NOTES

THE DRIVER'S LICENSE "DISPLAY" STATUTE: PROBLEMS ARISING FROM ITS APPLICATION

Virtually every state has provided by statute[1] that a motorist must carry his operator's license with him at all times while operating a motor vehicle, and display it upon the demand of a police officer.[2] Typically, failure to comply with the demand constitutes prima facie evidence of driving without a license, which is universally a misdemeanor.[3]

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1. Ala. Code Ann. tit. 36, § 65 (1940); Alaska Comp. Laws Ann. § 50-1-4(e)(8) (Supp. 1957); Ariz. Code Ann. § 28-423 (1956); Ark. Stat. Ann. § 75-323 (1957); Cal. Vehicle Code Ann. § 12951 (Deering 1959); Colo. Rev. Stat. Ann. § 13-3-13 (Supp. 1957); Conn. Gen. Stat. § 14-217 (1958); Del. Code Ann. tit. 21, § 2719(b) (1953); D.C. Code Ann. § 40-301(c) (Supp. 1960); Fla. Stat. Ann. § 322.15 (1958); Ga. Code Ann. § 92A-9906 (1958); Hawaii Rev. Laws § 160-45 (1955); Idaho Code Ann. § 49-319 (1957); Ill. Ann. Stat. c. 95½, § 6-118 (Smith-Hurd 1958); Ind. Ann. Stat. § 47-2714(b) (Supp. 1960); Iowa Code Ann. § 321.-190 (1949); Kan. Gen. Stat. Ann. § 8-244 (Supp. 1959); Ky. Rev. Stat. Ann. § 186.510 (1955); La. Rev. Stat. § 32:411(D) (Supp. 1959); Me. Rev. Stat. Ann. c. 22, § 153 (1954); Md. Ann. Code art. 66½, § 97 (1957); Mass. Ann. Laws c. 90, § 25 (1954); Mich. Stat. Ann. § 9.2011 (1952); Minn. Stat. Ann. § 171.08 (1946); Miss. Code Ann. § 8108 (1957); Mo. Ann. Stat. § 302.181(2) (1952); Mont. Rev. Codes Ann. § 31-136 (1954); Neb. Rev. Stat. § 60-413 (1952); Nev. Rev. Stat. § 483.350 (1959); N.H. Rev. Stat. Ann. § 262:26 (Supp. 1959); N.J. Stat. Ann. § 39:3-29 (1940); N.M. Stat. Ann. § 64-13-49 (Supp. 1959); N.Y. Vehicle & Traffic Law § 20.1(e); N.C. Gen. Stat. § 20-29 (1953); N.D. Rev. Code § 39-0616 (Supp. 1957); Ohio Rev. Code Ann. § 4507.35 (Baldwin 1958); Okla. Stat. Ann. tit. 47, § 285 (1950); Ore. Rev. Stat. § 482.300(2) (1959); Pa. Stat. Ann. tit. 75, § 783(a) (1953); R.I. Gen. Laws Ann. c. 10, § 31-10-25 (1957); S.C. Laws 1959 § 46-162, at 427; S.D. Laws 1959 c. 261, § 11, at 361; Tenn. Code Ann. § 59-709 (Supp. 1959); Tex. Rev. Civ. Stat. Ann. art. 6687b, § 13 (1960); Utah Code Ann. § 41-2-15(b) (1953); Vt. Stat. Ann. tit. 23, § 611 (1959); Va. Code Ann. § 46.1-7(c) (1958); Wash. Rev. Code § 46.20.190 (1951); W.Va. Code Ann. § 1721(217) (1955); Wis. Stat. Ann. § 343.18(1) (1958); Wyo. Comp. Stat. Ann. § 31-271 (1959).

2. There is a variance among the states as to who is authorized to make the demand, but generally any "peace officer" has the power.

3. The Missouri statute contains the typical provisions:

> The license shall be carried at all times by the holder thereof while driving a motor vehicle, and shall be displayed upon demand of any officer of the highway patrol, or any police officer or peace officer, or any other duly authorized person, for inspection when demand is made therefor. Failure of any chauffeur or operator of a motor vehicle to exhibit his license to any of the aforesaid officers, or other duly authorized officer, shall be presumptive evidence that said person is not a duly authorized chauffeur or motor vehicle operator. Mo. Ann. Stat. §302.181(2) (1952).

