

NOV 24 2020

DENISE M. KAMINSKI
CLERK OF COURTS
GEAUGA COUNTY

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO

<p>STATE OF OHIO EX REL. MIKE BURKONS 2466 Richmond Road Beachwood, Ohio 44122</p> <p style="text-align: center;">Relator,</p> <p style="text-align: center;">vs.</p> <p>HON. TERRI STUPICA Chardon Municipal Court 111 Water Street Chardon, Ohio 44024</p> <p style="text-align: center;">Respondent.</p>	<p>Case No. <u>20 G 0274</u></p> <p>Original Action for Writ of Prohibition</p> <p>Verified Complaint for Writ of Prohibition</p>
---	--

1. This is an action by Relator Mike Burkons for a writ of prohibition to bar Respondent, Judge Terri Stupica of the Chardon Municipal Court, from continuing to exercise judicial power in a criminal case against Burkons—which arises from events that took place entirely within Cuyahoga County—over which the Chardon Court patently and unambiguously lacks subject-matter jurisdiction. *See Cheap Escape Co. v. Haddox, L.L.C.*, 120 Ohio St.3d 493, 2008-Ohio-6323, 900 N.E.2d 601, ¶ 18, ¶ 22 (“R.C. 1901.20 provides that municipal courts have subject-matter jurisdiction in criminal matters only when the crime was committed ‘within its territory’ or ‘within the limits of its territory.’ ... Litigants cannot vest a court with subject-matter jurisdiction by agreement.”) (emphasis added); *State ex rel. Keller v. Birrell*, 149 Ohio St. 145, 151, 78 N.E.2d 53 (1948) (“[S]ince he had no authority to proceed with the case ... prohibition is a proper remedy to prevent any further action by respondent.”). *Talaba v. Moreland*, 132 Ohio St. 71, 71, 5 N.E.2d 159 (1936), paragraph 2 of the syllabus (“When it is claimed that a court is without judicial power to hear or determine a cause, the remedy of a writ of prohibition may be invoked.”).

2. Burkons seeks this writ because on November 16, 2020, Judge Stupica issued an order denying Burkons' motion to dismiss the case for lack of subject-matter jurisdiction, and expressed her intent to continue exercising judicial power in the case by setting a pretrial hearing for December 11, 2020.
3. Burkons is a duly elected member of Beachwood's City Council who, at all times relevant, has resided in the City of Beachwood and has executed the affidavit attached as **Exhibit 1** to verify the facts alleged herein.
4. The criminal matter from which this action arises was initially filed as *State of Ohio v. Michael Burkons*, No. 20-CRB-00722 in the Shaker Heights Municipal Court ("the Shaker case") until it was improperly transferred and filed as *State of Ohio v. Michael Burkons*, No. 2020-CRB-00858 in the Chardon Municipal Court ("the Chardon case"). At all times relevant to this action, Judge Stupica has presided over the Chardon case.
5. This Court has original jurisdiction over this matter under Article IV § 3(B)(1)(d) of the Ohio Constitution.
6. "To obtain a writ of prohibition, a relator must show that the respondent is about to exercise judicial or quasi-judicial power, that such exercise of power is unauthorized by law, and that the relator has no other adequate remedy at law." *State ex rel. Sanquihy*, 60 Ohio St.3d 78, 78-79, 573 N.E.2d 606 (1991). The purpose of a writ of prohibition "is to stop an inferior court or judicial officer from engaging in any action which exceeds the general scope of its jurisdiction." *State ex rel. Feathers v. Gansbeimer*, 11th Dist. Ashtabula No. 2006-A-0038, 2007-Ohio-2858, ¶ 2, quoting *State ex rel. Bridge v. Chardon Mun. Court*, 11th Dist. Geauga No. 2015-G-0029, 2016-Ohio-344, ¶ 10.
7. On September 25, 2020, the State of Ohio instituted the Shaker case against Burkons, over which Judge K.J. Montgomery of the Shaker Heights Municipal Court presided.
8. On October 1, 2020, Judge Montgomery issued a *sua sponte* order transferring the case to the

Chardon Municipal Court under Crim.R. 18(B), which provides that a “court may transfer an action to any court having jurisdiction of the subject matter outside the county in which trial would otherwise be held, when it appears that a fair and impartial trial cannot be held in the court in which the action is pending.” See **Exhibit 2** (emphasis added).

