

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,)	
)	
Plaintiff Below,)	
Appellant,)	
)	No. 1209000032
v.)	
)	
FRANK SMITH,)	
)	
Defendant Below,)	
Appellee.)	
)	

Submitted: November 12, 2013
Decided: February 28, 2014

On Appeal from the Court of Common Pleas
*Decision **AFFIRMED***

Daniel G. Simmons, Deputy Attorney General, Department of Justice, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware, 19801, *Attorney for Appellant.*

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DAVIS, J.

INTRODUCTION

This is an appeal from a decision of the Court of Common Pleas granting Appellee Frank Smith’s Motion to Suppress Evidence and Statements (the “Motion”). After an evidentiary hearing on the Motion, the Court of Common Pleas concluded that the Appellant State of Delaware failed to meet its burden of proof in demonstrating that a DUI sobriety checkpoint (the “Checkpoint”), set up by the Delaware State Police

Department (the “State Police”) on August 31, 2012, satisfied the necessary requirements under the Fourth and Fourteenth Amendments of the United States Constitution. The Court of Common Pleas based its decision on a finding that the testimony from the State’s only witness, Corporal Michael Cahall of the State Police, and the 902(11) affidavit of Lisa Shaw (the “Shaw Affidavit”) were not enough to meet the State’s evidentiary burden of demonstrating that the Checkpoint was properly established under applicable law. For the reasons set forth below, the Court of Common Pleas’ decision is **AFFIRMED**, as this Court holds that the decision of the Court of Common Pleas is free of legal error and the factual findings below are sufficiently supported by the record and are the product of an orderly and logical deductive process.

PROCEDURAL POSTURE

The Court of Common Pleas held an evidentiary hearing on this matter on April 3, 2013 (the “Hearing”).¹ At the Hearing, the Court of Common Pleas heard testimony (direct, cross and redirect) from Corporal Cahall and considered three exhibits proffered and admitted on behalf of the State – including the Shaw Affidavit. In addition, the Court of Common Pleas also considered two exhibits proffered and admitted on behalf of Mr. Smith. At the conclusion of the Hearing, the Court of Common Pleas ruled from the bench and granted the relief sought in the Motion.

The State filed a timely notice of appeal with this Court. This Court issued a briefing schedule on June 20, 2013. The State submitted its Opening Brief on July 8, 2013. Mr. Smith submitted his Answering Brief on July 29, 2013. The State submitted its Reply Brief on August 6, 2013. This Court held oral argument on November 12, 2013. After the hearing, also on November 12, 2013, the State filed a letter with the

¹ Suppression Hr’g Tr.1, April 3, 2012.

Court citing additional legal authorities that the State failed to present at the oral argument.

FACTUAL BACKGROUND

The facts presented to the Court of Common Pleas were straightforward and relatively uncontested. On August 31, 2012, the State Police began the process of setting up the Checkpoint.² The Checkpoint is part of the Checkpoint Strikeforce initiative established by the State to address intoxicated driving in Delaware.³

On August 31, 2012, Corporal Cahill and other members of the Checkpoint Strikeforce met at the Newport Police Department to go over the logistics of the Checkpoint.⁴ According to Corporal Cahill, before leaving to set up the Checkpoint, Newport Police Department Chief Capriglione explained where the Checkpoint was to be set up.⁵ Chief Capriglione also reviewed the rules and guidelines that were supposed to be followed when establishing the Checkpoint and where the Checkpoint Strikeforce members were to be positioned at the Checkpoint.⁶

Corporal Cahill testified that the Checkpoint was authorized to be operated between 10:00 p.m. on August 31, 2012 and 2:00 a.m. on September 1, 2012.⁷ The Shaw Affidavit seems to indicate that the Checkpoint was to be located at Route 13 (Market Street Bridge) at Rogers Road.⁸ As Corporal Cahill testified, the State Police actually located the Checkpoint at Route 13 (South Walnut Street) at or about Howard Street.⁹ Corporal Cahill testified that Chief Capriglione indicated that the Checkpoint was to be

² Hr'g Tr. 28-31.

