

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	Cr. A. No. 0212007119
	)	
JUSTIN P. ROGERS	)	
	)	
Defendant	)	

Submitted: February 23, 2004  
Decided: June 7, 2004

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**ORDER ON  
DEFENDANT’S MOTION TO SUPPRESS**

Justin P. Rogers (hereinafter referred to as “Defendant”) was arrested on November 30, 2002 for the offenses of Driving Under the Influence of Alcohol and or Drugs in violation of 21 *Del. C.* § 4177(a) and Operating an Unregistered Motor Vehicle in violation of 21 *Del. C.* 2115(1). The charges are a result from a stop at a sobriety checkpoint conducted on November 30, 2002 by the Delaware State Police. On December 8, 2003, a trial began in this matter with the testimony of Corporal Keith Lamey of the Delaware State Police regarding the stop. The Defense made an oral motion to suppress evidence on the basis that the checkpoint failed to comply with the legally required standards. The Court heard brief initial oral arguments and then ordered

additional briefing. Defendant's opening brief was due January 8, 2004. The State's response was due on February 6, 2004 followed by defendant's reply on February 20, 2004. Briefs were submitted in accordance with the Court's order.

In the Defendant's opening brief, he moves the Court to dismiss the charges against him alleging the State failed to meet its burden of proving the police sobriety checkpoint was conducted in a constitutionally permissible manner. The State argues that the motion is in essence a motion to suppress which must be filed prior to trial. Therefore, the State argues since there was no motion filed prior to trial, it is not timely under Court of Common Pleas Criminal rule 12(b)(3). Defendant responds such motion could not be filed because he was without information that the State would fail to establish the validity of the sobriety checkpoint.

The Court now has before it a motion to suppress evidence of the stop at the checkpoint based upon a violation of defendant's constitutional rights. State v. Grivas, 1997 WL 127005 Del.Super. (February 3, 1997). The State is correct in its assertion that under Court of Common Pleas Criminal Rule 12(b)(3), the Defendant failed to timely move to suppress evidence related to the stop by waiting until after trial had commenced. Motions to suppress evidence must be raised prior to trial. Mays v. State, Del.Supr., No. 391, 2002, Veasey, C.J. (Jan. 31, 2003); *See also* Pennewell v. State, Del.Super., 822 A.2d 397 (2003). This protects the State's right to appeal any suppression order. If the State is successful on appeal, it can then proceed against defendant on the merits free from double jeopardy claims. *See* 10 Del. C. § 9902(b), (c); Ct. Com. Pl. Crim. R. 12(b).

Here, the motion to suppress was made during trial and without prior notice to the State; therefore, the motion is untimely under the rule. Under subsection (f) of Rule 12 failure to raise defense or objections as required by subsection (b)(3) constitute a waiver, but the Court for cause

may grant relief from the waiver. The question then becomes whether there are “exceptional circumstances” which would warrant consideration by this Court of the Defendant’s untimely motion. “Exceptional circumstances” include defendant’s ignorance of his legal rights, or failure to provide notice to the defendant that suppression was at issue before trial. Disabatino v. State, Del.Super., 808 A.2d 1216 (2002). Absent exceptional circumstances, it is within the Court’s discretion to refuse to consider on the merits an untimely motion to suppress. Id. At trial, the Defendant argued that he did not know what Cpl. Lamey was going to testify to regarding the checkpoint and that he therefore could not have made a motion to suppress prior to trial. However, the defendant was aware he was stopped at a sobriety checkpoint, thus the defense was on notice of such potential issue. This is not a circumstance where the facts of the stop came to the knowledge of the defense without notice. However, the defense could not have been aware that the State would not produce sufficient evidence to establish the validity of the roadblock.

I turn to the merits of defendant’s argument that the road block was unreasonable and fails to meet the minimum requirements under the Fourth Amendment of the U.S. Constitution and the standards under State v. Strohman, 1984 WL 547841 (Del. Super.) 1984. Essentially, defendant puts forth two arguments on this issue. First, defendant argues that the checkpoint was not conducted in a constitutional manner. Secondly, he argues that even if it was conducted in a constitutional manner, the State failed to establish evidence of the checkpoint validity at the hearing because its witness was not a Troop Commander or his designee.

It is well settled that stopping a vehicle at a sobriety checkpoint constitutes a seizure for purpose of a Fourth Amendment analysis. The inquiry is whether the checkpoint was reasonable when balanced against the individual’s right to personal security free from arbitrary interference by law enforcement officers. Delaware v. Prouse, 440 U.S. 648 (1979). The defendant relies

upon State v. Strohman, *ibid.* arguing that for a road block to pass constitutional muster, the State must demonstrate that (1) the location of the checkpoint must have been selected and approved by a troop commander; (2) the reason for the location of checkpoint must be a “problem area” as quantified by alcohol arrest or alcohol-related accidents; (3) the checkpoint must be monitored by a supervisor at all times; (4) all cars must be stopped unless a traffic backup occurs; and the inconvenience and the anxiety of the motorist must be minimized. Therefore, defendant reasons that failure to show all of these items invalidates the checkpoint.

The defendant is correct in its assertion that the State must establish a basis for the checkpoint with objective data. Additionally, there must be established guidelines in the operation of the checkpoint with adequate supervision, which minimized the level of intrusion on the individual privacy of the motorist. The operation guidelines must further limit the discretion of the officers. However, I do not find that the language of Strohman or any other case which has considered this issue as creating a prolectic rule. Rather, the analysis is whether there are clear rules, which limit discretionary basis for the area selected, adequate warning to approaching motorists, vehicles stopped in a systematic way, which is non-random and operation to ensure safety of the motorist.

The officer testified that while he was selected at the last moment to work this assignment, he was aware that the checkpoint was established by an administrative supervisor which was the Traffic Lieutenant. Trooper Lamey, testified the location of the checkpoint was established, he believed because of the number of driving while under the influence violations that had been issued in the Polly Drummond Hill area. He further testified that he had no personal knowledge of the factors which served as a basis for the roadblock. He testified that the area of the checkpoint was safe and clearly marked with flares, police vehicle lights and highway

lights. He also testified the officers were only allowed to question a motorist after they exhibited signs of possibly being under the influence of alcohol. Further, he testified that all vehicles were stopped and there was a supervisor in charge of the checkpoint. On cross-examination, however, he was not able to testify independently nor did he have independent knowledge of which troop commander selected this site for the roadblock. Because of this lack of knowledge, defendant now argues that the roadblock failed to meet the minimum requirements under Strohman and the Fourth Amendment of the U.S. Constitution.

In balancing the rights of a motorist to use the roadway unimpeded by a police officer for no apparent violation, the checkpoint must be established in accordance with the factors outlined in Strohman. The evidence in this case indicates that while an administrative supervisor made the decision to conduct the roadblock, the witness was unable to testify to the basis for the decision. He also testified that the location of the roadblock was in an area where they were not usually conducted. When the record is analyzed under the factors required of Strohman, I am unable to conclude that the State put forth sufficient testimony to meet the required test.

For the reasons stated above, the defendant's motion to suppress is hereby Granted.

SO ORDERED this 7<sup>th</sup> day of June, 2004

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Alex J. Smalls  
Chief Judge