9. Because Crim.R. 18(C) authorizes the transfer of venue only when the receiving court would have subject-matter jurisdiction over the case, Judge Montgomery’s order (**Ex. 2**, p. 11 (Ex. A)) transferring the Shaker case to the Chardon Municipal Court, which did not have subject-matter jurisdiction over the case, was improper. See *Bedford v. Lavey*, 30 Ohio App.3d 1, 3-4, 506 N.E.2d 224 (8th Dist.1985) (“Municipal courts are statutory courts and their territorial jurisdiction may not be enlarged except by statute ... The offenses for which defendant ... was charged arose in the municipality of Bedford. ... [T]herefore, unless some statute authorized the transfer, Garfield Heights Municipal Court lacked territorial subject matter jurisdiction to proceed with the trial of the criminal charges against defendant”).

10. On October 28, 2020, after the Shaker case was received and filed in the Chardon Municipal Court, Burkons filed a motion in the Chardon case to transfer venue or dismiss under Crim.R. 12(C) and Article I, Section 10 of the Ohio Constitution, which guarantees criminal defendants that “in any trial in any court the party accused shall be allowed ... a speedy trial by an impartial jury of the county ... in which the offense is alleged to have been committed.” *Simmons v. State*, 75 Ohio St.346, 350-351, 79 N.E. 555 (1906).¹ The State notified the Court that it did not oppose Burkons’ motion.

11. After filing the motion to transfer or dismiss, Burkons and his attorneys consulted R.C.

¹ See also *State v. Chalikes*, 122 Ohio St. 35, 35, 170 N.E. 653 (1930) (“A statute which attempts to provide the place of trial of an offense for which a jury may be demanded in a county other than that in which the offense was committed in violative of Section 10 of Article I of the Constitution of Ohio, and, to that extent, is void.”); *State v. Loucks*, 28 Ohio App.2d 77, 82, 274 N.E.2d 773 (4th Dist.1971) (“Venue is important as a guaranty of the defendant’s right to be tried in the vicinity of his alleged criminal activity, and venue requirements are imposed to prevent the state from choosing a favorable tribunal or one which may be unduly inconvenient for the defendant.”).

Chapter 1901, which governs the jurisdiction of municipal courts.

12. R.C. 1901.02(A) states that “municipal courts ... have jurisdiction within the corporate limits of their respective municipal corporations...” In addition, R.C. 1901.02(B) provides that the “Chardon municipal court has jurisdiction within Geauga county.” And with respect to criminal cases, R.C. 1901.20(A)(1) limits the authority of a municipal court to hear cases wherein the alleged criminal act was “committed *within its territory*...” (emphasis added).

13. “Unlike courts of common pleas, which are created by the Ohio Constitution and have statewide subject-matter jurisdiction, ... municipal courts are statutorily created ... and their subject-matter jurisdiction is set by statute.” *Cheap Escape Co. v. Haddox, L.L.C.*, 120 Ohio St.3d 493, 2008-Ohio-6323, 900 N.E.2d 601, ¶ 7; *See also State v. Goldberg*, 11th Dist. Ashtabula No. 2013-A-0063, 2014-Ohio-2453, ¶ 20 (“Since municipal courts are statutory creations, the scope of their subject-matter jurisdiction is governed solely by statute.”); *Stern v. Cleveland Browns Football Club*, 11th Dist. Lake No. 95-L-196, 1996 Ohio App. LEXIS 5802, *7 (Dec. 20, 1996), citing *State ex rel. Foreman v. Bellefontaine Mun. Court*, 12 Ohio St.2d 26, 27, 231 N.E.2d 70 (1967) (“A municipal court’s jurisdiction is “statutorily limited and specific.”).

