

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
DEREK MICHAEL MANN	:	
	:	
Appellant	:	No. 41 WDA 2026

Appeal from the Judgment of Sentence Entered December 8, 2025
In the Court of Common Pleas of Allegheny County Criminal Division at
No(s): CP-02-CR-0007911-2023

BEFORE: KING, J., NEUMAN, J., and BENDER, P.J.E.

MEMORANDUM BY NEUMAN, J.:

FILED: October 13, 2026

Appellant, Derek Michael Mann, appeals from the judgment of sentence of three to six days' incarceration, followed by six months' probation, imposed after he was convicted, following a non-jury trial, of driving under the influence ("DUI") — controlled substance metabolite (75 Pa.C.S. § 3802(d)(1)), and DUI — general impairment (75 Pa.C.S. § 3802(d)(2)). Appellant solely challenges the trial court's denial of his pretrial motion to suppress. After careful review, we affirm.

The trial court summarized the facts underlying Appellant's convictions, as follows:

On July 2, 2023, officers assigned to the West Hills DUI Task Force were conducting a sobriety checkpoint in the 600 block of Fourth and Fifth Avenue Coraopolis, PA 15108. Officer Rosen^[1] of the North Fayette Police Department made initial contact with the

¹ Officer Rosen's first name is not included in the record.

driver, later identified as [Appellant]..., who was operating a Jeep Compass. As [Appellant] entered the checkpoint, Officer Rosen observed that he stopped short of the designated stopping point. Officer Rosen further noted that [Appellant] did not roll his driver's side window down completely, that eye drops were visible in the door, and that an odor of marijuana was emanating from the interior of the vehicle. As for ... [Appellant] himself, Officer Rosen observed him to have glassy eyes, a lethargic demeanor, slow movements, impaired fine motor skills, and slow speech. When asked whether he had anything to drink or smoke that evening, [Appellant] replied that he "smoked weed an hour ago." Additionally, [Appellant] failed to follow Officer Rosen's directions to the testing area several times.

Officer Jonathan Short then took custody of [Appellant] in the testing area. After [Appellant] again admitted to smoking marijuana, Officer Short requested the assistance of [Pennsylvania State] Trooper Michael Schmidt, a certified Drug Recognition Expert ("DRE"), to conduct further evaluation. Trooper Schmidt placed [Appellant] in the rear of a Pennsylvania State Police patrol vehicle and transported him to the police department to conduct his DRE evaluation. Upon completion of the evaluation, Trooper Schmidt concluded that [Appellant] was under the influence of Cannabis. [Appellant] was subsequently transported back to the checkpoint testing area, where he was read the DL-26B implied consent warnings and agreed to provide a blood sample for analysis.

Trial Court Opinion ("TCO"), 2/5/26, at 2-3. Testing later confirmed Appellant had "Delta 9 THC, and Delta Carboxy THC" in his system. N.T., 10/23/25, at 32.

Appellant was thereafter charged with the above-stated offenses. On October 8, 2025, he filed a motion to suppress, "asserting ... the DUI checkpoint at issue failed to conform to the law, and therefore, ... the stop was illegal." TCO at 1. The court conducted a suppression hearing on October 23, 2025. At the conclusion thereof, the court denied Appellant's motion to suppress. His case proceeded to "a stipulated non-jury trial based on the

suppression hearing testimony, the affidavit of probable cause, the crime lab reports, and the investigative field notes.” Appellant’s Brief at 13 (citation to the record omitted). Based on this evidence, the court convicted Appellant of both DUI charges. On December 8, 2025, the court sentenced him to the aggregate term of incarceration and probation set forth above. Appellant filed a timely notice of appeal, and he and the court complied with Pa.R.A.P. 1925. Herein, Appellant states one issue for our review: “Whether the trial court erred in denying [Appellant’s] motion to suppress where the Commonwealth failed to establish that the DUI checkpoint in question was constitutionally acceptable?” ***Id.*** at 7.

