

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES F. BRADLEY,)
) No. 215, 2003
 Defendant Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for Sussex County
)
 STATE OF DELAWARE,) Cr. ID No. 0208006458
)
 Plaintiff Below,)
 Appellee.)

Submitted: March 23, 2004
Decided: August 19, 2004

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

ORDER

This 19th day of August 2004, upon consideration of the parties' briefs, it appears to this Court that:

1. On August 10, 2002, the Millsboro Police stopped James F. Bradley at a DUI Checkpoint on Route 24 and charged him with Driving Under the Influence of Alcohol. At trial, Bradley moved to suppress evidence gathered during the stop on the grounds that the Millsboro Police set up the check point by use of a protocol that violated Bradley's Fourth Amendment rights. The trial judge denied the motion, admitted the evidence, and a Superior Court jury convicted Bradley.

2. Bradley appeals the trial judge's ruling that the Millsboro Police's protocol complied with United States and Delaware Constitutional standards and

Delaware law. Bradley insists that the Millsboro Police DUI checkpoint operation failed to demonstrate sufficient compliance with the standard operating procedures for motorist checkpoints required by the Office of Highway Safety (OHS). This failure, Bradley claims, violated rights guaranteed him by the Fourth Amendment to the United States Constitution and Article I §6 of the Delaware Constitution to be free from unreasonable searches and seizures. Bradley's argument appears to be that a failure to comply with OHS's SOP for checkpoints results in a deprivation of an individual's constitutional rights.

3. The trial judge denied Bradley's motion, ruling that the DUI checkpoint satisfied constitutional requirements. The trial judge found that the procedures required by OHS were properly implemented, that all the cars passing through the DUI checkpoint were stopped in a reasonably safe manner, and that sufficient safeguards were in place to check the Millsboro Police's discretion in locating the site of the DUI checkpoint and stopping the vehicles.

4. We review *de novo* claims that the trial judge erred in formulating law or applying the proper legal standard in deciding a motion to suppress evidence.¹

5. After fully reviewing the record, we find little merit in Bradley's argument that the Millsboro Police failed to comply sufficiently with the exacting

¹ *Caldwell v. State*, 780 A.2d 1037,1045 (Del. 2001).

procedural standards of the Office of Highway Safety. In *State v. McDermott*,² a motion to suppress evidence gathered at a checkpoint was granted because the State failed to demonstrate both careful compliance and substantial compliance with OHS checkpoint policy and procedures. Here, the record demonstrates that the Millsboro Police carefully complied with substantially all of the OHS procedures in setting up and operating their checkpoint. Most importantly, the Millsboro Police were careful to comply with OHS guidelines that limit an officer's discretion to set the location of the checkpoint, or to stop particular vehicles during the checkpoint. Further, it is evident that the admittedly minor deficiencies in compliance with the OHS checkpoint procedures by the Millsboro Police did not affect Bradley's constitutional rights. The stop about which he complains, given the safeguards employed from the protocol, represented only a minimal intrusion on Bradley's constitution right to be free from unreasonable searches and seizures.

6. Finally, we review for plain error Bradley's claim that no proper foundation was introduced at trial to demonstrate that the OHS procedures were promulgated in accordance with the Administrative Procedures Act.³ Bradley, however, fails to cite which, if any, provisions of the APA would govern the OHS

² 1999 WL 1847364 (Del. Com. Pl.).

³ 29 *Del. C.* ch. 101. This argument is raised for the first time in Bradley's Opening Brief.

procedures. Given the lack of substance to the argument, we conclude no plain error occurred here.

For the foregoing reasons, the judgment of the Superior Court is hereby Affirmed.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice