



**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

**EDWARD J. COOK,** )  
 )  
 **Defendant Below,** )  
 **Appellant,** )  
 ) **No. 388, 2014**  
 **v.** )  
 )  
 **STATE OF DELAWARE,** )  
 )  
 **Plaintiff Below,** )  
 **Appellee.** )

**APPELLANT'S OPENING BRIEF**

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**ON APPEAL FROM THE SUPERIOR COURT IN AND OF NEW  
CASTLE COUNTY**

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## **SUMMARY OF THE ARGUMENT**

1. The trial court erred by denying Mr. Cook's Motion to Suppress Evidence and Statements because the State failed to meet its burden and demonstrate that the sobriety checkpoint was properly established and operated in accordance with the standards set by the 4<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution, the guidelines and standards established by the National Highway Traffic Safety Administration, Article I, Sections 6 and 7 of the Delaware Constitution, the guidelines and standards established by the State of Delaware Office of Highway Safety, and relevant case law. By moving the checkpoint from its approved location, the State failed to meet the requirements of reasonableness and failed to demonstrate careful and substantial compliance with the policy guidelines. Therefore, reversal is required.

## NATURE AND STAGE OF THE PROCEEDINGS

On April 27, 2012, the Checkpoint Strike Force, with the assistance of other officers and departments, established and operated a sobriety checkpoint around the 500 to 600 block of South Market Street, in the city of Wilmington, New Castle County, Delaware. (A-13). Defendant below-Appellant, Edward Cook (hereinafter “Mr. Cook”)<sup>1</sup>, entered the sobriety checkpoint and was ultimately arrested and charged with driving under the influence in violation of 21 *Del.C.* §4177. (A-7).

On August 1, 2012, Mr. Cook, through his counsel Joseph A. Hurley, Esq., filed a Motion to Suppress Evidence and Statements challenging, *inter alia*, the propriety of the sobriety checkpoint. (A-1; D.I. #8). A suppression hearing was held on August 31, 2012 and the Superior Court denied the motion by written opinion dated February 13, 2013. (See opinion, attached as Exhibit A).

Mr. Cook stood trial, non-jury, on February 14, 2013, and was convicted as charged. (A-4; D.I. #31). Mr. Cook was sentenced and a certificate of reasonable doubt was issued in light of the controversy surrounding certain aspects of the law vis-à-vis the flexibility of repositioning the location of the sobriety checkpoint once approved by the appropriate state office. (A-5; D.I. #40). (See Sentence Order, attached as Exhibit B). Mr. Cook filed a timely notice of appeal. This is his opening brief in support of that appeal.

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<sup>1</sup> Mr. Cook is retired from the United States Postal Service after 37 years of service.

## STATEMENT OF FACTS

On April 27, 2012, at 9:00 P.M., Officer Andrew Rubin of the Newark Police Department and other members of the Checkpoint Strike Force<sup>2</sup> assembled at the Newport Police Department to go over logistics of the sobriety checkpoint scheduled for that evening. (A-15). A memo authored by Lisa Shaw, Deputy Director of the Office of Highway Safety, to Newport Police Department Chief Michael Capriglione<sup>3</sup> approved and confirmed that the sobriety checkpoint was to be established and operated from 10:00 P.M. to 2:00 A.M. at the intersection of South Market Street and A Street<sup>4</sup> in Wilmington, Delaware. (A-10-11). However, the sobriety checkpoint was actually constructed and operated approximately 0.3 miles south of the approved location at the intersection of South Market Street and Howard Street. (A-13).

Officer Rubin failed to testify as to the reason or basis why Chief Capriglione moved the checkpoint from its approved location. Chief Capriglione did not testify at the Hearing. Accordingly, the record developed

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<sup>2</sup> The State of Delaware was, and perhaps still is, a participant in a Mid-Atlantic Sobriety Checkpoint Program that shares methods, experiences, data, and statistics concerning the establishment and operation of sobriety checkpoints.

