

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

DISTRICT COURT DEPARTMENT  
CONCORD DIVISION  
DOCKET NUMBER

_____	)
COMMONWEALTH	)
	)
v.	)
	)
JOHN DOE	)
_____	)

DEFENDANT’S MOTION TO SUPPRESS HIS STOP, SEIZURE, STATEMENTS,  
AND BREATHALYZER READING

Now Comes the defendant and respectfully moves this Honorable Court to suppress his stop and seizure by State Police troopers and Concord police officers on May 21, 2016. In support thereof, the defendant asserts the State Police roadblock guidelines afforded the preliminary investigating officer unfettered discretion to decide whether to immediately question the motorists about their alcohol consumption. Such discretion is unconstitutional in the context of OUI roadblock stops and the guidelines in this case are therefore unconstitutional on their face. Accordingly, this Court must suppress the defendant’s stop, seizure, statements, and Breathalyzer reading as fruits of the poisonous tree. The government’s conduct violated the Fourth and Fourteenth Amendments to the United States Constitution and Articles XII and XIV of the Massachusetts Declaration of Rights.

I. BACKGROUND

According to a police report written by Concord Police Officer Kallie Koppenal, the Concord Police Department and the Massachusetts State Police conducted a sobriety checkpoint on May 21, 2016, on Route 2 in Concord. At approximately 12:44 a.m., a

state trooper stopped the defendant as he drove toward the roadblock. The trooper interacted with the defendant in what was identified as the “prescreening area.” According to the report, “[i]n his contact with the operator, [the trooper’s] observations were that the operator had glassy eyes, the odor of an alcoholic beverage emanating from his person, and **admission to have consumed alcohol**. There was also an open container located behind the driver’s seat.” (Emphasis added.) The trooper ordered the defendant to drive into the “screening area” where other officers administered a series of field sobriety tests and concluded the defendant was under the influence of alcohol. The defendant was placed under arrest and transported to the Concord Police Department, where he blew a .09 on the Breathalyzer.

## II. ARGUMENT

In Commonwealth v. McGeoghegan, 389 Mass. 137, 143 (1983), the Supreme Judicial Court suggested a sobriety roadblock might pass constitutional muster if: motor vehicles were stopped in a non-arbitrary manner; safety was assured; motorists’ inconvenience was minimized, and the roadblock was conducted pursuant to a plan devised by law enforcement supervisory personnel. Two years later, in Commonwealth v. Trumble, 396 Mass. 81 (1985), the Court approved of a roadblock conducted by the State Police in compliance with written guidelines drafted by the leader of the State Police Research and Development Department. Among other requirements, the guidelines mandated that troopers stop every car approaching the roadblock and engage every driver in a brief conversation while providing a brochure on drunk driving laws. Id. at 85. Drivers who appeared to have been drinking were instructed to park in a detention area and perform field sobriety tests. Id. The troopers were ordered by the

commanding officer that, “there should be no deviation from the procedures set forth in the guidelines.” Id. at 90. The guidelines provided specific instructions to the troopers regarding how and when they were permitted to ask motorists about their alcohol consumption.

- A. A very brief and courteous statement should be made by officers manning the checkpoints: Example – “Good evening, this is a routine sobriety checkpoint. Sorry for the inconvenience, good night.”
- B. Only upon observing an articulable sign of possible intoxication will further inquiry be warranted. In other words, the officer should develop at least an indication that the driver has been consuming alcohol before asking for a driver’s license or engaging in conversation regarding the consumption of alcohol.

Id. at 93.

