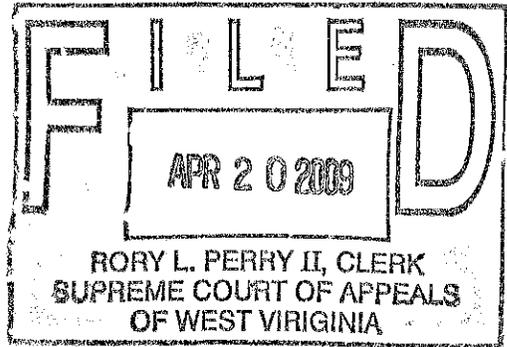


**IN THE  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA  
CHARLESTON**



**LINDA S. SIGLER,  
aka LINDA S. MULLINS**  
Defendant below, Appellant

Appeal No. 34741

**STATE OF WEST VIRGINIA**  
Plaintiff below, Appellee

**APPELLANT BRIEF  
ON BEHALF OF LINDA S. SIGLER AKA LINDA S. MULLINS  
APPELLANT**

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TABLE OF CONTENTS

INTRODUCTION ..... 1

TABLE OF AUTHORITIES ..... 4

I. KIND OF PROCEEDING AND NATURE OF RULING BELOW ... 5

II. STATEMENT OF FACTS ..... 7

III. ASSIGNMENTS OF ERROR AND THE MANNER IN WHICH THEY WERE DECIDED ..... 8

IV. POINTS AND AUTHORITIES ..... 8

V. ARGUMENT ..... 11

A. The Court erred in upholding the constitutionality of an indiscriminate “administrative” or “safely” checkpoint point roadblock in finding that there was probable cause for Petitioner’s stop

CONCLUSION ..... 21

EXHIBITS ..... 23

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**CHARLESTON**

**LINDA S. SIGLER,**  
**aka LINDA S. MULLINS**  
Defendant below  
Appellant

Appeal No. 34741  
Underlying Proceeding  
Indictment No. 08-F-138  
Fayette County Circuit Court

**STATE OF WEST VIRGINIA**  
Plaintiff below  
Appellee

**APPELLANT BRIEF ON BEHALF OF LINDA S. SIGLER AKA LINDA S.  
MULLINS, APPELLANT**

**INTRODUCTION**

This case challenges the Fayette County Circuit Court's ruling denying Petitioner's Motion to Suppress Evidence relating to an uncertified municipal police officer's "administrative check" or "safety check" roadblock when said roadblock was done without a preconceived plan and done to evade supervisory approval, public notification and prosecutorial authorization.

Petitioner entered a conditional plea of "guilty" to "Third Offense Driving Under the Influence of Alcohol" before the Fayette County Circuit Court on August 5, 2008.

Said Plea was conditioned on her appealing to the West Virginia Supreme Court of Appeals the Trial Court's adverse ruling as to her Motion to Suppress Evidence Obtained Pursuant to an Illegal Road Block, heard by the trial court on July 10, 2008.

Petitioner alleged during the above suppression hearing that the uncertified municipal police officer who arrested the Petitioner had no specific supervisory authority; no preconceived plan; and had not proceeded with public notification and did not have the permission of the Office of the Fayette County Prosecuting Attorney to establish a 3:22 A. M. "administrative" or "safety" roadblock.

Petitioner alleges that such a check point is illegal and unconstitutional and therefore, the arresting officer had no probable cause to arrest the Petitioner.

In addition, the arresting municipal officer testified that the Town of Gauley Bridge had no written policy on either safety checkpoints or sobriety checkpoints.

The officer further testified that he conducted such roadblocks when he had nothing else to do and testified that he had never conducted one at 3:00 o'clock a.m.

Petitioner contends that such an "administrative" or "safety" roadblock is done to circumvent the sobriety roadblocks which have more stringent requirements.

The officer, after stopping the Petitioner's vehicle, smelled alcohol on her breath and then made his arrest.

The Petitioner appeals the ruling of the Circuit Court of Fayette County in denying that the evidence obtained by the roadblock was illegal and unconstitutional.

Petitioner further appeals the final Conviction Order of the Court. Said Order

being based on a conditional guilty plea, after the Trial Court ruled to admit the evidence obtained from the “safety check” roadblock.

