IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE	)	**C.R. No. 0710017284**
vs.	)	
	)	
PETER JANELLE,	)	
	)	
Defendant.	)	

Submitted May 19, 2008
Decided July 9, 2008

Casey L. Ewart, Esquire, Deputy Attorney General.
Eric G. Mooney, Esquire, counsel for Defendant.

DECISION AND ORDER ON DEFENDANT'S MOTION

On April 8, 2008, after a bench trial, the Court found the defendant in the above-referenced criminal matter guilty of underage possession and/or consumption of alcohol, in violation of 4 *Del. C.* § 904(f). On April 11, 2008 Defendant timely filed a Motion for Judgment of Acquittal or New Trial. On May 19, 2008 the State filed its response thereto. After consideration of the briefs and the record, the Court denies the Motion.

The Court found from the evidence that, on October 14, 2007, the Defendant was the passenger in a vehicle stopped by the arresting officer in this County for traffic violations. The officer testified that he detected a strong odor of alcohol on the defendant's and driver's breath both inside and outside of the vehicle, and that the defendant had bloodshot eyes. He further testified that,

during an inventory search of the vehicle, he discovered a bottle labeled "blueberry vodka" on the backseat floor board within reach of the defendant. The officer determined that the defendant was 20 years old at the time, and charged him with violating 4 *Del. C. §* 904 (f), Underage Possession or Consumption of Alcohol. The driver of the vehicle was also under 21 at the time.

The Court found that the State had proven beyond a reasonable doubt that the defendant had ***both*** consumed and possessed alcohol. However, since the testimony indicated that the defendant and the driver of the vehicle had driven into this County from "Frightland" in southern New Castle County, the Court held that the State was unable to prove that the defendant's ***consumption*** of alcohol occurred in this County. The officer's testimony established, nonetheless, that the defendant remained in ***possession*** of alcohol in this County since the bottle of blueberry vodka remained within the defendant's area of control. The evidence of defendant's having consumed alcohol, albeit perhaps outside of this County, combined with the discovery of the vodka bottle within his reach, and the fact that neither occupant of the vehicle was old enough to legally possess alcohol, was sufficient circumstantial evidence to conclude, beyond a reasonable doubt, that the defendant had exercised "conscious dominion, control and authority" over the alcohol bottle[1]. The Court therefore found the defendant guilty of the charge filed against him in the Information.

[1] *See Holden v. State,* 305 A.2d 320 (Del. 1973).

In his motion for Judgment of Acquittal, Defendant claims his conviction "seems to be unjust [because he was] found guilty of something he was not arrested for, i.e., possession of alcohol." Defendant apparently makes this claim because he was arrested prior to the inventory search discovery of the vodka bottle, and the police report produced in discovery refers to defendant's consumption of alcohol, making no mention of the inventory discovery of the blueberry vodka bottle. For the same reasons, defendant further asserts he should be granted a new trial in the interest of justice since the discovery provided made no mention of the blueberry vodka bottle, resulting in an "alternate theory" of liability being "sprung" on him on the day of trial.

The information filed in this matter charged that the defendant "being under the legal drinking age of twenty-one (21), did possess and/or consume alcoholic liquor." The information therefore plainly put the defendant on notice that the State was attempting to convict him on alternate, albeit closely associated, theories, both possession and/or consumption of alcohol when underage. The Court finds that the language used in the Information was sufficiently specific to reasonably inform the defendant of the essential facts of the charge against him to enable him to adequately prepare a defense, and to prevent subsequent prosecution for the same offense.[2]

Defendant contends that, since he was initially arrested based on the officer's conclusion that he had consumed alcohol, he cannot be convicted at

[2] *State v. Phillips*, 2004 WL 909557 (Del. Super., April 21, 2004).

trial for possession of alcohol. The Court is not persuaded by this argument. Defendants often are charged with other offenses after arrest. The filing of the Information in this Court supplants the initial ticket as the charging document. In addition, post-arrest discovered evidence may alter the state's theory of prosecution; as long as it remains within the alleged facts of the charging document the State may prosecute without amendment or Rule 9 warrant. For example, an officer may arrest a defendant at the scene for driving under the influence of alcohol. The subsequent blood draw may reveal the defendant was not under the influence of alcohol, but had illegal drugs in his system. The State may proceed to prosecute him on the initial arrest as long as the Information adequately apprises him of what the State may try to prove, as it did in the present case.

The fact that the police report did not mention the bottle of vodka found in the inventory search does not amount to a discovery violation that would entitle the defendant to a new trial. The officer testified on cross examination that he had not included a reference to the vodka bottle in the report because it was a part of the inventory search. Although it is clear from the officer's testimony that the defendant's initial arrest was triggered by the officer's observations of the defendant's intoxicated condition, that does not prohibit the introduction of evidence regarding the discovery of the vodka bottle within reach of the defendant. There is no indication that the State intentionally or negligently withheld discoverable material from the defendant.

CONCLUSION

Under Criminal Rule 29 (a), the Court may grant entry of judgment of acquittal if it finds "the evidence is insufficient to sustain a conviction of such offense . . .." Here, however, the evidence presented by the State was plainly sufficient for conviction of the offense charged. Under Criminal Rule 33, the Court may grant a new trial "if required in the interests of justice." The defendant has not persuaded the Court that the interests of justice require a new trial in these circumstances. Accordingly, the Defendant's alternate motions are **DENIED.**

IT IS SO ORDERED, this ____ day of July, 2008.

_____
Kenneth S. Clark, Jr., Judge