license and vehicle registration.⁵⁴ As he approached the vehicle, the officer smelled marijuana and subsequently seized a quantity of marijuana lying in plain view on the floor of the car. Charged with illegal possession of a controlled substance, the driver argued that the initial random stop had been an illegal seizure in violation of the fourth amendment.⁵⁵ The trial court granted defendant's motion to suppress the seized evidence, and the Delaware Supreme Court affirmed.⁵⁶ The United States Supreme Court granted certiorari in order to resolve the conflicting decisions among the various jurisdictions.⁵⁷

50. *Id.*

51. *Id.* at 630-31, 398 A.2d at 806 (quoting *State v. McKinley*, 305 Minn. 297, 304, 232 N.W.2d 906, 911 (1975)) (footnote omitted).

52. 41 Md. App. 623, 631, 398 A.2d 801, 806, *cert. denied*, 285 Md. 730 (1979).

53. 440 U.S. 648 (1979). *Goode* was decided Mar. 8, 1979 and *Prouse* was decided on Mar. 27, 1979.

54. *Id.* at 650.

55. *Id.*

56. *State v. Prouse*, 382 A.2d 1359 (Del. 1978), *aff'd*, 440 U.S. 648 (1979).

57. *Delaware v. Prouse*, 440 U.S. 648, 651 nn.2 & 3 (1979).

In holding the random stop unconstitutional, the Supreme Court employed a balancing test to determine whether the individual's interests outweighed the government's interests.⁵⁸ Although the Court found that the state's interest in highway safety was vital⁵⁹ and the intrusion upon the individual's interest modest,⁶⁰ it concluded that the random stop was so ineffective as a means of promoting highway safety that the state's interest failed to outweigh the individual's rights under the fourth amendment.⁶¹ The Court held that, because the random stop was not an efficient enforcement technique, the intrusion upon the individual's interest was unreasonable in the absence of some reasonable suspicion of criminal activity.⁶²

In addition, the Court relied upon its holding in *United States v. Brignoni-Ponce*,⁶³ which dealt with random stops near the Mexican border. In *Brignoni-Ponce*, the government sought unlimited discretion to stop any vehicle at random to determine if it contained illegal aliens.⁶⁴ The Court held that the border patrol could not make such random stops in the absence of some specific and articulable facts which raise a reasonable suspicion of some criminal activity.⁶⁵ The Court in *Prouse* concluded that the random stop to check for licensing and registration strongly resembled the random stop in border search cases and was at least as unreasonable.⁶⁶

B. *The Goode Decision*

In arriving at its decision, the *Goode* court balanced the competing state and individual interests to determine the reasonableness of random stops by police.⁶⁷ This test of reasonableness has been articulated by the Supreme Court⁶⁸ and requires balancing the governmental interests served by the seizure against the degree to which the seizure interferes with the interests of individuals.⁶⁹ In *Goode*, the court noted that although the state's interest in highway

58. *Id.* at 663.

59. *Id.* at 658.

60. *Id.* at 653-55. *Accord*, *United States v. Brignoni-Ponce*, 422 U.S. 873, 880 (1975) (random stop of a vehicle to check for illegal aliens termed modest intrusion).

61. 440 U.S. 648, 659 (1979).

62. *Id.* at 663.

63. 422 U.S. 873 (1975).

64. *Id.* at 876.

65. *Id.* at 884.

66. 440 U.S. 648, 657 (1979).

67. 41 Md. App. 623, 630, 398 A.2d 801, 806, *cert. denied*, 285 Md. 730 (1979).

68. *See Brown v. Texas*, 443 U.S. 47, 50-51 (1980); *Pennsylvania v. Mimms*, 434 U.S. 106, 109 (1977); *United States v. Martinez-Fuerte*, 428 U.S. 543, 554-55 (1975); *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1974); *Terry v. Ohio*, 392 U.S. 1, 20-21 (1968); *Camara v. Municipal Court*, 387 U.S. 523, 534-35 (1967).

