Editorial on DWI ruling faulted

To the Editor:

Your editorial criticizing the Supreme Court's decision in *State v. Badessa* was off-base. The crux of the editorial appears to be a disagreement with a ruling in the case that the stop of a motorist, who evaded a DWI sobriety checkpoint, was impermissible. However, that ruling was not made by the Supreme Court, but was the basis of the decision of the Appellate Division. The Appellate Division panel that decided *Badessa* ruled that the DWI checkpoint had failed to provide the motorist with adequate warning that a lawful turn onto an intersecting road while approaching the checkpoint area would provide the basis for the police to conduct a stop.

In so ruling, the Appellate Division relied on its own holding in the 1990 case *State v. Hester*, 245 N.J. Super. 75. In *Badessa*, the Appellate Division ruled that despite the unlawful stop, evidence that the defendant subsequently refused to take a breathalyzer was saved from suppression by the attenuation doctrine. Thus, the Appellate Division ruled that, although the stop of the defendant's car was improper, he could nonetheless be prosecuted for refusal to take a breathalyzer test. It was against this Appellate Division holding that the defendant, not the State of New Jersey, sought certification by the New Jersey Supreme Court. The defendant's petition for certification was granted, limiting the scope of the court's review to the sole issue of whether, under the circumstances of the case, *assuming* the unconstitutionality of the vehicle stop, whether the attenuation doctrine nonetheless permitted the introduction of evidence of the defendant's subsequent refusal to take the breathalyzer test. The state, for reasons unknown, did not seek any review of the Appellate Division opinion that the stop of the defendant's car was unlawful. The issue of the propriety of the stop of the defendant's car for evading the DWI checkpoint was simply not before the court.

It is therefore misguided to suggest that the Supreme Court's opinion in *Badessa* "might have concentrated on whether the law authorizing these sobriety checkpoints requires cooperation and compliance by motorists and, if so, whether the ignorance of that requirement or lack of actual notification should defeat an officer's stop of a motorist who has attempted to skip out." While this would certainly be an interesting issue to be tackled by the Supreme Court in an appropriate case, it must be brought before the court. We cannot and should not expect the Supreme Court to digress from an issue placed squarely before it to pass upon a constitutional issue not contained in the grant of certification, nor, presumably, briefed or even argued by the parties.

If your editorial seeks to criticize the holding that a driver must be provided with adequate notice of a sobriety checkpoint and be warned that any attempt to turn onto an intersecting side street will result in a motor vehicle stop, the criticism should be directed at the Appellate Division, as the court that ruled upon the issue, or the Attorney General's Office, which failed to press the issue before the Supreme Court of New Jersey. It seems to me that to label the Supreme Court's decision as one-dimensional is simply a reflection upon the undeniable fact that the court was presented with, and ruled upon, a single narrow issue. Established and long-standing principles of jurisprudence justifiably precluded the Supreme Court in *Badessa* from addressing any issue other than the one squarely before it.

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