These statutes (which may be called "display" statutes) are silent on the questions of when or under what circumstances the police are legally authorized to make the demand. However, under color of such statutes, police have assumed the right to stop automobiles at any time and request the drivers thereof to exhibit their licenses. This asserted power has been exercised even in situations where the authorities have neither seen nor had probable cause to believe that the drivers were violating traffic laws or committing crimes in their presence.[4] Currently, these "display" provisions have become the basis for systematic license checks through the erection of roadblocks on well-travelled thoroughfares.

Until recently, this assumption of power by police had never been challenged directly. As a result, the law in the area was confined to decisions wherein the validity of the practice arose as merely a collateral issue. However, a late Florida decision[5] in which this action of the police was the primary issue, has emphasized the problems inherent in these statutes.

The two basic situations where the question may arise are outlined as follows: (1) The police may establish a *roadblock* for the purpose of enforcing the licensing laws and pursuant thereto, they may examine the permits of those motorists who are stopped. (2) The police may intercept and *"pull-over"* an individual motorist and ask to see his permit. If the driver fails to comply with the request, or the police notice some suspicious article in the car, the occupants might then be taken into custody and prosecuted, in the latter case for a crime other than driving without a license, on the basis of evidence disclosed by a search conducted after the arrest. On the other hand, the police may pull-over a car on the pretext of enforcing the licensing laws, but this is a *subterfuge* and their real motive is to investigate an unfounded suspicion regarding another crime. A "fishing expedition" in the form of an unwarranted search is then conducted which uncovers evidence of a crime for which the occupants of the car are subsequently prosecuted.

In any of these situations, if the driver displays his permit and no search is undertaken, or a search discloses nothing and he is allowed to continue, he might sue to enjoin the practice. On the other hand, if the driver refuses to display his permit, or a search is conducted which uncovers incriminating evidence, he may move to suppress this evidence at the trial. In all cases, the gravamen of the driver's claim

4. See, e.g., Cameron v. State, 112 So. 2d 864 (Fla. Dist. Ct. App. 1959), where the halting was based solely on the ragged physical appearance of the occupants.

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

is that the original stopping constituted an illegal procedure, i.e., an arrest without probable cause, and was, therefore, in violation of his constitutional rights.[6]

THE ROADBLOCK SITUATION

City of Miami v. Aronovitz[7] was the first decision to present squarely the issues of whether the roadblock stopping of vehicles to check drivers' licenses without probable cause to believe that a particular driver was unlicensed was (1) authorized by the "display" statute, and (2) constitutionally permissible as a valid exercise of the police power.

Aronovitz, a former mayor of Miami, was lawfully operating his automobile along a street in that city when he observed cars ahead of him being halted at a police license-check roadblock. An officer prevented his turning onto another street, motioning him into the line of cars approaching the checkpoint. After displaying his license, he was permitted to drive on. Subsequently, he filed suit in the state court against various city officials including the Chief of Police, seeking, among other things, to enjoin them from using roadblocks or similar devices to stop automobiles without probable cause to believe the driver was acting unlawfully.[8] Aronovitz contended that the stopping violated due process in contravention of the state and federal constitutions in that it (1) constituted an unreasonable interference with his *right* as a citizen to use the public highways, and (2) was an unlawful *arrest*.[9] Further, he argued that the roadblock was a mere sham to give the police an opportunity to search his car.[10]

The Chancellor found for Aronovitz and issued a temporary injunction restraining the authorities from stopping motorists by means of roadblocks or other devices unless these officials "should observe or have probable cause to believe that . . . [the driver] . . . has committed or aided in the commission of a crime."[11] On appeal, the Supreme Court of Florida reversed,[12] holding: (1) the right to use the highways is subject to reasonable regulation for the public welfare; (2) a

6. It must be assumed that in none of these situations is the detained automobile violating traffic laws, otherwise probable cause is clearly present.

7. 114 So. 2d 784 (Fla. 1959).

8. It is not clear from the opinion whether the validity of the "display" statute on its face was in issue or whether the question concerned merely its application. It is submitted that the latter was the case.