³ Hr'g Tr. 12.

⁴ Hr'g Tr. 25.

⁵ Hr'g Tr. 23.

⁶ Hr'g Tr. 23.

⁷ Hr'g Tr. 28-31.

⁸ Shaw Affidavit, Memo from Captain Sherri Benson to Lt. Michael Wysock dated August 15, 2012.

⁹ Hr'g Tr. 28.

located on South Walnut Street.¹⁰ Chief Capriglione did not testify at the Hearing. Accordingly, the record developed by the State is incomplete as to why the Shaw Affidavit provides that the authorized location for the Checkpoint was to be Route 13 (Market Street Bridge) at Rogers Road, but Chief Capriglione told the Checkpoint Strikeforce members to locate the Checkpoint at some point on South Walnut Street.

After arriving at Route 13 (South Walnut Street) at or about Howard Street, the Checkpoint Strikeforce members set up illuminating signs to notify motorists that they were approaching a DUI sobriety checkpoint.¹¹ The Checkpoint Strikeforce members also set up orange cones with lights to move traffic into the Checkpoint.¹² Additionally, the Checkpoint Strikeforce members used patrol cars with lights illuminated to alert motorists that they were approaching the Checkpoint.¹³

Corporal Cahall testified that the Checkpoint Strikeforce members were instructed to stop every vehicle for a brief period of time.¹⁴ An officer could detain a driver further only if the officer observed signs of impairment that gave the officer a reasonable articulable suspicion that the driver could be driving under the influence of a substance.¹⁵ Chief Capriglione instructed the Checkpoint Strikeforce members to make contact with the driver by identifying themselves, explaining that they were conducting a sobriety checkpoint, and then to “just basically see if [they] have any observations of any impaired driving.”¹⁶ Corporal Cahall stated that this process normally takes no more than a minute, and if there were no observations of intoxication then the officer was to allow

¹⁰ Hr’g Tr.25-26.

¹¹ Hr’g Tr. 27.

¹² Hr’g Tr. 28.

¹³ Hr’g Tr. 28.

¹⁴ Hr’g Tr. 27.

¹⁵ Hr’g Tr. 27.

¹⁶ Hr’g Tr. 27.

the driver to leave. According to Corporal Cahall, Chief Capriglione told the Checkpoint Strikeforce members not to question drivers as to destination, sobriety, license or registration during the initial encounter.¹⁷

While at the Checkpoint, Corporal Cahall came in contact with Mr. Smith.¹⁸ Mr. Smith entered the Checkpoint and stopped his car. Corporal Cahall spoke with Mr. Smith and, upon contact, noticed that Mr. Smith had bloodshot and glassy eyes.¹⁹ Corporal Cahall also noted a strong odor of alcoholic beverage on Mr. Smith's breath.²⁰ Despite being instructed not to ask questions regarding a driver's destination, Corporal Cahall went on to introduce himself, explain there was a sobriety checkpoint and asked Mr. Smith where he was coming from and where he was going.²¹

At this point, Corporal Cahall decided to conduct a DUI investigation. Corporal Cahall then instructed Mr. Smith to pull over to the side of the Checkpoint for additional questioning.²² Corporal Cahall asked for and received Mr. Smith's license, registration and insurance card. Corporal Cahall then had Mr. Smith get out of the car and conducted field sobriety tests.²³ After these tests were completed, Corporal Cahall had Mr. Smith submit to an intoxilyzer test and arrested Mr. Smith for driving under the influence of alcohol.²⁴

On February 7, 2013, Mr. Smith filed the Motion. Through the Motion, Mr. Smith sought to suppress evidence obtained and statements made by Mr. Smith during the investigation and arrest on August 31, 2012. Mr. Smith argued that the State failed to

¹⁷ Hr'g Tr. 35.

¹⁸ Hr'g Tr. 37.

¹⁹ Hr'g Tr. 68.

²⁰ Hr'g Tr. 68.

²¹ Hr'g Tr. 68.

²² Hr'g Tr. 58.

²³ Hr'g Tr. 58.

²⁴ Hr'g Tr. 58.

satisfy the requirements necessary under the Fourth and Fourteenth Amendments as those requirements relate to the establishment and operation of a sobriety checkpoint. The Court of Common Pleas held the Hearing on the Motion. At the Hearing, the State produced only Corporal Cahall, relying upon Corporal Cahall's testimony and three exhibits in opposition to the Motion.

THE COURT OF COMMON PLEAS' DECISION AFTER THE HEARING

At the conclusion of the Hearing, the Court of Common Pleas granted the relief sought in the Motion and suppressed evidence relating to the arrest of Mr. Smith. Relying, in part, on *State v. Hollinger*,²⁵ the Court of Common Pleas held that the State failed to satisfy its burden in demonstrating that the Checkpoint was properly established. The Court of Common Pleas also held that the State carried its burden as to whether the Checkpoint was operated properly.²⁶

The Court of Common Pleas' decision contains a detailed recitation of factual findings.²⁷ The Court of Common Pleas found that Corporal Cahall was a sufficient witness on many of the operational aspects of the Checkpoint.²⁸ However, the Court of Common Pleas also found that the State failed to provide sufficient substantive competent testimony to demonstrate that the Checkpoint was established properly.²⁹ The Court of Common Pleas noted that Corporal Cahall did not participate in the overall establishment of the Checkpoint and that the Shaw Affidavit, without supporting

²⁵ *State v. Hollinger*, 2012 WL 5208792 (Del. Com. Pl. Oct. 10, 2012). This Court uses the qualifier "in part" because it is clear from the record that the Court of Common Pleas relied upon that part of the decision in *Hollinger* relating to the use of a 902(11) affidavit and its evidentiary weight in a suppression hearing involving a DUI sobriety checkpoint. See, e.g., Hr'g Tr. 15, 20-23 and 74-75.

²⁶ Hr'g Tr. 74-75.

²⁷ Hr'g Tr. 75-80.

²⁸ Hr'g Tr. 75.

²⁹ Hr'g Tr. 80.

testimony, was insufficient to indicate whether the Checkpoint was setup properly under applicable law or established rules, regulations and guidelines.³⁰

In its bench ruling, the Court of Common Pleas briefly mentions *State v. McDermott*³¹, *State v. Cook*³² and *Bradley v. State*³³ as those cases relate to the State's need to adhere to certain police procedures governing sobriety checkpoints. However, contrary to the State's claims, the Court of Common Pleas does not hold that the State must "carefully and strictly" comply with the police procedures governing sobriety checkpoints. Indeed, the Court of Common Pleas makes no reference to such a standard at any point during the Hearing. Rather, the Court of Common Pleas found and held that the State failed to factually demonstrate that the Checkpoint was set up pursuant to a neutral plan and that the Checkpoint Strikeforce members' discretion was strictly circumscribed when locating the Checkpoint.³⁴

PARTIES' CONTENTIONS

The State contends that the Court of Common Pleas erred in granting the Motion. The State claims that the Court of Common Pleas applied the wrong legal standard in this case. The State argues that the Fourth and Fourteenth Amendment require that the State only demonstrate that the Checkpoint was established pursuant to a neutral plan that limits officer discretion, and that a reasonable nexus exist between the location of the checkpoint and the purpose of curbing drunken driving. The State also contends that a trial court is to give wide deference to law enforcement selecting the time and location of a sobriety checkpoint. The State argues that the Court of Common Pleas instead required

³⁰ Hr'g Tr. 75-80.

³¹ *State v. McDermott*, 1999 WL 1847364 (Del. Com. Pl. April 30, 1999). *See, e.g.*, 16, 18 and 74.