## TABLE OF AUTHORITIES

### Constitutional Provisions

Fourth Amendment, Constitution of the United States .....	11, 13
West Virginia Constitution, Article III, Section 6 .....	11

### Cases

<i>Delaware v. Prouse</i> , 440 U. S. 648 (1978) .....	12
<i>Brown v. Texas</i> , 443 U.S. 47 (1979) .....	12
<i>Illinois v. Lidster</i> , 540 U.S. 419 (2004) .....	12, 20
<i>City of Indianapolis v. Edmond</i> , 531 U.S. 32 (2000) .....	12, 20
<i>Carte v. Cline</i> , 194 W. Va. 233; 460 S.E.2d 48 (1995) .....	13, 17
<i>State v. Frisby</i> , 161 W. Va. 734, 245 S.E. 2d 622 (1978) .....	15
<i>State v. Davis</i> , 195 W.Va. 79; 464 S.E. 2d 598 (1995) .....	15, 16
<i>State v. Legg</i> , 207 W. Va. 686; 536 S.E. 2d 110 (2000) .....	16, 17
<i>Hall v. Commonwealth</i> 12 Va. App. 972 (Va. App.1991); 406 S.E.2d 674 (1991) .....	17
<i>State of Tennessee v. Hicks</i> , 55 S.W 3d 515 (2001) .....	17, 18, 19
<i>Monin v. Commonwealth of Kentucky</i> , 209 S.W.3d 515 (2001) .....	17, 20
<i>State of Tennessee v. Downey</i> , 945 S.W.2d 102 (1997) .....	17, 18
<i>Simmons v. Commonwealth</i> , 238 Va. 200; 380 S.E.2d 656; (1989) .....	19
<i>State of North Carolina v. Rose</i> , 170 N.C. App. 284; 612 S.E. 2d 336 (2005) .....	19, 20
<i>Ohio v. Orr</i> , 91 Ohio St. 3d 389 (2001) .....	21

### Statutes

<i>West Virginia Code</i> , 20-4-7(5) .....	17
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**A direct appeal from the Circuit Court of Fayette County**

**STATE OF WEST VIRGINIA,**

**v.**

**LINDA S. SIGLER,  
aka LINDA S. MULLINS**

**Appeal No. 34741  
Indictment No. 08-F-138  
Fayette County Circuit Court**

**I. KIND OF PROCEEDING AND NATURE OF RULINGS BELOW**

Petitioner was arrested on January 27, 2008 in the Town of Gauley Bridge, Fayette County, for the felony offense of “Third Offense Driving Under the Influence of Alcohol.” In the early morning hours of that date, Petitioner was stopped at a road block described by the arresting officer as a “safety checkpoint.” The arresting officer, C. L. Burkhamer, was an uncertified city police officer.

A preliminary hearing upon the felony warrant was held March 12, 2008 where, without benefit of Counsel, the Petitioner waived her case to the May, 2008 session of the Fayette County Grand Jury.

On May 14, 2008 the Grand Jury returned an Indictment, 08-F-138, charging the Petitioner with “Third Offense Driving Under the Influence of Alcohol.”

Petitioner was arraigned on May 23, 2008 and trial was set for July 28, 2008.

On July 10, 2008 Petitioner and Counsel appeared before the Honorable John W. Hatcher, Jr., Judge of the Circuit Court of Fayette County, upon her Motion to Suppress Evidence Obtained Pursuant to an Illegal Roadblock.

The arresting officer, C. L. Burkhamer, testified as to the roadblock.

Petitioner's Counsel argued at the hearing that the arresting officer in performing the "safety" checkpoint was in violation of the United States Constitution and the Constitution of the State of West Virginia. It was further argued that the safety roadblock was really a subterfuge and was in reality a sobriety checkpoint and that the arresting officer failed to follow the law for such sobriety check points.

Petitioner's Counsel argued that the officer did not have specific supervisory permission to conduct a safety roadblock and there was no preconceived plan for the stop. In addition, the officer did not have prosecutorial permission nor was there any public notification. In fact, the officer was conducting a sobriety checkpoint.

At the conclusion of the hearing, the trial court ruled that the arresting officer's stop was legal and further ruled that there was probable cause for the stop and that the evidence obtained could be used for trial purposes.

The Order reflecting that decision was entered August 6, 2007.

A conditional plea of "guilty" was entered into by the Petitioner on August 5, 2008 said plea being conditioned on her appealing the Court's adverse ruling denying her Motion to Suppress Evidence Obtained Pursuant to an Illegal Roadblock.