9. The basis of these contentions was the case of Florida Motor Lines, Inc. v. Ward, 102 Fla. 1105, 137 So. 163 (1931).

10. This contention involves the "subterfuge" doctrine and will be considered in connection with the discussion of the "pull-over" situation to follow.

11. 114 So. 2d at 786.

12. There was no intermediate appeal because by statute the supreme court had jurisdiction to review directly interlocutory decrees of this type.

driver's license is a privilege, not a right, and the operator accepts the privilege subject to reasonable restrictions; (3) the regulation, i.e., the roadblock stopping, was reasonable and necessary to prevent those drivers whose licenses had been suspended, revoked, or who had never had them from continuing to use the highways; (4) a requirement of probable cause would "produce almost total disablement of law enforcement officers in the performance of a needed police power which has been granted to them by the Legislature . . . ,"[13] and (5) there was no showing of subterfuge sufficient to question the good faith of the officers.

Where a roadblock is used to stop a motorist, it would be almost impossible for the police to have probable cause to stop any *particular* driver.[14] The City of Miami prevailed in the *Aronovitz* case because the court refused to read into the "display" statute a requirement that the officer have probable cause to believe that *this motorist* was unlicensed as a condition precedent to the authority to stop the car. In lieu of this, the court substituted a requirement of what might be termed "general probable cause." The Miami authorities had introduced detailed statistical reports illustrating the number of drivers' licenses which had been revoked or suspended in the Miami area in previous months, and also the successes of other roadblocks in apprehending violators. The obvious purpose of this evidence was to convince the court that, although probable cause concerning each driver stopped at a roadblock was not possible, proof of necessity or "general probable cause" *within a particular geographical area* could always be obtained, and that acceptance of the latter form of justification would permit sufficient judicial control of the activity while simultaneously promoting effective policing of the highways. The decision of the court in favor of the city reflects the complete success of the argument, and it is submitted that this reasoning would and should be adopted in all roadblock controversies.[15]

In approving the use of a systematic roadblock to enforce the licensing laws, the court in the *Aronovitz* case stated:

> The possibility that a power of government may be abused if improperly asserted under conditions which do not justify it is

13. 114 So. 2d at 789.

14. One possible exception would be the case where the automobile stopped matches the description of one known to have been used in the commission of a crime.

15. This argument would be equally applicable to the situation where there was no "display" statute. Licensing was originally undertaken primarily as a source of revenue, but due to congested road conditions, all states have passed "license" and "display" statutes to help rid the highways of unfit drivers, so the point is moot.

> not necessarily a valid argument for denying the existence of the power or its reasonable exercise in a proper case in the interest of the public good.[16]

By implication this statement recognizes that there may be cases in which the power to stop a car and demand that the driver display his operator's license might be unreasonably exercised under conditions which do not justify it. To determine what those cases and conditions might be, the pull-over situation with its many variations will now be examined.

THE "PULL-OVER" SITUATION

The identical arguments employed in the roadblock situation might have logical application where police, pursuant to a departmental directive or on their own initiative, pull-over an individual motorist and demand display of his driver's license. However, when a roadblock is used to enforce the licensing laws, the police have no way of predetermining what cars will pass the particular location chosen to establish the roadblock. This fact negates the possibility that the police might stop a particular car for purposes other than the reasonable and therefore legitimate license check. In the pull-over situation there is no such assurance since the police may decide to stop any car at any time and place. While they might ask to see the driver's license for the purpose for which the "display" statute was passed, their primary motive in stopping the car might well be: (1) to check the identity of the occupants of the car; (2) to examine the car for unconcealed contraband which would give them sufficient probable cause to make an arrest without a warrant; or (3) to conduct an unwarranted search of the car where the driver is arrested for driving without a license or for another crime.

In the pull-over situation then, the courts have developed two methods to insure that police use the "display" provisions to accomplish the intended end of licensing law enforcement rather than for some other unlawful purpose such as search without a warrant. One method, the requirement of probable cause, requires that police have probable cause to believe that a driver is unlicensed before they may lawfully stop him, even though the statute itself contains no such express provision.[17] This method would say that the motive of the police is not determinative of their authority to stop a car since the requirement of specific probable cause provides a method of control in pull-over cases comparable to the general probable cause required in the roadblock

16. 114 So. 2d. at 789.