³² *State v. Cook*, 2013 WL 1092130 (Del. Super. Feb. 13, 2013). *See, e.g.*, Hr'g Tr. 74-75.

³³ *Bradley v. State*, 858 A.2d 960, 2004 WL 1964980 (Del. 2004).

³⁴ Hr'g Tr. 75-80.

the State to demonstrate strict and careful compliance with police procedures governing sobriety checkpoints, and that if the Court of Common Pleas had used the appropriate standard then it would have found that the State had complied with the Fourth and Fourteenth Amendment when it established and operated the Checkpoint.

Mr. Smith contends that the Court of Common Pleas properly granted the Motion. Mr. Smith supports this claim by arguing that the Court of Common Pleas correctly determined that the State failed to meet its burden and demonstrate that the Checkpoint was properly established and operated in accordance with the standards set by the Fourth and Fourteenth Amendment, Article I, Sections 6 and 7 of the Delaware Constitution, the National Highway Traffic Safety Administration's guidelines and standards, the State of Delaware's Office of Highway Safety's guidelines and standards, and relevant case law.

STANDARD OF REVIEW

“In an appeal from the Court of Common Pleas to the Superior Court, the standard of review is whether there is legal error and whether the factual findings made by the trial judge are sufficiently supported by the record and are the product of an orderly and logical deductive process.”³⁵ This Court must accept findings of the Court of Common Pleas that are supported by the record, even if this Court would have made contrary findings.³⁶ The Superior Court may “review *de novo* questions of law involved in the case.”³⁷

³⁵ *Onkeo v. State*, 182, 2008 WL 3906076, at *1, 957 A.2d 2 (table) (Del. July 1, 2008); *Wheeler v. Clerkin*, 448204, 2005 WL 873341, at *2, 871 A.2d 1129 (table) (Del. Super. Apr. 13, 2005).

³⁶ *Onkeo*, 2008 WL 3906076, at *1.

³⁷ *DiSabatino v. State*, 808 A.2d 1216, 1220 (Del. Super. 2002) *aff'd*, 810 A.2d 349 (Del. 2002).

The Superior Court reviews evidentiary rulings by the Court of Common Pleas under an abuse of discretion standard.³⁸ “An abuse of discretion occurs when a court has . . . exceeded the bounds of reason in view of the circumstances, [or] . . . so ignored recognized rules of law or practice . . . as to produce injustice.”³⁹ The Court should only reverse a lower court’s evidentiary decision where there was a clear abuse of discretion.⁴⁰

DISCUSSION

A. The Court of Common Pleas did not commit legal error and applied appropriate legal standards for DUI Checkpoints.

Stopping a vehicle at a checkpoint constitutes a seizure under the Fourth Amendment of the United States Constitution and Article I, Section 6 of the Delaware Constitution, which prohibit “unreasonable” seizures.⁴¹ Whether a seizure is reasonable depends upon “a balance between the public interest and the individual’s right to personal security from arbitrary interference by law officers.”⁴² In assessing the reasonableness of a sobriety checkpoint, the United States Supreme Court has articulated a test that balances a state’s interest in preventing injury and damage caused by drunk driving and the effectiveness of sobriety checkpoints as a means of prevention versus the level of intrusion on individual privacy as a result of a checkpoint.⁴³

³⁸ *Delaware Acceptance Corp. v. Swain*, N12A-03-012MM, 2012 WL 6042644, at *6 (Del. Super. Nov. 30, 2012).

³⁹ *Id.* (quoting *Culp v. State*, 766 A.2d 486, 489 (Del. 2001)); *Firestone Tire & Rubber Co. v. Adams*, 541 A.2d 567, 571 (Del. 1998)); *see also* D.R.E. 103(a) (“Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected . . .”); *Mercedes-Benz of N. Am. Inc. v. Norman Gershman’s Things to Wear, Inc.*, 596 A.2d 1358, 1365 (Del. 1991) (“For [the Supreme] Court to find reversible error in an evidentiary ruling, [it] must find not only error in the ruling, but that a ‘substantial right of the party is affected.’”).

