IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	Case No. 1111003793
)	
DONALD E. PYLE)	

Submitted: January 6, 2013 Decided: August 28, 2013

Louis B. Ferrara, Esquire 1716 Wawaset Street Wilmington, DE 19806 Attorney for Defendant Danielle Brennan, Esquire Deputy Attorney General Department of Justice 820 N. French Street, 7th Floor Wilmington, DE 19801 Attorney for the State

Bruce Herron, Esquire City Solicitor/Prosecutor's Office 220 Elkton Road Newark, DE 19711

ORDER ON DEFENDANT'S MOTION TO DISMISS

Donald E. Pyle, ("hereinafter "Pyle" or "Defendant") was arrested in the City of Newark, State of Delaware on November 5, 2011, for the charge of Driving While Under the Influence of Alcohol, in violation of 21 *Del. C.* §4177(a) *The* Defendant is charged with operating the vehicle on the Veterans Lane, 300 feet north of Elkton Road in the City of Newark. The arresting officer is employed by the Newark Police Department and was acting within his official duties when he conducted the arrest.

The Defendant was not taken before the Alderman's Court in the City of Newark, but was instead taken to Justice of the Peace Court No. 11. The defendant transferred the matter to the Court of Common Pleas on January 9, 2012 and the State filed an Information on March 30, 2012. The Defendant brings this Motion to Dismiss on jurisdictional grounds. The Court issued a briefing schedule on August 29, 2012 directing the parties to address the issue regarding whether the charge is required to be brought before the Newark Alderman Court since it occurred in the City of Newark.

The Court in its scheduling order provided the City of Newark an opportunity to submit arguments on the jurisdictional issue. The City Solicitor on September 27, 2012 wrote the Court and indicated the City of Newark takes no position on the issue. Therefore, the issue is decided on the submission of the State and the Defendant.

The Defendant argues that this charge must be brought first in the Newark Alderman's Court because the offense was allegedly committed within the City boundaries of the City of Newark. In support of his position, Defendant points the Court to 21 Del. C. § 703(e) and argues that this statutory provision requires that the charge be brought in the Alderman Court. Defendant also relies upon the recent Delaware Supreme Court decision in Request For An Opinion of Justices of Delaware Supreme Court Regarding House Bill Nos. 134 and 135 of the 146th General Assembly, 37 A.3rd 860 (Del. Supr. 2012).

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¹ The City Solicitor specifically writes "The City of Newark takes no position with respect to the question of whether all misdemeanor and traffic charges based on conduct which occurs within the City of Newark must be brought in the Newark Alderman's Court, rather than the Justice of the Peace Court.

The State argues that a violation of the Delaware Code where the defendant is arrested without a warrant for a motor vehicle offense within the jurisdictional limits of the City of Newark may be brought in the Justice of the Peace Court.

Discussion

This case begins before the Court a matter of statutory construction involving the jurisdictional provisions of motor vehicle violations under Title 21, to determine when the charges must initially be brought before an Alderman Court. The language of the Motor Vehicle Code 21 *Del. C.* 703 which governs jurisdiction in relevant part provides as follows:

- "(a) A person arrested without a warrant for a violation of any section of this title, or arrested for any moving traffic violation or any municipal ordinance regulating traffic within its territorial limits as set forth in Chapter 41 of this title shall have such case heard and determined by a justice of the peace.
- (e) ... Notwithstanding any other any other provision of this section to the contrary, in those incorporated municipalities which provide duly constituted alderman's courts or mayor's courts, the alderman and mayor shall continue to hear and adjudicate those cases in which a person is arrested without a warrant, and where the alderman's court or the mayor's court is the court of original jurisdiction."

The issue of jurisdiction for motor vehicle violations was considered in *State v. William R. Sluss*, 327 A.2d 755 (Del. Super. 1974). In that case, the defendant after a motor vehicle pursuit, was stopped by a County Police Officer in the City of Wilmington, and he was charged with Driving While Under the Influence of Alcohol

in violation of 21. *Del. C.* § 4176(a), which at that time governed impaired driving offenses. The County Police Officer took the Defendant before Justice of the Peace Court No. 10 where he was arraigned. The case was subsequently transferred to the Court of Common Pleas where he was found guilty of the impaired driving offense. *Sluss* appealed his conviction to the Superior Court alleging that since he was arrested in the City of Wilmington, he was required under the then jurisdiction section 21 *Del. C.* § 704(a)² to be tried in the Wilmington Municipal Court. Section 704 of Title 21, at the time, was the relevant section which governed jurisdiction for motor vehicle offenses. The Court when addressing the jurisdictional issue held:

". . . The language of the predecessor statute made it clear that Municipal Court was to hear cases where the offense occurred in the city rather than merely because the arrest occurred in the City. It is this Court's conclusion that to affect the inherent purposes of the law, the first sentence of section 704(a) that persons arrested for motor vehicle violations in the City of Wilmington be taken before the Municipal Court, must be construed to mean that persons arrested for committing motor vehicle offenses within the City of Wilmington should be taken before the Municipal Court. . . . "

