

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-1203-2024
	:
vs.	: Opinion and Order Denying
	: Defendant's Motion to Withdraw
MARK GORDON,	: Guilty Plea
Defendant	:

**OPINION AND ORDER**

This matter came before the court on April 11, 2025 for a hearing and argument on Defendant's Motion to Withdraw Guilty Plea.

By way of background, Defendant was charged with Driving Under the Influence of Alcohol (DUI)-high rate of alcohol, DUI-incapable of safely driving, Driving Under Suspension -DUI related with a BAC of .02% or greater, and related offenses arising out of an incident where, when driving from his residence in Lairdsville to his parents' residence on Peterman Road in Benton, PA, the Pennsylvania State Police were dispatched for a call regarding a suspicious person outside the parents' residence and discovered Defendant in his vehicle parked in the middle of Peterman Road a short distance away from the residence. Trooper Cofano encountered Defendant and asked him if everything was alright. Defendant indicated that he was driving to his parents' house from Lairdsville. Defendant's speech was slurred, his eyes were bloodshot and glassy and a strong odor of alcohol was emanating from his breath. Defendant admitted that he had been drinking. The police arrested Defendant and transported him to the nearest hospital for a blood test. Defendant had a BAC of .296%.

On December 13, 2024, Defendant entered a guilty plea to Count 2, DUI-highest rate of alcohol and Count 4, DUS-DUI related (BAC .02% or greater, 2<sup>nd</sup> offense) in exchange for a negotiated sentence of 72 hours to 6 months for DUI and a concurrent 6-month to 12-month

sentence on DUS-DUI related. As Defendant had not yet completed a Court Reporting Network (CRN) evaluation, sentencing was scheduled for February 18, 2025.

At the time scheduled for sentencing, the court granted a defense request to continue the sentencing hearing as Defendant wished to withdraw his guilty plea on the basis that the court lacked jurisdiction.

On February 25, 2025, Defendant filed his motion to withdraw guilty plea in which he asserted that the court lacked jurisdiction because the crime occurred in Columbia County, not Lycoming County. The court scheduled a hearing and argument on Defendant's motion for April 11, 2025. At the hearing, neither party presented any evidence. Defense counsel argued that Defendant was residing with his parents at 998 Peterman Road in Benton Pennsylvania and that address is in Columbia County. The prosecutor argued that the motion should be denied and that the affidavit of probable cause showed that Defendant told the police that he drove to the location from Lairdsville and the address on the criminal complaint showed that Defendant lived in Lairdsville.

### **DISCUSSION**

There is no absolute right of a defendant to withdraw a guilty plea. *Commonwealth v. Carrasquillo*, 115 A.3d 1284, 1291-92 (Pa. 2015); *Commonwealth v. Garcia*, 280 A.3d 1019 (Pa. Super. 2022). Instead, trial court's have discretion in determining whether such a request will be granted. *Carrasquillo, id.* Although pre-sentence motions to withdraw are to be liberally allowed, this does not mean that the court must grant such a motion on a bare assertion. *Id.* It is only when there is a **demonstration** by a defendant that there is a fair-and-just reason and a withdrawal would not work a substantial prejudice to the Commonwealth that a withdrawal is granted. *See id* (bare assertion of innocence is

insufficient; it must be a credible assertion); *Commonwealth v. Norton*, 201 A.3d 112, 120-21 (Pa. 2019)(the proper inquiry on a withdrawal motion is whether the accused has made some colorable demonstration under the circumstances, such that permitting withdrawal of the plea would promote fairness and justice).

Defendant did not present any evidence to justify allowing him to withdraw his plea. It is well-settled that arguments of counsel are not evidence. *Commonwealth v. Chmiel*, 30 A.3d 1111, 1146 (Pa. 2011); *Commonwealth v. Puksar*, 951 A.2d 267, 280 (Pa. 2008); *Commonwealth v. Moore*, 263 A.3d 1193, 1206 (Pa. Super. 2021).