⁴⁰ *Delaware Acceptance Corp.*, 2012 WL 6042644, at *6.

⁴¹ *See Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990); *Bradley v. State*, 858 A.2d 960, 2004 WL 1964980 (Del. 2004).

⁴² *Brown v. Texas*, 443 U.S. 47 (1979).

⁴³ *Sitz*, 496 U.S. at 455.

Delaware courts have approved the legality and use of sobriety checkpoints in this State. Such sobriety checkpoints are “reasonable” seizures when procedures are in existence to ensure that cars passing through checkpoints are stopped in a reasonably safe manner and that sufficient safeguards are in place, limiting the discretion of law enforcement officers with respect to the location of each checkpoint and the stopping of vehicles.⁴⁴

Sobriety checkpoints in Delaware are created and operated under certain Delaware State Police Department policy guidelines (the “Guidelines”).⁴⁵ The Guidelines describe the objective criteria used for choosing the location of the checkpoint, the manner of notifying officials and the procedures for actually conducting the roadblock.⁴⁶ The Guidelines address, among other things, selection of the location, visibility of the checkpoint, suggested language of the officers, appropriate actions for determining sobriety and requirements for a supervisor (or designee) to monitor the checkpoint, record and compile the results of the checkpoint.⁴⁷ In other words, the Guidelines ensure that the sobriety checkpoint is set up pursuant to a neutral plan and that the discretion of the officers conducting the checkpoint is strictly circumscribed.

To meet the requirements of reasonableness, the State must demonstrate careful compliance with substantially all of the Guidelines.⁴⁸ Most importantly, the State must

⁴⁴ *Bradley*, 2004 WL 1964980, at *1. *Cook*, 2013 WL 1092130, at *5.

⁴⁵ *See State v. McDermott*, 1999 WL 1847364, at *2. This was also true in Michigan. As the U.S. Supreme Court noted in *Sitz*, “Here, checkpoints are selected *pursuant to the guidelines*, and uniformed police officers stop every approaching vehicle.” *Sitz*, 496 U.S. at 453 (emphasis added).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Bradley*, 2004 WL 1964980, at *1.

demonstrate careful compliance with those guidelines that limit an officer's discretion to set the location of the checkpoint, or to stop particular vehicles during the checkpoint.⁴⁹

On a motion to suppress, the State bears the burden of establishing that the challenged search or seizure comported with the rights guaranteed Mr. Smith by the United States Constitution, the Delaware Constitution, and Delaware statutory law.⁵⁰ The burden of proof on a motion to suppress is proof by a preponderance of the evidence.⁵¹

The record is clear that the Court of Common Pleas applied an appropriate legal standard in granting the Motion.⁵² The Court of Common Pleas engaged in an analysis of determining whether the Checkpoint was set up pursuant to a neutral plan that limited the officers' discretion on locating the Checkpoint.⁵³ Additionally, the Court of Common Pleas analyzed whether the Checkpoint was operated properly.⁵⁴ In other words, the Court of Common Pleas attempted to determine whether the Checkpoint Strikeforce members stopped cars passing through the Checkpoint in a reasonably safe manner and that sufficient safeguards were in place limiting the discretion of law enforcement officers with respect to the stopping of cars. The Court of Common Pleas, therefore, engaged in the same legal analysis when assessing the validity of the Checkpoint as was used by the Delaware Supreme Court in *Bradley* and this Court in *Cook*.⁵⁵ Accordingly, this Court does not hold that the Court of Common Pleas committed legal error by applying a wrong legal standard when assessing the validity of the Checkpoint.

⁴⁹ *Id.*

⁵⁰ *See State v. Matos*, 2001 WL 1398585, at *2 (Del. Super. Aug. 6, 2001).

