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

STATE OF DELAWARE,	)	
	)	
v.	)	C.A. No. 1012016310
	)	
TYLER T. HOLLINGER,	)	
	)	
Defendant.	)	

Submitted: September 10, 2012
Decided: October 10, 2012

MEMORANDUM OPINION AND ORDER
DECISION AFTER HEARING

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DAVIS, J.

Defendant Tyler T. Hollinger was arrested on December 24, 2010 during a stop at a sobriety checkpoint (the "Checkpoint") and charged with the offense of driving under the influence of alcohol (the "DUI Offense") in violation of Title 21, Section 4177 (a) of the Delaware Code of 1974, as amended. On September 13, 2011, Mr. Hollinger's counsel filed a motion to suppress (the "Motion") that challenged the validity of the Checkpoint and the subsequent arrest. On May 30, 2012, the Court held an evidentiary hearing (the "Hearing") on the Motion and, at the end of the Hearing, reserved decision on the Motion pending further briefing.

After a review of the record, and based upon the legal and factual determinations made during the hearing, the Court **GRANTS** the Motion.

BACKGROUND

A. General Information

Through the Motion, Mr. Hollinger challenges the validity of the Checkpoint and his subsequent arrest, contending the State failed to demonstrate the Checkpoint was properly established and operated as required under certain Delaware sobriety checkpoint procedural guidelines.[1] The Motion contends that the evidence obtained during the stop should be suppressed and the case dismissed because of this failure.

On December 24, 2010, Mr. Hollinger was arrested and charged with the DUI Offense. On April 6, 2011, Mr. Hollinger plead not guilty, waived his right to a jury trial and, at a subsequent case review, the Court set the matter for trial on October 24, 2011. The Motion was filed on September 13, 2011. Mr. Hollinger sought a continuance of the October 24, 2011 trial date on September 14, 2011. The Court granted this request -- which was not opposed by the State -- on that same date and set the trial for January 25, 2012. On January 25, 2012, the Court needed to continue the trial and set the matter for April 16, 2012. On February 29, 2012, the State requested and received a continuance of the April 16, 2012 trial date. Mr. Hollinger did not object to the State's continuance request. The Court then set May 30, 2012 as the date for an evidentiary hearing and for trial.

On May 30, 2012, the Court held the Hearing on the Motion. At the Hearing, the State called one witness – Corporal Charles W. Simpson of the Delaware State Police. Corporal Simpson is the investigating officer in this criminal action and the officer who stopped and

[1] *See, e.g.*, *State v. Stroman*, Nos. IN83-02-0055T, N83-04-0132T, N83-09-0620T, 1984 WL 547841 (Del. Super. Ct. May 18, 1985); *Bradley v. State*, 858 A.2d 960, 2004 WL 1964980 (Del. Super. Ct. 2004); *State v. McDermott*, Cr. Action No. S98-07-0875, 1999 WL 1847364 (Del. Com. Pl. April 30, 1999).

arrested Mr. Hollinger at the Checkpoint. Corporal Simpson was not the officer charged with supervising the establishment and operation of the Checkpoint. After hearing his testimony, the Court finds Corporal Simpson to be a credible witness.

In addition to Corporal Simpson, the State introduced the following exhibits into evidence:

1. Delaware State Police Academy Award for Charles S. Simpson for training in NHTSA – DUI Detection and HGN Certification dated August 24, 27-28, 1998 ("Exhibit 1"); and

2. Self Authenticating Declaration Under Delaware Rules of Evidence 902(11) of Lisa M. Shaw dated January 7, 2011 ("Exhibit 2").[2]

Other than examination of Corporal Simpson, Mr. Hollinger did not present any additional testimonial or physical evidence at the Hearing. At the conclusion of the Hearing, the Court reserved ruling on the Motion and set a series of briefing schedules.[3] The Court received the final brief of the parties on September 10, 2012.

