IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
	)	
v.	)	
	)	ID No. 1204020357
	)	
EDWARD J. COOK,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

Diana A. Dunn, Esquire, Department of Justice, Wilmington, Delaware – Attorney for the State.

Joseph A. Hurley, Esquire, Wilmington, Delaware – Attorney for the Defendant.

JOHN A. PARKINS, JR., JUDGE

This case calls upon the court to decide whether the Fourth Amendment requires the State to show that the police strictly complied with their written procedures when operating a sobriety checkpoint. The defendant contends that his stop at a checkpoint deprived him of his Fourth Amendment rights and that the discovery and seizure of evidence of intoxication after that stop constitutes fruit of the poisonous tree. For the reasons which follow, the court finds that the stop of Defendant did not violate his Fourth Amendment protections and consequently there is no taint to the later discovered evidence. His motion to suppress is therefore denied.

FACTS

On April 27, 2012 at 10:00 p.m. the Check Point Strike Force set up a sobriety checkpoint on southbound South Market Street in Wilmington. The checkpoint was scheduled to operate until 2:00 a.m. the next morning. The site was selected because of the comparatively high rate of drunk driving arrests in that area—in 2010 there were 26 DUI arrests and one alcohol-related motor vehicle fatality in the vicinity of the checkpoint where Defendant was stopped.

In the instant case there could be little doubt to an approaching motorist that a sobriety checkpoint was ahead. There were large illuminated signs warning motorists that they were approaching a sobriety checkpoint. Marked police cars with their emergency lights

flashing abounded, and spotlights illuminated the checkpoint's command post. Specially trained uniformed police officers, wearing reflective vests, manned the checkpoint. Orange traffic cones topped by flashing lights served to narrow the traffic to one lane as the motorist approached the checkpoint itself.

The intrusion at the checkpoint was minimal. All cars were stopped and each driver was asked to roll down the window.[1] A uniformed officer did not question the driver but simply explained to the driver that the police were operating a sobriety checkpoint. If the officer saw no signs of impairment, the driver was permitted to go on his or her way, in which case the entire encounter with the police officer lasted no more than a few seconds. In instances where the officer observed signs of impairment, the driver was asked to pull off to a well lit area for further investigation.

When Defendant Cook stopped at the checkpoint, the officer detected signs he was impaired. In accordance with standard procedure, Cook was asked to pull over to the side, where police conducted an additional investigation which revealed that Cook was intoxicated. Defendant does not contend that the direction to pull off to the side of the road and the investigation done there were constitutionally defective. He argues instead that his initial stop as he passed through the checkpoint violated his Fourth Amendment right to be free from

[1] The police would depart from the practice of stopping all cars when traffic backed up, in which case all of the backed-up traffic was permitted to pass through the checkpoint without stopping.

unreasonable seizures. Relying primarily, if not exclusively, on two Court of Common Pleas opinions, Defendant asserts that the Fourth Amendment requires the State to show that the police strictly complied with the written police procedures governing sobriety checkpoints.

Analysis

A. The stop of defendant did not violate the Fourth Amendment.

The primary question here is whether the Fourth Amendment requires strict compliance with the protocol developed by Delaware police for the operation of sobriety checkpoints. It does not.

1. Defendant was "seized" within the meaning of the Fourth Amendment

Most Fourth Amendment analyses begin with a determination whether there has been a search or seizure contemplated by that amendment. This issue can be quickly disposed of here. The law is well settled that defendant Cook was "seized" when he was ordered by the police to stop and roll down his window. "Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of the [Fourth Amendment]."[2]

2. Suspicionless stops at sobriety checkpoint are not *per se* unreasonable.

[2] *Whren v. United States*, 517 U.S. 806, 809-10 (1996)

The fact that Defendant was seized by the police is not dispositive--the Fourth Amendment does not bar all searches and seizures, only those that are unreasonable.[3] It "goes without saying that the Fourth Amendment bars only unreasonable searches and seizures."[4] The issue, therefore, is whether under these circumstances the initial stop of Defendant was reasonable under the Fourth Amendment.

