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Illinois v. Lidster: Continuing to Carve out Constitutional Vehicle Checkpoints

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ILLINOIS V. LIDSTER: CONTINUING TO CARVE OUT CONSTITUTIONAL VEHICLE CHECKPOINTS

I. INTRODUCTION

In *Illinois v. Lidster*,[1] the Supreme Court held that the Fourth Amendment does not prohibit motorist checkpoints carried out with the purpose of requesting information from vehicle occupants about a previously-committed crime.[2] The Court deemed such stops to be constitutional when they advance the public interest in solving a crime to a degree that outweighs any interference with individual liberties as a result of the stop.[3]

This Note argues that the Supreme Court properly reasoned that its decision in *City of Indianapolis v. Edmond*,[4] in which the Court held unconstitutional checkpoints conducted without any individualized suspicion and "to detect evidence of ordinary criminal wrongdoing,"[5] is distinguishable from *Lidster* and should not control. The Supreme Court was correct in reasoning that a lack of individualized suspicion is not fully determinative of an informational stop's constitutionality under the Fourth Amendment. Further, the Supreme Court was consistent in holding that special law enforcement concerns will sometimes justify such stops, as the Court had previously articulated in *Michigan Department of State Police v. Sitz*[6] and *United States v. Martinez-Fuerte*.[7] Finally, the Supreme Court properly held that the reasonableness of the checkpoint stop in *Lidster*—and, thus, its constitutionality—should be determined by applying the balancing test set forth in *Brown v. Texas*.[8] However, this Note also argues

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[1] 540 U.S. 419 (2004).
[2] *Id.* at 424.
[3] *Id.* at 427.
[4] 531 U.S. 32 (2000).
[5] *Id.* at 41-42.
[6] 496 U.S. 444, 455 (1990).
[7] 428 U.S. 543, 566-67 (1976).
[8] *Lidster*, 540 U.S. at 426-27 (citing Brown v. Texas, 443 U.S. 47, 50-51 (1979)).

that although the Supreme Court used the proper analysis in finding that these types of checkpoints are not *per se* unconstitutional, the Supreme Court erred in engaging in the balancing test to decide *Lidster*. Instead, it should have remanded the case to the Illinois courts to decide whether the facts of the case satisfied *Brown*'s multifactor test.

II. BACKGROUND

The Fourth Amendment states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, 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.[9]

It is well established that a vehicle checkpoint stop is a seizure within the meaning of the Fourth Amendment, just as stopping a pedestrian on the street is considered a seizure.[10] In cases involving such checkpoints, the question that then arises is whether those seizures are reasonable under the Fourth Amendment.[11] When a seizure is less intrusive than a formal arrest, courts balance "the amount of intrusion upon individual privacy against the special law enforcement interests that would be served by permitting such an intrusion" in order to determine whether it is reasonable and thus does not require some element of suspicion in order to be constitutional.[12] While some amount of individualized suspicion is generally required in a constitutional seizure, "the Fourth Amendment imposes no irreducible requirement of such suspicion."[13] When the public interest concerns advanced by a seizure outweigh the interference with individual liberties as a result of the seizure, the seizure is constitutional even in the absence of any degree of individualized suspicion.[14] Conversely, if the balancing test

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[9] U.S. CONST. amend. IV.

[10] *Sitz*, 496 U.S. at 450; Brower v. County of Inyo, 489 U.S. 593, 597 (1989) (noting that a Fourth Amendment seizure occurs "when there is a governmental termination of freedom of movement *through means intentionally applied*"); *Martinez-Fuerte*, 428 U.S. at 556. As applied to vehicle checkpoints, drivers are intentionally constrained in their ability to use the roads as they ordinarily would by law enforcement officials. Further, as noted in *Marshall v. Barlow's, Inc.*, "[t]he fact that automobiles occupy a special category in Fourth Amendment case law is now beyond doubt . . . ." 436 U.S. 307, 315 n.10 (1978).

[11] *Sitz*, 496 U.S. at 450.

[12] Florida v. Royer, 460 U.S. 491, 514-15 (1983).

[13] *Martinez-Fuerte*, 428 U.S. at 560-61.

[14] *See id.*

falls in favor of individual liberties, a suspicionless seizure is unconstitutional.[15]

The following cases outline the Supreme Court's assessment of seizures employed in a variety of circumstances, including vehicle checkpoints. First, in *United States v. Martinez-Fuerte*, the Supreme Court weighed public interest concerns against intrusions on individual liberties in finding vehicle checkpoints set up to assist with border control efforts constitutional.[16] Then, in *Brown v. Texas*, the Court formally set forth a balancing test to be used in determining the reasonableness of suspicionless seizures.[17] Next, the Court applied the *Brown* test in *Michigan Department of State Police v. Sitz* in holding that sobriety checkpoints executed without any individualized suspicion of the drivers were constitutional.[18]

Then, in *City of Indianapolis v. Edmond*, the Supreme Court held that suspicionless checkpoints conducted for the purpose of general crime control were unconstitutional.[19] In this case, there was no use for the *Brown* balancing test because the checkpoint at issue was factually distinguishable from those in *Martinez-Fuerte* and *Sitz*.[20]

A. THE SUPREME COURT FINDS CHECKPOINTS TO ASSIST WITH BORDER CONTROL CONSTITUTIONAL IN *UNITED STATES V. MARTINEZ-FUERTE*

In *United States v. Martinez-Fuerte*, the Supreme Court considered several consolidated cases that had been decided by the Ninth and Fifth Circuits.[21] In those cases, the original defendants were individuals arrested at permanent checkpoints set up along roads that led away from U.S. border crossings with Mexico.[22] At these stops, located not at border crossings, but generally within 100 miles from the border on major highways frequently traveled by vehicles coming from the border, officials slowed or

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[15] *See* Brown v. Texas, 443 U.S. 47, 52 (1979).

[16] 428 U.S. at 543.

[17] 443 U.S. at 47.

[18] 496 U.S. 444, 444 (1990).

[19] 531 U.S. 32, 32 (2000).

[20] *Id.* at 42-43.

[21] 428 U.S. at 545-51. This case resolved a circuit split on the issue. The Ninth Circuit had previously found that checkpoints of this nature were unconstitutional, while the Fifth Circuit had found them to be constitutional. *Compare* United States v. Martinez-Fuerte, 514 F.2d 308 (9th Cir. 1975), *with* United States v. Sifuentes, 517 F.2d 1402 (5th Cir. 1975). In finding that the checkpoints were constitutional, the Supreme Court affirmed the Fifth Circuit decisions and reversed and remanded the Ninth Circuit decisions. *Martinez-Fuerte*, 428 U.S. at 567.

[22] *Martinez-Fuerte*, 428 U.S. at 545-51.

stopped all traffic.[23] Each vehicle was visually inspected and those that were determined to require additional inquiry were directed to pull out of the traffic flow.[24] In some circumstances, officials who determined vehicles required additional inquiry did so without any "articulable suspicion."[25] Each of the original defendants had been arrested for transporting illegal aliens, discovered upon further inquiry at their respective checkpoints.[26]

In reaching its holding, the Supreme Court considered whether reasonable suspicion was "a prerequisite to a valid stop" by balancing the interests at stake.[27] The Court put great weight on the public interest of operating routine stops, because controlling the inflow of illegal aliens was an important concern and could not be accomplished at the border crossings alone.[28] It reasoned that requiring reasonable suspicion in order to stop a car would be "impractical," because too many vehicles traveled on the roads to allow "particularized study" of each one.[29] The Supreme Court also found that vehicle occupants' Fourth Amendment rights were intruded upon in a very limited way.[30] The court considered both the objective intrusion on individuals' Fourth Amendment interests, as well as the subjective intrusion.[31] From the objective perspective, the vast majority of vehicles were detained very briefly and the seizure itself (that is, the preliminary checkpoint inspection) was limited to a visual inspection of only that which could be seen from the outside of the car.[32] The subjective intrusion—"the generating of concern or even fright on the part of lawful travelers"—was also not great at a checkpoint stop.[33] Thus, even without articulable suspicion, the government interests in operating the checkpoints outweighed those of the private citizen.[34]

In holding that permanent checkpoints to screen for illegal aliens were constitutional even in the absence of individualized suspicion, the Supreme

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[23] *Id.* at 546.

[24] *Id.*

[25] *Id.* at 547.

[26] *Id.* at 547-50.

[27] *Id.* at 556.

[28] *Id.* at 556-57.

[29] *Id.* at 557.

[30] *Id.* at 557-58.

[31] *Id.* at 558.