B. Facts Developed in Connection with the Motion

The State called Corporal Simpson to testify at the Hearing in connection with the Motion. Corporal Simpson is employed by the Delaware State Police Department. Corporal Simpson has been with the Delaware State Police Department for approximately 10 years and is presently stationed at Troop 5 in Bridgeville, Delaware. Corporal Simpson testified that during his time with the Delaware State Police Department he had received training on and been certified with respect to DUI investigation and NHTSA field testing. Corporal Simpson also

[2] The State contends that Exhibit 2 was received into evidence and that Mr. Hollinger never moved to strike Exhibit 2. The Courts notes and the Clerk have Exhibit 2 as marked for identification purposes as Exhibit B but not admitted into evidence as Exhibit 2. Whether admitted into evidence or not, the Court has the ability to disregard incompetent evidence and decide the matter from a consideration of competent evidence only. *See, e.g., Kruzmann v. State*, 903 A.2d 702, 709 (Del. 2006); *Bennett v. Barber*, 79 A.2d 363, 365 (Del. 1951). The Court took this matter under advisement, in part, to determine whether Exhibit 2 should be admitted into evidence, or if already admitted, stricken. As such, the Court will consider but will also discount contentions that either party waived the right to make certain arguments, object to exhibits or move to strike evidence.

[3] Scheduling Order dated May 30, 2012 and Order Requesting Additional Submission dated August 29, 2012.

testified that he has been involved in over 100 driving under the influence investigations and/or arrests.

On December 23, 2010, Corporal Simpson was among 25 officers who established the Checkpoint at 10:00 p.m. on Route 52 in Wilmington, Delaware. Corporal Simpson was not the officer charged with supervising the establishment and operation of the Checkpoint. Corporal Simpson testified that he was personally involved in setting up the Checkpoint. Corporal Simpson testified that officers placed a "rumble" strip in the road, set up signs approximately 25-30 yards prior to the Checkpoint's entry, placed traffic cones to direct traffic and illuminated the Checkpoint with temporary lights and police emergency lights. Corporal Simpson testified that all the officers wore reflective vests and carried flashlights. According to Corporal Simpson's testimony, the officers stopped every vehicle that approached the Checkpoint. Corporal Simpson testified that he introduced himself to each vehicle he stopped and stated that the officers were conducting a DUI checkpoint to detect persons who were drinking and driving.

Corporal Simpson testified that at 1:03 a.m. on December 24, 2010, Mr. Hollinger's vehicle entered the Checkpoint. Corporal Simpson stated that it appeared that Mr. Hollinger did not immediately slow down when entering the Checkpoint, stopping only after Corporal Simpson yelled for Mr. Hollinger to stop. Upon encountering Mr. Hollinger, Corporal Simpson detected a strong odor of alcohol. Corporal Simpson noted that Mr. Hollinger's eyes were bloodshot and dilated. Corporal Simpson testified that he believed that Mr. Hollinger's speech was slurred but understandable. Corporal Simpson had Mr. Hollinger exit the vehicle and stand on the sidewalk.

Once on the sidewalk, Corporal Simpson had Mr. Hollinger perform certain tests. First, Corporal Simpson had Mr. Hollinger recite the alphabet from E through T. Mr. Hollinger started

with the letter F and ended with the letter Z and missed letters G, H and V. Corporal Simpson then had Mr. Hollinger count backwards from 78 through 58. Mr. Hollinger started with 77 and counted backwards to 50.

Corporal Simpson then had Mr. Hollinger perform certain NHTSA field sobriety tests. Corporal Simpson first gave Mr. Hollinger the horizontal gaze nystagmus test (the "HGN Test"). After instructing Mr. Hollinger, Corporal Simpson performed the HGN Test on Mr. Hollinger and detected 6 out of 6 clues – those relating to smooth pursuit, distinct nystagmus at maximum deviation and the onset of nystagmus before 45 degrees in each eye. Corporal Simpson testified at the Hearing that exhibiting at least 4 of 6 clues indicated a 60-65% chance of impairment.

