

Fall 9-1-1963

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Recommended Citation

Road Blocks to Inspect Drivers' Licenses, 20 Wash. & Lee L. Rev. 386 (1963),
<https://scholarlycommons.law.wlu.edu/wlulr/vol20/iss2/23>

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ROAD BLOCKS TO INSPECT DRIVERS' LICENSES

The hurrying motorist today finds road blocks set up to inspect drivers' licenses one of his principal irritants. To a motorist without a license, this method of inspection naturally causes great anxiety, and so he may be disposed to contend that the setting up of a road block to inspect drivers' licenses is unconstitutional.¹

In the recent Kentucky case of *Commonwealth v. Mitchell*,² the defendant was forced to stop at a road block and ordered by state police officers to display her operator's license. She failed to do so, and it developed that she had never been issued an operator's license. Defendant was then prosecuted in the Quarterly Court for operating a motor vehicle without a driver's license.³ A dismissal of the action was obtained on the ground that the use of a road block for the purpose of detaining the defendant to check her license constituted a violation of her constitutional right of liberty by means of an illegal restraint or arrest. On appeal by the Commonwealth, the Circuit Court affirmed the dismissal. In the present action, the Commonwealth sought a certification of the law.⁴ The Court of Appeals of Kentucky took a different view from that of the Circuit Court, holding that the act of police officers in setting up a road block for motor vehicles for the purpose of requiring drivers to display operators' licenses does not involve an illegal restraint, an unlawful search, or an arrest in violation of any other constitutional right.

The contention in the *Mitchell* case that the accused was subjected to an unlawful search and seizure, contrary to both the state⁵ and

¹"At the very foundation of our state is the right of the people to be secure in their persons, houses, papers, and possessions. Infringement of such individual rights cannot be tolerated until we tire of democracy and are ready for communism or a despotism. The enforcement of no statute is of sufficient importance to justify indifference to the basic principles of our government." *Craven v. State*, 148 Tenn. 517, 256 S.W. 431, 432 (1923); accord, *Robertson v. State*, 184 Tenn. 277, 198 S.W.2d 633, 635 (1947).

²355 S.W.2d 686 (Ky. 1962).

³"Unless another penalty is provided by law, any person who violates any of the provisions of KRS 186.400 to 186.640 shall be fined not less than two dollars nor more than five hundred dollars or imprisoned for not more than six months or both." Ky. Rev. Stat. Ann. § 186.990(3) (Supp. 1962).

⁴"Where the punishment which might be inflicted includes imprisonment, the Commonwealth cannot obtain a reversal of a misdemeanor case and so may appeal to have the law certified without making a motion for a new trial." Ky. Crim Code § 352(1).

⁵"The people shall be secure in their persons, houses, papers, and possessions, from unreasonable search and seizure; and no warrant shall issue to search any

federal Constitutions, when detained by an officer for the sole purpose of inspecting her license is not tenable. A mere detention under such circumstances is not a search and seizure. When the operator is intercepted by a police officer and requested to display his license, such an act by the officer in itself constitutes neither a search nor a seizure.⁶ The essential distinction is that the operator by his own act produces the license; the officer does not search for it. A mere perfunctory observation by the inspector of that which is in plain sight does not constitute a search.⁷

Moreover, the momentary detention of a motorist for the sole purpose of checking his operator's license does not constitute an arrest or apprehension.⁸ The fact that a police officer detains a motorist for the purpose of talking to him and asking him reasonable questions does not necessarily mean that the person so stopped is arrested.⁹ This element of detention falls short of the act of actually seizing or holding a person to answer for a suspected or alleged public offense.¹⁰ Even though such a detention does not amount to an arrest, it still involves a restraint upon the person. Such restraint is not unlawful, however, if it is carried out in good faith.¹¹

The extent to which an individual's constitutional rights¹² can be limited by regulation under the state's police power¹³ is a question which has resulted in voluminous litigation. It is settled that the validity of a state's regulation, purportedly enacted in accord with

places or seize any person or thing, without describing them as nearly as may be, nor without probable cause supported by oath or affirmation." Ky. Const., Bill of Rights § 10.

⁶City of Miami v. Aronovitz, 114 So. 2d 784 (Fla. 1959).

⁷People v. Carnes, 173 Cal. App. 2d 559, 343 P.2d 626 (Dist. Ct. App. 1959); People v. Murphy, 173 Cal. App. 2d 367, 343 P.2d 273 (Dist. Ct. App. 1959); People v. Hyde, 51 Cal. 2d 152, 331 P.2d 42 (1958); People v. Roberts, 47 Cal. 2d 374, 303 P.2d 721 (1956).