[32] *Id.*

[33] *Id.* In this case, the Supreme Court compared the subjective intrusion of checkpoint stops to the subjective intrusion of "roving patrols"—customs officials who generally patrolled secondary roads around border crossing and pulled over vehicles at random to check for illegal aliens. *Id.* (quoting United States v. Ortiz, 422 U.S. 891, 894-95 (1975)).

[34] *Id.* at 561.

Court noted that the expectation of privacy in a car is appreciably less than such expectation during a search of one's person or belongings, or while in one's residence.[35] The Supreme Court affirmed the Fifth Circuit decision and remanded the individual Ninth Circuit cases.[36]

B. A BALANCING TEST FOR REASONABLENESS IS ESTABLISHED IN *BROWN V. TEXAS*

The Supreme Court's first direct articulation of the appropriate test by which the reasonableness of seizures should be determined appeared in its unanimous opinion in *Brown v. Texas*:

> The reasonableness of seizures that are less intrusive than a traditional arrest depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers. Consideration of the constitutionality of such seizures involves a weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty.[37]

In *Brown*, two patrolling police officers saw the defendant as he walked away from another individual in an alley.[38] The police officers did not suspect him of any specific misconduct or of being armed.[39] However, they stopped the defendant, and demanded that he identify himself, and explain what he was doing in the alley.[40] The defendant refused to identify himself, and the police arrested him under a provision in the Texas penal code that deems failure to provide one's name when lawfully requested by a police officer a criminal act.[41] The defendant claimed that the police officers' seizure of him—here, the short seizure when they detained him on the street—violated the Fourth Amendment, and as such he was wrongfully arrested.[42] The officers did not have reasonable suspicion to detain the defendant, so the Court in deciding the case considered the public interest concerns at stake, the degree to which they were advanced by detaining the defendant, and the defendant's right to personal security and privacy.[43] Here, the public interest concerns (prevention of crime) were great, and the Texas statute under which the defendant had been stopped may have been

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[35] *Id.* at 561-62.
[36] *Id.* at 567.
[37] 443 U.S. 47, 50-51 (1979) (citations omitted).
[38] *Id.* at 48.
[39] *Id.* at 49.
[40] *Id.* at 48-49.
[41] *Id.* at 49.
[42] *See id.*
[43] *Id.* at 52.

designed to advance those concerns.[44] However, to demand that any individual identify himself even when he is not suspected of having committed any criminal activity was found to be arbitrary and at risk of abuse.[45] Thus, the Court found that the balance "tilt[ed] in favor of freedom from police interference" and held that the statute as applied violated the Fourth Amendment.[46]

C. *MICHIGAN DEPARTMENT OF POLICE V. SITZ* SETS FORTH CONSTITUTIONALITY OF CHECKPOINTS TO SCREEN FOR INTOXICATED DRIVERS

In *Michigan Department of Police v. Sitz*,[47] the Supreme Court considered whether Michigan's use of sobriety checkpoints violated the Fourth Amendment.[48] The checkpoints were part of a pilot program run by the state police department.[49] State police officers, operating checkpoints set up at selected sites along state roads, would stop all vehicles passing through and briefly examine the drivers for signs of intoxication.[50] If such signs were detected, those cars would be directed out of the traffic flow for an inspection of the driver's license and registration and, if necessary, additional sobriety tests.[51] The trial and appellate courts had utilized the *Brown* balancing test to determine that the use of sobriety checkpoints generally was a violation of the Fourth Amendment.[52] The Supreme Court reversed, holding that while the *Brown* balancing test was the appropriate test to use, the lower courts had misapplied several elements of the test.[53]

First, the Supreme Court noted that the Michigan courts, in weighing the balance between the public interest in combating drunk driving and the intrusion on private individuals' Fourth Amendment rights, put improper emphasis on what they perceived to be the subjective intrusion on drivers.[54] The Michigan courts had found the subjective intrusion to be substantial on the basis that the checkpoints had the potential to generate great fear and

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[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] 496 U.S. 444 (1990).
[48] *Id.* at 447.
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.* at 448-49.
[53] *Id.* at 450-55.
[54] *Id.* at 452.

surprise, and, thus, were unreasonable.[55] The Supreme Court found that the lower courts had misread precedent cases and had considered the fear and surprise that would be generated in a driver who had been drinking.[56] Instead, the Supreme Court clarified that the fear and surprise to be considered is that of a law-abiding driver.[57]

The Supreme Court also held that the Michigan courts had improperly considered the "effectiveness" of the checkpoint program as part of its balancing analysis.[58] The Michigan courts, relying on empirical testimony presented at trial,[59] concluded that the checkpoint program did not satisfy the effectiveness element of the test, and this failure "materially discounted [the State's] strong interest in implementing the program.[60] The Supreme Court instead found that the language from *Brown* upon which the Michigan courts based their effectiveness evaluation ("the degree to which the seizure advances the public interest"[61]) was never intended to make the courts the decision-makers in determining among reasonable law enforcement techniques, nor was it supported by any of the precedent cases cited by the Michigan courts.[62] It held that "for purposes of Fourth Amendment analysis, the choice among such reasonable alternatives remains with the governmental officials who have a unique understanding of, and a responsibility for, limited public resources, including a finite number of police officers."[63]

Finding that the balance of Michigan's interest in preventing drunken driving, the extent to which the checkpoint program could reasonably be found to advance that interest, and the intrusion upon drivers who are stopped at the checkpoints weighed in favor of the program, the Supreme Court reversed and remanded the case.[64]

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[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] *Id.* at 453.
[59] *Id.* at 454-55.
[60] *Id.* at 453.
[61] Brown v. Texas, 443 U.S. 47, 51 (1979).
[62] *Sitz*, 496 U.S. at 453-54.
[63] *Id.*
[64] *Id.* at 455.

D. THE IMPACT OF *INDIANAPOLIS V. EDMOND* IN DETERMINING THE CONSTITUTIONALITY OF VEHICLE CHECKPOINTS

In November 2000, after the parties' briefs were filed in Lidster's appeal to the Illinois appellate court and before that court's decision,[65] the Supreme Court decided *City of Indianapolis v. Edmond*.[66] In *Edmond*, the Supreme Court addressed the issue of whether highway checkpoints with the primary purpose of "discovery and interdiction" of vehicle passengers possessing illegal narcotics were constitutional.[67]

In 1998, the city of Indianapolis began a program in which vehicle checkpoints were set up on city roads to check for unlawful drugs.[68] Approximately thirty police officers manned each checkpoint.[69] The stop operated by pulling over a group of passing cars for processing.[70] The rest of the traffic on the road would proceed as usual until examinations of all of the stopped cars were completed.[71] At least one officer would approach each vehicle, inform the driver that he or she was being stopped for a drug checkpoint and ask for his or her license and registration.[72] The officer would screen for signs of impairment and conduct a visual inspection of the car from outside.[73] A narcotics-detection dog would be walked around the perimeter of each vehicle.[74] Officers were only allowed to conduct any further searches by consent or with an "appropriate quantum of particularized suspicion."[75]

The original plaintiffs in the case consisted of a class of drivers who had been stopped or were "subject to being stopped in the future" at the checkpoints.[76] They claimed that the roadblocks violated the Fourth Amendment.[77] At trial, the United States District Court for the Southern District of Indiana held that the checkpoints did not violate the Fourth

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[65] Lidster was convicted by the Circuit Court, Du Page County in 1997. The parties filed their briefs in Lidster's appeal to the Appellate Court of Illinois, Second District in early Fall of 2000. Lidster's appeal to the Appellate Court of Illinois, Second District was decided on March 30, 2001. People v. Lidster, 747 N.E.2d 419 (Ill. App. Ct. 2001).

[66] 531 U.S. 32 (2000).

[67] *Id.* at 34.

[68] *Id.*

[69] *Id.* at 35.

[70] *Id.*

[71] *Id.* at 36.

[72] *Id.* at 35.

[73] *Id.*

[74] *Id.*

[75] *Id.*

[76] *Id.* at 36.

[77] *Id.*

Amendment.[78] On appeal, a sharply divided panel for the United State Court of Appeals for the Seventh Circuit reversed and found that the checkpoints were in fact a violation of the Fourth Amendment.[79] The Supreme Court affirmed the Seventh Circuit decision, noting that it had "never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing."[80] In holding that the checkpoints in *Edmond* violated the Fourth Amendment, the Supreme Court declined "to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes."[81] The Supreme Court specified that its previous checkpoint cases "recognized only limited exceptions to the general rule that a seizure must be accompanied by some measure of individualized suspicion."[82]

The Supreme Court compared *Edmond* to its holding in *Sitz* and found that the narcotics-interdiction purpose of the checkpoints could not be rationalized in terms of a highway safety concern as was present in *Sitz*.[83] Rather, the *Sitz* checkpoint sought to eliminate a class of offenses that presented an "immediate, vehicle-bound threat to life and limb," and such a claim could not be supported in *Edmond*.[84]

Additionally, the rationale applied in *Martinez-Fuerte* did not support the Indianapolis checkpoint program.[85] While the city of Indianapolis likened its anti-contraband purpose to the anti-smuggling rationale for checkpoints in *Martinez-Fuerte*, the Indianapolis program lacked a counterpart for the border context present in the precedent case.[86] That is, both checkpoint systems may have logically connected to the impracticality of giving particularized study to each car because of traffic flow concerns.[87] However, there was no connection between the checkpoints in *Edmond* and proximity to contraband production or importation as there had been such a "crucial" connection between the checkpoints in *Martinez-Fuerte* and proximity to the U.S. border.[88]

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[78] *Id.*
[79] *Id.*
[80] *Id.* at 41.
[81] *Id.* at 44.
[82] *Id.* at 41.
[83] *Id.* at 43.
[84] *Id.*
[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] *Id.*

In finding the Indianapolis checkpoint program unconstitutional, the Supreme Court reiterated that its holding in no way changed the constitutional status of its previous checkpoint holdings in *Sitz* and *Martinez-Fuerte*, and in those cases, constitutionality still depended on a balancing of the competing interests at stake.[89]

III. *ILLINOIS V. LIDSTER*: FACTS AND PROCEDURAL HISTORY

Early on Saturday morning, August 23, 1997, Joseph L. Pytel, a seventy-year-old postal worker, began the fifteen-mile trip to his home in Maywood, Illinois, from a U.S. Postal Service sorting facility in Carol Stream, Illinois, on his bicycle.[90] Although he could drive, most days Pytel chose to ride his bicycle for exercise.[91] While riding on the eastbound shoulder of Highway 64 in Lombard, Illinois, Pytel was struck by a car.[92] The driver of the vehicle left the scene without identifying himself.[93] Pytel was pronounced dead upon arrival via ambulance at a local hospital.[94] Two days later, Lombard police had no specific leads, other than a description of either a Ford Bronco or a pick-up truck involved in the accident.[95]

In an effort to obtain more information about the driver of the vehicle that hit and killed Pytel, Lombard police decided to set up an informative stop the following Saturday morning along the same stretch of road where the accident occurred and around the same time that the accident took place.[96]

> Police cars with flashing lights partially blocked the eastbound lanes of [Highway 64]. The blockage forced traffic to slow down, leading to lines of up to 15 cars in each lane. As each vehicle drew up to the checkpoint, an officer would stop it for 10 to 15 seconds, ask the occupants whether they had seen anything happen there the previous weekend, and hand each driver a flyer [that requested assistance in identifying the vehicle and driver that killed Mr. Pytel].[97]

In addition to operating the roadblock around the same time as the accident, the police considered the fact that the time of the accident also coincided with shift changes at some businesses in nearby industrial

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[89] *Id.* at 47.

[90] William Grady, *Joseph L. Pytel, 70, Postal Worker*, CHI. TRIB., Aug. 25, 1997, § 2, at 5.

[91] *Id.*

[92] *Id.*

[93] Illinois v. Lidster, 540 U.S. 419, 422 (2004).

[94] Grady, *supra* note 90.

[95] People v. Lidster, 779 N.E.2d 855, 856 (Ill. 2002).

[96] *Lidster*, 540 U.S. at 422; *Lidster*, 779 N.E.2d at 856; People v. Lidster, 747 N.E.2d 419, 421 (Ill. App. Ct. 2001).

[97] *Lidster*, 540 U.S. at 422.

complexes.[98] They hypothesized that this might result in not only an increase in regular traffic on the road at that hour but also an increased possibility of locating motorists who had been on the road at the same time the previous week.[99]

Robert Lidster, the manager of a pet store in the nearby community of Villa Park,[100] approached the roadblock in a minivan.[101] A police officer handed him a leaflet and allowed him to pass.[102] At that time, Detective Wayne Vasil was standing in the center lane of the highway while handing out flyers to other stopped cars.[103] He was wearing an orange reflective vest with the word "Police" on it.[104] As Lidster pulled away from the roadblock, he swerved and almost hit Detective Vasil.[105] Detective Vasil approached Lidster's car to inquire as to why Lidster had nearly hit him with his car.[106] Detective Vasil, though unaware that Lidster had violated any state law or city ordinance, thought that "something might be wrong,"[107] so he requested Lidster's license and insurance card.[108]

During his conversation with Lidster, Detective Vasil smelled alcohol on Lidster's breath and noticed that Lidster's speech was slurred.[109] In response, Detective Vasil directed Lidster to pull over onto a side street.[110] There, another detective with the Lombard police, Roy Newton, had Lidster perform several sobriety tests and subsequently arrested Lidster for driving under the influence of alcohol.[111]

At trial, Lidster moved to quash his arrest, arguing that the roadblock in Lombard was unconstitutional.[112] The court denied the motion and a jury found Lidster guilty of driving under the influence of alcohol.[113] The trial

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[98] *Id.*

[99] *Id.*

[100] Christy Gutowski, *A Bad Month for One Drunken Driver*, CHI. DAILY HERALD, Jan. 28, 2004, at 13.

[101] *Lidster*, 540 U.S. at 422.

[102] Stacy St. Clair, *DUI Tossed Out Over Lombard's Use of Roadblock*, CHI. DAILY HERALD, Apr. 25, 2001, at 3.

[103] People v. Lidster, 779 N.E.2d 855, 856 (Ill. 2002).

[104] *Id.*

[105] *Id.*

[106] People v. Lidster, 747 N.E.2d 419, 421 (Ill. App. Ct. 2001).

[107] *Id.*

[108] *Lidster*, 779 N.E.2d at 856.

[109] Illinois v. Lidster, 540 U.S. 419, 422 (2004).

[110] *Lidster*, 779 N.E.2d at 856.

[111] *Id.*; *Lidster*, 747 N.E.2d at 421.

[112] *Lidster*, 779 N.E.2d at 856; *Lidster*, 747 N.E.2d at 421.

[113] *Id.*

court sentenced Lidster to one year of conditional discharge, and required that he participate in counseling, complete fourteen days in the "Sheriff's Work Alternative Program" and pay a $200 fine.[114] Lidster appealed on the grounds that the roadblock was unconstitutional.[115]

A. THE IMPACT OF *CITY OF INDIANAPOLIS V. EDMOND* ON THE ILLINOIS APPELLATE COURT DECISION

When Lidster appealed his conviction to the appellate court in Illinois, he argued that the balancing test weighed in favor of the intrusion on private individuals over the public interest.[116] The appellate court, in considering Lidster's claim, noted that although the Lombard roadblock was in some ways different from the one at issue in *Edmond*, it was "impossible to escape the conclusion that the roadblock's ostensible purpose was to see evidence of 'ordinary criminal wrongdoing.'"[117] The court went on to note that although *Edmond* allows for the possibility of "emergency" checkpoints, no such emergency was present in the instant case.[118] The Lombard police were simply looking for a better description of the driver in the hit-and-run and not even expecting to catch him.[119]

Additionally, the appellate court reasoned that per *Edmond*, the use of checkpoints for "the ordinary enterprise of investigating crimes" allowed for no theoretical limit on when such tactics could be employed and when the requirement of individualized suspicion would be nullified, as well as the possibility of police subterfuge.[120] Accordingly, the appellate court posited that if the roadblock employed in Lidster's case could be justified on the basis of aiding the investigation of a crime, it would effectively allow police to use roadblocks "virtually every day on the chance that someone might have seen something that would aid the investigation."[121] The appellate court also viewed the fact that police officers were present to ensure that drivers did not evade the roadblock as indicative that the intentions behind the checkpoint were not necessarily only to seek

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[114] *Lidster*, 779 N.E.2d at 857.

[115] *Lidster*, 747 N.E.2d at 421.

[116] *Id.*

[117] *Id.* at 422.

[118] *Id.* In *Edmond*, the Supreme Court hypothesized circumstances under which the requirement of reasonable suspicion might be waived in justifying checkpoints designed to generally prevent criminal activity. Among them, it listed responding to the imminent threat of a terrorist attack and catching a dangerous criminal who is anticipated or likely to flee "by way of a particular route." 531 U.S. 32, 44 (2000).

[119] *Lidster*, 747 N.E.2d at 422.

[120] *Id.* at 422 (quoting *Edmond*, 531 U.S. at 44).

