

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA**  
**CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. CR-869-2012
	:	
LOUIS A. NAWROCKI,	:	
	:	
Defendant	:	

Gary Dobias, Esquire	Counsel for Plaintiff
District Attorney	
Robert A. Saurman, Esquire	Counsel for Defendant

**MEMORANDUM OPINION**

Matika, J. - June 24, 2013

Defendant, Louis A. Nawrocki, has been charged with two counts of driving under the influence.<sup>1</sup> His arrest occurred as the result of having been stopped at a sobriety checkpoint on July 8, 2012, near the intersection of Pohopoco Drive and Green Street in Franklin Township, Carbon County. Defendant has filed a Motion to Suppress and a Petition for Habeas Corpus which in essence are claims grounded in the failure of the Commonwealth to comply with all requirements necessary to withstand a constitutional challenge to the checkpoint. For the reasons stated in this opinion, this Court **DENIES** Defendant's motion to suppress and petition for habeas corpus.

---

<sup>1</sup> 75 Pa.C.S.A. § 3802(a)(1) and 75 Pa.C.S.A. § 3802(b), respectively.

## **FACTUAL AND PROCEDURAL BACKGROUND**

On July 8, 2012, Defendant, Louis A. Nawrocki (hereinafter "Nawrocki") was arrested and charged with two counts of driving under the influence of alcohol. This arrest occurred on Pohopoco Drive in Franklin Township, Carbon County, Pennsylvania at a sobriety checkpoint at approximately 5:30 P.M.

Defendant was driving his vehicle westbound when he encountered the sobriety checkpoint. Due to his observations of the Defendant, Officer Audie Mertz of the Mahoning Township Police Department and coordinator of the checkpoint, asked the Defendant to perform a number of field sobriety tests. Based upon the Officer's observations, experience, and opinion, the Defendant failed the various field sobriety tests. The Defendant was then placed into the custody of Trooper Shawn Noonan of the Pennsylvania State Police for further processing, more specifically the drawing of blood for purposes of determining Defendant's blood alcohol content. The results of this testing was a blood alcohol content of .105.

Thereafter, the Defendant, through Counsel, Robert A. Saurman, Esquire filed an omnibus pretrial motion that included a motion to suppress and petition for habeas corpus challenging the constitutionality of the checkpoint.

The Court held a hearing on March 15, 2013, whereat only

Officer Audie Mertz testified. Officer Mertz testified that he was the coordinator of this checkpoint and the one responsible for the selection of this location, as well as the date and time the checkpoint was to be conducted. The Officer stated that the selection of this location was made based upon a number of things: volume of traffic, number of DUI's on that stretch of road, and prior checkpoints in 2009, 2010, and 2011 in the same vicinity. Additionally, Officer Mertz indicated that he chose this date because it was the end of the Fourth of July holiday weekend when, among other reasons, campers at the adjoining Beltzville Lake would be participating in various holiday celebrations and in doing so may be imbibing alcohol and then exiting the area. The Officer also reviewed data from prior years' checkpoints around the Fourth of July in relation to the number of DUI's.

Further, Officer Mertz testified regarding other enforcement data including the fact that the road enjoyed a significant "straight away" as well as ample adjacent space for safe field sobriety testing of suspected DUI drivers.

Additionally, the Officer asserted that prior notice was given to numerous news media outlets of the checkpoint including the location and date range of when the checkpoint may take place.

Officer Mertz further explained, through a map of the area, regarding the signage that was required and the police's eventual placement of the checkpoint signs to ensure conformity with regulations and protocol. Moreover, he also stated that a briefing was held with all of the officers (including officers from seven police departments, the Pennsylvania Fish Commission, and Beltzville Park Rangers) involved in the various aspects of the checkpoint. At the briefing, everyone was provided with a copy of the standard operating procedure for this checkpoint as well as each officer's assignment and explanation of their respective roles.

Lastly, Officer Mertz testified that each car would be stopped; however, in his opinion and his alone, should traffic backup in excess of six hundred (600) feet, he would then give the direction to systematically allow twenty (20) vehicles to travel through the checkpoint without being stopped.

After the hearing, the Court granted both the Commonwealth and Defense Counsel additional time to file briefs in support of their respective positions. This matter is now ripe for disposition by the Court.