⁸Morgan v. Town of Heidelberg, 150 So. 2d 512, 515 (Miss. 1963).

⁹People v. King, 175 Cal. App. 2d 386, 346 P.2d 235, 238 (Dist. Ct. App. 1959).

¹⁰State v. Martin, 89 Kan. 678, 131 Pac. 1190 (1913).

¹¹Supra note 8.

¹²U.S. Const. amend. 4, 5, 14; Ky. Const., Bill of Rights §§ 2, 10, 11.

¹³"It is an attribute of sovereign power to enact laws for the exercise of such restraint and control over the citizen and his occupation as may be necessary to promote the health, safety, and welfare of society. This power is known as the 'police power.' In its exercise the general assembly may provide that any occupation which is the proper subject of the power may not be pursued by the citizen, except [when] authorized by a license issued by public authority so to do. Such enactment may require the payment of a fee, and the execution of a bond with security, conditioned in view of the objects and purpose of the act, as a prerequisite to the issuance of such license. What occupations are the proper subjects of this power is a judicial question." Price v. People, 193 Ill. 114, 61 N.E. 844, 846 (1901); accord, Spiegler v. City of Chicago, 216 Ill. 114, 74 N.E. 718, 721 (1905).

its police power, depends upon the circumstances of each case and the reasonableness of the regulation.¹⁴ Great stress must be placed upon the term "reasonable" in order to understand that the test of state regulation, when considered in light of the due process clause of the Constitution, is reasonableness as distinguished from arbitrary or capricious action.¹⁵ Since the exercise of a state's police power has been held to extend to legislation of laws relating to the public welfare,¹⁶ it follows that a state can regulate even at the expense of private rights.¹⁷

It is immediately apparent that, from the setting up of a road block for the purpose of inspecting operators' licenses, a direct conflict emanates between two paramount considerations: the public interest and the individual's natural rights. Thus, it is essential that we recognize the individual's rights and that we juxtapose the exercise of these rights with the necessities of the general public.¹⁸ The automobile has long been considered a dangerous instrumentality in our society.¹⁹ It has also long been recognized that regulations imposed by the state legislature upon the use and operation of automobiles are a valid exercise of the police power.²⁰ The Kentucky statute,²¹ which is similar to the statutes of many other states, requires all drivers to obtain an operator's license. The statute has been held valid on the ground that the right to operate an automobile in public is not a natural and unrestrained right but a privilege subject to reasonable regulation under the police power in the interest of public safety.²²

Since the requirement that an operator obtain a license is a reasonable regulation under the police power, it follows that revocation by the state for good cause is also valid. The suspension of the privilege of operating a vehicle in a public place for failure to comply

¹⁴*People v. Perretta*, 253 N.Y. 305, 171 N.E. 72 (1930); *Wulfsohn v. Burden*, 241 N.Y. 288, 150 N.E. 120 (1925).

¹⁵*State ex rel. Davis-Smith Co. v. Clausen*, 65 Wash. 156, 117 Pac. 1101 (1911).

¹⁶*West Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

¹⁷*New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63 (1928).

¹⁸*Supra* note 6, at 789.

¹⁹*Supra* note 6, at 788; *Smith v. Commonwealth*, 175 Ky. 286, 194 S.W. 367 (1917).

²⁰"Since the preservation and the safety of highways is a matter of vital public concern, and an appropriate subject for the exercise of the police power of the state, users of the highway must submit to reasonable rules and regulations adopted to attain these ends . . ." *Commonwealth v. Abell*, 275 Ky. 802, 122 S.W.2d 757, 760 (1938); accord, *Mansbach Scrap Iron Co. v. City of Ashland*, 235 Ky. 265, 30 S.W.2d 968 (1930).

²¹"Every person except those exempted by KRS 186.420 and KRS 186.430 shall before operating a motor vehicle upon a highway secure an operator's license as provided in this chapter." Ky. Rev. Stat. Ann. § 186.410 (1) (Supp. 1962).