Sobriety checkpoints, by their nature, involve suspicion-less stops of motor vehicles.[5] Not surprisingly the present record contains no evidence that police suspected Defendant of driving while intoxicated (or any other crime for that matter) until after he was stopped at the checkpoint.[6] Ordinarily stops made without a suspicion that the person being stopped committed, is committing or is about to commit a crime are barred by the Fourth Amendment.[7] Over the last few decades the United States Supreme Court has carved out a few limited exceptions to this rule. The narrow scope of these exceptions cannot be over-

---

[3] *See Maryland. v. Buie*, 494 U.S. 325, 331 (1990); *see also Segura v. United States.*, 468 U.S. 796, 806 (1984) ("By its terms, the Fourth Amendment forbids only 'unreasonable' searches and seizures.").

[4] *Buie*, 494 U.S. at 331 (1990) (citing *Skinner v. Railway Labor Executives' Assn*., 489 U.S. 602 (1989)),

[5] *See Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 456 (1990) (Brennan, J., dissenting) ("[P]olice stop all cars and inspect all drivers for signs of intoxication without *any* individualized suspicion that a specific driver is intoxicated.") (emphasis original).

[6] It should be noted that the defendant's "standing" is not at issue here. *See Rakas v. Illinois*, 439 U.S. 128, 139 (1978); s*ee also State v. Manuel*, 2009 WL 1228573 (Del. Super. May 5, 2009). In *Rakas*, the United States Supreme Court explained that for Fourth Amendment purposes, issues of standing come more appropriately under the "purview of the substantive Fourth Amendment law" rather than "within that of standing." The Supreme Court reasoned that Fourth Amendment as opposed to standing analysis is appropriate because the United States Supreme Court's "long history of insistence that Fourth Amendment rights are personal in nature has already answered many of the[ ] traditional standing inquiries." (internal citations omitted). Therefore, the "better analysis" for Fourth Amendment cases "focuses on the extent of a particular defendant's rights under the Fourth Amendment, rather than on the theoretically separate, but invariably intertwined concept of standing."

[7] *Delaware v. Prouse*, 440 U.S. 648, 663 (1979); *see also Brown v. Texas*, 443 U.S. 47, 51 (1979).

emphasized. The Supreme Court has "never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing. Rather, our checkpoint cases have recognized only limited exceptions to the general rule that a seizure must be accompanied by some measure of individualized suspicion."[8] Sobriety checkpoints are one of these limited exceptions.

The proverbial seminal case insofar as sobriety checkpoints are concerned is *Michigan Department of State Police v. Sitz*[9] in which the Supreme Court upheld a conviction arising from a suspicion-less stop at a sobriety checkpoint. *Sitz* rested largely on a decision reached fourteen years earlier in *United States v. Martinez-Fuerte* in which the Supreme Court approved roadblocks designed to detect illegal aliens. *Martinez-Fuerte* therefore warrants some discussion.

Martinez-Fuerte

In *Martinez-Fuerte* the Supreme Court explained that although suspicion is "usually a [search or seizure] prerequisite," "the Fourth Amendment imposes no irreducible requirement of such suspicion."[10] The Court "balanc[ed] the interests at stake," to determine whether reasonable suspicion should be required for checkpoint stops. This requires balancing "the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and

[8] *City of Indianapolis, v. Edmund,* 531 U.S. 32, 41 (2000).
[9] 496 U.S. 444, 451-52 (1990).
[10] *Id.* at 561.

the severity of the interference with individual liberty." The "reasonableness of seizures that are less intrusive than a traditional arrest depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers."[11] The purpose of this balancing test is to allow for the protection of vital public interests while at the same time affording individuals the well-established Fourth Amendment safeguards which "protect the privacy and security of individuals against arbitrary invasions by governmental officials."[12]