#### **DISCUSSION**

The paramount cases in Pennsylvania dealing with the constitutionality of sobriety checkpoints are *Commonwealth v.*

*Tarbert*, 535 A.2d 1035 (Pa. 1987) and *Commonwealth v. Blouse*, 611 A.2d 1177 (Pa. 1992). Both cases concluded that systematic, non-discriminatory, non-arbitrary roadblocks are constitutional provided that they are conducted in accordance with certain guidelines suggested in *Tarbert*. Thus, to be constitutionally valid, a roadblock must be substantially compliant with these guidelines as well as conducted in accordance with 75 Pa.C.S.A. § 6308(b).<sup>2</sup> In order for this Court to determine the constitutionality of the stop of Nawrocki, the Court must examine the criteria set forth in *Tarbert*.<sup>3</sup>

1. The vehicle stop must be momentary and not involve a search of the vehicle<sup>4</sup>

Officer Mertz testified that each vehicle, except where backups occurred, including that driven by the Defendant, was momentarily stopped while an officer asked a few questions of

---

<sup>2</sup> 75 Pa.C.S.A. § 6308(b) provides:

Authority of police officer.—Whenever a police officer is engaged in a systematic program of checking vehicles or drivers or has reasonable suspicion that a violations of this title is occurring or has occurred, he may stop a vehicle, upon request or signal, for the purpose of checking the vehicle's registration, proof of financial responsibility, vehicle identification number or engine number or the driver's license, or to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of this title.

<sup>3</sup> While *Tarbert* and *Blouse* suggest five (5) criteria, Defendant in his brief challenges only one: the selection of the time and place for the checkpoint. The Court will, however, review each criteria, reserving this "challenged" criteria discussion for last.

<sup>4</sup> See, *Talbert*, 535 A.2d at 1043; *Blouse*, 611 A.2d at 1180.

the driver. Further, if any signs of intoxication or alcohol consumption were detected, the driver was directed to pull his or her vehicle into a designated area where further investigation into potential DUI was conducted. This is what occurred with the Defendant after an officer detected an odor of alcohol emanating from the passenger compartment of the vehicle. The initial stop and questions that followed of the Defendant were brief. While the field sobriety tests detained the Defendant longer, such tests occurred only after the officer detected an odor of alcohol, thus establishing probable cause to detain the Defendant for a longer period of time. The Court finds that the Commonwealth complied with this particular criterion.

2. The existence of the checkpoint must be provided to avoid the element of surprise<sup>5</sup>

Officer Mertz testified that a press release was sent out in advance of the checkpoint to various news media providing a date range for the checkpoint and its location. Additionally, a press conference was held at the boat launch of Beltzville State Park. The press conference was covered by local television station TV13.

Officer Mertz also asserted that on the date in question,

---

<sup>5</sup> See, *Talbert*, 535 A.2d at 1043; *Blouse*, 611 A.2d at 1180.

signage of the checkpoint was setup in both directions on Pohopoco Drive to alert approaching motorists of the sobriety checkpoint. A map of the area of the checkpoint was also introduced showing the location of the signage, the distances of the signs from the actual checkpoint, and other traffic control devices to alert motorists of the checkpoint. All of the notice requirements regarding the checkpoints satisfy this prong of the *Talbert* criteria.

3. Prior administrative approval of the conducting of the checkpoint along with its date, time, and location must be decided in advance<sup>6</sup>

Officer Mertz indicated that he is the Traffic Safety Coordinator for Mahoning Township. Inherent in this position is the authority to decide the "when, where, and how" checkpoints are conducted. The placement of this authority in one person is done to avoid, or remove, questions related to uncertainties as to how to conduct these checkpoints, where to conduct them, and when to schedule them.

4. Prefix objective standards should be in place before the checkpoint begins so as to take unfettered discretion from the officers involved<sup>7</sup>

As proclaimed by Officer Mertz, a "standard operating procedure" is prepared in advance for each officer involved with

---

<sup>6</sup> See, *Talbert*, 535 A.2d at 1043; *Blouse*, 611 A.2d at 1180.

<sup>7</sup> See, *Talbert*, 535 A.2d at 1043; *Blouse*, 611 A.2d at 1180.

the sobriety checkpoint, which included the instructions for each officer to review in order to implement the procedures in advance of and throughout the conducting of the checkpoint. The preparation of carrying out such checkpoints includes a "briefing" with all individuals involved with the checkpoint to ensure everyone knows and understands the procedures and their implementation. This includes the "administrative decision" to deviate from the normal focus of the checkpoint, stopping every car, where circumstances warranted such. In other words, as Officer Mertz testified, if a line of cars at the checkpoint exceeded six hundred (600) feet, he and he alone, would make the decision to "open up" the checkpoint and allow twenty (20) vehicles to pass through without them being stopped so as to relieve congestion.