69. *Brown v. Texas*, 443 U.S. 47, 50-51 (1980).

safety was "valid and vital,"⁷⁰ the individual's right to be free from arbitrary state interference was of greater significance and therefore outweighed the state's interest.⁷¹

A shortcoming of the *Goode* decision is the court's failure to determine the extent to which the seizure promotes the state's interest. When the state and individual interests are of relatively equal importance, the effectiveness of the means used to further the state interest becomes a critical factor in the outcome of the balancing test.⁷² In *Goode*, the state's interest in highway safety is arguably as important as the individual's right to be free from arbitrary state intrusion. What tips the scale in favor of the individual is that the random stop is an inefficient and ineffective means of promoting the state's interest.

When a police officer makes a random stop, he seizes a motorist and requests his driver's license and the vehicle registration card. The stop is designed to insure that the motorist is validly licensed and that the vehicle is properly registered. If the random stop is to be considered a valid enforcement technique, it should be an effective means of apprehending licensing and registration violators and deterring future violators.

Although statistical data is unavailable,⁷³ it is safe to assume that only a fraction of one percent of the drivers in Maryland are unlicensed.⁷⁴ At the same time, there are approximately 2,700,000 properly licensed drivers in the state.⁷⁵ Employing the random stop method, a police officer must stop an enormous number of motorists who are lawfully operating their vehicles in order to find licensing violators. The chance of finding an unlicensed driver among all drivers is slight. In *Delaware v. Prouse*,⁷⁶ the Supreme Court expressed this view, stating that "the contribution to highway safety made by the discretionary stops selected from among drivers generally will, therefore, be marginal at best."⁷⁷ Thus, the method is ineffective as a means of apprehending licensing violators.

70. 41 Md. App. 623, 630, 398 A.2d 801, 805, *cert. denied*, 285 Md. 730 (1979).

71. *Id.*

72. *Brown v. Texas*, 443 U.S. 47, 50-51 (1980); *Delaware v. Prouse*, 440 U.S. 648, 654 (1979).

73. The only information available from the Maryland Department of Transportation Public Information Division concerning unlicensed drivers was that 2,555 people were found guilty in Maryland of driving without a license in the year 1977-1978. Telephone interviews with staff members of the Maryland Department of Transportation Public Information Division, in Baltimore City (Jan. 31, 1980).

74. See *Delaware v. Prouse*, 440 U.S. 648, 659-60 (1979) ("It seems common sense that the percentage of all drivers on the roads who are driving without a license is very small . . .").

75. Telephone interviews with staff members of the Maryland Department of Transportation Public Information Division, in Baltimore City (Jan. 31, 1980).

76. 440 U.S. 648 (1979).

77. *Id.* at 660.

In addition to its failure to facilitate apprehension of violators, the random stop fails to deter licensing violations. One essential aspect of an effective regulatory scheme is a deterrent effect on potential violators.⁷⁸ The notion that the random stop has such an effect is unrealistic. Given the enormous number of drivers in Maryland, there is a minute chance that an unlicensed driver who is properly operating his vehicle will ever be stopped by the police. Consequently, the deterrent effect is negligible at best. As expressed in *Prouse*, "[i]n terms of actually discovering unlicensed drivers or deterring them from driving, the [random stop] does not appear sufficiently productive to qualify as a reasonable law enforcement practice."⁷⁹

Finally, the random stop is unnecessary because the state has other more adequate means for promoting highway safety.⁸⁰ The principal purpose of statutory provisions requiring drivers to be licensed is to insure that motorists have certain minimal driving skills and knowledge. If these licensing requirements are valid methods of insuring safety, it must be assumed that unlicensed drivers who have in some way failed to comply with these standards are more likely to commit traffic violations than licensed drivers.⁸¹ Because any traffic violation, including an equipment problem, permits an officer to stop the vehicle and check the driver's license and registration,⁸² it follows that more unlicensed drivers are likely to be stopped under the traffic violation stop than under the random stop method.⁸³

In arriving at its decision, the *Goode* court noted the interest in highway safety as the state's only justification for the random stop.⁸⁴ In reality, however, the state has used the random stop to further a second interest — crime detection and prevention. The facts in *Goode* aptly demonstrate this point. The passengers in the car in *Goode* were not stopped because the officer wished to check the driver's license and vehicle registration in an effort to promote highway safety. On the contrary, they were stopped because the officer was suspicious of possible criminal activity.⁸⁵ The enforcement of licensing and registration provisions was merely a pretext for the stop. To protect against such arbitrary stops, the court properly noted that an officer must be able to point to specific and articulable

78. *Id.* at 658–60. See generally *Automobile Spot Checks*, *supra* note 17.