Corporal Simpson next administered the one legged stand test (the "One Leg Stand Test"). After providing instructions and a demonstration of the One Leg Stand Test, Corporal Simpson had Mr. Hollinger perform the test. Mr. Hollinger swayed during the One Leg Stand Test, raised his arms more than 6 inches from his waist and put his foot down three times before Corporal Simpson stopped the test. Corporal Simpson stated that during the One Leg Stand test he observed Mr. Hollinger exhibit 3 of 4 clues. Corporal Simpson testified that exhibiting 3 of 4 clues was a good indicator of impairment but could not recite the NHTSA standard for probability of impairment. Mr. Hollinger then refused to perform any additional NHTSA field tests.

Following the field sobriety tests, Corporal Simpson had Mr. Hollinger take a portable breath test. Corporal Simpson testified that the portable breath test indicated that Mr. Hollinger had alcohol in his blood and was impaired. At this point during the stop, Corporal Simpson formed an opinion that Mr. Hollinger had been driving while under the influence of alcohol. Corporal Simpson then arrested Mr. Hollinger.

At the Hearing, the State provided Corporal Simpson with Exhibit 2. Exhibit 2 is a copy of the Self Authenticating Declaration Under Delaware Rules of Evidence 902(11) of Lisa M. Shaw dated January 7, 2011 and certain attachments. Exhibit 2 is 13 pages long. Exhibit 2 consists of:

1. A Self Authenticating Declaration Under Delaware Rules of Evidence 902(11) of Lisa M. Shaw dated January 7, 2011;

2. A copy of Delaware Rule of Evidence 902(11) and (12);[4]

3. Memorandum from Lisa Shaw to Chief Michael Capriglione dated December 10, 2010 and containing "statistical information" for location "Rt 52@Tower Hill Rd;"

4. A document entitled "Crash States – Source DSP 2009 Annual Traffic Statistics" that contains various state-wide and county-wide statistics;

5. A document entitled "DUI Joint Checkpoint" that contains statistics relating to DUI arrests for certain locations in Delaware;

6. A document entitled "DUI Joint Checkpoint" that contains statistics relating to alcohol related crash data for certain locations in Delaware;

7. A news release dated December 22, 2010 entitled "Safe Family Holiday Campaign Update Week Four;"

8. A document entitled "Checkpoint Strikeforce Sobriety Checkpoint Procedures" that consists of 13 numbered paragraphs of various procedures to be followed when conducting a sobriety checkpoint;

9. A grid that seems to set out various fatal crash, "PI crash" and "DUI Arrests in Wilmington;"

10. A fax dated December 26, 2010 from the Town of Newport that contains a Statistical Reporting Form for the Checkpoint listing various items including the number of officers working the Checkpoint, the number of hours worked, etc.; and

11. An undated grid entitled "CPSF Stats Checkpoint" from December – Week 26.

[4] In text, the Delaware Rules of Evidence will hereafter be referred to as the "DRE."

According to the briefing submitted by the parties, Exhibit 2 was provided to Mr. Hollinger's counsel through a letter dated January 28, 2011 (the "Transmittal Letter") that reads as follows:

> Attached are the DUI checkpoint statistics for the above matter. If you have any questions or require further discovery, please contact me. Thank you.[5]

So, on or about January 28, 2011, the State sent Mr. Hollinger a copy of Exhibit 2 and the Transmittal Letter. The record here is clear that the State provided no additional written communications to Mr. Hollinger regarding Exhibit 2.

Corporal Simpson testified that he did not recognize Exhibit 2. Corporal Simpson also testified that, prior to the Hearing, he had never seen the documents that made up Exhibit 2 – this included pages 9-10 which are entitled "Checkpoint Strikeforce Sobriety Checkpoint Procedures." Corporal Simpson did testify that while he had not seen Exhibit 2 before he had helped set up numerous sobriety checkpoints prior to being involved in the Checkpoint on December 23-24, 2010. With respect to the Checkpoint, however, Corporal Simpson testified that he was not responsible for establishing or supervising the Checkpoint. Other than being able to read the documents in Exhibit 2 and hypothesize about the statistics contained therein, Corporal Simpson was unable to provide substantive testimony regarding anything contained in Exhibit 2. Despite being a credible witness at the Hearing, Corporal Simpson's testimony as to Exhibit 2 was mostly speculative and not overly helpful to the Court.

