



# Roll Call Reporter

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LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

## Traffic Checkpoints, Traffic Initiatives, and the Fourth Amendment

**Question:** What is the difference between a “traffic checkpoint” and a “traffic initiative” for Fourth Amendment purposes?

**Answer:** A traffic checkpoint is a “seizure” under that Fourth Amendment that involves the stopping of all motorists by police at a designated area without reasonable articulable suspicion or probable cause. Traffic checkpoints are used at restricted entry areas and borders, and for roadway safety (sobriety checkpoints) and information gathering for certain criminal events (such as child abductions and hit and run fatalities). A traffic initiative, if properly designed and executed, is not a “seizure” under the Fourth Amendment. In a traffic initiative, police use normal traffic controls to observe motorists. Not all motorists are stopped. Instead, motorists are stopped only if an officer observes the specified traffic offense, such as a seatbelt or cell phone violation.

**Case:** *Clifton Johnson v. State of Maryland*  
Court of Special Appeals of Maryland  
Decided September 9, 2019

## The Traffic Initiative

On May 7, 2016, at approximately 4:30 or 5:00 p.m., seven officers from the Baltimore City Police Department (“BPD”) stationed themselves at the intersection of West Pratt Street and South Payson Street to conduct a “traffic initiative” in order to find infractions pertaining to seat belts and cell phones. Pratt Street is a one-way street and traffic was moderate at the time. No signs were set up informing drivers of the police activity. Orange cones were placed between the cars parked on Pratt Street and the curb as a signal to drivers parking their vehicles that officers were present. The officers parked their cars on Payson Street to avoid obstructing traffic. Their emergency lights were not activated.

When traffic stopped for the red light, one of the officers, Officer Serio, walked in front of or beside vehicles to see if the occupants were wearing their seat belts or were talking on a cell phone. If the light was green, the officers did not initiate any traffic stops, even if they observed an infraction. In this way, drivers were stopped only during red lights and the flow of traffic was not affected. If a driver stopped for the red light was observed on a cell phone or not wearing a seatbelt, he or she was requested to pull off onto Payson Street where another officer, Officer Dauphin, was located. Officer Dauphin would then issue the driver a

citation. Officers located at the intersection below Officer Serio alerted him if they saw someone using a cell phone or not wearing a seatbelt. The traffic initiative lasted for about ninety (90) minutes.

### The Stop of the Suspect's Vehicle and the Check for Warrants

Midway through the traffic initiative, a vehicle driven by Clifton Johnson was stopped at the red light. Officer Serio walked by the driver's side and noticed that Johnson was not wearing his seatbelt. He told Johnson to pull over at Officer Dauphin's location on Payson Street. Officer Serio then notified Officer Dauphin of his observations. As Johnson was pulling over, Officer Dauphin ran a check on the vehicle's license plate number. The MVA information came back "No record found." Officer Dauphin approached the driver's door and confirmed that Johnson was not wearing his seatbelt. Johnson was unable to produce his driver's license or registration but did give his name and date of birth. From this information, Officer Dauphin learned that there was possibly an open warrant for Johnson. Officer Dauphin moved to the rear of Johnson's car and contacted BPD's "Hot Desk" to confirm Johnson's warrant status. Officer Serio then joined Officer Dauphin to keep an eye on Johnson. He saw Johnson hunch over with his left shoulder and place his left hand under the driver's seat. At that moment, Officer Dauphin received confirmation that Johnson had an open warrant and was advised to take him into custody.

### The Arrest, Inventory Search, and Recovery of the .357 Revolver

Johnson was ordered out of the car, handcuffed, and placed under arrest. He was also given a citation for failure to wear a seat belt. Because there was no license plate record for the vehicle, the officers decided to have it towed from the scene. Prior to the tow, the officers conducted an inventory search. They found a loaded .357 Smith and Wesson revolver under the front driver's seat. Officer Dauphin

actually saw the handgun on the floor as soon as he opened the driver's side door.

### The Charges, Motion to Suppress, and Conviction

Johnson was charged with illegal possession of a regulated firearm, wearing, carrying and transporting a handgun on his person and in a vehicle, possession of ammunition, and operating a vehicle while not wearing a seatbelt. Johnson filed a motion to suppress the evidence, arguing that: (1) the traffic initiative was an unlawful traffic checkpoint, and (2) if the stop was illegal, the discovery of Johnson's arrest warrant did not attenuate the unlawful stop. The State argued that the traffic initiative was not a checkpoint, and that, in any event, the police had probable cause to stop Johnson. The circuit court denied Johnson's motion and a jury found him guilty of the charges. Johnson appealed.

### The Decision on Appeal

The Court of Special Appeals upheld Johnson's conviction. The court first pointed out the differences between a "traffic checkpoint" and a "traffic initiative." **In a traffic checkpoint, every motorist is stopped without reasonable articulable suspicion.** Motorists are stopped in a predetermined sequence without any discretion being exercised by the officers. **Another characteristic of a checkpoint is the use of a "roadblock" or "barrier."** Roadblocks and barriers can be created by police vehicles in or adjacent to the roadway with their emergency lights activated. Traffic cones, flares, and other objects that act as barriers are generally used to guide traffic at checkpoints. Also, signs are used to warn motorists that a checkpoint is ahead and to provide instructions to motorists. Finally, at checkpoints, motorists are subjected to varying degrees of intrusion, from visual inspection to questioning.

On the other hand, a **"traffic initiative" does not involve any form of roadblock or barrier. Instead, normal traffic controls, such as red lights, are used to observe traffic violations. Police cars do not block traffic in any way and emergency lights are**



**not activated. Officers do not use cones or other objects to funnel traffic, and they do not direct or impede traffic. Signs are not used to warn drivers of a traffic initiative.** For these reasons, the court found that the traffic initiative in this case was not a checkpoint for purposes of the Fourth Amendment. In other words, the traffic initiative itself was not a seizure. “Seizures” were made only upon police observation of a traffic violation. Since there was probable cause to stop Johnson based on the officers’ observations, the stop did not violate the Fourth Amendment.

**Note:** A motorist stopped at a traffic checkpoint has been “seized” for purposes of the Fourth Amendment. Whether a traffic checkpoint is reasonable under the Fourth Amendment depends on several factors, including, but not limited to, the degree of discretion left to officers, the checkpoint’s location, the advance warning given to motorists, and the time and duration of the checkpoint. If properly designed and executed, a traffic initiative is not a seizure under the Fourth Amendment. Seizures can only be made during a traffic initiative on the basis probable cause arising from an officer’s observations.

*By John F. Breads, Jr., Director of Legal Services, Local Government Insurance Trust*

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