

## "Delaware Superior Court Invalidates DUI/Drunk Driving Arrest Resulting From a Checkpoint"

**CASE:** Delaware v Terry (Case No. 1209012999; Decided July 18, 2013)

### **FACTS:**

The defendant Terry was arrested on August 17, 2012 during a stop at a sobriety checkpoint ("the Checkpoint"). Terry was ultimately charged with DUI (driving under the influence/drunken driving). On May 6, 2013 Terry's attorney filed a motion to suppress challenging the legality of the checkpoint and his client's subsequent arrest for DUI.

### **PROCEDURAL HISTORY:**

As noted above, on May 6, 2013, Terry's attorney filed a motion to suppress with the Court. In his motion, Terry challenged the validity of the checkpoint and his subsequent arrest, contending that the state failed to demonstrate that the checkpoint was properly established and operated as required under Delaware sobriety checkpoint procedural guidelines. The state responded to the motion on June 5, 2013. An evidentiary hearing on the motion was held on June 7, 2013.

At the hearing, the state called one witness - Corporal Anthony Prey of the University of Delaware Police Department. Corporal Prey was the officer who stopped and arrested the defendant in the case at bar. In addition to Corporal Prey, the state introduced a self-authenticating declaration (under the Delaware Rules of Evidence) of Ms. Lisa Shaw. Terry's attorney objected to the admissibility of the Shaw declaration on a number of grounds. The declaration was related to traffic statistics supplied and as relating to the checkpoint at issue in this case.

Further testimony from Corporal Prey at the motion hearing established that he was among "20 or so" officers manning the checkpoint. Prey was not the officer charged with supervising the establishment or operation of the checkpoint; and he had nothing to do with determining the location of the checkpoint.

Corporal Prey went on to testify that he worked at the checkpoint while in full uniform and that all vehicles who approached the checkpoint were stopped. Prey further stated to the Court that each officer would introduce themselves and make observations as to the driver concerning any odor of alcohol, appearance, eyes and speech pattern. If any factors were present indicating impairment, the driver would be instructed to turn into an adjoining parking lot for further testing.

As to Mr. Terry, Corporal Prey testified that he almost drove through the checkpoint and passed Corporal Prey. After stopping Terry he immediately detected an odor of alcohol and instructed him into the adjoining parking lot for further field sobriety testing in connection with a potential driving under the influence-drunken driving arrest.

### **ISSUE:**

Can the state of Delaware demonstrate that Terry's "seizure" was reasonable under the 4<sup>th</sup> Amendment of the United States Constitution and the Delaware Constitution? Additionally, can the state prove that the checkpoint was created and operated pursuant to the Delaware state police policy guidelines for the creation and operation of sobriety checkpoints?

### **HOLDING:**

No. The defendant's motion for suppression is hereby granted as the state did not carry its burden as to the constitutionality of the checkpoint.

Stopping a vehicle at a checkpoint constitutes a seizure under both the United States and Delaware Constitutions. Whether a seizure is reasonable depends upon a balance between the public interest and the individual's right to personal security free from arbitrary interference with their liberty by law enforcement officers. In determining the reasonableness of a DUI/drunk driving sobriety checkpoint, the United States Supreme Court has articulated a balancing test to apply in these type cases. Delaware courts have consistently approved the legality and use of sobriety checkpoints. Such sobriety checkpoints are "reasonable" when the procedures are in existence to ensure that cars passing through the checkpoints are stopped in a safe manner and that sufficient safeguards are in place limiting the discretion of law enforcement officers.

DUI/drunk driving sobriety checkpoints in Delaware must be created and operated under Delaware state police department policy guidelines. 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 to monitor the checkpoint and keep appropriate records and results from the checkpoint. Critically, to meet the requirements of reasonableness the state must demonstrate careful compliance with the Delaware state police department policy guidelines for DUI/drunk driving sobriety checkpoints.