The *Martinez-Fuerte* court recognized the public's interest in controlling the flow of illegal aliens into the United States. The Court harkened back to its earlier decision in *United States v. Brignoni-Ponce*[13] wherein it observed that

> these aliens create significant economic and social problems, competing with citizens and legal resident aliens for jobs, and generating extra demand for social services. The aliens themselves are vulnerable to exploitation because they cannot complain of substandard working conditions without risking deportation.[14]

Weighed against this is the degree of intrusion into the motorist's privacy. The checkpoint stops in *Martinez-Fuerte* were short in duration,

---

[11] *Brown v. Texas,* 443 at 50.

[12] *Camara v. Municiapl Court of City and County of San Francisco*, 387 U.S. 523, 528 (1967); *see also Del. v. Prouse*, 440 U.S. 648, 654 (1979) ("Thus, the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests."); *Brignoni-Ponce*, 422 U.S. at 878 (The reasonableness of a seizure under the purview of the Fourth Amendment "depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers.") (citing *Terry v. Ohio*, 392 U.S. at 20-21).

[13] 422 U.S. 873 (1975)

[14] *Id.* at 878-9.

usually consisting of only a few questions and an occasional request for documents. The Court found that the public interest before it outweighed this minimal intrusion and therefore concluded that the stops were constitutional.

Sitz

According to the *Sitz* court "[w]e see virtually no difference between the levels of intrusion on law-abiding motorists from the brief stops necessary to the effectuation of these two types of checkpoints [in the *Martinez-Fuerte* and *Sitz* cases], which to the average motorist would seem identical save for the nature of the questions the checkpoint officers might ask."[15] Once again the Supreme Court balanced the state's interest in using sobriety checkpoints against the level of intrusion to the motorist. After explaining the substantial state interest in curbing drunken driving, the Supreme Court analyzed the level of intrusion to the motorists. [16] And as it did in *Martinez-Fuerte,* the Court found that the public interest outweighed the intrusion into motorists lives.

The *Sitz* court analyzed this level of intrusion in terms of what it called the "objective" intrusion (the duration of the stop and level of questioning) and the "subjective" intrusion (causing concern or fear to

[15] *Id.* at 451-2.
[16] *Id.* at 451 ("No one can seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating it.")

the motorist).[17] From an objective standpoint, the officers detained each car briefly and asked only a few questions regarding the motorists' right to be in the United States and occasionally asked for documents. This brief detention remained limited to "what can be seen without a search."[18] The "subjective" intrusion was minimal in *Sitz* because motorists were well warned that they were approaching a sobriety checkpoint.

One additional common thread runs through the cases authorizing suspicion-less stops—such stops can not be done at the unfettered discretion of the police officer in the field. Although the Fourth Amendment does not itself contain an equal protection component,[19] it has long been part of our equal protection jurisprudence under the Fourteenth Amendment that seizures may never be made on the basis of impermissible factors such as race. The presence of unfettered discretion by the officer on the beat would allow this to occur. As a result, in all of the cases upholding the constitutionality of a suspicion-less checkpoint stop there has been a pre-existing plan which limited the discretion of the officers in deciding which cars to stop.[20] Although it is

---

[17] *Martinez-Fuerte,* 428 U.S. at 556-558

[18] *Id.*

[19] *See Whren*, 517 U.S. at 813 ("But the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment. Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.").