[121] *Id.*

information—if they were, drivers would not find it necessary to attempt to avoid the roadblock and, thus, such additional officers would not be necessary.[122]

The appellate court also looked to *Edmond* to determine that "a criminal investigation can never be the basis for a roadblock, at least absent some emergency circumstance not present [in the Lombard roadblock]."[123] The court reasoned that even if the police took every possible step to minimize the intrusion on the motorists, the interest in using the roadblock to assist in a criminal investigation would never be strong enough to outweigh even the most minimal intrusion.[124]

With that rationale, the appellate court reversed Lidster's conviction on the basis that the roadblock set up by the police in Lombard violated the Fourth Amendment.[125]

B. THE ILLINOIS SUPREME COURT WEIGHS IN ON *EDMOND* IN ITS DECISION

1. The Majority Opinion

The State of Illinois appealed the appellate court's reversal to the Illinois Supreme Court.[126] At the outset of its majority opinion, the court reprised the appellate court's holding that the investigation into the hit-and-run accident in Lombard was "the type of routine investigative work that the police must do every day and does not justify the extraordinary means chosen to further the investigation."[127]

The State, in its appeal, contended that *Edmond* was distinguishable from the instant case and that the Lombard roadblock did not constitute such "every day" police work.[128] Rather than looking for information about a crime not yet known to the police, the roadblock in Lombard had the specific purpose of assisting authorities in solving a crime that had already been committed.[129] Since the hit-and-run accident was known to the police and was the specific reason for the checkpoint, the checkpoint was not

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[122] *Id.* at 422-23.

[123] *Id.* at 423.

[124] *Id.*

[125] *Id.*

[126] *Id.* at 419.

[127] People v. Lidster, 779 N.E.2d 855, 858 (Ill. 2002) (quoting *Lidster*, 747 N.E.2d at 422).

[128] *Id.* at 858-59.

[129] *Id.*

directed at "general crime control."[130] Additionally, the State argued that there was a distinction between stopping the driver of a car to gather information as to whether he or she as the perpetrator of a crime, and stopping a driver to gather information leading to the identification of a different driver as the perpetrator of a crime.[131]

The court found the State's assertions incorrect in four ways.[132] First, the court found that the facts of the instant case did not fall within the scope of the "limited exceptions" to the general rule requiring individualized suspicion in reasonable searches or seizures, as outlined in *Martinez-Fuerte* and *Sitz*.[133] Because the Lombard roadblock did not involve either the border or sobriety checkpoints approved by the Supreme Court in those cases, the roadblock could not be justified without individualized suspicion.[134] Second, *Edmond* drew "a bright line that when the primary purpose of a roadblock [was] general crime control, the roadblock [was] unconstitutional."[135] On the basis of these two points, the court concluded that the State's assertions contravened the holding in *Edmond*.[136] The court could not follow the State's reasoning—doing so would uphold the constitutionality of the Lombard roadblock based on criteria that the Supreme Court had considered unconstitutional in previous cases.[137]

Third, the court found that the State's distinction between gathering information from drivers about themselves or about other drivers untenable to delineate between "general crime control" and otherwise.[138] Regardless of whether the police are inquiring about an individual's involvement in a crime or an individual's knowledge of someone involved in a crime, the court reasoned, these activities all fall within the context of "general crime control."[139] Fourth, the court stated that making an exception for informational roadblocks has the potential to make roadblocks "a routine part of American life."[140] The court described the "troubling specter" of the streets of Chicago, adorned with roadblocks as a result of a ruling in favor of the state of Illinois.[141]

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[130] *Id.*
[131] *Id.* at 859.
[132] *Id.* at 859-60.
[133] *Id.* at 859.
[134] *Id.*
[135] *Id.*
[136] *Id.*
[137] *Id.*
[138] *Id.* at 859-60.
[139] *Id.*
[140] *Id.* at 860 (quoting City of Indianapolis v. Edmond, 531 U.S. 32, 42 (2000)).
[141] *Id.*

Further, the court noted that although the State had not argued that the roadblock was due to emergency purposes, the Illinois Association of Chiefs of Police had filed an *amicus* brief raising this consideration.[142] The court mentioned this line of argument, but declined to consider that an emergency justified the use of the roadblock.[143] The court cited the length of time since the accident (the roadblock took place one week after Mr. Pytel had been killed).[144] It also pointed out that there was no indication the hit-and-run driver posed a further threat to the community, or even remained in the community.[145]

For these reasons, the Illinois Supreme Court affirmed the decision of the appellate court, and held that the Lombard roadblock was unconstitutional, per the Supreme Court's decision in *Edmond*.[146]

2. The Dissent

Three judges dissented in the Illinois Supreme Court decision.[147] First, the dissent pointed out that *Edmond* was factually distinguishable from the instant case in its "nature, purpose, and scope."[148] Where *Edmond* involved a roadblock that detained drivers on average between two and five minutes, the Lombard roadblock detained drivers just long enough to hand out a flyer, which took between ten and fifteen seconds.[149] Drivers were required to produce a license and registration in *Edmond*; this was not required at the Lombard roadblock.[150] Additionally, police in *Edmond* conducted a visual inspection of the vehicles, which were also inspected by a narcotics-detection dog.[151] Neither of these elements was present at the Lombard roadblock.[152]

Further, *Edmond* should not have been determinative in the instant case.[153] The dissent argued that the majority had focused on the wrong language – rather than turning the case on whether the roadblock was designed for "general crime control," the court should have instead

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[142] *Id.*

[143] *Id.*

[144] *Id.*

[145] *Id.*

[146] *Id.* at 861.

[147] *Id.* at 861-67 (Thomas, J., dissenting). Justice Thomas's dissent was joined by Justices Fitzgerald and Garman.

[148] *Id.* at 862 (Thomas, J., dissenting).

[149] *Id.* (Thomas, J., dissenting).

[150] *Id.* (Thomas, J., dissenting).

[151] *Id.* (Thomas, J., dissenting).

[152] *Id.* (Thomas, J., dissenting).

[153] *Id.* (Thomas, J., dissenting).

concentrated on the language that followed in *Edmond*: "We cannot sanction stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime."[154] The dissent felt that this language revealed that the definition of "general crime control" as used in *Edmond* differed crucially from the definition that the majority.[155]

Additionally, the dissent cited a case decided by the Supreme Court of Virginia with a similar fact pattern to the instant case.[156] *Burns v. Commonwealth* was the only other reported case decided after *Edmond* that addressed the use of roadblocks to locate witnesses and gather information about a previously-committed crime.[157] In determining whether the roadblock violated the Fourth Amendment, the Supreme Court of Virginia distinguished the case from *Edmond*, reasoning that roadblocks designed to secure witnesses of a crime already committed and known to the police are not simply investigating "ordinary criminal wrongdoing."[158] Instead, the Supreme Court of Virginia applied the balancing test set forth in *Brown* and found that the public interest in solving a murder was advanced by the use of a roadblock to investigate the crime.[159] These interests outweighed the Fourth Amendment interests of private individuals, particularly in light of the fact that the roadblock was "carried out pursuant to an explicit plan that contained neutral criteria and limited the discretion and conduct of the law enforcement officers charged with the responsibility of stopping vehicles at the roadblock."[160]

Finally, the dissent advocated application of the balancing test in *Brown v. Texas* to show that the checkpoint in Lombard was reasonable and consistent with the Fourth Amendment.[161] The dissent noted that apprehending the perpetrator of a hit-and-run accident was a matter of public concern, and that the roadblock advanced that concern by aiding in the investigation of the crime.[162] Further, by operating the roadblock at the

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[154] *Id.* at 862-63 (Thomas, J., dissenting) (quoting City of Indianapolis v. Edmond, 531 U.S. 32, 44 (2000)).

[155] *Id.* at 863 (Thomas, J., dissenting).

[156] Burns v. Commonwealth, 541 S.E.2d 872 (Va. 2001). The Supreme Court denied certiorari. Burns v. Virginia, 534 U.S. 1043 (2001). In *Burns*, police in Virginia set up a roadblock shortly after a murder took place in a location close to where it had happened in order to ask drivers if they had seen the suspect in the area. *Burns*, 541 S.E.2d at 879.

[157] *Lidster*, 779 N.E.2d at 864.

[158] *Id.*

[159] *Id.*

[160] *Id.*

[161] *Id.* at 865-66.