17. See Edwards v. State, 319 P.2d 1021 (Okla. Crim. App. 1957), where the court reasoned that probable cause or reasonable belief of some vehicle code violation should precede any stopping to check drivers' licenses, "except perhaps where a roadblock has been established for wholesale checking." Id. at 1026.

situation, except that it would be a rare case indeed where the police would have probable cause to believe that a specific driver was unlicensed before the car was stopped and the display requested and refused. The other method, known as the "subterfuge" doctrine, assigns controlling importance to the motive of the police. If their primary motive was to examine the license, the stopping was lawful regardless of whether they had specific probable cause.

A. Requirement of Probable Cause

Two approaches, the "Arrest" and the "Interpretation," might be employed to construe the "display" statute to require specific probable cause in the pull-over situation.

1. *"Arrest" Approach*

This approach would first assume that the original stopping is an arrest in itself, and then subdivide into two parallel arguments. The *first* is that since the stopping is an arrest, it would violate due process if allowed without probable cause. Therefore, rather than hold the "display" statute invalid on its face, the court should read such a requirement into it. The *second* argument reasons that since at common law an arrest could not be lawful except upon probable cause, any statute not specifically demanding that requirement is in derogation of the common law and is to be strictly construed against the state. Applying a strict construction, it may be argued that the "display" provisions refer merely to the *duty of the motorist* and are not intended to vest absolute power in police officers.[18]

The basic assumption of this approach may be fatal to its effectiveness. Professor Perkins cites four requirements which have been suggested for an arrest at common law:[19] (1) a purpose to take the person into custody, (2) under a real or pretended authority, (3) resulting in an actual or constructive seizure or detention of his person, (4) so understood by the arrestee.[20] It is obvious that the mere stopping of an automobile by a policeman would not meet the first requirement, and probably the fourth would be lacking as well. Therefore, Perkins would say there was no arrest, for besides listing these four requirements he indicates that there is no arrest where a truck is stopped on the highway to be weighed and sent along without undue delay, and this situation is analogous to those under consideration.[21] Such case authority as exists on the application of the law of arrest

18. See Edwards v. State, supra note 17.

19. Perkins, The Law of Arrest, 25 Iowa L. Rev. 201 (1940).

20. Id. at 208.

21. Id. at 207.

to the mere stopping of a motor vehicle is scant. But a reasonable view[22] would seem to support Perkins, and therefore, one cannot conclude, by calling the mere stopping of an automobile an arrest, that the "display" statutes were intended to require specific probable cause.

2. *"Interpretation" Approach*

The alternate approach, the "Interpretation," although its availability is somewhat limited, presents a more convincing argument for the probable cause requirement. Besides the "display" statute, almost every motor vehicle code contains a section enumerating the powers of highway patrol officers.[23] These fall into three broad categories: (1) those requiring no probable cause to stop a motorist *in any case,*[24] (2) the considerable number that grant police the power to stop and inspect any car which they *reasonably believe* to be operating with defective equipment,[25] and most important to the approach discussed here, (3) the provisions which allow the officers to stop and inspect a vehicle upon *reasonable belief* that its equipment is defective or *that any other provisions of the code are being violated.*[26] It is this third "catch-all" clause which provides the basis for the "Interpretation" approach.

This approach proposes that the "display" statute with its "shall exhibit" language merely prescribes the *duty of the motorist,* and does not attempt to restrict or expand the powers of the police. Such powers, so the argument goes, are to be found in the provisions of the general statute specifying the rights and duties of highway officers. Since the "powers" statute requires probable cause prior to any stopping, and it is in pari materia with the "display" statute, the two are in conflict, and the incongruity can be avoided only if the latter also requires probable cause, i.e., the operator need exhibit his license only on lawful demand. Of course, this argument can be asserted only in a state where the "powers" statute includes a "catch-all" clause. Recently the Nebraska legislature eliminated the "catch-all" clause from

22. See Cornish v. State, 215 Md. 64, 137 A.2d 170 (Ct. App. 1957).

23. This note does not purport to distinguish acts of highway patrol officers from those of other law enforcement authorities within a given state. It is submitted, however, that there is little difference in effect. See Edwards v. State, 319 P.2d 1021 (Okla. Crim. App. 1957), which stated, "we must assume that peace officers in general would have no less restrictions than highway patrolmen, in their demands to see the license of the driver of a motor vehicle, particularly when the vehicle was in motion and there was no justification in stopping the same other than to examine the license of the driver." Id. at 1026.