[20] *See, e.g. Sitz*, 496 U.S. 444; *U.S. v. William*, 603 F.3d 66 (1st Cir. 2010); *U.S. v. Green*, 293 F.3d 855 (5th Cir. 2002); *Brouhard v. Lee*, 125 F.3d 656 (8th Cir. 1997); *U.S. v. Trevino*, 60 F.3d 333 (7th Cir. 1995); *Com. v. Yastrop*, 768 A.2d 318 (Pa. 2001); *State v. Damask*, 936 S.W.2d 565 (Mo. 1996); *People v. Rister*, 803 P.2d 483 (Colo. 1990); *City of Overland Park v. Rhodes*, 257 P.3d 864 (Kan. Ct. App. 2011); *but see State v. Mitchell*, 592 S.E.2d 543 (N.C. 2004).

not always clear whether the restriction on discretion emanates from the Fourth or Fourteenth Amendment (or both), it is safe to say that absent such a restriction the checkpoint will not pass constitutional muster.

3. Defendant's stop was reasonable under the Fourth Amendment

Federal appellate courts have synthesized the Supreme Court holdings involving checkpoints and have developed factors to be considered in determining whether the stop at a checkpoint is reasonable. Perhaps the most cited is the Fourth Circuit's formulation in *United States v. Henson:*[21]

> Factors to weigh intrusiveness include whether the checkpoint: (1) is clearly visible; (2) is part of some systematic procedure that strictly limits the discretionary authority of police officers; and (3) detains drivers no longer than is reasonably necessary to accomplish the purpose of checking a license and registration, unless other facts come to light creating a reasonable suspicion of criminal activity.[22]

In determining the level of intrusion, the court reviews the amount of time for which the motorist is detained and the level of questioning at the stop. A short stop with brief questioning causes minimal intrusion to the motorist.[23] The court should also examine whether the checkpoint has the potential to invoke unnecessary surprise or fear in law-abiding motorists. Systematic stops by uniformed police officers may prevent

---

[21] 2009 WL 3792435 (4th Cir.)
[22] *Id.* at *2
[23] *Sitz*, 496 U.S. 444; *Martinez-Fuerte,* 428 U.S. 543; *U.S. v. Ortiz*, 422 U.S. 891.

such surprise or fear, while random stops along dark roads may not.[24] When performing this balancing test, courts may also consider whether the checkpoints actually advance the interest the State seeks to promote, which in this instance is the prevention of drunken driving.[25]

a. The State's public interest justifies the use of sobriety checkpoints

As discussed earlier, the class of cases in which the Fourth Amendment permits suspicion-less stops is quite narrow. In *City of Indianapolis v. Edmond*[26] the Supreme Court invalidated a stop at a checkpoint designed to look for drugs. In doing so, the Supreme Court distinguished drug checkpoints from those looking for drunk drivers:

> Nor can the narcotics-interdiction purpose of the checkpoints be rationalized in terms of a highway safety concern similar to that present in *Sitz.* The detection and punishment of almost any criminal offense serves broadly the safety of the community, and our streets would no doubt be safer but for the scourge of illegal drugs. Only with respect to a smaller class of offenses, however, is society confronted with the type of immediate, vehicle-bound threat to life and limb that the sobriety checkpoint in *Sitz* was designed to eliminate.[27]

This court need not dawdle over whether sobriety checkpoints fall within that narrow exception—that question was resolved in *Sitz.* "In the present case, *Sitz* establishes the 'gravity of the public concerns' with the death and injury toll taken by drunken drivers and the fact that sobriety

---

[24] *Id.*
[25] *Sitz*, 496 U.S. 444.
[26] 531 U.S. 32 (2000).
[27] *Id.* at 43.

checkpoints can 'advance the public interest' sufficiently to make such a checkpoint reasonable."[28]

The public interest found in *Sitz* is not limited to Michigan, where that case arose; rather there is an equally weighty interest to curb drunk driving in Delaware. Determination of what is--or is not--in the public interest lies within the purview of the legislature and executive branches of our government. There can be no doubt that those branches view drunk driving as a public nemesis and that their views are well founded. According to the National Highway Traffic Safety Administration, in 2009 three people died every two hours on the nation's highways because of alcohol-related crashes, and that year the percentage of fatal crashes involving alcohol in Delaware exceeded the national average. In 2009 the State Police alone made nearly 4000 DUI arrests.