14. Because “subject-matter jurisdiction involves a court’s power to hear a case, the issue can never be waived or forfeited and may be raised at any time.” *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, 951 N.E.2d 1025, ¶ 10, citing *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004 Ohio 1980, 806 N.E.2d 992, ¶ 11.

15. Thus, in criminal cases, the subject-matter jurisdiction of the Chardon Municipal Court is strictly limited to cases in which the alleged criminal act occurred in Geauga county or otherwise “within the corporate limits of [Chardon’s] respective municipal corporations ...” R.C. 1901.02(A)–(B); *See also Cheap Escape Co.*, 2008-Ohio-6323, ¶ 18, ¶ 22 (“R.C. 1901.20 provides that municipal courts have subject-matter jurisdiction in criminal matters only when the crime was committed

‘within its territory’ or ‘within the limits of its territory.’ ... Litigants cannot vest a court with subject-matter jurisdiction by agreement.”) (emphasis added).

16. Because Cuyahoga County—where Burkons’ alleged criminal act occurred—is patently and unambiguously outside of the jurisdiction of the Chardon Municipal Court as defined by the above-referenced statutes, Burkons, on November 5, 2020, filed a motion to dismiss the Chardon case for lack of subject-matter jurisdiction under Crim.R. 12(C). **Exhibit 3**. The State did not oppose this motion.

17. On November 16, 2020, Judge Stupica entered an order (**Exhibit 4**) denying Burkons’ motion to transfer venue and/or motion to dismiss (**Ex. 2**) and his motion to dismiss for lack of subject-matter jurisdiction (**Ex. 3**).

18. Despite that venue (which can be waived) subject-matter jurisdiction (which cannot be waived), are separate and distinct issues governed by separate and distinct standards, Judge Stupica justified her order denying Burkons’ motions on the basis that “the decision to change venue rests largely in the discretion of the trial court, and, absent an abuse of discretion, the trial court’s decision must stand.” **Ex. 4**, p. 3. But as set forth above, Ohio law is clear that municipal courts have no discretion to extend their subject-matter jurisdiction beyond what is specifically enumerated in R.C. Chapter 1901.

19. By denying Burkons’ motion to dismiss for lack of subject-matter jurisdiction and scheduling a pretrial hearing for December 11, 2020, Judge Stupica has expressed her intention to continue exercising judicial power over Burkons despite her lack of jurisdiction over him.

20. Burkons does not have an adequate remedy at law for Judge Stupica’s continued exercise of unauthorized judicial power over him. Because neither Burkons nor the State can by consent or agreement vest Judge Stupica with subject-matter jurisdiction that is clearly not authorized by R.C. Chapter 1901, any proceedings resulting from the Chardon Municipal Court will be “void *ab initio*.”

Patton v. Diemer, 35 Ohio St.3d 68, 518 N.E.2d 941, paragraph three of the syllabus; *See also Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶ 11 (“Because subject-matter jurisdiction goes to the power of the court to adjudicate the merits of a case, it can never be waived ... If a court acts without jurisdiction, then any proclamation by that court is void.”).

21. If Judge Stupica is permitted to hear the Chardon case and a jury acquits Burkons of the charge at issue, the State could retry Burkons in a court with subject-matter jurisdiction on the basis that Judge Stupica never had subject-matter jurisdiction over the case in the first place. *State v. Schooler*, 2d Dist. Greene No. 2003 CA 65, 2004-Ohio-2430, ¶ 16, citing *Patton v. Diemer*, 35 Ohio St.3d 68, 518 N.E.2d 941, paragraph three of the syllabus (“A judgment rendered by a court lacking subject matter jurisdiction is void *ab initio*. ... Accordingly, [the defendant]’s plea before the municipal court was void. Consequently, [the defendant] was not subjected to double jeopardy when he was subsequently convicted in the Greene County Court of Common Pleas on the felony charge.”).

