

VENUE

No Reversal of Conviction When There Was a Variance Between Indictment's Allegation and Proof of County Where Offense Was Committed

State v. Spencer, 187 N.C. App. 605, 654 S.E.2d 69 (18 December 2007).

The indictment charged that the defendant committed felony larceny in Cleveland County. The evidence at trial in Cleveland County Superior Court proved that the offense was committed in Gaston County. The court ruled that the defendant was not entitled to a reversal of his conviction. First, the defendant waived any question of venue because he failed to make a pretrial motion to dismiss for improper venue; see G.S. 15A-631 and *State v. Brown, 85 N.C. App. 583 (1987)*. Second, the variance in this case between the indictment and proof at trial was not fatal; see *State v. Brown, supra*.

Indictment and Information--County in which crime occurred--Venue rather than jurisdiction

State v Pulley, 180 N. C. APP. 54 (2006)

Jurisdiction to hear a case is statewide; the proper county in which to bring the case is an issue of venue. There was no plain error in the instructions where an indictment alleged that an offense was committed in Caswell County and the court instructed the jury that the State must prove that the alleged homicide was committed in North Carolina.

Criminal Law--Venue--Concurrent--Joinable offenses

State v. Perry, 159 N. C. APP. 30 (2003)

The trial court did not err in an involuntary manslaughter and practicing medicine without a license case by denying defendant's motion to dismiss based on improper venue, because: 1) N.C.G.S. § 15A-132(b) provides that when acts constituting the offense occur in multiple counties, each county has concurrent venue; 2) N.C.G.S. § 15A-132(b) also provides that if charged offenses which may be joined in a single criminal pleading under N.C.G.S. § 15A-926 occurred in more than one county, each county has concurrent venue as to all charged offenses; and 3) the offenses in this case are joinable offenses under N.C.G.S. § 15A-926(a).

Venue—Change--Vicinage rights--No right to county of choice

State v. Prevatte, 356 NC 178 (2002)

The trial court did not violate defendant's vicinage rights in a first-degree murder and second degree kidnapping case by changing venue from Anson County to Stanly County, because: 1) although defendant failed to present a sufficient showing of prejudice to change venue, the trial court had inherent authority in its discretion to change venue; 2) the trial court was making a decision at defendant's request to benefit defendant in his upcoming trial; 3) the trial court took into consideration whether there were adequate facilities and manageable dockets in the other counties; and 4) defendant does not have the right to change venue to the county of his choice, and a defendant may not condition a motion for a change of venue upon the trial court's agreeing to transfer the case to a particular county specified by defendant.

Jury--Special venire--Another county

State v. Golphin, 352 N.C. 364, 533 S.E.2d 168 (S. Ct. 2000)

Although one defendant argues there was no filed court order changing venue for purposes of jury selection, the trial court did not abuse its discretion in a capital trial by ordering a special venire from another county for the limited purpose of jury selection because: 1) both defendants agreed through their counsel to the proposed change; 2) N.C.G.S. § 15A-957 does not apply since defendants never moved for a change of venue; and (3) N.C.G.S. § 15A-133 was not violated since the trial court had the inherent authority to order the change based on the nature and circumstances of the alleged crimes against two law enforcement officers, and defendants' acquiescence to the stipulation and proposal at the hearing.

Venue--State's motion to change--Limitation of facilities

State v. Griffin, 136 N.C. App. 531 (2000)

The trial court did not abuse its discretion in a first-degree murder prosecution by granting the State's motion to change the venue based upon the physical limitations of the facilities.

Criminal Law § 78 (NCI4th Rev.) - pretrial publicity - denial of change of venue

State v. Bonnett, 348 N.C. 417 (1998)

The trial court did not err in the denial of defendant's motion for a change of venue or a special venire in this first-degree murder and robbery trial

based on pretrial publicity where 1) several jurors who indicated that they had read or heard about the case stated that they had not formed an opinion about the case, could set aside any information, and could be fair and impartial, and one juror who had formed an opinion and knew the victim stated unequivocally that he could set aside his opinion and base his decision on the evidence, and 2) viewing the totality of the circumstances, there was no reasonable likelihood that the county's population was so infected with prejudice against defendant that he could not receive a fair trial in the county. N.C.G.S. § 15A-957.

Criminal Law 1 78 (NCI4th) pretrial publicity--Denial of change of venue.

State v. Gregory, 340 N.C. 365 (1995) ___ S.E.2d ___

1) Criminal Law 1 78 (NCI4th) murder and rape--Pretrial publicity--Change of venue denied

State v. Moseley, 338 N.C. 1 (1994) ___ S.E.2d ___

2) Criminal Law 76, 77 (NCI4th)--Pretrial publicity--Change of venue--Test and burden of proof

State v. Yelverton, 334 N.C. 532 (1993) 434 S.E.2d 183

The test for determining whether venue should be changed is whether it is reasonably likely that prospective jurors would base their decision in the case upon pretrial information rather than the evidence presented at trial and would be unable to remove from their minds any preconceived impressions they might have formed. Defendant has the burden of proving the existence of a reasonable likelihood that he cannot receive a fair trial because of prejudice against him in the county in which he is to be tried.

3) Criminal Law 76 (NCI4th)--Pretrial publicity--Change of venue--Discretion of court

State v. Yelverton, 334 N.C. 532 (1993) 434 S.E.2d 183