The final Order of conviction based upon Petitioner's conditional guilty plea was entered on August 15, 2008, reserving in Paragraph 13 of that Order her right to Appeal the aforesaid adverse ruling on her Motion to Suppress.

The Notice of Intent to Appeal was duly filed September 4, 2008.

## **II. STATEMENT OF FACTS**

On January 27, 2008 at approximately 3:22 A.M. the arresting officer, C. L. Burkhamer, of the Gauley Bridge Police Department was conducting a "safety" check point at the intersection of State Route 39 and U. S. Route 60 when he stopped a Chevrolet pickup truck being driven by the Petitioner.

He requested her driver's license, vehicle registration and proof of insurance. He detected the smell of alcohol and observed two cans of beer sitting in the console of the pickup truck. She admitted to consuming five to six beers earlier. Petitioner then complied with the officer's request to pull to the side of a parking lot.

After unsatisfactorily performing field sobriety tests, and determining that she had been convicted, under the name, Linda S. Mullins, for driving under the influence of alcohol on two prior occasions, she was subsequently arrested for Third Offense Driving Under the Influence of Alcohol.

Because of the late hour, no Magistrates were on duty and the Petitioner was taken to the Southern Regional Jail until she could be arraigned. Later in the day on January 27, 2008, she posted a Five Thousand Dollar Surety Bond.

She was indicted by the May, 2008 session of the Fayette County Grand Jury and a trial date was set for July 28, 2008.

On July 10, 2008 the Fayette County Circuit Court denied her Motion to Suppress Evidence Obtained Pursuant to an Illegal Road Block. The Order reflecting that decision was entered on August 6, 2007.

A conditional plea of guilty was entered into by the Petitioner on August 5, 2008

said plea being conditioned on her appealing the adverse ruling on her Motion to Suppress.

The Final Order of conviction, based upon Petitioner's conditional guilty plea, was entered on August 15, 2008 reserving in Paragraph 13, her right to appeal the aforesaid adverse ruling.

### **III. ASSIGNMENT OF ERROR AND THE MANNER IN WHICH THEY WERE DECIDED**

A. The trial court erred in failing to grant Petitioner's Motion to Suppress Evidence Obtained Pursuant to an Illegal Road Block which Motion challenged the legality and constitutionality of an alleged "safety" check-point roadblock in that the Circuit Court found that there was probable cause for stopping the vehicle.

### **IV. POINTS AND AUTHORITIES**

1. "This holding does not preclude the State of Delaware or other States from developing methods for spot checks that involve less intrusion that do not involve the unconstrained exercise of discretion. Questioning of all oncoming traffic at roadblock type stops is one possible alternative." *Delaware v. Prouse*, 440 U.S. 648 at 661

2. "[I]n judging the reasonableness, we look to [1] the gravity of the public concerns served by the seizure, [2] the degree to which the seizure advances the public interest, and [3] the severity of the interference with individual which the seizure advances the public interest." *Illinois v. Lidster*, 540 U.S. 419 at 420

3. "[B]ecause the checkpoint program's primary purpose is indistinguishable

from the general interest in crime control the checkpoints violate the Fourth Amendment.” *City of Indianapolis v. Edmond*, 531 U.S. 32 at 48

4. “[M]otorists may be stopped for no other reason than examination of licenses and registrations when such examinations are done on a random basis pursuant to a preconceived plan, such as stopping of every car at a checkpoint, the examination of every car on a given day with a particular letter or number in the license, or any other nondiscriminatory procedure.” *State v. Frisby*, 161 W.Va. 734 at 738

5. “[T]he flashing blue lights of the police vehicles and the directing of traffic by officers alerted approaching drivers of the existence and location of the roadblock. In fact, the roadblock was placed within the Town of Marlinton, rather than upon a remote highway and, was, thus, less intimidating to drivers. There is no evidence that the roadblock was conducted in an unsafe manner.” *State v. Davis*, 195 W.Va. 79 at 84

6. “[The Court was] not called upon to directly explore the constitutional implications of the possible use of game-kill checkpoints or roadblocks. However, we note that in the analogous context of so-called ‘sobriety checkpoints,’ we have held that such ‘roadblocks are constitutional when conducted within predetermined operational guidelines which minimize the intrusion on the individual and mitigate the discretion vested in police officers at the scene.’ *Carte v. Cline*, 194 W. Va. at 238, 460 S.E.2d at