[162] *Id.* at 866.

same time of the accident one week later, the police maximized the likelihood of locating drivers who routinely traveled along that route and who may have witnessed the accident.[163] On the other hand, the dissent felt that the objective intrusion upon private individuals was minimal, as the roadblock detained them for only ten to fifteen seconds.[164] The subjective intrusion was also minimal, as the roadblock was carried out in a neutral, official, "systematic and preestablished manner."[165] Although the roadblock may not have been publicized or permanent, the basis for the roadblock was well-known to the public.[166]

Lastly, the dissent downplayed the majority's concern that a decision in favor of the State of Illinois would result in a proliferation of roadblocks.[167] It pointed out that the relevant crimes which might result in the need for a roadblock (for example, fatal hit-and-run accidents versus all hit-and-run accidents) make up an extremely small portion of all crimes.[168] Additionally, police forces lack the public resources necessary to operate roadblocks as frequently as the majority suggested.[169] Finally, any roadblock would still be subject to the *Brown* balancing test, as well as the principles set forth in *Edmond*.[170]

After the Supreme Court of Illinois held that the Lombard roadblock was unconstitutional per *Edmond*, the state petitioned for and was granted certiorari by the U.S. Supreme Court to resolve whether *Edmond* properly controlled the instant case.[171]

IV. OPINION OF THE SUPREME COURT

A. THE MAJORITY OPINION

Writing for the majority, Justice Breyer reversed the decision of the Supreme Court of Illinois, and distinguished the roadblock conducted by the Lombard police from the drug checkpoints at issue in *Edmond*.[172]

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[163] *Id.*

[164] *Id.*

[165] *Id.* at 867.

[166] *Id.*

[167] *Id.*

[168] *Id.*

[169] *Id.*

[170] *Id.*

[171] People v. Lidster, 779 N.E.2d 855 (Ill. 2002), *cert. granted*, 538 U.S. 1012 (May 5, 2003) (No. 02-1060).

[172] Illinois v. Lidster, 540 U.S. 419 (2004). Justice Breyer's majority was joined by Justices Rehnquist, O'Connor, Scalia, Kennedy, and Thomas. Justices Stevens, Souter and Ginsburg joined as to Parts I and II.

First, the Court stated that *Edmond* did not govern the outcome of the instant case.[173] In essence, the Supreme Court agreed with the dissent in the Illinois Supreme Court decision and held that there was a distinction between the Lombard roadblock and the unconstitutional drug checkpoint in *Edmond* whose primary purpose was to "detect evidence of ordinary criminal wrongdoing."[174] The purpose of the stop in Lombard was "*not* to determine whether a vehicle's occupants were committing a crime, but to ask vehicle occupants, as members of the public, for their help in providing information about a crime in all likelihood committed by others."[175] The Supreme Court added that the reasoning in *Edmond* should not be read to mean every law enforcement objective, but rather "as referring in context to circumstances similar to the circumstances then before the Court and not referring to quite different circumstances that the Court was not then considering."[176]

The Court went on to specify that, *Edmond* aside, a lack of individualized suspicion is not determinative of a constitutional outcome.[177] As in *Sitz* and *Martinez-Fuerte*, special law enforcement concerns will sometimes justify roadblocks without individualized suspicion.[178] The Court further highlighted the distinctions between *Edmond* and the instant case and pointed out that in the context of information-seeking stops such as the Lombard roadblock, individualized suspicion has little role to play because suspicion is not a relevant characteristic of the individuals involved.[179]

Additionally, the Court clarified that law enforcement officers do not violate the Fourth Amendment merely by asking members of the public to voluntarily provide information in the investigation of a crime.[180] However, the Court pointed out, the public importance of soliciting information from members of the public to provide information is "offset to some degree" because the members of the public solicited in the instant case were motorists.[181] In this case, there is a difference between soliciting voluntary information from a pedestrian and a motorist: stopping a motorist for

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[173] *Id.* at 432.
[174] *Id.* (quoting City of Indianapolis v. Edmond, 531 U.S. 32, 41 (2000)).
[175] *Id.*
[176] *Id.* at 424.
[177] *Id.*
[178] *Id.*
[179] *Id.* at 424-25.
[180] *Id.* at 425.
[181] *Id.* at 425-26.

information amounts to a "seizure"[182]—while a pedestrian could continue walking and decline the police's request, a motorist is unable to circumvent the police's overtures. However, the Court held that although these stops constitute seizures, they do not justify an "*Edmond*-type rule" because stops like the one in Lombard are likely to be brief and may yield important results for the police.[183]

The Court also agreed with the dissent in the Illinois Supreme Court decision that a failure to apply *Edmond* to information checkpoints would not be necessary to prevent a proliferation of checkpoints.[184] The Court pointed out that a lack of police resources and public opposition would likely "inhibit" widespread use of roadblocks.[185]

With presumptive unconstitutionality per *Edmond* written off, the Court applied the *Brown* balancing test to determine the constitutionality of the Lombard roadblocks.[186] To do so, the Court weighed the gravity of the public concern served by the roadblock and the degree to which the roadblock advanced the public interest against the roadblock's interference with individual liberties.[187] The Court found that the relevant public concern was significant because the Lombard police were investigating a hit-and-run death.[188] The roadblock advanced the public interest to a significant degree because the Lombard police tailored the checkpoint by setting it up near the location of the accident, and at the same time one week after the accident took place.[189]

The Court, with regards to the severity of the interference with individual liberties, found minimal objective interference because the stops were brief, lasting only ten to fifteen seconds.[190] The Court also found that the subjective interference was minimal because the request for information about the accident provided little reason for any of the motorists to feel anxiety or alarm.[191]

Based on the Court's finding that *Edmond* did not apply to the instant case, and on the outcome of the *Brown* balancing test, the Supreme Court

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[182] *Id.*
[183] *Id.* at 426.
[184] *Id.*
[185] *Id.*
[186] *Id.* at 426-27.
[187] *Id.* at 427.
[188] *Id.*
[189] *Id.*
[190] *Id.* at 427-28.
[191] *Id.* at 428.

reversed the Supreme Court of Illinois' decision, holding that the roadblock used by Lombard police was consistent with the Fourth Amendment.[192]

B. THE DISSENT

Although Parts I and II of the Supreme Court decision (addressing the factual background of the case and then distinguishing it from *Edmond*), received unanimous agreement from the Court, Part III of the decision, in which the majority outlined and applied the *Brown* balancing test, did not.[193] The dissent to Part III of the opinion argued that the Court should have remanded the case to the Illinois state courts to apply the balancing test because the courts had not used the test in their previous decisions.[194] The dissent also outlined possible discrepancies in the majority's application of the test.[195] In terms of the roadblock's ability to advance the public concern, the dissent questioned how likely the Lombard police actually were to find witnesses in a random sample of drivers one week after the accident.[196] Although the police hypothesized that, along with the accident victim, Pytel, other motorists might be workers leaving their shifts at the Postal Service sorting facility or other local businesses, there was no evidence to confirm that the police knew this to be true.[197] Although it was a "plausible theory," the roadblock may not have actually captured any drivers who had been on the road the week before at that time.[198] Further, the dissent argued that the majority had not considered all of the possibilities in determining how great the interference of the roadblock might be on private individuals.[199] In sum, the dissent did not believe the outcome of the test was clear on the facts of this case.[200]

Since the Illinois appellate court and the Illinois Supreme Court found the Lombard roadblock *per se* unconstitutional and did not apply the *Brown* balancing test, the dissent thought that the majority should have been reluctant to abandon its role as a court of review "in a case in which the

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[192] *Id.*

[193] *Id.* (Stevens, J., concurring in part and dissenting in part). Justice Stevens's opinion was joined by Justices Souter and Ginsburg.

[194] *Id.* (Stevens, J., concurring in part and dissenting in part).

[195] *Id.* (Stevens, J., concurring in part and dissenting in part).

[196] *Id.* at 429 (Stevens, J., concurring in part and dissenting in part).

[197] *Id.* (Stevens, J., concurring in part and dissenting in part).

[198] *Id.* (Stevens, J., concurring in part and dissenting in part).

[199] *Id.* at 428 (Stevens, J., concurring in part and dissenting in part).

[200] *Id.* at 429 (Stevens, J., concurring in part and dissenting in part).

constitutional inquiry requires analysis of local conditions and practices more familiar to judges closer to the scene."[201]

V. ANALYSIS: THE SUPREME COURT PROPERLY REVERSED THE ILLINOIS COURTS' DECISIONS BUT SHOULD HAVE REMANDED THE CASE

The Supreme Court was correct in holding that the Lombard roadblock was consistent with the Fourth Amendment. The Court's opinion in *Edmond* did not control because the roadblock in that case was distinguishable from the Lombard roadblock. Further, the Court correctly applied the same reasoning that it had used in *Martinez-Fuerte* and *Sitz* in holding that reasonable suspicion of the drivers was not required to avoid presumptive unconstitutionality of the roadblock. The Court also correctly held that the *Brown* balancing test should be used to determine the reasonableness of the roadblock. However, the Court should have remanded *Lidster* back to the Illinois courts because neither the Illinois appellate court nor the Supreme Court of Illinois considered the *Brown* balancing test in their majority decisions. As such, the Supreme Court improperly abandoned its role as reviewer by applying the test and deciding its outcome when the lower court decisions had not done so previously.