² The law on jurisdiction of offenses for motor vehicle violations reads as follows (21 *Del. C.* 704(a)): 'A person arrested without a warrant in the City of Wilmington for a violation of any section of this title shall be taken before a Judge of the Municipal Court for the City of Wilmington, except that persons arrested for a violation occurring on any part of the Interstate Highway System may be taken before the nearest available Justice of the Peace from the place of arrest. A person arrested without a warrant outside of the City of Wilmington for a violation of any section of this title, or arrested for any moving traffic violation of any municipal ordinance regulating traffic within its territorial limits as set forth in Chapter 41 of this title, shall have his case heard and determined by the nearest available Justice of the Peace, notwithstanding the fact that the court of said Justice of the Peace is situated in a county other than that in which the violation is alleged to have occurred. It shall be sufficient defense for a person arrested outside of the City of Wilmington to show by one competent witness that there was, at the time of his arrest, an available Justice of the Peace whose regular officer was nearer to the place where such person was arrested than the Justice of the Peace before whom the case is being tried.'

When construing a statute, the Court must give effect to the legislative intent to achieve the goal which was intended. The language of Subsection (e) clearly provides that "in those incorporated municipalities, such as the City of Newark which have a duly constituted Alderman's Court, motor vehicle offenses must be taken before that Court." Thus, in reviewing the statute before the Court, it is clear in this Court' view that the legislation intended that those individuals arrested for motor vehicle offenses within the jurisdictional boundaries of the City of Newark, be tried before the City of Newark Alderman's Court. To hold otherwise, is to disregard the plain language of the statute.

This conclusion is supported by the Delaware Supreme Court opinion in *In* Re: Request for an Opinion, when the Court held: "21 Del. C. § 703(e) requires prosecution of motor vehicle offenses in the Alderman's Courts or 'Mayor Courts' if police arrest the person charged with that offense, without a warrant, in an incorporated municipality where that municipality's charter places original jurisdiction for the offenses in the Alderman's Court."

In this instance, Newark City Code Section 20-8 Procedure on Arrest Without a Warrant provides: "A person arrested without a warrant for violation of any section of this chapter [Traffic Administration] shall be taken before the Alderman of the City."

This conclusion is further supported by the provisions which govern transfers from the Newark Alderman's Court to the Court of Common Pleas. The language of 11 *Del. C.* § 5303, relevant to this issue regarding transfers provide in relevant part:

The accused in all criminal cases in which there is a possibility that a period of incarceration may be imposed

or the maximum fine is \$100 or more where a justice of the peace or alderman or mayor of any incorporated city or town, except the City of Newark, in the county where the charge is brought has jurisdiction and power to hear and finally determine the matter, may elect at any time prior to day of trial to have the case tried by the Court. If an offense or criminal case within the exclusive jurisdiction of a justice of the peace or alderman or mayor of any incorporated city or town, except the City of Newark, is or may be joined properly with a criminal case or other offense that is within the jurisdiction of the Court and has been transferred upon the accused's election pursuant to this section, such criminal case shall be within the jurisdiction of the Court.

This section places a limitation on the right of transfer when the offense occurs in the City of Newark. Therefore, to permit the State to charge the Defendant with an offense in the Justice of the Peace Court where it occurred in the City of Newark and permit the subsequent transfer to the Court of Common Pleas would be to circumvent the statutory restriction. When these two sections are read together, it provides further indication that traffic offenses which occur in the jurisdictional limits of the City of Newark must be tried in the Newark Alderman's Court.

Defendant moves to dismiss the Information on the basis that the Justice of the Peace Court does not have jurisdiction in this matter. Thus, Defendant reasons that as a consequence, since the case could not be properly brought in the Justice of the Peace Court, the transfer to the Court of Common Pleas is inappropriate and the charges must be dismissed. While I agree the Justice of the Peace Court, under 21 *Del. C.* 703(e) does not have jurisdiction for motor vehicle offenses which are committed within the jurisdictional limit of the City of Newark, the Defendant is not

entitled to have the charges dismissed. Defendant fails to take into consideration the transfer provisions in <u>Title 10</u>.

The provisions of 10 Del. C. § 1902(a)(c) provide:

- "(c) No criminal action, complaint, or other proceeding brought in any court of this State shall be dismissed solely on the ground that such court is without criminal jurisdiction. Upon certification by the Criminal Clerk of Court to the sitting judge of the court in which the complaint, action, or other proceeding is pending averring that the court is without criminal jurisdiction, the judge may administratively issue an Order of Transfer and transfer the criminal proceeding to the court of competent criminal jurisdiction.
- (e) In both subsections (c) and (d) of this section, the bond and all pretrial conditions by a state court imposed upon the defendant shall remain in full force and effect and shall not be discharged pending transfer.
- (f) The transfer of a pending criminal action, complaint, or other proceeding under this statute shall be made only when the court lacks criminal jurisdiction.

Based upon this statutory provision, the charges are to be transferred to the Court which is vested with the jurisdiction. Therefore, the charges are hereby transferred to the Newark Alderman's Court.

SO ORDERED

Chief Judge

Alex J. Smalls

Pyle-OP Aug 2013