⁵¹ *Id.*

⁵² Although not challenged on appeal, the Court of Common Pleas used the correct legal standard for a motion to suppress. Hr'g Tr. 74-75.

⁵³ Hr'g Tr. 75-80.

⁵⁴ Hr'g Tr. 75-79.

⁵⁵ *Bradley*, 2004 WL 1964980, at *1; *Cook*, 2013 WL 1092130, at *5.

The State contends that the Court of Common Pleas applied a standard of “careful and strict” compliance with the Guidelines. This Court does not read the Court of Common Pleas’ decision below to apply such a standard. The Court of Common Pleas’ references to *McDermott* and *Hollinger* were not with respect to applying a “careful and strict” compliance standard. Instead, the Court of Common Pleas relied on those cases as authority on what the State needs to do in order to factual demonstrate that a sobriety checkpoint was properly established and operated.⁵⁶ The Court of Common Pleas did hold that the State failed to demonstrate that the Checkpoint was established properly; however, the Court of Common Pleas also held that the State carried its burden in showing that the Checkpoint was operated properly. If the State were correct, on the record below, the Court of Common Pleas would have found that the State failed to factually demonstrate that the Checkpoint was established properly *and* operated properly.

The factual record below demonstrates that Officer Cahall and other members of the Checkpoint Strikeforce failed to carefully and strictly comply with a number of the Guidelines or the instructions of Chief Capriglione. For example, Corporal Cahall asked Mr. Smith where he was coming from and where was he going.⁵⁷ The State also failed to prove whether a supervisor or designee monitored the Checkpoint at all times⁵⁸. Despite these and other deficiencies, the Court of Common Pleas still held that the Checkpoint, while not strictly compliant, was still operated properly.⁵⁹ If, as the State claims, the Court of Common Pleas had applied a “careful and strict” compliance standard then the

⁵⁶ See, e.g., Hr’g Tr. 18 and 80.

⁵⁷ Hr’g Tr. 68.

⁵⁸ Hr’g Tr. 58-59.

⁵⁹ Hr’g Tr. 75.

Court of Common Pleas should have held that the Checkpoint was not just improperly established but also improperly operated. As is clear, however, the Court of Common Pleas did not hold that the State carried its burden in showing that the Checkpoint was operated improperly.

B. Because the facts and evidence support a finding that the State failed to demonstrate that the Checkpoint was set up pursuant to a neutral plan, the Court of Common Pleas' decision is affirmed.

In assessing the decision below, this Court next turns to an inquiry of whether the factual findings made by the Court of Common Pleas are sufficiently supported by the record and are the product of an orderly and logical deductive process. This Court holds that the evidence—contained within the undisputed facts and record and set forth in the Court of Common Pleas decision —supports a finding that the State failed to carry its burden in demonstrating that the Checkpoint was properly established pursuant to a neutral plan that limited the discretion of law enforcement officers with respect to the location of the Checkpoint.

As discussed above, a sobriety checkpoint must comply with a neutral plan (here the State's own Guidelines) that limits an officer's discretion to set the location of the checkpoint in order to comply with the Fourth and Fourteenth Amendments.⁶⁰ Although no one testified to this at the Hearing, the State supposedly chooses the location of a sobriety checkpoint as follows:

4. Selection of the location for the checkpoint shall be based upon a demonstrated problem with persons driving under the influence in that particular area, and consideration should include, but not be limited to the following:

- Alcohol-related fatal crashes

⁶⁰ *Bradley*, 2004 WL 1964980, at *1.

- Alcohol-related personal injury crashes
- Areas with a high incidence of DUI arrests;

To be considered, at least 10% of total DUI arrests must have occurred on the given roadway, or at least 5% of total DUI arrests plus at least one alcohol-related fatal or personal injury crash must have occurred on the given roadway.