A. THE SUPREME COURT PROPERLY DISTINGUISHED *EDMOND*

In *Edmond*, the Supreme Court held that roadblocks set up with the purpose of "general crime control" were *per se* unconstitutional, violating the Fourth Amendment's requirement of reasonable seizures.[202] However, the facts and legal backdrop surrounding *Edmond* make it clear that the Supreme Court intended the *per se* rule to apply only to those checkpoints designed to detect wrongdoing by the detained motorists.[203]

In *Edmond*, the Court invalidated checkpoints with the primary purpose of discovering and interdicting illegal narcotics in the vehicles passing through the checkpoints, when such seizures occurred without some degree of individualized suspicion.[204] In holding that such checkpoints were *per se* unconstitutional, the Court described the checkpoints as those meant to "detect evidence of ordinary criminal wrongdoing" and with the purpose of "general crime control."[205] When these phrases are viewed in isolation, they may be interpreted broadly to encompass checkpoints where

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[201] *Id.* (Stevens, J., concurring in part and dissenting in part).

[202] City of Indianapolis v. Edmond, 531 U.S. 32, 48 (2000).

[203] Brief for Petitioner at 4-14, *Lidster* (No. 02-1060).

[204] *Edmond*, 531 U.S. at 41-42.

[205] *Id.* at 41, 44.

motorists are stopped for any law enforcement purpose, including roadblocks like the one in *Lidster* which sought information from motorists about a crime previously committed by someone else and also known to the police.[206] However, the context of *Edmond* demonstrates that "general crime control" is not meant to include all possible law enforcement activities, but specifically the circumstances presented in *Edmond*, in which officials intended to detect any wrongdoing specifically by the motorists who passed through the checkpoint.[207]

The Illinois Appellate Court, Second District, and the Supreme Court of Illinois erred in incorrectly affixing an impermissibly broad meaning to the language from *Edmond*. The Supreme Court recognized that its holding in *Edmond* had been misconstrued in reversing the Illinois Supreme Court's decision, stating that "*Edmond*'s language, as well as its context, makes clear that the constitutionality of . . . [an] information-seeking kind of stop was not then before the Court."[208]

Additionally, the Court in *Edmond* emphasized that its decision to hold the roadblock unconstitutional turned on the fact that the Indianapolis checkpoints served only "to advance the general interest in crime control."[209] In doing so, the Court drew a distinction between purposes of "general interest in crime control" and "law enforcement." The Court emphatically denied that it was adopting a "non-law-enforcement primary purpose test" in which all law enforcement checkpoints would be *per se* unconstitutional as a result of *Edmond*.[210] Rather, only those law enforcement checkpoints that served no purpose other than to advance the general interest in crime control would be *per se* unconstitutional.[211] When an information-seeking checkpoint is set up to find witnesses to and information about an unsolved crime, as the Lombard roadblocks were, the checkpoint serves law enforcement purposes but does more than simply advance the general interest in crime control.[212] Because it operates specifically to solve a crime already known to police, it is not *per se* unconstitutional per *Edmond*.[213]

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[206] *See Lidster*, 540 U.S. at 423.

[207] *See id.*; *see generally Edmond*, 531 U.S. at 41-44.

[208] *Lidster*, 540 U.S. at 424.

[209] *Edmond*, 531 U.S. at 44 (quotations omitted).

[210] *Id.* at 44 n.1; *see also Lidster*, 540 U.S. at 424.

[211] *Edmond*, 531 U.S. at 44.

[212] Brief for Petitioner at 11, *Lidster* (No. 02-1060).

[213] *Lidster*, 540 U.S. at 424.

B. INDIVIDUALIZED SUSPICION IS NOT REQUIRED FOR INFORMATION-SEEKING ROADBLOCKS

Edmond aside, the Supreme Court's previous decisions, particularly *Martinez-Fuerte* and *Sitz*, demonstrate that individualized suspicion is not a prerequisite to determine the constitutionality of a vehicle checkpoint.[214] As the Court noted in *Lidster*, the fact that vehicle checkpoints generally do not have individualized suspicion "cannot by itself determine the constitutional outcome."[215]

In his brief to the Court, Lidster argued that any suspicionless vehicle checkpoint was presumptively in violation of the Fourth Amendment unless its purpose was roadside safety or border control.[216] However, this presumption was clearly erroneous in light of the reasoning behind and specific language in the two cases to which Lidster alluded—*United States v. Martinez* and *Department of Michigan Police v. Sitz*.[217]

First, in *Martinez-Fuerte*, the Court acknowledged that some amount of individualized suspicion is "usually" a prerequisite to a constitutional seizure.[218] However, the Court also pointed out that "the Fourth Amendment imposes no irreducible requirement of such suspicion."[219] This concept did not first emerge in *Martinez-Fuerte*—the Court cited five other cases that supported its statement.[220] The Court went on to hold that suspicionless vehicle checkpoints used to assist with border control were consistent with the Fourth Amendment.[221] As such, the Court's holding was not only limited to the factual circumstances of *Martinez-Fuerte*; but rather, the context of the Court's holding indicates that suspicionless vehicle checkpoints used for purposes other than border control may also be constitutional.[222]

In *Sitz*, the Court rejected the idea that "a showing of some special governmental need beyond the normal need for criminal law enforcement" was necessary in order to apply the *Brown* balancing test to determine a

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[214] Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 449-50 (1990); United States v. Martinez-Fuerte, 428 U.S. 543, 556 (1976).

[215] *Lidster*, 540 U.S. at 424.

[216] Brief for Respondent at 8, *Lidster* (No. 02-1060).

[217] *Id.* at 8, 14-15.

[218] *Martinez-Fuerte*, 428 U.S. at 560.

[219] *Id.* at 561.

[220] *Id.* (citing Almeida-Sanchez v. United States, 413 U.S. 266, 283-85 (1973); United States v. Biswell, 406 U.S. 311 (1972); Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970); Camara v. Municipal Court, 387 U.S. 523 (1967); Carroll v. United States, 267 U.S. 132, 154 (1925)).

[221] *Id.*

[222] *Id.*

checkpoint's reasonableness.[223] Further, the Court did find that such needs would sometimes justify highway stops without any individualized suspicion. The Court, referring to *Martinez-Fuerte*, confirmed that this concept was "in no way" to change how it would handle cases involving vehicle checkpoints.[224] Again, the reasoning set forth in *Martinez-Fuerte* was both reaffirmed by the Court and shown that it would not be limited only to that case.[225]

Thus, Lidster's argument was not supported by the cases on which he relied.[226] While Lidster argued that *Martinez-Fuerte* and *Sitz* supported the notion that suspicionless seizures should only be found to be constitutional as exceptions to the rule, the Supreme Court cases to which he cited support the opposite contention. The Supreme Court's language presented in *Martinez-Fuerte* and clarified in *Sitz* very clearly states that individualized suspicion is never determinative of the constitutionality of any vehicle checkpoint.[227] Here, the fact that the Lombard roadblock did result in suspicionless seizures of motorists was not at all dispositive as to whether the roadblock would be found to be constitutional.[228]

Furthermore, in an amicus brief to the Supreme Court supporting Illinois, the United States Solicitor General likened information-seeking vehicle roadblocks to another type of suspicionless seizure that is consistent with the Fourth Amendment—information-seeking seizures of pedestrians.[229] The information-seeking vehicle roadblock is simply an adaptation of these kinds of seizures in response to the "highly mobile society" of current times.[230] The Supreme Court, in its majority opinion in *Lidster*, did not go far to relate the two types of seizures.[231] The Court noted that stopping a motorist is more intrusive than stopping a pedestrian, since the motorist does not have the option to refuse to stop in the way that a passing pedestrian does.[232] However, the Supreme Court found that this difference "is not important enough" to find presumptive unconstitutionality in the absence of individualized suspicion.[233]

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[223] Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 450 (1990) (quotations omitted).

[224] *Id.*

[225] *Id.*

[226] Brief of Respondent at 8, *Lidster* (No. 02-1060).

[227] *See Sitz*, 496 U.S. at 450; *Martinez-Fuerte*, 428 U.S. at 560-61.