<sup>3</sup> Chief Capriglione also serves as the Commander of the New Castle County Checkpoint Strike Force. (A-10).

<sup>4</sup> Note that the Suppression Hearing Transcript incorrectly refers to A Street as 8<sup>th</sup> Street since there is no 8<sup>th</sup> Street intersection on South Market Street. See [https://maps.google.com/maps?q=South+Market+Street,+Wilmington,+DE&bav=on.2,or.r\\_qf.&bvm=bv.76943099,d.aWw&biw=1024&bih=664&dpr=1&wrapid=tljp141271545389110&um=1&ie=UTF-8&sa=X&ei=xlM0VP23LpShyATHjID4BQ&ved=0CAYQ\\_AUoAQ](https://maps.google.com/maps?q=South+Market+Street,+Wilmington,+DE&bav=on.2,or.r_qf.&bvm=bv.76943099,d.aWw&biw=1024&bih=664&dpr=1&wrapid=tljp141271545389110&um=1&ie=UTF-8&sa=X&ei=xlM0VP23LpShyATHjID4BQ&ved=0CAYQ_AUoAQ) .

by the State is incomplete as to why the Shaw memo provides that the authorized location for the checkpoint was to be the intersection of South Market Street and A Street, but Chief Capriglione directed the checkpoint Strikeforce members to locate the Checkpoint further south at the intersection of South Market Street and Howard Street.

According to Officer Rubin, the checkpoint in question was approved at grid 106-354. Rubin testified that the entire State of Delaware is broken up into various quadrants designated by a corresponding grid number. (A-11). However, Officer Rubin was unable to answer: (1) how many grids were in the state; (2) how many grids were in New Castle County; (3) the parameters or guidelines for calling or denominating a certain geographic area as a grid; (4) how the grids are established; (5) whether or not there is a uniform dimension for each of the four sides that would constitute a grid; (6) the metes and bounds of grid 106-354; or (7) the distance between 106-354 and the adjoining grid. (A-16-17). Moreover, no operational diagram was developed or introduced to conclusively demarcate the location and manner in which the sobriety checkpoint was to be established and operated.

On April 27, 2012, Mr. Cook entered the sobriety checkpoint. (A-16). Officer Rubin made initial contact with Mr. Cook, and ultimately arrested and charged him with driving under the influence in violation of 21 *Del. C.* §4177.

**I. THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT DENIED MR. COOK’S MOTION TO SUPPRESS BECAUSE THE STATE FAILED TO MEET ITS BURDEN AND DEMONSTRATE THAT THE SOBRIETY CHECKPOINT WAS PROPERLY ESTABLISHED AND OPERATED IN ACCORDANCE WITH THE STANDARDS SET BY THE IV AND XIV AMENDMENTS OF THE UNITED STATES CONSTITUTION, ARTICLE I, SECTIONS VI AND VII OF THE DELAWARE CONSTITUTION, THE GUIDELINES AND STANDARDS ESTABLISHED BY THE STATE OF DELAWARE OFFICE OF HIGHWAY SAFETY, AND RELEVANT CASE LAW.**

*Question Presented*

Whether a police “seizure” at a sobriety checkpoint is reasonable under the Fourth Amendment of the United States Constitution and Article I, Section 6 of the Delaware Constitution when the State fails to carefully comply with the approved checkpoint and it was not created and operated pursuant to Delaware State Police policy guidelines—guidelines that have been implemented by the Delaware State Police to ensure that any seizure in connection with a sobriety checkpoint does not violate the Fourth Amendment of the United States Constitution and Article I, Section 6 of the Delaware Constitution? The issue was preserved by a motion to suppress. (See Exhibit A).