5. The time, date and location of the checkpoint must be based on local experience and likely travelled by intoxicated drivers.<sup>8</sup>

The testimony presented by Officer Mertz suggested that in anticipation of setting up a sobriety checkpoint, he studies statistical data for the area where a checkpoint may be conducted. In this case, Officer Mertz touched on a number of factors or variables he took into consideration when determining to locate the checkpoint on Pohopoco Drive near Beltzville State

---

<sup>8</sup> See, *Talbert*, 535 A.2d at 1043; *Blouse*, 611 A.2d at 1180.



Park on July 8, 2012, during the hours of 4:00 P.M. until 8:00 P.M. Such factors included the following:

- 1) The existence of a straightaway on Pohopoco Drive approaching the checkpoint;
- 2) the amount of traffic on that road;
- 3) the number of DUI arrests in the past;
- 4) the fact that checkpoints were conducted at this location in 2009, 2010, and 2011;
- 5) the data obtained from prior checkpoints in recent years at this location which resulted in DUI arrests; and
- 6) the fact that July 8, 2012, was the end of the Fourth of July weekend when many people would be exiting the park area after camping there and possibly after imbibing alcohol during holiday parties.

All of these variables were factored into Officer Mertz's decision to set up the checkpoint at this location on the date and time encompassing the Defendant's stop and eventual arrest.

The Court first points out that the case law does not require Officer Mertz to produce the statistics used by him to justify his selection of the checkpoint location. *Commonwealth*

*v. Ziegelmeier*, 685 A.2d 559, 563 (Pa. Super. Ct. 1996); *Commonwealth v. Rastogi*, 816 A.2d 1191, 1194 (Pa. Super. Ct. 2003). It is sufficient that this data was considered in the decision to conduct the checkpoint at a given location.

Additionally, Officer Mertz stated that not only did statistical data play a role in this decision, but so did the fact that the location was adjacent to Beltzville State Park where historically people camp and party over holiday weekends including this, the Fourth of July weekend.<sup>9</sup>

In *Commonwealth v. Pacek*, 691 A.2d 466 (Pa. Super. Ct. 1997) the Court found that the Commonwealth satisfied this one criteria where the evidence showed that the choice of location, date, and time involved a "holiday weekend" and was based on the number of DUI arrests in proximity to the checkpoint for several previous years and therefore was likely to be travelled by intoxicated drivers. *Id.* at 470.

Based on the testimony presented at the hearing by Officer Mertz, the Court finds that the sobriety checkpoint conducted on Pohopoco Drive, in Franklin Township, Carbon County, Pennsylvania during the hours of 4:00 P.M. and 8:00 P.M. on July 8, 2012 which lead to the detention and eventual arrest of Defendant, Louis A. Nawrocki, substantially complied with the

---

<sup>9</sup> July 8, 2012, the date for this checkpoint was the Sunday of this holiday weekend.

criteria set forth in *Talbert* and *Blouse* and was therefore constitutionally permissible.

#### **CONCLUSION**

Based on the foregoing, the Court enters the following order:

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. CR-869-2012
	:	
LOUIS A. NAWROCKI,	:	
	:	
Defendant	:	

Gary F. Dobias, Esquire	Counsel for Commonwealth
District Attorney	
Robert A. Saurman, Esquire	Counsel for Defendant

ORDER OF COURT

AND NOW, this            day of June, 2013, upon consideration of the Omnibus Pretrial Motion of Defendant, Louis A. Nawrocki, in the nature of both a motion to suppress and petition for habeus corpus, and after a hearing and submission of supporting legal memorandums by both parties, it is hereby **ORDERED and DECREED** that said Motion and Petition are **DENIED and DISMISSED**.<sup>10</sup>

BY THE COURT:

---

Joseph J. Matika, J.

---

<sup>10</sup> At the hearing, Defense Counsel agreed that the only issue being raised as to habeus corpus relief was the constitutionality of the checkpoint and not any insufficiency claims as to any other Commonwealth evidence.