53. The defendant sought through the Freedom of Information Act any operational guidelines used by the Department of Natural Resources in conducting game-kill surveys. Unfortunately, the Department indicated that none exist. In this regard,

operationalization of *W. Va. Code*, 20-4-7(5) [1994] would suggest that the Department of Natural Resources promulgate policies and procedures that satisfy constitutional protections against unreasonable searches and seizures.” *State v. Legg*, 207 W. Va. 686 at footnote 11 following page 695

7. “[C]ontrary to our decision in *Downey*, the roadblock was operated with little regard to the safety of approaching motorists...Further contrary to *Downey*, the officers placed no advanced warning signs giving approaching motorists notice of the upcoming roadblock. Not only is this requirement especially important to ensure the safety of motorists, but the presence of advanced warning signs also ‘reassure[s] motorists that the stop is duly authorized,’ thereby diminishing the possibility of surprise, concern, or fright.” *State of Tennessee v. Hicks*, 55 S.W. 3d 515 at 533 and 534

8. “Without evidence that [police] were using an objective, nondiscretionary procedure...the initial stop of [Appellant’s] automobile violated the Fourth Amendment.” *Simmons v. Commonwealth*, 238 Va. 200; 380 S.E.2d 656 at 659

9. [Virginia State Troopers] “set up a ‘checking’ detail or roadblock...in Dinwiddie County. The Troopers stopped all vehicles entering the checkpoint and inspected drivers’ licenses and equipment.” *Simmons v. Commonwealth*, 238 Va. 200; 380 S.E.2d 656 at 657

10. “We do not read *Prouse* to stand for the proposition that stopping all traffic at a roadblock constitutes sufficient restraint on the exercise of discretion by police officers to transform the stop into a constitutionally valid roadblock.” *Simmons v. Commonwealth*, 238 Va. 200; 380 S.E.2d 656 at 659

11. “[T]he trial court, in considering the constitutionality of the checkpoint, failed to make findings of fact regarding the ‘primary programmatic purpose’ of the checkpoint required by *City of Indianapolis v. Edmond*, 531 U.S. 32...and failed to conduct the separate analysis of the reasonableness of the checkpoint mandated by *Illinois v. Lidster*, 540 U.S. 419...*North Carolina v. Rose*, 170 N.C. App. 284 at 285

12. “[W]e conclude that this checkpoint was not properly conducted so as to limit the troopers’ discretion at the scene or to maximize public safety in any way.”...*Monin v. Commonwealth of Kentucky*, 209 S.W. 3d 471 at 474

13. “Trooper...explained that the checkpoint was immediately disbanded when Monin was arrested and had to be transported.” *Monin v. Commonwealth of Kentucky*, 209 S.W. 3d 471 at 474

14. “In determining the constitutionality of a driver’s license checkpoint, a Court must evaluate, on a case-by-case basis, the checkpoint’s intrusion on privacy, the state’s interest in maintaining the checkpoint, and the extent to which the checkpoint advances the state interest.” *Ohio v. Orr*, 91 Ohio St. 3d 389 at 390

## **V. ARGUMENT**

**The Trial Court erred in upholding the constitutionality of an indiscriminate “safety”**

**checkpoint roadblock in finding that there was probable cause for Petitioner’s stop.**

Petitioner believes that the stop of her vehicle at 3:22 a.m. on January 27, 2008 was unconstitutional and illegal in accordance with the Fourth Amendment of the Constitution of the United States and Article III, Section 6 of the West Virginia State

Constitution. The guiding light case for police agencies to stop motorists is *Delaware v. Prouse*, 440 U.S. at 648-667 (1978). In *Prouse*, the Court maintained that arbitrary, random stops for the purposes of checking driver's license and vehicle registration are in violation of the U.S. Constitution. The court further noted, "This holding does not preclude the State of Delaware or other States from **developing** [emphasis added] methods for spot checks that involve less intrusion that do not involve the unconstrained exercise of discretion. Questioning of all oncoming traffic at roadblock-type stops is one **possible** [emphasis added] alternative" at 663. As more recent rulings indicate, however, to assert that the latter solitary criterion within and of itself was intended or suggested to become the singular standard upon which all such roadblocks would be afforded constitutional protection is unsound reasoning.