ANALYSIS

Mr. Hollinger contends that the evidence relating to his arrest at the Checkpoint should be suppressed because the State cannot demonstrate that this "seizure" was reasonable under the Fourth Amendment of the United States Constitution and Article I, Section 6 of the Delaware Constitution. Specifically, in this case, Mr. Hollinger argues that the State did not prove that the

[5] A copy of the May 28, 2011 letter is attached to this Memorandum Opinion and Order.

Checkpoint was 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. For the reasons set forth below, the Court agrees and, therefore, grants the relief request in the Motion.

A. 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.[6] 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."[7] In assessing the reasonableness of a sobriety checkpoint, the United States Supreme Court has articulated a test that balances the 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.[8]

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.[9]

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[6] *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).
[7] *Brown v. Texas*, 443 U.S. 47 (1979).
[8] *Sitz*, 496 U.S. at 455.
[9] Bradley, 2004 WL 1964980, at *1.

Sobriety checkpoints in Delaware are created and operated under certain Delaware State Police Department policy guidelines.[10] The policy 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.[11] These 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.[12] 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.[13] To meet the requirements of reasonableness, the State must demonstrate careful compliance with the policy guidelines.[14]

B. The State Cannot Demonstrate that the Checkpoint Complied with Policy Guidelines

In this case, the State attempts to prove that the Checkpoint and the stop of Mr. Hollinger carefully complied with the policy guidelines through the testimony of Corporal Simpson and two exhibits. On the record before the Court here, the State has failed to prove that the Checkpoint met the requirements of the State's own "Checkpoint Strikeforce Sobriety Checkpoint Procedures."[15] 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.

[10] *See State v. McDermott*, 1999 WL 1847364, at *2 (Del. Com. Pl. April 20, 1999); Exhibit 2 at 9-10.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *See* Exhibit 2 at 9-10.

1. Exhibit 2 will not be considered in this criminal matter as admissible evidence.

At trial, the State sought to introduce Exhibit 2 under DRE 902(11)(C). The Court agrees that DRE 902(11)(C) is available in criminal proceedings, including in cases involving sobriety checkpoints. However, under the facts present here, the Court holds that the State has failed to meet the standards of admissibility under Delaware Rule 902(11)(C).

DRE 902(11) provides:

> Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:
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> ***
>
> (11) Certified domestic records of regularly conducted activity. The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration of its custodian or other qualified person, in a manner complying with any law of the United States or of this State, certifying that the record
>
> ***
>
> (C) was made by the regularly conducted activity as a regular practice. A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.[16]

Although there appears no Delaware case directly on point, DRE 902(11)(C) is available in criminal proceedings if the party offering the document satisfies the requirements of the rule.[17]

In order to meet the requirements of DRE 902(11), the proffering party must provide a written declaration from the custodian of record or other qualified person that specifically certifies that the records constitute records of regularly conducted activity.[18] Moreover, the proffering party must provide written notice of intention to use the DRE 902(11) declaration as evidence and must make the records and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with an opportunity to challenge

[16] Del. R. Evid. 902(11).
[17] *See, e.g., State v. Andrews*, Nos. 0208019127, N02-09-0621, 2003 WL 22931333, at *8-9 (Del. Com. Pl. Aug. 22, 2003).
[18] Del. R. Evid. 902(11)(C).

the records and/or the declaration.[19] The notice requirements of DRE 902(11)(C) are intended to give the opponent of the evidence a full opportunity to test the adequacy of the foundation set forth in the declaration.[20]

The State provided a copy of Exhibit 2 to Mr. Hollinger on May 18, 2011 through the Transmittal Letter. The Transmittal Letter provides in full:

> Attached are the DUI checkpoint statistics for the above matter. If you have any questions or require further discovery, please contact me. Thank you.[21]

While Exhibit 2 does reference DRE 902(11), the Transmittal Letter itself provides no notice of intention by the State to use Exhibit 2 as evidence in any evidentiary hearing or trial.