*Standard And Scope Of Review*

This Court reviews the denial of a motion to suppress for an abuse of discretion. However, the trial court’s legal conclusions and determinations are

reviewed *de novo* for errors in formulating or applying legal precepts.<sup>5</sup>

### *Argument*

The trial court erred by denying Mr. Cook's Motion to Suppress Evidence and Statements because the State failed to meet its burden and demonstrate that the sobriety checkpoint was properly established and operated in accordance with the standards set by the 4<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution, the guidelines and standards established by the National Highway Traffic Safety Administration, Article I, Sections 6 and 7 of the Delaware Constitution, the guidelines and standards established by the State of Delaware Office of Highway Safety, and relevant case law.

The arresting officer and lone State's witness had little to no knowledge of how or why the particular checkpoint, which was moved from the approved location, was established and operated in the manner and location. As a result, the State was unable to produce substantive evidence that the establishment and operation of the newly located sobriety checkpoint was proper, because the Trial Court was unable to evaluate and balance the relevant considerations: (1) the State's interest in preventing impaired driving, (2) the extent, if any, that the establishment and operation of the newly located sobriety checkpoint advanced that State interest, and (3) the extent the establishment and operation of the newly

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<sup>5</sup> *Lopez-Vazquez v. State*, 956 A.2d 1280, 1284-1285 (Del. 2008).

located sobriety checkpoint interfered with individual liberty.<sup>6</sup> Thus, reversal is required.

The right to be free from unreasonable search and seizure is well rooted in the laws of the United States, the several states, and in particular, the State of Delaware.<sup>7</sup> Stopping a vehicle at a sobriety checkpoint clearly entails a search and seizure, and such searches and seizures are no doubt subject to the restraints and protections of the constitutions of United States and State of Delaware and the cases and decisions thereunder.<sup>8</sup> In Delaware, sobriety checkpoints are deemed “reasonable” seizures when 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.<sup>9</sup> “An overarching theme throughout DUI checkpoint case law is that the police officers conducting the suspicion-less stops must not have ‘unfettered discretion’ in the formulation and execution of checkpoint stops.”<sup>10</sup>

Sobriety checkpoints in this state are created and operated pursuant to

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<sup>6</sup> *State v. Smith*, 2014 WL 1047076, at \*7 (Del. Super. Feb. 28, 2014)(attached as Exhibit H).

<sup>7</sup> *U.S. Const.*, amend. IV; *Del. Const.*, art. 1, §6; *See Delaware v. Prouse*, 440 U.S. 648, 653 (1979).

<sup>8</sup> *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)(attached as Exhibit D).

<sup>9</sup> *Bradley*, 2004 WL 1964980, at \* 1.

<sup>10</sup> *State v. Geary*, 2013 WL 4084100, at \*3 (Del.Com.Pl. Aug. 1, 2013)(attached as Exhibit G).

Delaware State Police Department policy guidelines.<sup>11</sup> These guidelines describe, among other things, the objective criteria for choosing a checkpoint location and requirements for a supervisor to monitor the checkpoint.<sup>12</sup> “The policy guidelines act as a substitute for the reasonable requirements of the Fourth Amendment of the United States Constitution and Article I, Section 6 of the Delaware Constitution.”<sup>13</sup> “To meet the requirements of reasonableness, the State must demonstrate careful [and substantial] compliance with the policy guidelines.”<sup>14</sup> In essence, a sobriety checkpoint must comply with a neutral plan (the State’s own guidelines) that limits police discretion to set the checkpoint location in compliance with the Fourth and Fourteenth Amendments.<sup>15</sup>

Here, the State failed to prove that the checkpoint and the seizure of Mr. Cook complied with constitutional standards. On this record, or the lack thereof, there just is not enough competent evidence for the Court to hold that the checkpoint was “reasonable” for purposes of the Fourth Amendment of the United States Constitution and Article I, Section 6 of the Delaware Constitution. Specifically, the State failed to demonstrate that the checkpoint was established

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<sup>11</sup> *State v. Terry*, 2013 WL 3833085, at \*3 (Del. Super. July 18, 2013)(attached as Exhibit F)(citing *State v. McDermott*, 1999 WL 1847364, at \*2 (Del.Com.Pl. Apr. 20, 1999) (checkpoints, established pursuant to statistics relating to DUI incidents, “involve less discretion of the law enforcement officers.”) (attached as Exhibit C).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Bradley*, 2004 WL 1964980, at \* 1.

properly and operated in a manner that limited law enforcement discretion.