Preliminarily, we recognize:

An appellate court’s standard of review in addressing a challenge to the denial of a suppression motion is limited to determining whether the suppression court’s factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Because the Commonwealth prevailed before the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the suppression court’s factual findings are supported by the record, the appellate court is bound by those findings and may reverse only if the court’s legal conclusions are erroneous. Where the appeal of the determination of the suppression court turns on allegations of legal error, the suppression court’s legal conclusions are not binding on an appellate court, whose duty it is to determine if the suppression court properly applied the law to the facts. Thus, the conclusions of law of the courts below are subject to plenary review.

Commonwealth v. Smith, 164 A.3d 1255, 1257 (Pa. Super. 2017) (cleaned up).

Here, Appellant challenges the constitutionality of the DUI checkpoint that led to his arrest and charges. This Court has explained:

A DUI checkpoint passes constitutional muster where there is *substantial*, “not complete,” compliance with the following guidelines:

1. Vehicle stops must be brief and must not entail a physical search;
2. There must be sufficient warning of the existence of the checkpoint;
3. The decision to conduct a checkpoint, as well as the decisions as to time and place for the checkpoint, must be subject to prior administrative approval;
4. The choice of time and place for the checkpoint must be based on local experience as to where and when intoxicated drivers are likely to be traveling; and
5. The decision as to which vehicles to stop at the checkpoint must be established by administratively pre-fixed, objective standards, and must not be left to the unfettered discretion of the officers at the scene.

Commonwealth v. Worthy, 957 A.2d 720, 725 (Pa. 2008) (citing [***Commonwealth v. Blouse***, 611 A.2d [1177,] ... 1180 [(Pa. 1992)]] (quoting [***Commonwealth v. Tarbert***, 535 A.2d [1035,] ... 1043 [(Pa. 1987)]]). “Thus, where the trial court’s factual findings support the conclusion that the roadblock substantially complied with the guidelines, and where the trial court’s findings are premised on sufficient evidence of record, this Court will not disturb the trial court’s conclusion of substantial compliance.” ***Commonwealth v. Yastrop***, 768 A.2d 318, 323 (Pa. 2001).

Commonwealth v. Meshyock, No. 808 MDA 2019, unpublished memorandum at 5-6 (Pa. Super. filed Feb. 18, 2020) (emphasis in original).²

² Pursuant to Pa.R.A.P. 126(b), non-precedential decisions of the Superior Court filed after May 1, 2019, may be cited for their persuasive value.

Here, Appellant only challenges the first and fourth prongs of the test for establishing a DUI checkpoint was constitutional, which is known as the **Tarbert-Blouse** test. **See** Appellant's Brief at 22 ("The Commonwealth failed to establish that the vehicle stops were brief and did not entail a physical check."); **id.** at 26 ("The Commonwealth failed to establish that the choice of time and place for the DUI checkpoint was based on local experience as to where and when intoxicated drivers were likely to be traveling."). **See also** TCO at 5 ("Here, [Appellant] concedes that the Commonwealth has satisfied its burden with respect to the second, third, and fifth **Tarbert-Blouse** prongs. [Appellant] challenges only the first and fourth prongs, concerning the physical nature and duration of the stop as well as the checkpoint's location."). Thus, we limit our review to only those two prongs of the **Tarbert-Blouse** test.