In *Illinois v. Lidster*, 540 U.S.419 (2004), a case involving a checkpoint for information purposes concerning the events of a hit-and-run accident, the Court stressed and reaffirmed the three-prong analytical assessment found in *Brown v. Texas*, 443 U.S.47 (1979). "[I]n judging the reasonableness, we look to [1] the gravity of the public concerns served by the seizure, [2] the degree to which the seizure advances the public interest." *Lidster*, 540 U.S. at 420. After an analysis applying the three layer method, the Court found that the constitutionality could be upheld in the instance of *Lidster*. The Appellant *Lidster*, as he approached the checkpoint, established at the same location and same time of the accident but one week later, swerved his van, nearly hitting one of the officers, which gave additional probable cause for the DUI investigation that ensued.

In *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000), the court found that a

checkpoint designed for narcotics determent, with secondary purposes of checking for sobriety and driver's license and vehicle registration, did not meet constitutionally standards, even though the city had developed, detailed written plan for carrying out such roadblocks with a predetermined number of vehicles to be stopped. Edmond and Joell Palmer, though convicted of no crime, claimed such checkpoints violated their (and the class of all motorists') Fourth Amendment rights, and the Court upheld their position. As the Court noted, "[B]ecause the checkpoint program's primary purpose is indistinguishable from the general interest in crime control the checkpoints violate the Fourth Amendment." Id. At 48.

The West Virginia Supreme Court has acknowledged the need for rules and regulations governing sobriety checkpoints and did incorporate within its finding in *Carte v. Cline*, 194 W.Va. 233, 460 S.E.2d 48 (1995), the guidelines as adopted by the West Virginia State Police. Id. At 234, 235. Petitioner maintains that such need for written policy was never adopted by the Town of Gauley Bridge Police Department for sobriety checkpoints (See Suppression Hearing Transcript: Page 8 and Page 9). It is, however, common place practice for police agencies to avoid the stringent requirements of sobriety checkpoints by claiming that the roadblock's purposes are for license, vehicle registration, and insurance verification. Petitioner further maintains that without any direct policy the Gauley Bridge Police Department did establish a "safety" checkpoint roadblock not to apprehend safety violators but to check for other offenses, including alcohol related offenses.

The arresting Officer testified that he was not wearing a reflective vest and at any

time "there was nothing going on in town I had permission" to conduct checkpoints. (Hearing Transcript Page 7) The Officer further admitted that the Town had no written policy on safety checkpoint or sobriety checkpoints. (See Hearing Transcript Page 8)

Officer Burkhamer further testified that he had never conducted a sobriety checkpoint in Gauley Bridge and that no checkpoint had ever been conducted later than 3:00 in the morning. (See Hearing Transcript Page 8)

When asked by Counsel why he chose 3:00 in the morning to do a safety check, he replied, "Well, the Town is dead. No, I was getting no calls. Just something to do." (See Hearing Transcript Page 8)

The Officer stated that there was no preconceived plan as to what cars were to be stopped and he stopped every vehicle. The stops were not made on the basis of a number on a license plate, expiration date of the license plate, make of vehicle or the expiration date of any inspection sticker. (See Hearing Transcript Page 9)

He further denied that he had the approval of the Prosecuting Attorney's Office to conduct such a checkpoint and he denied giving any type of public notification with regard to the establishing of the checkpoint. (See Hearing Transcript Page 10)

The Officer knew the difference between a sobriety checkpoint and a safety checkpoint. (See Hearing Transcript Page 11 and 12)

The Officer testified that he was the only officer present and there were no warning sandwich board signs, no flares and no additional lighting for his safety or the safety of oncoming traffic. (See Hearing Transcript Page 5)

He further stated that there were probably only two or three vehicles that went

through the checkpoint before the Petitioner was arrested and the checkpoint stopped.

(See Hearing Transcript Page 4)

The West Virginia Supreme Court of Appeals first addressed checkpoints established for verification of drivers' license and registration in *State v. Frisby*, 161 W. Va. 734, 245 S.E. 2d 622 (1978), where the Court maintained, "[M]otorists may be stopped for no other reason than examination of licenses and registrations when such examinations are done on a random basis pursuant to a preconceived plan, such as stopping of every car at a checkpoint, the examination of every car on a given day with a particular letter or number in the license, or any other nondiscriminatory procedure" *Id.* At 625. *Frisby* involves a motorist, eventually charged with possess of marijuana with intent to deliver, whose vehicle carried an obscure and out-of-state license plate. The Court deemed that stoppage of the vehicle for investigating the vehicle's registration and the Appellant's license was reasonable.