5. Checkpoints shall be conducted at a safe location to allow approaching traffic ample time to realize that a stop is imminent...If it is unsafe to set up a checkpoint at a specific problem area, it will be permissible to utilize an adjacent area or roadway that feeds into the problem area.⁶¹

According to the record, the purported authorized location, or “problem area,” of the Checkpoint was to be at Route 13 (Market Street Bridge) at Rogers Road.⁶² As demonstrated at the Hearing, however, the Checkpoint was not located at Route 13 (Market Street Bridge) at Rogers Road. Instead, the Checkpoint Strikeforce members located the Checkpoint at Route 13 (South Walnut Street) at Howard Street.⁶³ The State produced no evidence as to why the Checkpoint location was moved from a location authorized by Captain Sherri Benson on August 15, 2012.

The State used Corporal Cahall’s testimony and the Shaw Affidavit to try and prove that the establishment of the Checkpoint met the requirements of the Fourth and Fourteenth Amendment – *i.e.*, that officer discretion was limited in determining the location of the Checkpoint. The Court of Common Pleas found that the State failed to meet its evidentiary burden on this point.⁶⁴ This Court holds that the Court of Common Pleas’ factual findings are sufficiently supported by the record and are the product of an orderly and logical deductive process.

⁶¹ Shaw Affidavit, Office of Highway Safety Sobriety Checkpoint Procedures at ¶¶ 4 and 5.

⁶² Shaw Affidavit, Memo from Captain Sherri Benson to Lt. Michael Wysock dated August 15, 2012.

⁶³ Hr’g Tr. 25-26, 28.

⁶⁴ Hr’g Tr. 79-80.

The Court of Common Pleas found that the State needed to produce substantive evidence that the Checkpoint was properly located. After hearing all the evidence and argument, the Court of Common Pleas found that Corporal Cahall could not provide competent testimony on whether the Checkpoint was properly located pursuant to a neutral plan that limited officer discretion as to location. The Court of Common Pleas noted that Corporal Cahall did not have personal knowledge as to why the Checkpoint initially was to be located at Route 13 (Market Street Bridge) at Rogers Road or why it was moved to Route 13 (South Walnut Street) at Howard Street.⁶⁵ The Court of Common Pleas found that Corporal Cahall candidly admitted that he did not know where the appropriate location was, or whether the actual location of the Checkpoint complied with the State's guidelines on selecting a location for a sobriety checkpoint.⁶⁶

In addition, the Court of Common Pleas found that the Shaw Affidavit, without more, was not sufficient to demonstrate that the Checkpoint was located pursuant to a neutral plan that limited officer discretion as to location.⁶⁷ The Court of Common Pleas observed that the Shaw Affidavit is merely a mix of documents containing various statistics and procedures. The Court of Common Pleas noted that the Shaw Affidavit does not provide that the Checkpoint was set up properly or that established procedures were followed when locating the Checkpoint.⁶⁸ Finally, the Court of Common Pleas found that the State did not provide any competent evidence that tied the Shaw

⁶⁵ Hr'g Tr. 77-79.

⁶⁶ Hr'g Tr. 77-78.

⁶⁷ Hr'g Tr. 76-80.

⁶⁸ Hr'g Tr. 77-78.

Affidavit's business records with what actually happened in connection with the establishment of the Checkpoint.⁶⁹

On this record, this Court holds that the Court of Common Pleas' factual findings concerning the location of the Checkpoint are sufficiently supported by the record and are the product of an orderly and logical deductive process.

CONCLUSION

For the reasons stated above, the Court of Common Pleas' finding that the State failed to meet its burden at the Hearing is free from legal error. Moreover, the Court of Common Pleas' factual findings are supported by the record and are the product of an orderly and logical deductive process. Therefore, the decision of the Court of Common Pleas is **AFFIRMED**.

/s/ Eric M. Davis _____

Eric M. Davis
Judge

⁶⁹ Hr'g Tr. 79-80.