79. 440 U.S. 648, 660 (1979).

80. *Goode v. State*, 41 Md. App. 623, 630, 398 A.2d 801, 805, *cert. denied*, 285 Md. 730 (1979).

81. *Delaware v. Prouse*, 440 U.S. 648, 659 (1979).

82. *Goode v. State*, 41 Md. App. 623, 630, 398 A.2d 801, 805, *cert. denied*, 285 Md. 730 (1979).

83. *Delaware v. Prouse*, 440 U.S. 648, 659 (1979).

84. 41 Md. App. 623, 630, 398 A.2d 801, 805, *cert. denied*, 285 Md. 730 (1979).

85. *Id.* at 624–25, 398 A.2d at 802–03.

facts that warrant a reasonable suspicion that a crime is being committed, is about to be committed, or has been committed.⁸⁶ If the officer can make such a showing, the stop is constitutional.

Allowing a stop in the absence of reasonable suspicion would grant police absolute discretion to stop any motorist without judicial review of the exercise of discretion.⁸⁷ The abuse inherent in such a procedure is readily apparent. The principal constitutional difficulty is that the police could stop motorists for unarticulated reasons which may, in fact, be based upon prejudices. Such stops, without the safeguard of judicial review, would permit the police to engage in "fishing expeditions" at the expense of the motoring public.⁸⁸ The potential for harassment of certain groups of citizens, such as minority groups, inherent in random stops makes both the *Goode* and *Prouse* decisions essential to insure the protection of fourth amendment rights.

C. Roadblock Stops: A Possible Alternative

Roadblock stops involve the stopping of *all* oncoming traffic at a fixed location to check the validity of the driver's license and the vehicle registration.⁸⁹ In *Goode*, the court noted that in holding that random stops are unconstitutional, it was not implying that roadblock stops are also prohibited.⁹⁰ The Supreme Court in *Prouse* mentioned that the roadblock stop might be a possible alternative to the random stop.⁹¹ Both courts, relying upon a series of Supreme Court cases sanctioning the use of roadblocks in searches for illegal aliens at the Mexican border or its functional equivalent,⁹² imply that such a technique might be constitutional. Although a roadblock may be a proper enforcement technique in regulating illegal alien traffic, extending its use to licensing and registration checks is unwarranted when analyzed in light of the Supreme Court's balancing test.⁹³

In *United States v. Martinez-Fuerte*,⁹⁴ the Supreme Court sanctioned roadblock stops at fixed checkpoints to regulate the flow

86. *Id.* at 629-30, 398 A.2d at 805.

87. *Id.* at 630, 398 A.2d at 805.

88. *Id.*

89. *Automobile Spot Checks*, *supra* note 17, at 99-100.

90. 41 Md. App. 623, 628 n.5, 398 A.2d 801, 804 n.5, *cert. denied*, 285 Md. 730 (1979).

91. 440 U.S. 648, 663 (1979). Prior to *Prouse*, the Court had reserved any comment on the propriety of roadblock stops to check for licensing and registration. *Id.* at 656-57 n.13; *see* *United States v. Brignoni-Ponce*, 422 U.S. 873, 883 n.8 (1974).

92. *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976); *United States v. Ortiz*, 422 U.S. 891 (1975); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975); *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973).

93. *See* text accompanying notes 30 & 31 *supra*.

94. 428 U.S. 543 (1975).

of illegal alien traffic across the Mexican border.⁹⁵ The roadblock stop used in *Martinez-Fuerte* consisted of border patrol agents slowing all oncoming traffic to a virtual standstill and then referring certain motorists to a secondary area for brief questioning.⁹⁶ Referrals to the secondary area were not necessarily based on any reasonable suspicion that a crime had been committed.⁹⁷ In holding the roadblock stop constitutional, the Court applied the traditional balancing test, concluding that the governmental interest in curtailing illegal alien traffic was great⁹⁸ and the intrusion upon the interests of motorists minimal.⁹⁹ In addition, the Court cited statistical data which demonstrated the effectiveness of the roadblock¹⁰⁰ and expressed concern that elimination of the roadblock would reduce the border patrol's ability to apprehend and deter illegal alien traffic.¹⁰¹

An analysis of the factors used in the balancing test in *Martinez-Fuerte* demonstrates a strong governmental interest in the seizure, an effective seizure method which promotes that governmental interest, and a minimal interference with the interests of the individual. The governmental interest, therefore, outweighs the individual interest and the roadblock stop at fixed checkpoints is constitutional. Applying this balancing test to the use of roadblock stops in licensing and registration checks, however, renders a different result.

