

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

**STATE OF DELAWARE** )  
 )  
 v. ) **CRIMINAL ACTION NUMBER**  
 )  
 **JAMES L. JORDAN** ) **IN-08-03-0111 & IN-08-03-0112**  
 )  
 ) **ID NO. 0801031796**  
 Defendant )

*Submitted: September 9, 2008*

*Decided: January 20, 2009*

***MEMORANDUM OPINION***

***Appearances:***

Annemarie Hayes, Esquire, Deputy Attorney General, of the Department of Justice,  
Wilmington, Delaware, attorney for State of Delaware

Joseph M. Leager, J., Esquire, Wilmington, Delaware, attorney for the defendant

HERLIHY, Judge

James Jordan moves for judgment of acquittal. He had moved at the end of the State's case to dismiss the charges against him. That motion was denied.

Jordan was tried on two charges: (1) possession of heroin within 1000 feet of a school and (2) using a vehicle for keeping controlled substances. The jury found him guilty of both. The "school" is Ferris. Although the vehicle was stopped within 1000 feet from Ferris, the State, in its response, to the current motion has now conceded either (1) Ferris does not qualify as a "school" under the law creating this offense<sup>1</sup> or (2) the stop was too coincidental. The State has asked this Court to allow it to enter a post-verdict *nolle prosequi* on the charge of possession of heroin within 1000 feet of school.<sup>2</sup> The State's request is **GRANTED**.

The remaining issue is whether Jordan's claim that there was insufficient evidence to allow the "use of a vehicle" conviction<sup>3</sup> to stand. The Court finds that there is and was sufficient evidence for the jury to determine Jordan was guilty. His motion is **DENIED**.

### ***Factual Background***

New Castle County officer Corey Hamilton was northbound on Delaware Route 141 near Lancaster Pike (Del. Rt. 48) when he saw a 1994 Buick headed in the opposite direction or turning from Rt. 48 onto Rt. 141. The windows were tinted so dark that

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<sup>1</sup> 16 *Del. C.* §4767.

<sup>2</sup> Super. Ct. Crim. R. 48.

<sup>3</sup> 16 *Del. C.* §4755(a)(5).

Hamilton was unable to view the driver or any other occupants. Hamilton made a u-turn and pulled Jordan over near the Ferris School entrance about 1000 feet from the 141/48 intersection.

The vehicle's registration came back to a female. Jordan, a male, was driving. He was the sole occupant. Upon checking Jordan's license, Hamilton learned there was an outstanding Court of Common Pleas capias for Jordan. Hamilton put Jordan in the police car and then searched the vehicle he had been driving:

A: I located that vehicle seven bags of what was suspected as Heroin (sic). They were marked in blue wax paper with a plastic sleeve over it, and had a stamp on it saying "Titanic." This was located in the front cabin of the vehicle, between the center console and the front passenger seat.

Q: And do you recall how many bags there were?

A: Seven bags.

Q: And do you recall about how far the defendant's front seat was from where the items were found?

A: The items were found inside the vehicle were within the wingspan of the driver. He could virtually put his hands down over there.<sup>4</sup>

The drugs were heroin.

The issue presented at trial and again now, therefore, was "possession." At the end of the State's case, Jordan moved to dismiss both charges on the basis the State had not met even a *prima facie* burden of showing Jordan's possession. The motion was denied.

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<sup>4</sup> Trial testimony.

Jordan testified. He said he lived in the Lancaster Court Apartments (on Lancaster Avenue/Pike). He was taking his sister's car, he said, to get a new radiator. He had been using it off and on since November 2007. Hamilton stopped him on January 26, 2008. Jordan testified he uses his sister's car to go to and from work. He also told the jury he had driven the car the night before and attended a party in Middletown. He also testified that he had four passengers that night in the Buick whom he brought home. Finally, he told the jury the drugs were neither his nor his sister's. None of the passengers complained to him, however, about leaving heroin in the car.

The Court gave the jury this Court's standard defining possession:

A person is generally regarded as being in possession of a narcotic drug when it is under the person's dominion and control and to the person's knowledge either is carried on his person or in his presence and custody, or, if not on his person or in his presence, the possession thereof is immediate, accessible and exclusive to him (provided, however, that two or more persons may have joint possession of a narcotic drug if jointly and knowingly they have the dominion, control and exclusive possession I have described).

"Possession" includes location in or about the defendant's person, premises, belongings, vehicle, or otherwise within the person's reasonable control. But a person possesses something, wherever it is located, only if that person had dominion, control and authority over it.

### *Discussion*

The standard is whether any rational trier of fact, viewing this evidence in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt.<sup>5</sup>

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<sup>5</sup> *Seward v. State*, 723 A.2d 365, 369 (Del. 1999).

Jordan argues that all the State's evidence showed was that he was the driver, but not the owner, of a car in which drugs were found. He points out that Hamilton saw no furtive moves, that there were no drugs on his person or anything else to add to evidence of dominion and control.

The custodian of a motor vehicle is presumed, by that status, to have dominion and control of contraband found in the vehicle.<sup>6</sup> This presumption applies to situations in which drugs are found in a vehicle.<sup>7</sup>

The heroin which the police found was clearly within Jordan's reach, particularly, easier than if between the console and the driver's seat. Jordan had been using the Buick frequently for several months prior to the stop and was the sole occupant when stopped. The jury, of course, was free to accept or reject his testimony denying the drugs were his and/or his inference that one of the party-goers who had been in the car had left behind seven bags of heroin.<sup>8</sup>

As rational triers of fact, the jurors looking at all of this evidence in a light most favorable to the State could, and did, find Jordan had dominion and control and find him guilty beyond a reasonable doubt.

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<sup>6</sup> *Gibbs v. State*, 300 A.2d 4 (Del. 1972).

<sup>7</sup> *Holden v. State*, 305 A.2d 320 (Del. 1973).

<sup>8</sup> *Tyre v. State*, 412 A.2d 326, 330 (Del. 1980).

*Conclusion*

For the reasons stated herein, defendant James Jordan's motion for judgment of acquittal on the charge of using vehicle for keeping a controlled substances is **DENIED**. The State's *nolle prosequi* of the conviction for possession within 1000 feet of a school is accepted and shall be entered.

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J.