²²*Commonwealth v. Harris*, 278 Ky. 218, 128 S.W.2d 579 (1939).

with reasonable regulations does not constitute a denial of due process.²³

It appears that utilization of a road block is the only practical and reliable method available to the state to insure that persons without licenses, either because they never had them or have had them revoked, will not continue to drive. The leading case of *City of Miami v. Aronovitz*²⁴ proclaims that the effectiveness of a road block for the purpose of inspecting drivers' licenses is a reasonable preventive device. The state derives its power to affect such a protective measure as a road block by statutes requiring that an operator's license be in the driver's possession and that the license be displayed upon demand.²⁵ These statutes have been held to confer the necessary power upon the state to effectuate a motor vehicle road block.²⁶ Furthermore, a statute requiring the operator to display his license upon demand has been interpreted to mean that he must display his license for the purpose of inspection as well as for identification in the event of an accident or statutory violation.²⁷

Many states have statutes penalizing a driver for failure to display his license upon demand. However, a failure to display upon demand is not conclusive evidence that the accused has no license. Although a rebuttable presumption arises that the accused has no license, no conviction can be had based upon his failure to display it upon demand.²⁸

Moreover, the question of who has the authority to demand the display of an operator's license is answered by the statutes. The Mississippi statute is illustrative of a broad conferring of the power, extending it to justices of the peace, peace officers, field deputies and

²³"Time has proven, however, that because of the severe penalties attendant upon serious traffic violations, including suspension or revocation of drivers' licenses, this requirement has become an essential segment of our laws for the control and prevention of traffic accidents and fatalities." *Supra* note 6, at 787; accord, *Sturgill v. Beard*, 303 S.W.2d 908 (Ky. 1957); *Ballow v. Reeves*, 238 S.W.2d 141 (Ky. 1951).

²⁴114 So. 2d 784 (Fla. 1959).

²⁵"The licensee shall have his license in his immediate possession at all times when driving a motor vehicle and shall display it upon demand . . ." Ky. Rev. Stat. Ann. § 186.510 (Supp. 1962).

²⁶*Supra* note 8; *supra* note 6; Cf, *Murphy v. State*, 194 Tenn. 698, 254 S.W.2d 979 (1953).

²⁷*Supra* note 6.

²⁸"However, no person charged with violating this section shall be convicted if he produces in court an operator's or chauffeur's license theretofore issued to him and valid at the time of his arrest." Fla. Stat. Ann. § 322.15 (1957). *People v. Meyer*, 194 App. Div. 822, 186 N.Y.S. 434 (1921).

motor vehicle inspectors.²⁹ The Massachusetts statute authorizes any police officer who is in uniform or who displays his badge to make such a demand.³⁰ The Tennessee statute, however, limits this unrestricted right to state highway patrolmen.³¹ In Tennessee, other peace officers are authorized to examine the operator's licenses only when the driver has violated a state statute or municipal or county ordinance or has been involved in an accident.³²

The statutory interpretation of roadblocks to inspect drivers' licenses necessarily involves the question of where and when a road block may be set up. Though there are no decisions or statutes on this subject, it would seem that road blocks must be confined to public thoroughfares. To set up a road block on private property would constitute a trespass. The time element, however, can have no natural restrictions, and it is assumed that the state will select the schedule most suitable to the ends to be accomplished. A road block cannot be erected, however, at a time or place which would cause unreasonable inconvenience to motorists.

Though the courts uphold the validity of road blocks for the purpose of checking drivers' licenses, they are alert to strike down any act manifesting a temptation to use this power as a guise for the purpose of perpetrating an unlawful search and seizure. In other words, the law authorizes an officer to stop a driver and ask him to show his license, but the law will not tolerate the utilization of the statutory authority as a mere subterfuge for the sole purpose of searching the person, the car, or the luggage.³³

The test of probable cause has been formulated for determining whether a search or seizure without a warrant is constitutionally valid. Good faith alone is not sufficient showing of probable cause. In addition to good faith, there must be reliable facts and circumstances which would lead a reasonable man to believe that the vehicle which is stopped and searched is being operated in violation of the law.³⁴ Thus, the conclusion is drawn that a mere search for evidence as such is a violation of the fourth amendment to the Constitution of the United States.³⁵

²⁹Miss. Code Ann. § 8108 (1942).

³⁰*Commonwealth v. Sullivan*, 311 Mass. 177, 40 N.E.2d 261 (1942); Mass. Ann. Laws ch. 90, § 25 (1954).

³¹Tenn. Code Ann. § 59-707 (Supp. 1962); *Cox v. State*, 181 Tenn. 344, 181 S.W.2d 338 (1944).

³²Tenn. Code Ann. § 59-709 (Supp. 1962).

³³*Supra* note 1; *United States v. Bumbola*, 23 F.2d 696 (N.D.N.Y. 1928).

³⁴*Carroll v. United States*, 267 U.S. 132 (1925); *Lawson v. United States*, 254 F.2d 706 (8th Cir. 1958).

³⁵*Application of Houlihan*, 31 F.R.D. 145 (D.N.D. 1962).