[228] Illinois v. Lidster, 540 U.S. 419, 426 (2004).

[229] Brief of Amicus Curiae for the United States at 11-13, *Lidster* (No. 02-1060).

[230] *Id.* at 4.

[231] *Lidster*, 540 U.S. at 425.

[232] *Id.* at 425-26.

[233] *Id.* at 426.

C. THE *BROWN* BALANCING TEST IS THE PROPER METHOD TO DETERMINE THE REASONABLENESS OF INFORMATION-SEEKING ROADBLOCKS

Since the Court found there was no presumptive unconstitutionality of information-seeking checkpoints, the Supreme Court correctly applied the *Brown* balancing test that it had used in *Sitz*.[234] The Court had not yet decided *Brown* when it decided *Martinez-Fuerte*.[235] However, *Martinez-Fuerte* is still relevant because, in that case, the Court balanced the same factors used in *Brown* to determine the constitutionality of the border control checkpoints.[236] Furthermore, there are additional cases involving Fourth Amendment issues that have also applied balancing tests—which were not specifically the *Brown* test, but closely align with the factors addressed in *Brown*—to determine the reasonableness of suspicionless searches and seizures.[237]

The *Brown* balancing test calls for weighing "the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty."[238] Certainly, the interest in solving a hit-and-run accident and apprehending the driver who had killed Pytel is a grave public concern.[239] In that respect, the first prong of the *Brown* test is fairly easily satisfied by the facts of *Lidster*.[240] The second prong of the test considers the means by which the police advanced the public interest.[241] Here, the Court pointed out how the Lombard police "appropriately tailored" the roadblock by corresponding it with the location of the accident as well as the time at which the accident had occurred a week earlier.[242] The Court also considered testimony from the record in which police officers indicated that they believed the time of the accident and roadblock coincided with shift changes at nearby businesses.[243]

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[234] *Id.* at 426-28.

[235] *Martinez-Fuerte* was decided in 1976. *Brown* was decided in 1979.

[236] United States v. Martinez-Fuerte, 428 U.S. 543, 555-56 (1976).

[237] *See* Chandler v. Miller, 520 U.S. 305, 314 (1997) (suspicionless searches); United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975) (roving patrols; decided prior to *Brown*).

[238] Brown v. Texas, 443 U.S. 47, 50-51 (1979).

[239] Illinois v. Lidster, 540 U.S. at 427 (2004).

[240] Even though it ultimately ruled against the state and did not apply the *Brown* test, the Supreme Court of Illinois was sympathetic to the efforts and rationale of the Lombard police force in trying to apprehend the hit-and-run driver. People v. Lidster, 779 N.E.2d 855, 861 (Ill. 2002).

[241] *Brown*, 443 U.S. at 51.

[242] *Lidster*, 540 U.S. at 427.

[243] *Id.*

Finally, the Court weighed the interference of the roadblock with individuals' liberties that the Fourth Amendment seeks to protect.[244] Initially, the Court did not specifically articulate the objective and subjective intrusions into individual liberties in *Brown*.[245] However, in *Sitz*, the Court delineated the need to reflect on objective criteria (the duration of the seizure, any demands made upon individuals, etc.) and subjective intrusions (fear or alarm that the individual might be subjected to as a result of the seizure).[246] These sub-elements are an important part of the *Brown* balancing test. They guide courts to be more inclusive when they weigh potential intrusions into Fourth Amendment-protected liberties, considering those that are manifested and measurable, as well as those that may be perceived.

Here, in considering the objective intrusions into individual liberties, the Court looked at the short length of the stop at the Lombard roadblock and the even shorter period of actual contact with the police.[247] The police interaction consisted of a request for information and the distribution of a flyer.[248] From a subjective perspective, the Court indicated that the stop should have caused the motorists little anxiety or alarm.[249] All of the vehicles were stopped systematically and did not involve any discriminatory treatment of the motorists.[250]

In applying the *Brown* balancing test in *Lidster*, the Supreme Court remained consistent with its previous holdings in vehicle checkpoint cases.[251] Furthermore, the Court properly addressed the various prongs of the balancing test, as well as facts of the case that should be considered for each prong. However, the Court should have stopped its analysis here and remanded the case back to Illinois, rather than using its application of the balancing test to simply reverse the Supreme Court of Illinois' decision.

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[244] *Brown*, 443 U.S. at 50-51.

[245] *See id.* at 47.

[246] Michigan Dept. of Police v. Sitz, 496 U.S. 444, 452 (1990).

[247] *Lidster*, 540 U.S. at 427-28.

[248] *Id.* at 428.

[249] *Id.*

[250] *Id.*

[251] *See supra* Part II.

D. IMPLICATIONS OF THE SUPREME COURT'S FAILURE TO REMAND *LIDSTER* TO THE ILLINOIS COURTS

1. The Court Abandoned Its Role as a Court of Review

The Court departed from its own practice of remanding reversals to lower courts in checkpoint cases when it simply reversed the Illinois Supreme Court's holding in *Lidster*. Not only did the Court abandon its "role as a court of review,"[252] but its failure to adhere to that role may lead to confusion when lower courts apply the *Brown* test in future information-seeking checkpoint cases.

In previous checkpoint cases, the Supreme Court remanded the cases in which it reversed a lower court's decision. In *Martinez-Fuerte*, the Supreme Court reversed and remanded each of the three original cases that had been brought before it (as a consolidated case) in which the Ninth Circuit had determined that border control checkpoints were unconstitutional.[253] Additionally, in *Sitz*, the Supreme Court reversed and remanded the case to the Michigan courts after finding that sobriety checkpoints were constitutional.[254] In *Edmond*, the Supreme Court did not remand the case because it affirmed the Seventh Circuit's decision.[255]

This is not to say that the Supreme Court did not provide the lower courts with guidance as to what they should consider upon remand. In both *Martinez-Fuerte* and *Sitz*, the Supreme Court gave very clear and specific guidelines as to how and why the checkpoints at issue were in fact constitutional, and upon remand, ordered that the lower courts' decisions should not be inconsistent with its rulings.[256] Arguably, the Court gave more guidance in those decisions than it did in *Lidster*—in *Martinez-Fuerte* and *Sitz*, the Court's analyses and applications of the *Brown* balancing test were considerably longer and more detailed than in *Lidster*.[257] However, the Court in *Martinez-Fuerte* and *Sitz* still left it to the lower courts to apply the *Brown* balancing test and enter decisions of their own.[258]

In simply reversing the Illinois Supreme Court's decision in Lidster, the Court effectively denied the Illinois courts the ability to enter a decision

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[252] *Lidster*, 540 U.S. at 429 (Stevens, J., dissenting).

[253] United States v. Martinez-Fuerte, 428 U.S. 543, 567 (1976). The Court simply affirmed the Fifth Circuit cases that had already found the stops to be constitutional. *Id.*

[254] Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 455 (1990).

[255] City of Indianapolis v. Edmond, 531 U.S. 32, 48 (2000).

[256] *See Sitz*, 496 U.S. at 449-55; *Martinez-Fuerte*, 428 U.S. at 556-62, 567.

[257] *Compare Sitz*, 496 U.S. at 449-55, *with Martinez-Fuerte*, 428 U.S. at 556-62. *But see Lidster*, 540 U.S. 426-28.

[258] *See Sitz*, 496 U.S. at 455; *Martinez-Fuerte*, 428 U.S. at 567.

using the *Brown* balancing test and the Court's guidelines.[259] To illustrate how this practice was neither typical nor appropriate for the Court, Justice Stevens pointed out in his dissent: "We do not ordinarily decide in the first instance issues not resolved below."[260] Despite its departure from the Court's usual role, the majority opinion provided no reason for its decision not to remand the case.[261] It may have been that the Court wanted to avoid the risk of the Illinois courts applying the *Brown* test and finding a balance against the reasonableness of the roadblock. However, if this were the reason, the Court could have adhered to its usual role and remanded the case "for further proceedings not inconsistent with [its] opinion," as it had done in *Sitz*.[262] On the other hand, this direction would only be upheld to the extent that the facts presented to the court on remand supported a balance in favor of the roadblock's constitutionality.[263] The Court was correct to illustrate how the facts of the case might be applied to the test.[264] However, it simply should have allowed the lower court to use the *Brown* test in a separate proceeding and enter a decision based on its finding of the complete facts of the case.