First, Appellant maintains the Commonwealth failed to establish the vehicle stop was brief and did not entail a physical search. In concluding this prong of the **Tarbert-Blouse** test was met, the trial court opined:

The checkpoint at issue here briefly stopped all vehicles passing through, including that driven by the [Appellant], according to a pre-established, objective pattern, during which an officer would ask a few questions of the driver. If any signs of impairment were detected, the driver would be asked to pull his or her vehicle into a separate testing area to further investigate whether the driver was intoxicated. Here, [Appellant] was subjected to that initial, brief questioning when Officer Rosen noted several signs of impairment, including [Appellant's] own admission that he had smoked marijuana one hour earlier. Additionally, Officer Rosen noted [Appellant's] difficulty following instructions, slowed speech, glassy eyes, and a strong odor of marijuana emanating

from inside the vehicle. Due to these signs of impairment, [Appellant] was taken to the designated testing area, where a DRE evaluation was conducted. Although [Appellant's] detention period was extended due to further testing, that prolongation was justified by his own admission of recent marijuana use and Officer Rosen's other observations indicating impairment, which together established probable cause to continue his detention. Accordingly, the Commonwealth satisfied its burden of demonstrating compliance with the first prong of **Tarbert-Blouse**, as the initial checkpoint stop was brief and did not involve a physical search. It was only after signs of impairment were detected that [Appellant] was subjected to a longer stop. Therefore, the trial court did not err in determining that the first prong was satisfied.

TCO at 6.

Appellant challenges the court's rationale because Officer Rosen did not testify to the facts relied upon by the court at the suppression hearing. Instead, the Commonwealth presented only the testimony of Moon Township Police Department Lieutenant Shener Ulke. Appellant stresses

[Lieutenant] Ulke was not even on the scene participating in the DUI checkpoint. A careful review of the suppression hearing transcript reveals the [lieutenant's] testimony was essentially limited to explaining why the DUI checkpoint was conducted at the intersection of Fourth Avenue and Fifth Avenue in Coraopolis. With that said, it appears the trial court gleaned information about the stop of [Appellant's] vehicle from the criminal complaint. However, the complaint was not entered into evidence at the suppression hearing. It is well-established that "[a]n appellate court cannot consider anything which is not part of the record in the case because for purposes of appellate review, what is not of record does not exist." **Hassel v. Franzi**, 207 A.3d 939, 950 n.1 (Pa. Super. 2019) (quoting **Commonwealth v. Johnson**, 33 A.3d 122, 126 n.6 (Pa. Super. 2011)) (internal ellipsis omitted).

Appellant's Brief at 24 (footnote omitted). Appellant further contends that, unlike in **Yastrop** where the "police officer who supervised the roadblock specifically testified at the suppression hearing that 'the police officers stopped

drivers for approximately thirty seconds each and detained for field testing only those drivers who smelled of alcohol[,]” here, “[Lieutenant] Ulke never explained how long the vehicle stops would last or what the officers were permitted to do during the stops.” *Id.* at 24-25 (quoting ***Yastrop***, 768 A.2d at 324). Therefore, he insists the evidence was insufficient to prove the first prong of the ***Tarbert-Blouse*** test, rendering the DUI checkpoint unconstitutional. *Id.* at 25.

No relief is due. Although Appellant is correct that Lieutenant Ulke did not specifically testify about the length of time for which each vehicle was stopped during the DUI checkpoint, he did state he was aware of the requirements for a DUI checkpoint, and noted he took guidance on the operation of DUI checkpoints “from a PA DUI manual. It’s published by the PA DUI Association, in association with the Pennsylvania District Attorney’s Association[,]” and it is “revised every ... other year.” N.T. at 7. The lieutenant also reiterated, later in his testimony, that the checkpoint procedures he follows are “basically adopted from the PA DUI manual.” *Id.* at 13. The lieutenant explained, within the manual, “there is a whole chapter on sobriety checkpoint[s], planning, justification, [and] execution[,]” which is “where we take our procedures from.” *Id.* It is reasonable to infer this manual set forth the ***Tarbert-Blouse*** requirement that vehicle stops at checkpoints must be brief, and that Lieutenant Ulke adhered to this requirement in conducting the instant checkpoint.