The sobriety checkpoint was to be established and operated on April 27, 2012, from 10:00 P.M to 2:00 A.M. at the intersection of South Market Street and A Street. (A-10-11). However, the sobriety checkpoint was not established and operated at that location. Rather, the sobriety checkpoint was established and operated at the intersection of South Market Street and Howard Street. (A-13). Approximately one-third of a mile south of the approved location. Thus, the police, without necessitous or emergency circumstance, or other rationale, repositioned the location of the sobriety checkpoint, intentionally, notwithstanding without knowledge whether or not the repositioned location was to be found within the designated grid that was approved.

Officer Rubin was the only witness to testify at the suppression hearing. Rubin was a credible witness. However, he was unable to testify as to the reason or basis why Chief Capriglione moved the checkpoint from its approved location. “Even if the State established the actual location of the approved Checkpoint, and that the Checkpoint was established at an appropriate alternative, adjacent location, the State failed to adduce any testimony that the alternate location was either within the approved area or in an adjacent area which feeds into the problem area.”<sup>16</sup>

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<sup>16</sup> *Geary*, 2013 WL 4084100, at \*4.

Significantly, Rubin was unable to testify as to: (1) how many grids were in the state; (2) how many grids were in New Castle County; (3) the parameters or guidelines for calling or denominating a certain geographic area as a grid; (4) how the grids are established; (5) whether or not there is a uniform dimension for each of the four sides that would constitute a grid; (6) the metes and bounds of grid 106-354; or (7) the distance between 106-354 and the adjoining grid. (A-16-17). Without that critical testimony, the Court was left to wonder whether the grids included other separate and distinct roadways, like South Walnut Street, or other roadways altogether, like Route 9 or I-495.

The State also failed to demonstrate that the decision as to the time and location for establishing and operating the sobriety checkpoint was made by a supervisory official acting in an administrative or managerial capacity, and not by patrol officers. Without the testimony of Chief Capriglione, or some other supervisory official acting in an administrative or managerial capacity, with the knowledge and ability to testify substantively about the grid in question, adjacent grids, data, statistics, and other aspects within and beyond the testimony provided by a patrol officer, the Trial Court could not begin to conduct the necessary analysis and balance the gravity of impaired driving in New Castle County, the degree to which the sobriety checkpoint at that specified time and locale reduced impaired driving in New Castle County or at that locale, and the severity of the

interference with individual liberty. In short, as the Court in *Hollinger* warned, the State's failure to provide substantive testimony from a supervising official acting in an administrative or managerial capacity can be fatal to the State's case.<sup>17</sup>

In sum, on this record, the State failed to establish the approved location of the checkpoint and failed to demonstrate that the checkpoint as established was within the original approved area or appropriately adjacent to the approved area. Moreover, the State also failed to establish that the Checkpoint was operated in a manner that limited the police officers' discretion. Thus, the State failed to meet its burden of showing that the checkpoint was reasonable under the Fourth Amendment of the United States Constitution and Article, 1 Section 6 of the Delaware Constitution and reversal is required.

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<sup>17</sup> *State v. Hollinger*, 2012 WL 5208792 at \*7 (Del.Com.Pl. Oct. 10, 2012)(attached as Exhibit E).

## **CONCLUSION**

For the foregoing reasons and upon the authority cited herein, the undersigned respectfully submits that Edward Cook's conviction should be reversed.

\s\ Santino Ceccotti  
Santino Ceccotti, Esquire

DATE: October 30, 2014