Additionally, this decision may leave courts in other jurisdictions without clear direction regarding the appropriate type and amount of evidence to use when determining the reasonableness of information-seeking checkpoints in the future because the Supreme Court's application of the test was so cursory.[265] The impact in terms of public policy has the potential to be grave if courts were to begin to use a less fact-intensive application of the balancing test in future cases involving vehicle checkpoints on the basis of the Court's decision in *Lidster*. However, since the Court's holding is limited to determining whether information-seeking checkpoints are constitutional, the potential for harm would probably be limited only to these types of cases, rather than to all vehicle checkpoints. Nonetheless, a court's failure to conduct a fact-intensive application of the balancing test could result in decisions that ignore important criteria that would otherwise affect the constitutionality of information-seeking checkpoints.

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[259] *See Lidster*, 540 U.S. at 429 (Stevens, J., dissenting).

[260] *Id.* (quoting Pierce County v. Guillen, 537 U.S. 219, 148 n.10 (2003)) (Stevens, J., dissenting).

[261] *Id.* at 428.

[262] *Sitz*, 496 U.S. at 455.

[263] *See infra* Part V.D.2.

[264] *Lidster*, 540 U.S. at 428 (Stevens, J., dissenting).

[265] Milton Hirsch & David Oscar Markus, *Fourth Amendment Forum*, CHAMPION, May 28, 2004, at 30.

2. The Facts Were Not Clear in the Case and Thus Required Remand

As Justice Stevens noted in his dissent, the facts of the case may not have supported an outcome in favor of the reasonableness of the Lombard roadblock.[266] While his hypothetical scenario of a clogged roadway as an influx of workers getting off their shifts seems somewhat implausible given the early morning hour during which the roadblock was operated, it still raises the idea that the Supreme Court was not in the best position to apply the facts of the case to the test.[267] Although it is likely that traffic, particularly commuter traffic, was sparse on the highway after midnight, it is possible that the combination of vehicle traffic from shift changes at the local businesses and general Saturday night traffic from people traveling for social purposes could have resulted in enough vehicles on the road to create substantial congestion with the roadblock. By remanding the case, local judges would have had the ability to better access this kind of information than the Supreme Court.

First, with regard to the second prong of the *Brown* test (advancing public concern) there are two potential issues which were not clearly settled and should have been decided by the Illinois court on remand. The timing of the roadblock may or may not have been "tailored" to advance the public interest concerns served by the roadblock.[268] On one hand, the roadblock did take place at the same time of the accident, exactly one week after it occurred.[269] The Lombard police believed that this might coincide with shift changes at the nearby factories and plants.[270] On the other hand, a considerable length of time had elapsed since the accident.[271] Further, according to the record, the Lombard police did not have any actual information regarding shift changes at any of the businesses other than the Postal Service plant where Pytel worked.[272] Since Pytel was traveling by bicycle, any co-workers who left at the same time but commuted by car might have passed the accident location long before he did.

Additionally, empirical evidence has played an important role in demonstrating how particular checkpoints advance public interest

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[266] *Lidster*, 540 U.S. 428 (Stevens, J., dissenting).

[267] *Id.* at 428-29 (Stevens, J., dissenting).

[268] *Id.* at 429 (Stevens, J., dissenting); *see also* Brief for Respondent at 1, *Lidster* (No. 02-1060).

[269] *Lidster*, 540 U.S. at 422.

[270] Brief for Petitioner at 2, *Lidster* (No. 02-1060).

[271] Brief for Respondent at 1, *Lidster* (No. 02-1060).

[272] Joint Appendix at 28, *Lidster* (No. 02-1060).

concerns.[273] Although the relative strength of the statistical evidence presented seems to matter less to the balancing test, the complete absence of such support has been contemplated as a strong negative factor in the second prong of the *Brown* test.[274] Here, the State presented no empirical data to support the effectiveness of information-seeking checkpoints in leading to the apprehension of criminal suspects. Further, an amicus brief submitted by the Illinois Association of Chiefs of Police and the Major Cities Chiefs Association provided no such support.[275] Although empirical data alone should probably not be dispositive of the outcome of the balancing test, its absence in combination with other questionable support for the second prong of the *Brown* test may result in a finding for the Lombard roadblock's unconstitutionality.

The outcome of the third prong of the test (considering a seizure's interference with personal liberties) may also have been less certain than the majority indicated in *Lidster*.[276] First, the Lombard police indicated that the stop delayed drivers for ten to fifteen seconds.[277] However, this estimate was based only on the actual interaction between the police officers and the drivers, when the officers asked drivers if they had any information about the accident and handed them a flyer.[278] It did not take into account the time that vehicles waited once they approached the roadblock area, but before they pulled up to a police officer.[279] The facts of the case indicate that as many as fifteen vehicles may have been waiting in line once they reached the checkpoint.[280] Writing for the majority, Justice Breyer did take this factor into account in the Court's opinion, noting that the wait would be "a very few minutes at the most."[281] In *Martinez-Fuerte*, the Court upheld stops of three-to-five minutes.[282] However, the record for *Lidster* is not clear on exactly how long the motorists' delays were.[283] In this case, it was improper for the Court to base its application of the *Brown* test on

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[273] *See* Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 450 (1990); United States v. Martinez-Fuerte, 428 U.S. 543, 548 (1976).

[274] *See Sitz*, 428 U.S. at 549.

[275] *See generally* Brief of Amicus Curiae The Illinois Association of Chiefs of Police and the Major Cities Chiefs Association, *Lidster* (No. 02-1060).

[276] Illinois v. Lidster, 540 U.S. 419, 427-28 (2004).

[277] Brief for Petitioner at 8, *Lidster* (No. 02-1060).

[278] *Id.*

[279] Brief for Respondent at 1, *Lidster* (No. 02-1060).

[280] Joint Appendix at 20, *Lidster* (No. 02-1060).

[281] *Lidster*, 540 U.S. at 427.

[282] United States v. Martinez-Fuerte, 428 U.S. 543, 546-47 (1976).

[283] Brief for Petitioner at 3, *Lidster* (No. 02-1060); Brief for Respondent at 1, *Lidster* (No. 02-1060); Joint Appendix at 21, *Lidster* (No. 02-1060).

speculation. If the Court had remanded the case, the Illinois courts would have been in a better position to clarify this information.

Further, both of the Illinois opinions addressed concerns over the deluge of roadblocks that might result if the Lombard checkpoint were upheld.[284] Since neither court applied the *Brown* balancing test, the point was raised in consideration of public policy.[285] However, when the Supreme Court applied the *Brown* test, it made no mention of this possibility at all.[286] Although the dissent in the Illinois Supreme Court decision pointed out that police resources would be unable to sustain such widespread use of roadblocks, the fact that this topic was absent from the Supreme Court's application of the test serves as another indication that the Court failed to address all of the relevant criteria when it applied the test.[287]

Lastly, since neither of the Illinois courts had applied the *Brown* balancing test in their previous decisions, on remand the court may have requested additional evidence from the parties to ensure its application of the test was as informed as possible. Here, the Supreme Court, in abandoning its usual role as reviewer, made a decision that likely was not based on all of the relevant evidence.

VI. CONCLUSION

In sum, the Supreme Court was correct in holding that information-seeking roadblocks are consistent with the Fourth Amendment. Its decision in *Edmond* is clearly distinguishable from the Lombard roadblock at issue in *Lidster*, and *Edmond*'s application should be limited to those roadblocks operated for the purpose of "general crime control." The Illinois courts had been incorrect in extending *per se* unconstitutionality to information-seeking roadblocks; rather, these roadblocks should be evaluated according to the reasonableness balancing test set forth in *Brown*.

However, the Supreme Court should have only offered its application of the *Brown* balancing test to the facts of *Lidster* as guidance for the lower court upon remand. The Supreme Court erred in simply reversing the case when the issue had not even been considered in the Illinois courts' decisions. Doing so was not only uncharacteristic of the Court in comparison to its previous treatment of vehicle checkpoint cases, but also improper in light of the Court's traditional function as a court of review. Further, it was potentially counterproductive for future court decisions on

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[284] *See* People v. Lidster, 779 N.E.2d 855, 860 (Ill. 2002); People v. Lidster, 747 N.E.2d 419, 423 (Ill. App. Ct. 2001).

[285] *Lidster*, 747 N.E.2d at 423; *Lidster*, 779 N.E.2d at 860.

[286] *See Lidster*, 540 U.S. at 426-28.

[287] *Lidster*, 779 N.E.2d at 867 (Thomas, J., dissenting).

the issue since the Court provided only a cursory application of the facts to the balancing test. Despite the fact that *Lidster* served to clarify and limit the Supreme Court's holding in *Edmond*, lower courts may still face confusion in the future when applying the *Brown* balancing test to determine the constitutionality of informational roadblocks.

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