In any event, even if Lieutenant Ulke's testimony was insufficient to meet this prong of the test, our Supreme Court has made it clear "that **substantial compliance** with the guidelines is all that is required to reduce the intrusiveness of the search to a constitutionally acceptable level." **Worthy**, 957 A.2d at 725 (cleaned up; emphasis added). Importantly, the **Worthy** Court "emphasize[d] that substantial—and **not complete**—compliance with the guidelines is all that is required under **Tarbert-Blouse**." **Id.** (emphasis added). Again, Appellant essentially concedes (by not challenging) that the second, third, and fifth factors of the **Tarbert-Blouse** test were met. Moreover, for the reasons stated *infra*, we determine the fourth prong was also satisfied. Therefore, we conclude that, although Lieutenant Ulke did not specifically state how long each vehicle was stopped at the instant checkpoint, the evidence was sufficient to prove the checkpoint substantially complied with **Tarbert-Blouse**.

We next address Appellant's argument the Commonwealth failed to present sufficient evidence demonstrating the fourth prong of the **Tarbert-Blouse** test. In support of this assertion, Appellant quotes a lengthy portion of his cross-examination of Lieutenant Ulke, during which the officer essentially conceded that Moon Township had more DUI-related incidents than Coraopolis, where the instant checkpoint occurred. **See** Appellant's Brief at 27-32. Appellant then contends that, based on Lieutenant Ulke's cross-examination, "the Commonwealth failed to prove that the location and time of the DUI checkpoint in question was appropriate." **Id.** at 33. He stresses

this Court's reiteration in **Commonwealth v. Garibay**, 106 A.3d 136, 139 (Pa. Super. 2014), of language first used in **Tarbert**, and then repeated in **Blouse**, that "it is essential ... the route selected for the roadblock be one which, based on local experience, is likely to be travelled by intoxicated drivers. The time of the roadblock should be governed by the same consideration." **Id.** Appellant concludes here, "[Lieutenant] Ulke's testimony made abundantly clear that, based on the data and local experience in the grand scheme of things, there was not a likelihood ... intoxicated drivers would travel through the DUI checkpoint in question." **Id.**

In rejecting Appellant's argument, the trial court first recognized that the fourth prong of the **Tarbert-Blouse** test

requires that the "choice of time and place for the checkpoint be based on local experience as to where and when intoxicated drivers are likely to be traveling." **Worthy**, 957 A.2d at 725. This prong requires a planning officer to select the location of the roadblock based on DUI-related arrests and/or DUI-related accidents at the specific location of the checkpoint. **Garibay**, 106 A.2d at 140-41. As such, the location of the checkpoint cannot be selected solely because it is a busy road or has a high volume of travelers—there must be specific DUI arrest/accident data to justify that the area has a drinking and driving problem. **Id.** at 14[1]-42. However, the DUI data need not originate from the exact and precise spot of the roadblock. **Commonwealth v. Menichino**, 154 A.3d 797, 802-03 (Pa. Super. 2017). Instead, it is sufficient that the general area and roadway at large ha[ve] a history of DUI-related incidents. **Id.** [at 803.] In addition, other factors such as traffic volume and safety concerns for officers and the public may properly be considered in selecting the site of the roadblock. **Commonwealth v. Mercado**, 205 A.2d 368, 374-75 (Pa. Super. 2019).

In evaluating whether law enforcement complied with the fourth prong of **Tarbert[-]Blouse**, the Superior Court's analysis does

not turn on whether an officer selects the highest-ranking DUI location among multiple boroughs, but rather, whether the officer relied on relevant data that indicated a clear DUI arrest and crash problem in that general area or roadway. **See Menichino**, 154 A.[3]d at 799[, 802-03] (finding substantial compliance where the planning officer based his selection on arrest data from State Route 18 in Hermitage, which comprised ... 22% of the total DUIs in the Hermitage borough); ... **Yastrop**, 768 A.2d [at] 323-24 ... (holding that a checkpoint substantially complied with **Tarbert-Blouse** where [the] planning officer's PennDOT research indicated ... a particular roadway [had] ... past DUI arrests and 7 accidents, which revealed ... the route was likely to be traveled by drunk drivers); ... **Mercado**, 205 A.2d [at] 374 ... (holding that there was substantial compliance where the planning officer selected an avenue in Philadelphia that was situated in a district with a high number of DUI-related incidents).