In licensing and registration cases, the state's interest is in highway safety.¹⁰² More specifically, enforcement of the licensing requirement is designed to prevent unlicensed drivers from operating vehicles on the state's roads. Although the state has a valid interest in eliminating highway safety problems, unlicensed drivers may not be contributing to these problems. There is no data available demonstrating that unlicensed drivers actually cause safety problems.¹⁰³ There has been no showing by the state that

95. *Id.* at 566.

96. *Id.* at 546.

97. *Id.* at 547.

98. *Id.* at 551-53, 557. The Court cited statistical data as to the gravity of the illegal alien problem, noting that anywhere from 1,000,000 to 12,000,000 illegal aliens enter the United States every year and that approximately 85% cross the 2,000 mile long Mexican border. *Id.* at 551.

99. *Id.* at 557-58. The Court noted that the stop is brief, requiring at the most an answer to several questions or the display of documents evidencing a right to be in the country. Furthermore, the stop is conducted at a fixed checkpoint. This lessens some of the anxiety and fear associated with a random stop made by police without warning. *Id.* at 558.

100. *Id.* at 553.

101. *Id.* at 556-57.

102. See *Goode v. State*, 41 Md. App. 623, 630, 398 A.2d 801, 805, cert. denied, 285 Md. 730 (1979).

103. See note 73 *supra*.

unlicensed drivers cause a significant number of accidents or commit other traffic violations. In fact, there has been no estimate made as to the number of unlicensed drivers in Maryland.¹⁰⁴ By comparison, the federal government in *Martinez-Fuerte* demonstrated that the illegal alien problem is one of enormous dimension in need of immediate and strict regulatory measures.¹⁰⁵ In terms of the balancing test, therefore, the state's interest in apprehending unlicensed drivers is arguably weak in comparison to the federal government's interest in apprehending illegal aliens.

Additionally, the balancing test requires consideration of the extent to which the seizure promotes the governmental interest.¹⁰⁶ In *Martinez-Fuerte*, the federal government showed that the roadblock is successful for several distinct reasons. First, there are millions of illegal aliens entering the country each year with the vast majority crossing the Mexican border.¹⁰⁷ Second, the fixed checkpoint roadblocks are located on key highways where it is known that many illegal aliens travel.¹⁰⁸ Third, the border patrol agents are trained to detect illegal aliens when stopping motorists for questioning at secondary areas.¹⁰⁹ Finally, roadblocks at fixed checkpoints are the most effective way to detect illegal aliens.¹¹⁰

The relative success of border search roadblocks probably could not be repeated by the state in roadblocks for licensing checks. Unlicensed drivers do not exist in vast numbers as do illegal aliens, nor are they localized in any area of the state. There are also no particular roads or highways that licensing violators travel, making it inefficient to set up only a few roadblocks. If many roadblocks were set up, the intrusion into the privacy of individuals would be increased, thereby affecting the outcome of the balancing test and increasing the chances of the unconstitutionality of such roadblocks. Unlike many illegal aliens, unlicensed drivers cannot be detected through outward characteristics. Stops for finding unlicensed drivers would thus involve a greater period of detention than would be involved in finding illegal aliens. Finally, the state has more

104. *Id.*

105. 428 U.S. 543, 551-53 (1979).

106. *Brown v. Texas*, 443 U.S. 47, 50-51 (1980).

107. *United States v. Martinez-Fuerte*, 428 U.S. 543, 551 (1975).

108. *Id.* at 556-57.