The court rejects Defendant's bare assertion that Lycoming County lacks jurisdiction. Defendant is confusing jurisdiction and venue. All courts of Common Pleas have statewide jurisdiction over criminal cases. *See Commonwealth v. Bethea*, 828 A.2d 1066, 1074 (Pa. 2003)(all court of common pleas have statewide jurisdiction in cases arising under the Crimes Code); *Commonwealth v. Gross*, 101 A.3d 1251, 1259 (Pa. Super. 2010)(same); *Commonwealth v. Kaminski*, 2024 WL 3983355 (Pa. Super., Aug. 29, 2024)(nonprecedential)(statewide jurisdiction applies to any criminal offenses that arise under the Vehicle Code).

Venue, on the other hand, refers to the convenience to the locality of trial or the right of a party to have a controversy brought and heard in a particular judicial district. *Gross*, 101 A.3d at 33. Venue in a criminal action properly belongs in the place where the crime occurred. *Id.* Venue need not be proven by direct evidence but may be inferred by circumstantial evidence. *Id.* Venue is a procedural matter governed by the Rules of Criminal Procedure, and it assumes the existence of jurisdiction. *Bethea*, 828 A.2d at 1074; see also Pa. R. Crim. P. 130. Venue is waived by the entry of a guilty plea. *See Commonwealth v.*

*Stradley*, 50 A.3d 769, 771 (Pa. 2012)(a guilty plea waives all defects except the validity of the plea, the jurisdiction of the court, and the legality of sentence). It is also waived by failing to object to improper venue prior to completion of the preliminary hearing. *See* Pa. R. Crim. P. 134(A)(“Objections to venue between magisterial districts shall be raised in the court of common pleas of the judicial district in which the proceeding has been brought, before completion of the preliminary hearing in a court case or before completion of the summary trial when a summary offense is charged, or such objections shall be deemed to have been waived.”).

The court finds that Defendant waived any objection to venue. He did not assert it prior to the completion of the preliminary hearing or before he entered his guilty plea. He did not even raise it in his motion to withdraw his guilty plea; he only raised a lack of jurisdiction. Based on the cases cited above, the court had jurisdiction in this case.

Moreover, the court is not convinced that venue is improper in Lycoming County. Defendant was found in his vehicle in the middle of Peterman Road. He was under the influence of alcohol. He admitted driving to the that location from Lairdsville, and his address on the criminal complaint is in Lairdsville. The police observations of Defendant establish the corpus for the offense of DUI. Defendant’s statements are admissible under the statements of an opposing party exception to the hearsay rule. Pa. R. E. 803(25). It might also be admissible as a statement against interest if Defendant is unavailable as a witness. *See* Pa. R. E. 804(b)(3). Lairdsville is in Lycoming County. Therefore, even if the spot where Defendant was parked in the middle of the road was in Columbia County, Defendant would have also committed the crime of DUI in Lycoming County.

Rule 130(A)(3) specifically governs this situation. It states:

(A) Venue. All criminal proceedings in summary and court cases shall be brought before the issuing authority for the magisterial district in which the offense is alleged to have occurred or before an issuing authority on temporary assignment to serve such magisterial district, subject, however, to the following exceptions:

(3) When charges arising from the same criminal episode occur in more than one judicial district, the criminal proceeding on all the charges may be brought before one issuing authority in a magisterial district within any of the judicial districts in which the charges arising from the same criminal episode occurred.

Pa. R. Crim. P. 130(A)(3). It is clear from the statements that Defendant made to the police that he drove under the influence of alcohol in both Lycoming County and Columbia County. Therefore, venue is proper in Lycoming County or Columbia County.<sup>1</sup>

As both jurisdiction and venue were properly in Lycoming County, the court will deny Defendant's motion to withdraw his guilty plea.

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<sup>1</sup> Even if venue were only proper in Columbia County, it would not result in dismissal of the charges. Rather, the charges would be transferred to Columbia County. *See* Pa. R. Crim. P. 134(C) ("No criminal proceedings shall be dismissed because of improper venue between magisterial district judges. Whenever an objection to such venue is allowed, the court of common pleas shall order the transfer of the proceeding to the issuing authority of the proper magisterial district."); *see also* *Gross*, 101 A.3d at 36.

**ORDER**

**AND NOW**, this 14<sup>th</sup> day of April 2025, the court DENIES Defendant's Motion to Withdraw Guilty Plea.

By The Court,

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Nancy L. Butts, President Judge

cc: Lindsay Sweeley, Esquire (ADA)  
Giovanna Danielle, Esquire (APD)  
Jerri Rook

NLB/laf