The West Virginia Supreme Court further addressed so-termed "administrative or "safety" checkpoints in *State v. Davis*, 195 W.Va.79 (1995), and did in that case maintain checkpoints were permissible under the circumstances existing in the case, but the Court did take specific note that "the flashing blue lights of the police vehicles and the directing of traffic by officers alerted approaching drivers of the existence and location of the roadblock. In fact, the roadblock was placed within the Town of Marlinton, rather than upon a remote highway and, was, thus, less intimidating to drivers. There is no evidence that the roadblock was conducted in an unsafe manner." *Id.* At 84. As the facts of the case make known, the Appellant Davis's approach to the checkpoint

was “excessively slow” and, moreover, Davis stopped “some thirty feet away” (Id. At 81) from the designated mark, giving rise to suspicion within its own right. The Petitioner in the case now before this Court, furthermore, stopped when and where directed by the officer. *Davis*, in deeper *Lidster* analysis, spotlights the inter-agency cooperation of the Marlinton City Police, the Pocahontas County Sheriff’s Department, and the West Virginia State Police. Theirs was not a spontaneous, haphazard, spur-of-the-moment, intra-agency meeting. Perhaps more importantly, *Davis* also demonstrates a clear-cut balance of city, county, and state authority with an implicitness of checks and balances, and further illustrates that supervisory level personnel not only participated in the planning but assisted in the execution of the checkpoint.

We are advocating that this Court adopt safety checkpoint standards, or other similar guidelines, to govern “administrative” or “safety” checkpoint roadblocks. The Charleston police Department, for example, out of an abundance of precaution provides public notice of seatbelt checkpoints, and that department has adopted the guidelines for sobriety checkpoints to conduct such operations, understanding apparently that any checkpoint is likely to encounter violators of different sorts. (See Exhibit 1) The Petitioner notes that in *State v. Legg*, 207 W.Va. 536 S.E.2d 110, the West Virginia Supreme Court footnoted a similar response, “[The Court was] not called upon to directly explore the constitutional implications of the possible use of game-kill checkpoints or roadblocks. However, we note that in the analogous context of so-called ‘sobriety checkpoints,’ we have held that such ‘roadblocks are constitutional when conducted

within predetermined operational guidelines which minimize the intrusion on the individual and mitigate the discretion vested in police officers at the scene.’ *Carte v. Cline*, 194 W.Va. at 238, 460 S.E.2d at 53. The defendant sought through the Freedom of Information Act any operational guidelines used by the Department of Natural Resources in conducting game-kill surveys. Unfortunately, the Department indicated that none exist. In this regard, operationalization of *W.Va. Code*, 20-4-7(5) [1994] would suggest that the Department of Natural Resources promulgate policies and procedures that satisfy constitutional protections against unreasonable searches and seizures.” *State v. Legg*, 207 W.Va. 686; 536 S.E.2d 110, [fn.11] (2000).

States within a close geographical proximity of West Virginia, during the past two decades or so, have developed and adopted guidelines and procedures that direct police officers in conducting roadblocks specifically targeted for the verification of drivers’ license and vehicle registration. Virginia State Police Memo 1987 #3, for example, prescribes the guidelines for such state police conducted “traffic-checking” details. See *Hall v. Commonwealth*, 12 Va. App. 972 (Va. App.1991); 406 S.E.2d 674. In Kentucky, State Police General Order OM-E-4 sets forth similar guidelines for the establishment and operation of driver’s license checkpoints. See *Monin v. Commonwealth of Kentucky*, 209 S.W. 3d 471 at 473. In Tennessee, checkpoint operations are governed by characteristics prescribed by the Supreme Court of Tennessee. See *State of Tennessee v. Hicks*, 55 S.W 3d 515 at 533 and 534, and *State of Tennessee v. Downey*, 945 S.W.2d 102 (1997).

The arresting officer knew the difference between sobriety checkpoints and “safety” checkpoints. There was no evidence that setting up this checkpoint was done because of an outcry of community concerns or even to an individual complaint but rather relied on his own discretion for the determination of the site. There appears to lack gravity in the officer’s establishment of a “safety” checkpoint in the wee hours of the morning.