109. *Id.* at 563 n.16. The government asserted that the border patrol is trained to rely on several factors in addition to apparent Mexican ancestry when making referrals to secondary areas. *Id.*

110. *Id.* at 556. Roadblocks are set up on key highways, which helps border patrol agents apprehend and deter illegal aliens. Those illegal aliens who are deterred from using these highways are forced to travel upon roads of poorer quality, which increases the possibility of their being apprehended by roving patrols of border agents. *Id.* at 557.

efficient means of apprehending licensing violators.¹¹¹ Using the roadblock stop to apprehend licensing violators would require the seizure of thousands of individuals in an effort to find a single licensing violator. Such a method would be inconvenient, inefficient, and ineffective.

The Court in *Martinez-Fuerte* also noted that the roadblock stop was a minimal intrusion upon the motorist's fourth amendment rights.¹¹² Border search roadblocks are set up at permanent checkpoints and motorists know or can find out the location of these checkpoints.¹¹³ Only a small percentage of motorists are detained for brief questioning. Most motorists are allowed to proceed immediately.¹¹⁴ Consequently, the potential interference with the movement of traffic is minimal and the individual is unlikely to be annoyed by the brief detention.¹¹⁵

In contrast, the roadblock stop for licensing checks probably would be set up at a temporary location unknown to motorists until they reached the roadblock.¹¹⁶ Each motorist would be stopped and asked to display his license and registration card. The police officer would then have to check the validity of those documents with a central record keeping facility. Whereas most motorists proceed almost immediately in the border search roadblock, each motorist in the licensing roadblock would be detained for a period of time, questioned, and compelled to display the necessary documents. Such an intrusion upon the motorist constitutes a higher degree of state interference into private interests than is present in the border search situation.

When the roadblock stop for licensing checks is scrutinized under the balancing test, its constitutionality is questionable. The state interest in the seizure is arguably weak, the seizure inefficient in promoting that interest, and the intrusion upon the individual's fourth amendment interest significant. It is conceivable that the

111. *Goode v. State*, 41 Md. App. 623, 630-31, 398 A.2d 801, 806, *cert. denied*, 285 Md. 730 (1979). The court noted that, even without random stops, adequate means exist for protecting the state's interest in highway safety because "the factual basis necessary to underpin the stop of a motorist for a spot or routine check, is minimal indeed." *Id.* See generally *Automobile Spot Checks*, *supra* note 17.

112. 428 U.S. 543, 557-58 (1975).

113. *Id.* at 559.

114. *Id.* at 546.

115. *Id.* at 558-59.

116. A permanent roadblock stop similar to those used at the Mexican border would be ineffective because violators would simply avoid those locations by using other roads. This does not happen in the border roadblock situation because there are only a limited number of key highways crossing the Mexican border and extending into major metropolitan areas. Consequently, illegal aliens are forced to use these limited access routes. *Id.* at 556. *Accord*, *United States v. Brignoni-Ponce*, 442 U.S. 873, 882 (1975).

state could demonstrate a serious problem with unlicensed drivers and develop an effective roadblock procedure that would not substantially intrude upon the individual interest. As it stands, however, the problems inherent in the licensing roadblock tip the scale in favor of the individual's fourth amendment rights and should render that procedure unconstitutional.

VI. CONCLUSION

The decisions in *Goode* and in *Prouse*, eliminating random stops, are necessary to insure that safeguards provided for in the fourth amendment extend to motorists. The random stop is an offensive police tactic unrelated to and unnecessary for a satisfactory program of highway safety. In light of the absolute discretion exercised by police in making random stops, the potential for misuse is too great to allow random stops to continue. Unfortunately, the Court of Appeals of Maryland and the Supreme Court have implicitly approved the roadblock stop which is just as troublesome and offensive to the motorist as the random stop. Roadblock stops for licensing checks have been implicitly sanctioned even in the absence of any showing by the state that the unlicensed driver poses a significant highway safety problem and that the implementation of this method would reduce such a problem if in fact it exists.

When analyzed in relation to the Supreme Court's balancing test, the roadblock for licensing and registration checks is unreasonable. The substantial dissimilarity between illegal alien roadblocks and licensing roadblocks indicates that the constitutionality of the method in the former situations cannot be transferred to the latter. If the licensing roadblock is put into practice, its constitutionality should be challenged. A motorist should be permitted to move about freely without being stopped by police authorities for any reason other than a traffic violation, equipment problem, or reasonable suspicion of some criminal activity.

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