24. See, e.g., Iowa Code Ann. § 321.492 (1949).

25. See, e.g., Ariz. Code Ann. § 28-982A (1956).

26. See, e.g., N.C. Gen. Stat. § 20-49(d) (1953).

its "powers" statute,[27] thus denying motorists the possible use of this approach. Whether other states will follow its lead and amend their "powers" statutes remains to be seen.[28]

The applicability of the "Interpretation" approach is illustrated by *Edwards v. State*.[29] In that case two policemen saw the defendant leave the home of a known bootlegger, climb into his automobile and drive away. One of the officers previously had seen the defendant convicted for driving without a license and for illegal whiskey traffic. They pursued and intercepted the car, and when defendant admitted he had no driver's license, placed him under arrest. The vehicle was then searched and illegal liquor uncovered. In his prosecution for the liquor violation, defendant moved to suppress the evidence, but the motion was overruled. Affirming this decision of the lower court, the court of appeals cited both the "powers"[30] and "display" statutes, and in applying the "Interpretation" approach said:

> [U]nder such circumstances no peace officer could be justified in stopping a motor vehicle and demanding to examine a driver's license except "upon reasonable belief" that the vehicle "is being operated in violation of any provision of the . . . Act . . . or any other law regulating the operation of vehicles", except perhaps where a road block has been established for wholesale checking.[31]

The court went on to hold, however, that since one of the officers had prior knowledge of the defendant's lack of license, there was sufficient "reasonable belief" to warrant the interception.[32]

It is submitted that a requirement of specific probable cause in the pull-over situation is not an appropriate control device. The decision of the Florida court in the *Aronovitz* case to the effect that such a re-

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27. Neb. Rev. Stat. § 60-413 (1952) (amended by Neb. Laws 1959, c. 295).

28. There is a third possible approach in this area. It could be argued that the statutes regulating inspection for mechanical defects and those dealing with driver's licenses are equally essential to public safety, and therefore, if one requires probable cause, the other should also. If accepted, this theory would obviate the necessity for the "Interpretation" approach. However, there is far greater inconvenience in terms of delay to the motorist whose automobile is subjected to an equipment inspection than to the operator who merely displays his license and drives on. Practically, then, this argument carries little weight.

29. 319 P.2d 1021 (Okla. Crim. App. 1957).

30. The "powers" statute in Oklahoma, Okla. Stat. Ann. tit. 47, § 366(4) (1956), is in greater conflict with the "display" provision than the usual "catch-all" type, for it specifically states that reasonable belief is required before police can stop cars for a license check. Therefore, this case does not fully support the "Interpretation" approach.

31. 319 P.2d at 1026.

32. This case included contentions of subterfuge, but they were rejected by the court. The situation here was rather extraordinary, for seldom does an officer have reasonable belief, prior to stopping a car, that the driver has no license.

quirement would "produce almost total disablement of law enforcement officers in the performance of a needed police power . . ."[33] has equal validity in the pull-over situation unless the roadblock be deemed the *only* reasonable means to the end of licensing law enforcement. Such a drastic limitation does not seem warranted because: (1) it should be the presumption until rebutted that the police have acted in good faith,[34] and (2) those drivers pulled over for the license check are generally put to little delay and inconvenience.[35] A more suitable control device in the author's view is the "subterfuge" doctrine.[36]

B. The "Subterfuge" Doctrine

Since the 1944 decision of its Supreme Court in *Cox v. State*,[37] Tennessee has been the leading advocate of this device to offer the motorist some protection against the apparently absolute mandate of the typical "display" statute.[38] In that case, two highway patrolmen followed the defendant's car, pulled him over, and demanded that he produce his driver's license. He gave his license to the officers, and while examining it, they noticed what appeared to be illegal whiskey in the car, searched further, and arrested the defendant on the basis of the whiskey uncovered. At the trial, a motion to suppress the evidence which placed in issue the validity of the original stopping was overruled. On appeal, the court reversed holding that where all the circumstances "showed that the officers stopping the defendant had no concern whatever about his driver's license, but he was put under restraint for the purpose of discovering whiskey . . ."[39] and he was

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33. Note 13 supra.