The Supreme Court of Tennessee, in a case involving a checkpoint for drivers’ license and vehicle registration, ruled that the two factors critical to finding if officers’ discretion was limited, thus checkpoints are afforded constitutional protection, are whether (1) the decision to set up the roadblock was made by the officers actually carrying it out and (2) whether officers on the scene could decide for themselves the procedures to be used in the operation of the checkpoint. *State of Tennessee v. Hicks*, 55 S.W. 3d 515 (2001) at 535. In *Hicks*, a motorist was stopped at a driver’s license checkpoint and marijuana was discovered in the front seat of the vehicle. Because the stop was not in alignment with guidelines set forth in *State of Tennessee v. Downey*, 945 S.W.2d 102 (1997), the court moved to suppress the evidence. *State of Tennessee v. Hicks*, 55 S.W. 3d 515 at 533 and 534.

In reaching its decision in *Hicks*, the Tennessee Court further noted, “[Contrary to our decision in *Downey*, the roadblock was operated with little regard to the safety of approaching motorists....Further contrary to *Downey*, the officers placed no advanced warning signs giving approaching motorists notice of the upcoming roadblock. Not only

is this requirement especially important to ensure the safety of motorists, but the presence of advanced warning signs also “reassure[s] motorists that the stop is duly authorized,” thereby diminishing the possibility of surprise, concern, or fright.” *State of Tennessee v. Hicks*, 55 S.W. 3d 515 at 533 and 534.

Here, then, is another prong of the *Lidster* analysis in the case presently before the West Virginia Supreme Court of Appeals. With no advanced warning, with only flashing emergency lights from the police cruiser, and with one individual (indiscernible at first) standing in the approximate middle of a secondary roadway holding a flashlight without a reflective vest, the Petitioner asks this Court to envision the surprise, concern, alarm and fright accumulated into one emotion.

In *Simmons v. Commonwealth*, 380 S.E.2d 656 (1989), the Virginia Supreme Court determined that, “Without evidence that [police] were using an objective, nondiscretionary procedure...the initial stop of [Appellant’s] automobile violated the Fourth Amendment.” *Id.* At 659. In *Simmons*, Virginia State Troopers “set up a ‘checking’ detail or roadblock...in Dinwiddie County. The Troopers stopped all vehicles entering the checkpoint and inspected driver’s licenses and equipment.” *Id.* At 657. The Court further noted, “We do not read *Prouse* to stand for the proposition that stopping all traffic at a roadblock constitutes sufficient restraint on the exercise of discretion by police officers to transform the stop into a constitutionally valid roadblock.” *Id.* at 658

The North Carolina Appellant Court more recently concurred. In *North Carolina v. Rose*, 170 N.C. App. 284 (2005), the Court noted that the stopping of “all oncoming traffic at the checkpoint...[is] a circumstance that by itself is not enough to uphold a

checkpoint” at 295. The case concerns a roadblock set up by the Onslow County Sheriff’s Department (the purposes of which are unclear). Appellant Rose, who stopped at the checkpoint, was convicted on four counts, including felony manufacturing of marijuana. In its ruling, the Court held that “the trial court, in considering the constitutionality of the checkpoint, failed to make findings of fact regarding the ‘primary programmatic purpose’ of the checkpoint required by *City of Indianapolis v. Edmond*, 531 U.S. 32...and failed to conduct the separate analysis of the reasonableness of the checkpoint mandated by *Illinois v. Lidster*, 540 U.S. 419 ...and remand[ed] the case further findings of fact in accordance with Edmond and Lidster.” *North Carolina v. Rose*, 170 N.C. App. 284 (2005) at 285, 286.

In *Monin v. Commonwealth of Kentucky*, 209 S.W. 3d 471 (2006), the Court of Appeals of Kentucky reversed the Marion Circuit Court’s affirmation of the appellant’s conviction of driving under the influence after being stopped at a purported license checkpoint. In so finding the court noted, “[W]e conclude that this checkpoint was not properly conducted so as to limit the troopers’ discretion at the scene or to maximize public safety in any way.” *Id* at 474. In its deliberation, the Court additionally considered such factors as its compliance with OM-E-4 9 Kentucky’s Traffic Safety Checkpoint Policy), although concluding that perfect compliance is not necessarily fatal. The Court further noted that, “There was obviously no concerted planning to maintain the checkpoint since it was immediately abandoned when Monin was arrested.” *Id*. At 474. The “Trooper....explained that the checkpoint was immediately disbanded when Monin

was arrested and had to be transported.” Id at 473. This case as much in common with the case now before the West Virginia Supreme Court. With the Petitioner’s arrest, the roadblock ceased.