22. Moreover, it is “well established that prohibition is a proper remedy when a court is attempting to exceed its jurisdiction in a criminal matter, even [if] a right of appeal is available to the accused.” *State ex rel. Chaputa v. Weaver*, 100 Ohio App. 513, 514, 131 N.E.2d 451 (2d Dist.1995), citing *State ex rel. Micheel v. Vamos*, 144 Ohio St. 628, 634, 60 N.E.2d 305 (1945) (“[T]he accused would have no remedy except to wait until the justice finally conducted the examination and thereafter prosecute an appeal. Surely such procedure would not afford an adequate remedy[.]”); *State ex rel. Talaba v. Moreland*, 132 Ohio St. 71, 71, 5 N.E.2d 159 (1936), paragraphs 1–3 of the syllabus (“1. A court may not compel a party to submit to the exercise of judicial power not possessed by that tribunal. 2. When it is claimed that a court is without judicial power to hear or determine a cause, the remedy of a writ of prohibition may be invoked. 3. In the state of Ohio the jurisdiction of Municipal Courts is statutory.”). *State ex rel. Keller v. Birrell*, 149 Ohio St. 145, 151, 78

N.E.2d 53 (1948) (“[S]ince he had no authority to proceed with the case ... prohibition is a proper remedy to prevent any further action by respondent.”). *State ex rel. T.L.M. v. Judges of the First Dist. Court of Appeals*, 147 Ohio St.3d 25, 2016-Ohio-1601, 59 N.E.3d 1260, ¶ 14 (“The court of appeals patently and unambiguously lacks jurisdiction to entertain the state’s appeals, and we therefore grant a peremptory writ of prohibition preventing the court of appeals from proceeding.”); *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, ¶ 32 (“The court of appeals patently and unambiguously lacks jurisdiction over Berman’s appeal. Because the pertinent facts are uncontroverted, we grant the requested peremptory writ of prohibition to prevent the court of appeals from further proceeding in Berman’s appeal[.]”).

23. Because R.C. Chapter 1901 expressly limits the Chardon Municipal Court’s subject-matter jurisdiction to criminal offenses occurring in Geauga county, and because the case against Burkons, which arose solely in Cuyahoga County, is “patently and unambiguously” outside of the Chardon Municipal Court’s jurisdiction, Burkons thus respectfully requests that this Court issue a writ of prohibition barring Judge Stupica and the Chardon Municipal Court from continuing to adjudicate the proceedings against him in Chardon Municipal Court Case No. 2020-CRB-00858.

Respectfully submitted,



Peter Pattakos (0082884)
Rachel Hazelet (0097855)
THE PATTAKOS LAW FIRM LLC
101 Ghent Road
Fairlawn, Ohio 44333
Phone: 330.836.8533
Fax: 330.836.8536
peter@pattakoslaw.com
rhazelet@pattakoslaw.com



Robert B. Botnick (0078267)
THE BOTNICK LAW FIRM, LLC
20600 Chagrin Boulevard, Suite 495
Shaker Heights, Ohio 44122
Phone: 216.245.9245
Fax: 216.331.2619
robert@botnicklawfirm.com

Attorneys for Relator Mike Burkons


IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO

STATE OF OHIO EX REL. MIKE BURKONS Relator, vs. HON. TERRI STUPICA Respondent.	Case No. _____ Original Action for Writ of Prohibition Affidavit of Mike Burkons
---	---

I, Mike Burkons, having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I am over eighteen years of age and am a duly elected member of Beachwood's City Council.
2. I have reviewed the Complaint in the above-captioned matter, to which this Affidavit is attached as **Exhibit 1**.
3. The facts set forth in the Complaint are true and accurate as known to me, and if called upon, I am competent to and will testify to such facts.
4. The exhibits attached to and incorporated by reference in the Complaint are true and accurate copies of pleadings and orders that have been generated and issued in connection with the proceedings at issue in the above-captioned matter.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.


Signature of Affiant November 20th 2020
Date

Sworn to and subscribed before me on 20th of November 2020 at HUNTINGTON, Ohio.