b. *The manner in which the instant checkpoint was operated made the stops reasonable*

The court finds that the sobriety checkpoint in this case was operated in a reasonable manner pursuant to a neutral plan which limited the police officers' discretion. The instant plan required a reasonable nexus between the location of the checkpoint and the desired purpose of curbing drunk driving. This court will give wide deference to the police decision as to when and where to conduct a checkpoint. As Chief Justice Rehnquist noted in *Sitz*, "for purposes of Fourth Amendment analysis, the choice among such reasonable alternatives

[28] *United States v. Henson,* 2009 WL 3792435 *70 (4th Cir. 2009)(*per curiam*).

remains with the governmental officials who have a unique understanding of, and a responsibility for, limited public resources, including a finite number of police officers"[29] The site and time for the instant checkpoint were selected on the basis of historical data and thus fall well within the deference accorded to such police decisions by the courts.

Not only is there a sufficient relationship between the time and location of the checkpoint and the public interest in curbing drunk driving, but also it is clear that the officers manning the checkpoint did not have unfettered discretion. Importantly they were required to stop every car proceeding through the checkpoint[30]--which prevented them from singling out motorists to be stopped on the basis of race or some other impermissible factor. The procedures also precluded officers from prolonging the stop unless they observed signs giving rise to a reasonable suspicion that the driver was intoxicated. The court finds, therefore, that the instant checkpoint was operated pursuant to a neutral plan.

B. The Fourth Amendment does not require the State to prove strict compliance with police procedures governing sobriety checkpoints

[29] 496 U.S. at 453-4

[30] The only exception is when traffic backed up at the entrance to the checkpoint so that it created a hazard. When that occurred the supervisor was permitted by the plan to leave all traffic pass through the checkpoint without being stopped until the backup dissipated. Importantly this decision did not involve an individualized judgment as to which cars would be permitted to pass through unimpeded and which cars would be stopped. This preserves the neutrality of the plan.

Defendant relies on the Court of Common Pleas' opinion in *State v. McDermott*[31] for the proposition that the Fourth Amendment requires strict compliance with the protocol. The *McDermott* court generally tracked the United States Supreme Court's analysis in *Michigan Dept. of State Police v. Sitz*[32] until *McDermott* reached the question of reasonableness. Then, citing only the 1989 case of *Commonwealth v. Anderson*[33] the *McDermott* court wrote that the "Delaware State Police policy acts as a substitute for the Fourth Amendment [reasonableness] standard."[34] The *Anderson* court wrote that "[o]nce the Department of Public Safety and the State police have adopted such standard, written guidelines for the conduct of roadblocks, which have been accepted as a sufficient substitute for the usual Fourth Amendment 'reasonableness' demands, it follows that the Commonwealth must carefully comply with them." [35]

This court finds that *McDermott* was erroneously decided for either of two reasons. First, local police procedures can not provide the basis for determining reasonableness under the Fourth Amendment, which must be applied uniformly across the country. Second, the *McDermott* court relied exclusively on a Massachusetts case—*Anderson v. Commonwealth*--for the proposition that the police checkpoint procedures

---

[31] 1999 WL 1847364 (Del. Com. Pl.)
[32] 496 U.S. 444 (1990)
[33] 547 N.E.2d 1134 (Mass. 1989)
[34] 1999 WL 1847364 at *3
[35] 547 N.E.2d at 1137.

define "reasonableness" for purposes of the Fourth Amendment. But *Anderson* case was based on a logical flaw and so, by extension, is *McDermott.*

1. State procedures do not serve as a measuring stick for determining "reasonableness" under the Fourth Amendment.

The reasoning in *Anderson* and *McDermott* runs afoul of established constitutional principles. The United States Supreme Court has rejected the notion that state law standards can be used to measure reasonableness under the Fourth Amendment:

> We are aware of no historical indication that those who ratified the Fourth Amendment understood it as a redundant guarantee of whatever limits on search and seizure legislatures might have enacted. The immediate object of the Fourth Amendment was to prohibit the general warrants and writs of assistance that English judges had employed against the colonists. That suggests, if anything, that founding-era citizens were skeptical of using the rules for search and seizure set by government actors as the index of reasonableness.[36]

This rule derives in part from the principle that the federal constitution (including the reasonableness requirement of the Fourth Amendment) is meant to be applied uniformly throughout the country. "States are free to provide motorists with more protection than the Fourth Amendment provides, but federal law is uniform across the country."[37] As a result

> [A]lthough a state may provide more protection from warrantless arrests than the federal Constitution, that enhanced protection does not govern the scope of the protections afforded by the Fourth Amendment. If state laws could define the contours of the Fourth Amendment, its

[36] *Virginia v. Moore,* 553 U.S. 164, 167-8 (2008)
[37] *United States v. Reyes-Vencomo*. 866 F.Supp.2d 1334, 1336 (DNM 2012)

protections would "vary from place to place and from time to time." [38]

2. The logic in *Anderson*, and hence *McDermott*, is flawed.

It is well established that states are free to enact broader protections than those afforded by the federal constitution.[39] But it does not follow that governmental conduct which falls short of the enhanced state law protections necessarily falls short of the lesser federal protections. The following analogy illustrates the point: Suppose a high school student's parents expect the student to earn nothing less than a grade of "A" in each subject, whereas the school regards a "C" to be a passing grade. If the student receives a "B" in a course he or she will have failed to satisfy the parents' enhanced expectations, but the student will still have satisfied the school's standard. By the same token, the mere fact that a stop at a sobriety checkpoint does not meet the enhanced state law standard does not, in and of itself, mean that it falls below the constitutional standard.

One of the police errors found by the *McDermott* court illustrates this logical flaw. According *McDermott* "the State provided no evidence that [a post-checkpoint report] on the roadblock was compiled or

---

[38] *Rose v. City of Mulberry, Arkansas*, 533 F.3d 678 (8th Cir. 2008) (citing *Virginia v. Moore*, 533 U.S. at 167 (quoting *Whren v. U.S.*, 517 U.S. 806, 815 (1996))).

[39] *Cooper v. California*., 386 U.S. 58 (1967) ("Our holding, of course, does not affect the State's power to impose higher standards on searches and seizures than required by the Federal Constitution if it chooses to do so."); *Jones v. State,* 745 A.2d 856, 863 (Del. 1999) ("The Delaware Constitution, like the constitutions of certain other states, may provide individuals with greater rights than those afforded by the United States Constitution.").

reported as required by Delaware State Police policy."[40] Even though the filing (or non-filing) of an administrative report days after the stop had nothing to do with whether the stop was reasonable, the *McDermott* court's logic led it to conclude that the after-the-fact absence of such a report somehow rendered the stop unreasonable under the Fourth Amendment. But it is settled that events occurring after a seizure can do nothing to invalidate a reasonable seizure, just as they can do nothing to do to validate an otherwise unreasonable seizure.[41] Rather the validity of a search or seizure under the Fourth Amendment must be determined on the basis of facts existing at the time of the search or seizure. "[T]he Fourth Amendment requires only that the steps preceding the seizure be lawful."[42] The logic and result in *McDermott* contravenes this principle.

IT IS SO ORDERED.

Date: February 13, 2013

_____
Judge John A. Parkins, Jr.

oc: prothonotary

---

[40] 1999 WL 1847376 *4 (Del. Com. Pleas).

[41] The most familiar example of this principle is the maxim that discovery of incriminating evidence during an unreasonable search can never retroactively justify the search. *See Young v. State*, 339 A.2d 723, 725 (1975).

[42] *Kentucky v. King*, ___ U.S. ___, 131 S.Ct. 1849, 1858 (2011).