In Commonwealth v. Murphy, 454 Mass. 318 (2009), the Supreme Judicial Court considered the constitutionality of a new set of guidelines the State Police had drafted to administer sobriety roadblocks. The defendant in Murphy filed a motion to suppress evidence resulting from his seizure at the roadblock and argued, in part, that the State Police general order governing the rules of the roadblock (TRF-15) lacked sufficient guidance as to what the screening officer could or could not say to the driver during the initial interaction. While acknowledging that TRF-15 was silent as to the questions the screening officer was permitted to ask a driver, the Court pointed out there was an operations plan that supplemented TRF-15 and that addressed the deficiency with the following instructions:

Upon stopping a motor vehicle, the officer shall make a brief and courteous statement to the operator of the motor vehicle, such as “Good Evening, this is a State Police Sobriety Checkpoint, we are checking all operators for sobriety.” If the officer observes any articulable sign of possible intoxication, impairment or contraband, then further inquiry should be made at the area designated on the diagram [the secondary screening area].

Id. at 328. The Court said, “[u]nder these written instructions, the initial screening officer is permitted simply to give the suggested greeting and is not allowed to make any inquiry regarding drinking...” Id. Instead, any questions about alcohol consumption were to be conducted at the secondary screening area, and a driver was directed to the secondary screening area only if the initial screening officer made observations to suggest the defendant had been drinking. Thus, under TRF-15 and the supplemental operations plan in Murphy, officers assigned to the initial screening area were prohibited from asking defendants if they had consumed alcohol. Because the guidelines eliminated officer discretion with respect to asking questions about drivers’ alcohol consumption in the initial screening area, they were deemed constitutional by the Supreme Judicial Court.

In the present case, the conduct of the police officers was governed by the Department of State Police General Order (TRF-15) and a Division Commander’s Order (15-DFS-044). TRF-15 instructed screening officers to be courteous and polite when speaking to the drivers, and to keep their initial conversations brief so as to minimize the inconvenience to the motorists. TRF-15 suggested an appropriate greeting would be, “Good evening, this is a State Police Sobriety Checkpoint. Sorry for the inconvenience, thank you.” Just as with the TRF-15 in Murphy, the TRF-15 in this case did not establish a rule restricting the types of questions the screening officers were permitted to ask the drivers. However, whereas the constitutionality of the guidelines in Murphy was saved by the supplemental operations plan (by specifying exactly when the officers could ask about alcohol consumption), the division commander’s order in the present case is completely silent as to the types of questions the officers could ask drivers at the initial screening area (and, more importantly, what types of questions were prohibited). As a

result of this lack of guidance, officers were responsible for deciding on their own whether to ask drivers at the preliminary screening area if they had been drinking. In ruling that police officers may not use their discretion to decide which cars to target during a roadblock, the Murphy Court said, “[b]ecause sobriety checkpoints, by their very nature, initially stop drivers without any individualized suspicion, giving police officers such discretion poses too high a risk that the discretion will be ‘standardless and unconstrained.’” Id. at 323, quoting Delaware v. Prouse, 440 U.S. 648, 661 (1979).

Similarly, allowing an officer the discretion to decide when to ask a motorist questions about his alcohol consumption is unconstitutional in the context of a sobriety checkpoint.

“Adherence to a neutrally devised, preplanned blueprint in order to eliminate arbitrariness and discretion has been [the Supreme Judicial Court’s] principal prerequisite for abandoning the requirement of individualized suspicion in roadblock stops.”... Indeed, the court has insisted on strict adherence to the provisions of the predetermined plan “in order that the possibility of arbitrariness and discretion of the officers in the field be eliminated.”

Commonwealth v. Aivano, 81 Mass. App. Ct. 247, 249 (2012), quoting Commonwealth v. Anderson, 406 Mass. 343, 349-350 (1989). See, also, Commonwealth v. Gray, 466 Mass. 1012 (2013) (officers at a checkpoint cannot initially ask drivers about their alcohol consumption absent specific authority granted by either a general order or supporting operations plan).

### III. CONCLUSION

The written guidelines related to the execution of the sobriety checkpoint in this case allowed a constitutionally impermissible amount of discretion to the screening officer related to the questions he was permitted to ask motorists. Accordingly, this Court must suppress the defendant’s stop, seizure, statements, and Breathalyzer reading.

Respectfully Submitted,

JOHN DOE,

By his Attorney,

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