AMRITPAL SANDHU
Notary Public, State of Ohio
My Commission Expires:
04/30/2025


Notary Public

EXHIBIT 1

SHAKER HEIGHTS MUNICIPAL COURT
(Traffic/Criminal Case Division)

20CRB00722

Journal Entry Sheet

BEACHWOOD

Offense(s) Charged:

2921.45 INTERFERING/CIVIL RTS

-VS-

Attorney for Defendant:

MICHAEL BURKONS

DATE	JOURNAL ENTRIES
10/01/2020	<p>The defendant, Michael Burkons, is a member of the Beachwood City Council. This court has jurisdiction to hear cases from five municipalities: Beachwood, Pepper Pike, Shaker Heights, University Heights and Hunting Valley (although a portion of Hunting Valley is also situated in Geauga County). Potential jurors for this case if it is scheduled for jury trial will be drawn from registered voters in these five municipalities including Beachwood. Furthermore, pursuant to the Ohio Revised Code, criminal charges occurring in Beachwood are prosecuted in this court. Fines imposed in Beachwood cases by this court are distributed to the City of Beachwood's general fund.</p> <p>This case has received publicity.</p> <p>Based upon all the foregoing, it appears that a fair and impartial trial cannot be held in this court.</p> <p>Pursuant to Ohio Rules of Criminal Procedure 18(B) and Ohio Revised Code 2901.12, this court may change venue to any court having jurisdiction of the subject matter outside the county in which trial would otherwise be held when it appears that a fair and impartial trial cannot be held at this court. The Chardon Municipal Court in Geauga County, contiguous to Cuyahoga County, has jurisdiction of the subject matter of this case.</p> <p>Therefore, it is ordered that venue shall be changed to Chardon Municipal Court, 111 Water Street, Suite 3, Chardon, Ohio 44024. The defendant is ordered to appear in Chardon Municipal Court henceforth.</p> <p>The change of venue procedure set forth in Ohio Revised Code 2931.29 shall be followed by the clerk and prosecuting attorney.</p> <p>So ordered.</p> <p><i>[Signature]</i></p> <p>Journalized: 10/1/2020</p> <p>Mailed to _____</p> <p>By _____ Clerk of Court</p> <p>By _____ Deputy Clerk</p>

EXHIBIT 2

IN THE CHARDON MUNICIPAL COURT
GEAUGA COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO (BEACHWOOD) Plaintiff vs. MICHAEL BURKONS, Defendant	<div>2020 NOV 5 P 12:36</div> <div>CHARDON MUNICIPAL COURT CHARDON, OHIO</div> <div>Case No. 2020 CRB 00858 Judge Terri L. Stupica</div> <div>Defendant's Motion to Dismiss for Lack of Subject-Matter Jurisdiction under Crim.R. 12(C)</div>
--	--

Last week, Defendant Mike Burkons moved for dismissal or transfer of this case back to the Shaker Heights Municipal Court, pursuant to his constitutional right to have this case heard in the jurisdiction where the alleged “crime” was committed. It has since occurred to the undersigned that this Court lacks subject matter jurisdiction over this matter, thus this matter should be dismissed on that basis, as this Court lacks jurisdiction to rule on the venue motion.

“The term ‘jurisdiction’ refers to the court’s statutory or constitutional authority to hear a case.” *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, 951 N.E.2d 1025, ¶ 10, citing *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶ 11. “Because subject-matter jurisdiction involves a court’s power to hear a case, the issue can never be waived or forfeited and may be raised at any time.” *Id.*


“Since municipal courts are statutory creations, the scope of their subject matter jurisdiction is governed solely by statute.” *State v. Goldberg*, 11th Dist. Ashtabula No. 2013-A-0063, 2014-Ohio-2453, ¶ 20, citing *State v. Jones*, 11th Dist. Portage Nos. 2010-P-0051, 2010-P-0055, 2011-Ohio-5109, ¶ 24. In criminal cases, R.C. 1901.20(A)(1) limits a municipal court’s subject-matter jurisdiction to “misdemeanor offenses committed within the limits of its territory.” *Goldberg*, 2014-Ohio-2453 ¶ 20, quoting *State v. Rode*, 11th Dist. Portage No. 2010-P0015, 2011-Ohio-2455, ¶ 17; accord *Mbodji*,