The language of the Transmittal Letter coupled with the heading of Exhibit 2 creates ambiguity as to whether the State was intending to use Exhibit 2 as evidence. This ambiguity could have been dispelled prior to the Hearing by either the State or Mr. Hollinger's counsel through follow-up inquiries. Here, the parties did not take steps to clarify whether Exhibit 2 was going to be used at the Hearing or any subsequent trial. Understanding this, the State spends a great deal of its briefing in arguing that (i) Mr. Hollinger waived his right to object to or move to strike Exhibit 2; (ii) it is harmless error that the State failed to notify Mr. Hollinger of its intent to use Exhibit 2 as evidence under DRE 902(11)(C); or (iii) the State's use of Exhibit 2 does not prejudice Mr. Hollinger. In essence, the State attempts to shift the clear and simple requirements of DRE 902(11)(C) to Mr. Hollinger. Under the circumstances and procedural posture present here, the Court does not believe that these arguments support the admission of Exhibit 2 into evidence.

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[19] Del. R. Evid. 902(11)(C); *see, also, Latman v. Burdette*, 366 F.3d 774 (9th Cir. 2004)

[20] *See* 5 Stephen A. Saltzburg, Michael M. Martin & Daniel J. Capra, Federal Rules of Evidence Manual §902.04[2] (9th ed. 2008).

[21] A copy of the January 28, 2011 letter is attached to this Memorandum Opinion and Order.

The law is clear that the State and not Mr. Hollinger must demonstrate compliance with certain important procedural requirements as part of any sobriety checkpoint DUI prosecution.[22] Exhibit 2 is central to the State's case. The Court does not agree that denying Mr. Hollinger an opportunity to test the adequacy of the foundation set forth in the declaration is harmless error. DRE 902(11)(C) places the burden of notification of intent to use written declarations on the proffering party – here, the State. Moreover, this burden is not terribly difficult to carry. All the State needed to do was provide a clear written notification of intent to use Exhibit 2 to Mr. Hollinger sufficiently in advance of the Hearing. The State did not clearly notify Mr. Hollinger in writing of its intent to use Exhibit 2 at any time prior to the Hearing. As such, an important condition precedent to admissibility was not satisfied and Exhibit 2 is not admissible for use at the Hearing.

2. Even if Exhibit 2 were admitted and considered, the State's case fails.

In the alternative, the Court holds that the State failed to demonstrate at the Hearing that the Checkpoint was created and operated under certain Delaware State Police Department policy guidelines. The State presented its case through the testimony of Corporal Simpson and two exhibits – Exhibit 1 and Exhibit 2. Even if Exhibit 2 were considered, the Court holds that the State failed to sufficiently demonstrate that it complied with standard procedures established by the Delaware State Police Department (or Office of Highway Safety) for sobriety checkpoints. For this additional reason, the Court grants the Motion.

[22] *See State v. Stroman*, Nos. IN83-02-0055T, N83-04-0132T, N83-09-0620T, 1984 WL 547841 (Del. May 18, 198); *State v. Gonzalez-Ortiz*, No. CR.A.06-08-1974, 2007 WL 549907 (Del. Com. Pl. Jan. 30, 2007); *State v. Rentoul*, No.0507024886, 2006 WL 951315 (Del. Com. Pl., April 6, 2006); *State v. McDermott*, Cr. Action No. S98-07-0875, 1999 WL 1847364, at *2 (Del. Com. Pl. April 30, 1999)

As discussed above, sobriety checkpoints in Delaware are created and operated under certain Delaware State Police policy guidelines.[23] The policy 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.[24] These 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.[25] 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.[26] *To meet the requirements of reasonableness, the State must demonstrate careful compliance with the policy guidelines.*[27]

