

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PA** : **No. CR-548-2019**  
**vs.** :  
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**IAN BROWN,** : **Motion to Withdraw Guilty Plea**  
**Defendant** :

**OPINION AND ORDER**

Before the court is Defendant’s motion to withdraw guilty plea. A hearing was held on December 3, 2019 at which Defendant testified.

By way of background, Defendant was charged by Criminal Complaint with driving under the influence and related charges on January 30, 2019. He received the charges by certified mail on February 19, 2019. The incident leading to the charges occurred on November 15, 2018.

Defendant qualified for representation by the Lycoming County Public Defender’s office. Through his attorney, he waived his preliminary hearing on April 4, 2019 as well as his arraignment on April 22, 2019. A guilty plea was scheduled for June 5, 2019. On May 28, 2019, Defendant requested a continuance of his guilty plea because he wanted “more time to make arrangements with his employment.” This request was denied.

Defendant pled guilty on June 5, 2019.

Prior to pleading guilty, he met with his attorney and completed a written guilty plea colloquy form. Although Defendant testified at the December 3, 2019 hearing that it was “unknown” as to “how much of” the written colloquy he was “able to decipher”, he previously initialed and signed the written colloquy specifically acknowledging, among other things, that he was pleading guilty to the DUI offense, driving under the influence with a

high rate of alcohol. He acknowledged that his attorney explained to him all of the elements of the crime to which he intended to plead guilty. He acknowledged that by pleading guilty he was waiving or giving up his right to present any defenses that he or his attorney thought that he had. He acknowledged that he thoroughly discussed with his attorney all of the facts and circumstances regarding the charges. He acknowledged that he was satisfied with the representation and advice of his attorney. Finally, he acknowledged that the decision to plead guilty was his because he wanted to “accept full responsibility” for the charges.

Defendant also underwent an oral colloquy by the court prior to the court accepting Defendant’s guilty plea. During this oral colloquy, he denied that he had taken any substance or suffered from any mental, emotional or physical condition that would cause him not to be able to understand the proceedings. He acknowledged that he was satisfied with the representation of his attorney and that all of his answers on the written guilty plea colloquy form were true and correct. He specifically admitted that on the date of the incident, he had been drinking prior to driving his vehicle, that he was stopped by the police, that his blood was drawn within two hours and that his blood alcohol content result was a .15%.

Following his guilty plea hearing, his sentencing was scheduled for September 17, 2019. On June 24, 2019, approximately three weeks after he pled guilty, Attorney Mark Mack, Esquire, entered his appearance on Defendant’s behalf. On July 29, 2019, the Public Defender was permitted to withdraw their appearance. Attorney Mack filed a motion to continue the sentencing on two separate occasions but both motions were denied.

On September 17, 2019, Defendant appeared for sentencing. Defense counsel provided to the court a written motion to withdraw the guilty plea that was not yet filed but

was to be filed in the immediate future. The court reviewed the written motion and heard from defense counsel. The court concluded that Defendant made a colorable assertion of innocence in the motion. The Commonwealth would not agree to Defendant withdrawing his guilty plea and a hearing was scheduled for December 3, 2019. The motion was filed the day after Defendant's scheduled sentencing on September 18, 2019.

At the hearing, and in explaining why he desired to withdraw his guilty plea, Defendant explained that he "wanted to see if [he] could do something better; [he] wanted to try for a better outcome." He explained further that he had a commercial driver's license and that "this was a last ditch effort to keep [his] CDL." He noted that he believed that pleading guilty at the time was "the only option [he] was given" and that he and his attorney at the time never discussed any defenses related to the field sobriety tests, the blood draw or any evidence that may support a not guilty verdict. He explained that when he pled guilty he "kind of blacked out" and "just thought everything kind of funneled into the same thing."

The court finds credible Defendant's explanation that following his guilty plea he wanted to get another legal opinion to determine if he could essentially beat the charges. He wanted to withdraw his guilty plea to allow his new attorney to obtain discovery, potentially file a motion to suppress incriminating evidence, and perhaps defend against the charges at trial.

Despite Defendant facially asserting his "innocence" in his written motion, such an assertion is belied by his written guilty plea colloquy, his oral guilty plea colloquy and his testimony at the withdrawal hearing.

The court does not find the defendant credible in his assertion that he "just

blacked out” at this guilty plea hearing or that he never discussed any defenses to the charges with his attorney. The court does not find the defendant credible in his assertion that he essentially had no choice to plead guilty or that “everything just funneled into the same thing.”

The court does not credit Defendant’s claim of innocence. The defendant’s motive in wishing to withdraw his guilty plea is nothing more than a last ditch effort or hope to avoid the consequences of his driving under the influence with a high rate of alcohol. Defendant did not actually assert innocence. At no time did Defendant testify that he was not drinking, not driving or that he was not driving with a blood alcohol of .15% within two hours of driving. Contrary to his written motion, he did not testify that his headlights were on; he said he “felt” he passed the standard field sobriety tests, and he did not know when his blood was drawn.

With the hiring of a new attorney, the defendant wants a second bite at the apple. He wants his new attorney to do whatever he can legally do to try to beat the charges. Defendant’s hope for a different outcome is not a sufficient reason to withdraw his plea. It would not be fair or just. Indeed, to allow defendants to withdraw their guilty pleas by subsequently asserting different facts than previously sworn to or stated under oath and for the sole purpose of trying to suppress evidence or defeat the charges, would result in a carte blanche or wholesale evisceration of guilty pleas. The potential to manipulate the entire legal process would be huge.

As Defendant notes, there is no absolute right to withdraw a guilty plea. *Commonwealth v. Carrasquillo*, 115 A.3d 1284, 1291 (2015). The Commonwealth has not

claimed prejudice in this case. As a result, the defendant must prove a fair and just reason for the withdrawal. *Id.* at 1292. The court’s discretion in determining a fair and just reason must be administered liberally in favor of the defendant. *Id.*

To permit the defendant to withdraw his plea under these circumstances would not promote justice and fairness. Whether his headlamps were on and working in the morning hours of the date of the incident is not determinative of whether his vehicle stop was proper, as a law enforcement officer needs only probable cause or reasonable suspicion to conduct a vehicle stop, not proof beyond a reasonable doubt. *Commonwealth v. Simmen*, 58 A.3d 811, 817 (Pa. Super. 2012)(“probable cause does not involve certainties, but rather the factual and practical considerations of everyday life on which reasonable and prudent persons act”). Whether or not the defendant passed the field sobriety tests is also not determinative as probable cause is based on the totality of the circumstances, and not solely on field sobriety tests. *Commonwealth v. Slonaker*, 795 A.2d 397, 402 (Pa. Super. 2002)(“the law is well settled that reasonable grounds to arrest does not require the failure of field sobriety tests”).

Finally, not only is there no basis that the defendant’s blood was taken illegally or outside the required time limits, that fact in and of itself is also not determinative as to whether the defendant is guilty.

### **ORDER**

**AND NOW**, this \_\_\_\_ day of December 2019, following a hearing and argument, Defendant’s motion to withdraw his guilty plea is DENIED. Defendant’s sentencing hearing is scheduled for **January 22, 2020 at 11:00 a.m. in Courtroom No. 4** of

the Lycoming County Courthouse. In preparation for sentencing, Defendant must contact West Branch Drug & Alcohol Abuse Commission for the purpose of scheduling a CRN and an assessment prior to sentencing.

By The Court,

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Marc F. Lovecchio, Judge

cc: CST  
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Work File