34. United States v. Long, 52 F.2d 901 (D.N.J. 1931).

35. See, e.g., City of Miami v. Aronovitz, 114 So. 2d 784 (Fla. 1959), where the driver was permitted to continue after stopping and merely displaying his license.

36. In jurisdictions which recognize this protective device, it may be argued successfully that the police lacked authority without resort to either the "Arrest" or the "Interpretation" approach, for, even if the court refuses to construe the "display" statute to require probable cause, it will nevertheless reverse a conviction if the officers acted in bad faith. See generally Annot., 154 A.L.R. 812 (1945).

37. 181 Tenn. 344, 181 S.W.2d 338 (1944).

38. There is a logical explanation for Tennessee's strong adherence to this doctrine; its "display" provision contains a unique proviso. It specifically requires that police, *other than highway patrolmen*, can stop a motorist and demand his license only if he is violating a state or municipal regulation. Tenn. Code Ann. § 59-709 (Supp. 1959). As to city police then, probable cause is required by the statute, thus destroying any necessity for the "Arrest" or "Interpretation" approaches in cases of detention by municipal authorities. By its terms, this statute grants absolute power to highway officers, and therefore the necessity for protection of the motorist is acute.

39. 181 Tenn. at 347, 181 S.W.2d at 340.

arrested on the basis of the whiskey discovered, the arrest was a mere subterfuge, and violated his constitutional rights. The court stated that while a state highway patrolman may stop a driver at any time to examine his driver's license, "he cannot do so as a mere pretense in order to search the automobile for whiskey or any other contraband article."[40] Highway patrolmen were given the exceptional authority to stop cars at any time solely because their chief duty was the enforcement of the traffic laws for the safety of the travelling public. "The statutes certainly did not contemplate conferring this authority upon them to enable them to circumvent the constitutional provision against searches of the person and property of a citizen without a valid search warrant."[41] On almost identical facts in the later case of *Robertson v. State*,[42] the court said that officers must exercise the right to check driver's licenses "in good faith and not as a pretext or subterfuge for an inspection of or a prying into the contents of an automobile . . . ."[43] Tennessee "will not permit an evasion of the requirements of the law with regard to search warrants through the device, pretext, or subterfuge of a pretended examination of a driver's license."[44]

The Michigan case of *People v. Roach*[45] also adopts the "subterfuge" doctrine. There a motorcycle policeman pulled over the defendant's car and asked the driver to produce a license. He did not have one and the officer then searched the car and discovered illegal liquor on the basis of which the defendant was arrested. At the trial, the defendant's motion to suppress the evidence on the ground that it was obtained by an illegal search was overruled and he was convicted of illegal liquor traffic. The officer had testified that his *sole reason* for stopping the car was that he became suspicious when the occupants of the car kept looking back at him. On appeal, the state supreme court reversed, holding that the search without a warrant was unconstitutional since the police were not entitled to "promiscuously stop automobiles upon the public highway and demand the driver's license merely as a subterfuge to invade the constitutional right of the traveler to be secure against unreasonable search and seizure."[46] Implicit in this statement is the rule that while an officer may always stop a car to see whether the driver is licensed, he may not then proceed to conduct a search on the bare suspicion that the occupants might have committed some other crime. After a car is stopped for the purpose of the license

40. Id. at 348, 181 S.W.2d at 340.
41. Ibid.
42. 184 Tenn. 277, 198 S.W.2d 633 (1947).
43. Id. at 283, 198 S.W.2d at 635.
44. Id. at 284, 198 S.W.2d at 635.
45. 237 Mich. 215, 211 N.W. 742 (1927).
46. Id. at 222, 211 N.W. at 744.

check, the officer must *then* notice something which gives him probable cause to believe a crime has been committed before any search is lawful.[47]