Corporal Simpson testified, with personal knowledge, at the Hearing as to what he did and observed at the Checkpoint. Corporal Simpson was not the officer charged with selecting the location of the Checkpoint or with supervising the set up or operation of the Checkpoint. Corporal Simpson testified that officers placed a "rumble" strip in the road, set up signs approximately 25-30 yards prior to the Checkpoint's entry, placed traffic cones to direct traffic and illuminated the Checkpoint with temporary lights and police emergency lights. Corporal Simpson testified that all the officers wore reflective vests and carried flashlights. According to Corporal Simpson's testimony, the officers stopped every vehicle that approached the Checkpoint. Corporal Simpson testified that he introduced himself to each vehicle he stopped

[23] *See State v. McDermott*, Cr. Action No. S98-07-0875, 1999 WL 1847364, at *2 (Del. Com. Pl. April 30, 1999); Exhibit 2 at 9-10.
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*

and stated that the officers were conducting a DUI checkpoint to detect persons who were drinking and driving.

Corporal Simpson could not testify substantively with respect to Exhibit 2. Corporal Simpson testified that he had never seen Exhibit 2 or any of the contents of Exhibit 2 before first seeing it at the Hearing. Exhibit 2 is not so clearly constructed as to present its contents in a way that shows compliance with applicable sobriety checkpoint procedural guidelines. The documents contained in Exhibit 2 are not so straightforward that the Court would, without more, hold that the Checkpoint was proper from just the self-authenticating declaration as drafted. In its briefs, the State posits reasonable conclusions as to what each page of Exhibit 2 provides, but these are just conclusions from counsel without more. For example, the State contends that Exhibit 2 shows that Ms. Shaw provided information to Chief Michael Capriglione and approved the Checkpoint for December 23-24, 2010. And, the Statistical Reporting Form in Exhibit 2 is likely the proof that a supervising officer monitored the Checkpoint and compiled the results of the Checkpoint. Those are the plausible and reasonable explanations of what these documents represent. However, neither the self-authenticating declaration of Lisa Shaw as drafted nor Corporal Simpson's testimony necessarily substantiates those explanations.[28]

In this case, a more complete record is necessary -- either through a more carefully crafted DRE 902(11) declaration or the testimony of the officer who supervised the Checkpoint – before the Court can hold that the State has met its burden in showing that the Checkpoint was

[28] Upon questioning from both the State and Mr. Hollinger's counsel, Corporal Simpson could do more than hypothesize what the numbers and grids contained in Exhibit 2 meant. Corporal Simpson admitted he had never seen Exhibit 2 or the documents contained in Exhibit 2. Moreover, Corporal Simpson testified that he had no knowledge as to whether the Checkpoint was properly advertized or how the location was selected or whether a supervisor properly monitored the Checkpoint at all times and recorded and compiled the results of the Checkpoint.

established and operated properly.[29] Accordingly, even considering Exhibit 2, the Motion is granted.

CONCLUSION

For the reasons stated in this opinion, the Court **GRANTS** the Motion and suppresses all evidence obtained during the stop or "seizure" of Mr. Hollinger at the Checkpoint.

The Clerk of the Court shall set this matter for trial.

IT IS SO ORDERED.

Eric M. Davis

Eric M. Davis
Judge

[29] *See, e.g.*, *State v. Gonzalez-Ortiz*, No. CR.A.06-08-1974, 2007 WL 549907, at *2 (Del. Com. Pl. Jan. 30, 2007) (supervising officer testified about selection of sobriety checkpoint location, compiling of statistics and other facts surrounding set up and operation of sobriety checkpoint); *State v. Rentoul*, No.0507024886, 2006 WL 951315, at *2 (Del. Com. Pl. April 6, 2006) (supervising officer did not testify but lieutenant that coordinated the location and operation of the sobriety did testify about selection of sobriety checkpoint location, compiling of statistics and other facts surrounding set up and operation of sobriety checkpoint); *State v. McDermott*, Cr. Action No. S98-07-0875, 1999 WL 1847364, at *2 (Del. Com. Pl. April 30, 1999) (supervising officer that approved the location and operation of the sobriety checkpoint testified about selection of sobriety checkpoint location, compiling of statistics and other facts surrounding set up and operation of sobriety checkpoint).