TCO at 6-7.

The trial court then concluded the Commonwealth had presented sufficient evidence the instant DUI checkpoint met the fourth **Tarbert-Blouse** factor, reasoning:

Turning to our case, Lieutenant ... Ulke—who has run the West Hills DUI Task Force since 2018 and serves with Moon Township Police Department—provided far more than generalized testimony to support the selection of the DUI checkpoint at issue here: 4th and 5th Avenue in Coraopolis (Route 51) between 10:00 p.m. to 3:00 p.m.^[3] on July 1-2, 2023. In coordinating the checkpoint, Lieutenant Ulke utilized the Pennsylvania Crash Information Tool covering January 1, 2017[] to May 31, 2023, which revealed a concentrated pattern of impaired driving crashes along Route 51. In fact, 4th and 5th Avenue ranked as the number-one roadway in Coraopolis for crashes involving impaired drivers in 2023.

Lieutenant Ulke also relied on DUI arrest statistics from January 1, 2018[] through December 31, 2022, which showed that DUI arrests occurred three to four times more frequently on Route 51

³ Officer Ulke testified the checkpoint was held “between 10:00 p.m. and 3:00 p.m.” on July 1, 2023. N.T. at 8. We presume he meant the checkpoint was conducted from 10:00 p.m. on July 1st to 3:00 a.m. on July 2nd.

than on any other roadway in Coraopolis. During that period, officers made a combined 67 DUI arrests on 4th and 5th Avenue. There were also 26 impaired driving related crashes during that time period. Lieutenant Ulke testified that this data reflected a longstanding DUI problem at that location, extending back to 2011. Out of the 17-member department ... he coordinates, Coraopolis Borough was ranked 7 and 8 for DUI incidents. In addition to DUI-related arrest and accident data, there are other factors Lieutenant Ulke considered in choosing the site, such as the road being a main vein of travel for the area, as well as officer and public safety.

[T]he defense argues that such data fails to show a DUI problem on 4th and 5th Avenue to the extent that it would warrant a sobriety checkpoint. In particular, the defense believes that Coraopolis is not the "best place" for a DUI checkpoint because Moon Township ranks higher among the 17 boroughs that the West Hills DUI Task Force coordinates. However, nowhere in the case law is there a requirement that police officers must bypass a location with a documented DUI problem simply because another nearby borough also experiences a high number of DUIs. Likewise, there is no specific number or percentage of DUI arrests/accidents that must occur as a threshold matter to arrange a checkpoint. Therefore, the Commonwealth satisfied the fourth prong of ***Tarbert-Blouse***. Lieutenant Ulke's testimony established that the checkpoint location was selected based on specific DUI arrest and crash data, demonstrating a persistent problem with impaired driving along Route 51. Because the decision to establish the checkpoint at [Fourth] and [Fifth] Avenue was grounded in local experience, historical data, and a documented drinking and driving problem, the checkpoint substantially complied with the fourth prong of ***Tarbert-Blouse***. Accordingly, the trial court's denial of suppression was appropriate and should be affirmed by the Pennsylvania Superior Court.

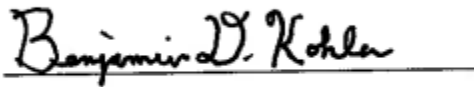
TCO at 8-9.

Because the trial court's factual findings are supported by the record and demonstrate the DUI checkpoint in this case substantially complied with

the ***Tarbert-Blouse*** requirements, we will not disturb the court's decision to deny Appellant's motion to suppress. ***See Yastrop***, 768 A.2d at 323.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

10/13/2026