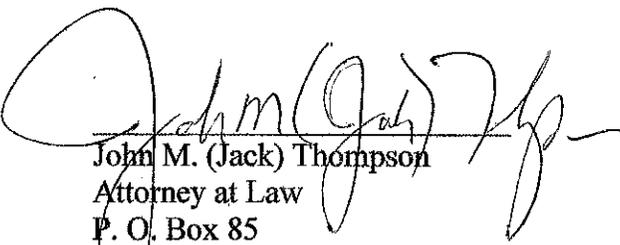
The Ohio Supreme Court recently held that, “In determining the constitutionality of a driver’s license checkpoint, a court must evaluate, on a case-by-case basis, the checkpoint’s intrusion on privacy, the state’ interest in maintaining the checkpoint, and the extent to which the checkpoint advances the state interest.” *Ohio v. Orr*, 91 Ohio St. 3d 389 (2001) at 390.

### CONCLUSION

For the foregoing reasons, the Petitioner emphatically believes that the stop of her vehicle on January 27, 2008, was illegal and unconstitutional and, as such, constituted a seizure by the Gauley Bridge Police Department. Petitioner further believes that the 12<sup>th</sup> Judicial Circuit erred in denying the Petitioner’s Motion to Suppress Evidence Obtained by an Illegal Roadblock. Petitioner further prays that this Court will set aside the resulting conviction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

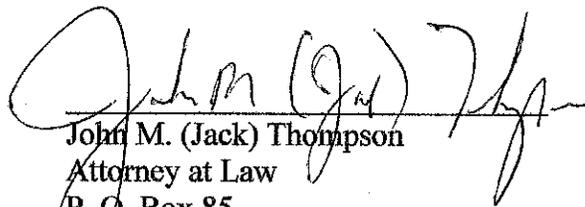
J, John M. (Jack) Thompson, Counsel of Record, for Linda S. Sigler, aka Linda S. Mullins, hereby certify that on the day of April 18, 2009, I served a copy of the foregoing Docketing Statement and Petition for Appeal upon the following at their respective addresses and in the manner noted below:

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# Seatbelt checkpoints to begin today

Traffic stops likely to weed out a few drunk drivers, too

By Gary A. Harki

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The fourth wave of nighttime "Click It or Ticket" safety enforcement zones designed to get more people to use seatbelts at night starts today.

While the checkpoints are designed to promote buckling up, police and researchers involved with the program say the zones can't help but turn up drunk drivers and people com-

mitting other types of offenses. "Nighttime traffic enforcement is crime enforcement," said Mark Solomon, vice president of Preusser Research Group. "Seatbelt enforcement is the primary effort. However, we know when police go out there they are going to catch people for all kinds of things. They are going to bust people for cocaine, fugitives and they are going to get a lot of drunk drivers."

Preusser Research is handling a project for the National Highway Traffic Safety Administration that's looking at whether nighttime "Click It or Ticket" campaigns get more people to use seatbelts at night. Charleston is one of five cities involved

in the study. So far results are encouraging, Solomon said. The project may expand in the future, he said.

This is the fourth and final wave of nighttime seatbelt enforcement zones for Charleston this year, said Sgt. Shawn Williams of the Charleston Police traffic division.

In each wave of about 10 days, police arrest between 30 and 40 drunk drivers, he said. The arrests are comparable to those at sobriety checkpoints, he said.

"It's not our primary objective," he said. "First and foremost this is an educational effort." "Because the checkpoints are at night, and because Williams knows that means he is going

to catch some drunk drivers and others breaking the law, he uses the same procedures as those used for sobriety checkpoints, he said.

"As police officers, we don't have a choice but to take those people off the road," he said. "Local defense attorneys like to challenge the constitutionality of seatbelt enforcement zones, it's the backyard approach."

The safety enforcement zones are scheduled to start about 6 p.m. and end between midnight and 2 a.m. for each evening for the next 10 days, Williams said. The dates and locations tentatively scheduled are:

Today — 600 block of Quarrier Street

Saturday — 500 block of Kanawha Boulevard.  
Sunday — 1700 block of 7th Avenue.

Monday — 1500 block of Greenbrier Street.

Tuesday — 2600 block of Kanawha Boulevard.

Wednesday — 1100 block of Greenbrier Street.

Thursday — 1800 block of 7th Avenue.

Nov. 30 — 1900 block of Washington Street West.

Dec. 1 — 2100 block of Sisonville Drive.

Dec. 2 — 1800 block of 5th Avenue.

To contact staff writer Gary A. Harki, use e-mail or call 348-5163.

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Appellant's Exhibit #1