EXHIBIT 3

2011-Ohio-2880, ¶ 11. R.C. 1901.02(A) likewise prevents a municipal court from exercising jurisdiction over matters occurring outside of “the corporate limits of [its] respective municipal corporations[.]” *Goldberg*, 2014-Ohio-2453, ¶ 21. *See also Cheap Escape Co. v. Haddox*, L.L.C., 120 Ohio St.3d 493, 2008-Ohio-6323, 900 N.E.2d 601, ¶ 18, 22 (“R.C. 1901.20 provides that municipal courts have subject-matter jurisdiction in criminal matters only when the crime was committed ‘within its territory’ or ‘within the limits of its territory.’ ... “Litigants cannot vest a court with subject-matter jurisdiction by agreement.”).

The allegations raised in this case relate exclusively to conduct alleged to have occurred between Beachwood residents entirely within Cuyahoga County. Because there are no “territorial connections to the [Chardon Municipal Court], this court lack[s] subject-matter jurisdiction” over it. *Cheap Escape*, 2008-Ohio-6323, ¶ 22. Accordingly, Ohio law requires dismissal.

Respectfully submitted,



Peter Pattakos (0082884)
Rachel Hazelet (0097855)
THE PATTAKOS LAW FIRM LLC
101 Ghent Road
Fairlawn, Ohio 44333
Phone: 330.836.8533
Fax: 330.836.8536
peter@pattakoslaw.com
rhazelet@pattakoslaw.com



Robert B. Botnick (0078267)
THE BOTNICK LAW FIRM, LLC
20600 Chagrin Boulevard, Suite 495
Shaker Heights, Ohio 44122
Phone: 216.245.9245
Fax: 216.331.2619
robert@botnicklawfirm.com

Attorneys for Defendant Michael Burkons

Certificate of Service

On November 5, 2020, my office filed this document with the Court and emailed it to the purported special prosecutor for Beachwood, Stephanie Scalise (scalise@universityheights.com).

A handwritten signature in black ink, appearing to be 'S. R. Scalise', written over a horizontal line.

Attorney for Defendant Michael Burkons

IN THE CHARDON MUNICIPAL COURT
GEAUGA COUNTY, OHIO

STATE OF OHIO

Plaintiff

-vs-

MICHAEL BURKONS

Defendant

CASE NO. 2020 CRB 00858

JUDGE: TERRI L. STUPPI

ORDER

CHARDON
MUNICIPAL COURT
CHARDON, OHIO

2020 NOV 16 P 2:43

FILED

This matter came before the Court upon Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction under Crim.R.12(C). A pretrial conference was held on November 12.

On or about September 17, 2020, a complaint and affidavit was filed against Defendant, Michael Burkons, in the Shaker Heights Municipal Court, for violations of 2921.45, interfering with civil rights, a misdemeanor of the first degree. Subsequently, a summons upon complaint was served upon Defendant. On September 14, 2020, a motion to withdraw as prosecuting attorney and appointment of special prosecutor was filed, which was granted and journalized on September 28, 2020 by Judge K.J. Montgomery of the Shaker Heights Municipal Court.

On or about October 1, 2020, Judge Montgomery ordered and journalized the following:

SHAKER HEIGHTS MUNICIPAL COURT
(Traffic/Criminal Case Division)

20CRB00722

Journal Entry Sheet

BEACHWOOD

Offense(s) Charged:

2921.45 INTERFERING/CIVIL RTS

-vs-

Attorney for Defendant:

MICHAEL BURKONS

DATE	JOURNAL ENTRIES
10/01/2020	<p>The defendant, Michael Burkons, is a member of the Beachwood City Council. This court has jurisdiction to hear cases from five municipalities: Beachwood, Pepper Pike, Shaker Heights, University Heights and Hunting Valley (although a portion of Hunting Valley is also situated in Geauga County). Potential jurors for this case if it is scheduled for jury trial will be drawn from registered voters in these five municipalities including Beachwood. Furthermore, pursuant to the Ohio Revised Code, criminal charges occurring in Beachwood are prosecuted in this court. Fines imposed in Beachwood cases by this court are distributed to the City of Beachwood's general fund.</p> <p>This case has received publicity.</p> <p>Based upon all the foregoing, it appears that a fair and impartial trial cannot be held in this court.</p> <p>Pursuant to Ohio Rules of Criminal Procedure 18(B) and Ohio Revised Code 2901.12, this court may change venue to any court having jurisdiction of the subject matter outside the county in which trial would otherwise be held when it appears that a fair and impartial trial cannot be held at this court. The Chardon Municipal Court in Geauga County, contiguous to Cuyahoga County, has jurisdiction of the subject matter of this case.</p>

EXHIBIT 4

Therefore, it is ordered that venue shall be changed to Chardon Municipal Court, 111 Water Street, Suite 3, Chardon, Ohio 44024. The defendant is ordered to appear in Chardon Municipal Court henceforth.

The change of venue procedure set forth in Ohio Revised Code 2931.29 shall be followed by the clerk and prosecuting attorney.

So ordered.

K. Montgomery, Jr.

Journalized

10/1/2020

Mailed to

By

Deputy Clerk

Defendant bases his argument on the fact that he has a constitutional right to have a jury trial in the county in which the offense is alleged to have been committed, pursuant to Article 1, Section 10 of the Ohio Constitution, and has not waived that right. He further argues that, as such, there was no lawful basis to transfer the case out of Shaker Heights Municipal Court. Defendant requests the case be dismissed or transferred back to the Shaker Heights Municipal Court.

In State v. Byrd, (No. 96CA2427, December 30, 1997), the Fourth District Court of Appeals addressed this same issue, but determined that the transferring court did not properly change venue. The Court stated,

"The Sixth Amendment to the United States Constitution and Section 10, Article 1 of the Ohio States Constitution provide that, in all criminal prosecutions, the accused shall enjoy a right to a speedy and public trial by an impartial jury of the County in which the crime was alleged to have been committed. R.C. 2901.12(A) states the trial of a criminal case in this state shall be held in the territory of which the offense or any element of the offense was committed." In the instant case, based upon this analysis, Shaker Heights Municipal Court would be the appropriate venue.

However, the Court continued,

"However, the law in Ohio provides that under certain circumstances, the venue of a criminal action may be transferred to a county other than the county in which the criminal offense was alleged to have been occurred. R.C. 2501.12(K) states that, notwithstanding any other requirement regarding the place of trial, 'venue may be changed upon motion of the prosecutor, the defense, or the Court, to any court having jurisdiction of the subject matter outside the county in which trial otherwise would be held, *when it appears that a fair and impartial trial cannot be held in the jurisdiction in which trial otherwise would be held, or when it appears that trial should be held in another jurisdiction for the convenience of the parties and in the interests of justice.*' (Emphasis added). Moreover, Crim. R. 18(B) provides that "Upon motion of any party or upon its own motion the Court may transfer an action to any court having jurisdiction of the subject matter outside the county in which trial would otherwise be held,

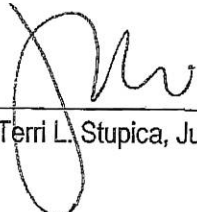
'when it appears that a fair and impartial trial cannot be held in the court in which action is pending.' (Emphasis added.)

In the instant case, Judge Montgomery delineated the reasoning regarding the transfer in clear and concise terms, and proceeded properly pursuant to Crim R. 18 and R.C. 2501.12(K), as opposed to the Byrd trial court above.

Finally, the decision to change venue rests largely in the discretion of the trial court, and, absent an abuse of discretion, the trial court's decision must stand. State v. Gumm, 73 Ohio St.3d 413, (1995); see also, State v. Carter, 72 Ohio St.3d at 556. (1995). . Therefore, based upon the foregoing, Defendant's motion to dismiss and/or transfer back to Shaker Heights Municipal Court is denied.

The next pretrial is set for December 11, 2020 at 11:00 a.m.

IT IS SO ORDERED.

 11-16-2020

Terri L. Stupica, Judge

NOV 16 2020