Thus the conclusion is warranted that the "subterfuge" doctrine will afford a motorist relief only in those important cases where he is prosecuted for a crime other than driving without a license on the basis of evidence obtained by a search of the car.[48] That the police have absolute power to stop cars and check drivers' licenses is desirable. It is only where police seek to use this power to search for evidence of other crimes without probable cause or a search warrant that a driver merits the protection afforded by the "subterfuge" doctrine. The fact that the officer's motive in stopping the car frequently cannot be easily challenged at the litigation stage for lack of proof is obvious.[49] But this is no reason to discard the doctrine, for often, as in the *Cox* case,[50] that motive may be satisfactorily ascertained by an examination of the circumstances surrounding the stopping, what the officer said and did, and whether there was anything which the officer might have noticed *before* the search which would have given him sufficient probable cause to conduct the search that was later undertaken. This is a factual question which may be decided by the court, or in the usual case where the issue is doubtful, it may be submitted to the jury.[51]

An interesting additional remedy for the motorist which might be used in connection with the "subterfuge" doctrine was developed by the Indiana legislature in 1957. At that time, it amended the "display" statute by adding that "no person shall be charged with violating this section, who within five [5] days from the time of apprehension, produces to the apprehending officer or headquarters of the apprehending officer satisfactory evidence or a permit or license theretofore issued

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47. See Gause v. State, 203 Miss. 377, 34 So. 2d 729 (1948).

48. The trend has been to read a requirement of "good faith" into "display" statutes. However, this is not to be confused with probable cause. The former questions whether the officer in fact stopped the vehicle for his avowed purpose, whereas the latter questions whether the stopping was based upon sufficient legal grounds.

49. Note, 1959 Wis. L. Rev. 347, 356.

50. Note 37 supra.

51. The validity of the "subterfuge" doctrine in Florida is still questionable. Although the Supreme Court of that state impliedly adopted it in the Aronovitz case, it neglected to consider a decision of the court of appeals decided in the same year, Cameron v. State, 112 So. 2d 864 (Fla. 1959), which stated that the motive of the officer acting under the "display" statute was immaterial. In this latter case, the conviction was reversed on other grounds, which explains perhaps the failure of the Aronovitz court to comment upon it. Besides, the earlier decision of the supreme court in Byrd v. State, 80 So. 2d 694 (Fla. 1955), strengthens the possibility that the doctrine may be employed in a proper case in that state.

to him and valid at the time of apprehension."[52] While this provision probably was intended by the legislature more as a convenience to motorists than as a curb on the unauthorized exercise of a power by the police, it is interesting to note that the police tried unsuccessfully to get the amendment repealed in 1959. The amendment, of course, deprives the police of the power to arrest for failure to display at the time of the stopping and thereafter to conduct a search incident to the arrest.[53] So it is obvious that the police recognized that the "display" statute was a convenient means by which to stop and search the car of an unlicensed driver who was otherwise obeying the law by all appearances. Assuming for the sake of this discussion that the police are empowered to conduct a search incident to an arrest for failure to display a driver's license, an amendment to the "display" statute such as that in Indiana is the only way to offer the motorist the protection, where he is unable to display a license for some reason, that he enjoys from the "subterfuge" doctrine in cases where he does display it.

CONCLUSION

In the final analysis, the basic question in these cases involves the pitting of society's interest in the effective policing of highways against that of the individual in unobstructed travel.[54] It appears that stopping a driver by means of a roadblock or pull-over to determine whether he possesses a valid license is both authorized by the "display" statute and constitutionally permissible as a necessary regulation for the public safety. But while such procedures are reasonably calculated to achieve the effective policing of today's congested roads, the interception of an individual motorist by the police under a claim of authorization by the "display" statute should not be upheld when the evidence shows that such a claim is a subterfuge and the officer's real motive is to conduct an unwarranted search for evidence of another crime of which he merely suspects the motorist. Finally, all "display" statutes should be amended along the lines of the Indiana statute to provide that the motorist may not be arrested if he subsequently furnishes the police with satisfactory proof that he possessed a valid license at the time he was stopped and the display demanded. This procedure is de-

52. Ind. Ann. Stat. § 47-2714(b) (Supp. 1960).

53. For a comprehensive discussion of this aspect of the problem, see Note, 1959 Wis. L. Rev. 347.

54. This is summed up by the Aronovitz court, 114 So. 2d at 789. "In matters of the type before us, it is essential that we recognize the individual right and that we simultaneously reconcile the enjoyment of that right with the needs of the general good."

sirable because, while depriving the police of another device to conduct an unwarranted search, it will attain the end of ridding the roads of unlicensed drivers without unduly burdening those who have valid licenses but have neglected to have them on their persons through forgetfulness or some other reason.