

# ARKANSAS COURT OF APPEALS

DIVISION II  
No. CACR08-812

DAVID BASHAM

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** April 8, 2009

APPEAL FROM THE CRAIGHEAD  
COUNTY CIRCUIT COURT  
[NO. CR-2007-391]

HONORABLE JOHN N.  
FOGLEMAN, JUDGE

AFFIRMED

## LARRY D. VAUGHT, Chief Judge

Appellant David Basham challenges the trial court’s ruling denying his motion to suppress. On appeal, he argues that his arrest for driving while intoxicated flowed from a constitutionally infirm roadblock administered by the Jonesboro Police Department and, as a result, all evidence acquired during the stop should have been suppressed. We see no error and affirm.

On September 9, 2006, inside the city limits of Jonesboro, a roadblock operation was ordered by the Chief of Police for the city. The purpose of the roadblock was to check for obstructed or damaged windshields, inoperable headlights and tail-lights, and damaged safety equipment on every third vehicle that passed through a designated portion of Airport Road. Jonesboro police officer, Robert Ghea, made contact with Basham while carrying out the roadblock plan. Ghea asked for Basham’s driver’s license and registration. During the stop,

Ghea noticed that Basham smelled of alcohol and began investigating him on suspicion of driving while intoxicated. Ultimately, Basham was arrested and charged with driving while intoxicated, second offense.

Basham filed a motion to suppress that challenged the constitutionality of the roadblock, alleging that it violated his state and federal constitutional rights. After a hearing on the matter, his motion was denied and Basham entered a conditional plea of guilty, reserving his right to challenge the denial of his motion to suppress on appeal. He was sentenced to seven days in the county jail, fined \$1500, and ordered to pay \$300 in court costs. His driver's license was also ordered suspended.

When reviewing a denial of a motion to suppress, we conduct a de novo review based on the totality of the circumstances. *Sims v. State*, 356 Ark. 507, 157 S.W.3d 530 (2004). We must review findings of historical facts for clear error and make a determination whether those facts give rise to reasonable suspicion, giving due weight to inferences drawn by the court. *Id.* The credibility of witnesses who testify at a suppression hearing is in the trial judge's domain, and we defer to the trial court's superior position in such matters. *Holland v. State*, 365 Ark. 55, 225 S.W.3d. 353 (2006). Finally, we will reverse only if the trial court's ruling is against the preponderance of the evidence. *Laine v. State*, 347 Ark. 142, 60 S.W.3d 464 (2001).

While it is well-settled law that although a Fourth Amendment seizure occurs when a vehicle is stopped at a roadblock checkpoint, not all such seizures are unreasonable under the Fourth Amendment. *Mullinax v. State*, 327 Ark. 41, 938 S.W.2d 801 (1997). In considering whether the checkpoint is reasonable, we must consider whether the checkpoint

program was narrowly designed to serve a specific purpose. See *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444 (1990) (holding roadblock set up to ensure roadway safety constitutional); *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) (approving a checkpoint program designed for policing the border). However, it is clear that a roadblock program initiated for the primary purpose of uncovering evidence of criminal wrongdoing contravenes the Fourth Amendment. *Deleware v. Prouse*, 440 U.S. 648 (1979).

Basham challenges the constitutionality of the Jonesboro checkpoint on the grounds that it was a “general criminal investigatory roadblock” with a primary purpose of “look[ing] for violations of Arkansas criminal law.”<sup>1</sup> His argument is grounded in the specifics of the checkpoint program that were established at the hearing. Specifically, Basham notes that the officers were instructed to look for invalid and suspended driver’s licenses and discrepancies between the vehicle and the paperwork presented. He argues that because these violations could subject the driver to a citation or warning, the roadblock was “transformed” into a constitutionally violative program with the primary purposes of “revenue enhancement” and “general criminal investigation.” In further support of this contention, Basham directs our court’s attention to the testimony of Officer Ghea who stated that—while operating the checkpoint—officers were empowered to further investigate any driver they came into contact with that exhibited signs of impairment for suspicion of driving while intoxicated.

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<sup>1</sup> Basham makes several vague references to a three-prong balancing test used to weigh the constitutionality of a checkpoint program that is outlined in *Brown v. Texas*, 443 U.S. 47 (1979), and sections 10 and 20 of Article 2 of the Arkansas Constitution. However, he does not develop these points on appeal, and it is neither the burden of the State nor our court to do so on his behalf; we will not address claims that are void of supporting argument. *Steinmetz v. State*, 366 Ark. 222, 234 S.W.3d 302 (2006).

However, Basham’s contentions are not supported by either the facts or the law surrounding this case. A roadblock initiated for the purpose of checking driver’s licenses and vehicle registration is a permissible means of ensuring roadway safety. *Camp v. State*, 26 Ark. App. 299, 764 S.W.2d 463 (1989). Indeed, our court has previously noted that roadblocks initiated to check driver’s licenses and registrations have the legitimate objective of “ascertaining that only qualified drivers and safe vehicles [are] using highways.” *Id.*, 26 Ark. App. at 304, 764 S.W.2d at 465. Further, as the Supreme Court of the United States has observed, “the States have a vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles, that these vehicles are fit for safe operation and hence that licensing, registration, and vehicle inspection requirements are being observed” because such matters are “essential elements in a highway safety program.” *Prouse*, 440 U.S. at 658.

It would result in a practical and legal absurdity to require an officer conducting a valid safety-inspection roadblock to turn a blind eye to an intoxicated or impaired driver—allowing an individual driving under the influence to continue on his way—in order to avoid the stop being decried as one primarily designed to detect ordinary, criminal wrongdoing. As such, we see no error in the trial court’s determination that the checkpoint was a permissible stop and its resulting denial of Basham’s motion to suppress.

Affirmed.

HART and BROWN, JJ., agree.