

10.2 Territorial Jurisdiction

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10.2 Territorial Jurisdiction

A. Constitutional Basis for Requirement

The Sixth Amendment to the U.S. Constitution guarantees the right to trial by jury “of the state and district wherein the crime shall have been committed” *State v. Darroch*, 305 N.C. 196, 201 (1982) (noting Sixth Amendment basis for the limitation on State’s territorial jurisdiction).

B. Location of Essential Element of Crime

The basic rule is that North Carolina courts have territorial jurisdiction over a crime if any of the essential acts forming the offense occurred in this state. For example, in *State v. White*, 134 N.C. App. 338 (1999), *habeas corpus granted sub nom.*, *White v. Hall*, 2010 WL 2572654 (E.D.N.C. 2010), the N.C. Court of Appeals held that North Carolina had jurisdiction over a heroin trafficking offense where the defendant was observed to have cut, bagged, and attempted to sell heroin in North Carolina, even though the defendant was arrested and the heroin was seized from the defendant’s person in New York. The acts essential for a trafficking charge—cutting, bagging, and selling—all took place in this state. *See also State v. Rick*, 342 N.C. 91 (1995) (evidence as whole amounted to prima facie showing of jurisdiction to carry case to jury and permit jury to infer that murder occurred in North Carolina).

In contrast, in *State v. Bright*, 131 N.C. App. 57 (1998), the victim was kidnapped from a North Carolina home, driven across the Virginia border, and at some point sexually assaulted by the defendant. Because the evidence was in dispute about whether the sexual offenses occurred in North Carolina or in Virginia, the Court of Appeals held that the trial court erred in failing to instruct the jury to determine whether North Carolina had jurisdiction over those offenses. *See also State v. Williams*, 74 N.C. App. 131 (1985) (North Carolina did not have jurisdiction to prosecute possession of stolen goods charge against defendant found in possession of stolen car in the District of Columbia where there was no evidence that the defendant possessed the car in North Carolina; for North Carolina to have jurisdiction, there must be evidence that the offense occurred wholly or

partly within the state). For a discussion of instructing the jury on jurisdiction, see *infra* § 10.2F, Procedure to Determine Territorial Jurisdiction.

Under the “duty to account” doctrine, North Carolina courts have territorial jurisdiction over the crime of embezzlement, even where the defendant misappropriates property in another state, if the defendant had a pre-existing obligation to account for the property in North Carolina. See *State v. Tucker*, 227 N.C. App. 627 (2013). In *Tucker*, the defendant was a long-distance driver for a moving company located in North Carolina. The defendant received payment from a customer in Nevada, used a portion of the money to buy a plane ticket in Arizona, and failed to remit any of the proceeds from the move to his employer. The court found that an essential act of embezzlement was committed in North Carolina in light of the defendant’s duty to account to the company headquartered in North Carolina.

North Carolina statutes codify the essential acts approach in general and for certain offenses. See G.S. 15A-134 (jurisdiction to try charged offense occurring in part within and in part outside North Carolina); G.S. 15-131 (jurisdiction to try homicide where person is assaulted in this state and dies in another state); G.S. 15-133 (jurisdiction to try homicide where person is assaulted outside the state and dies within the state); see also G.S. 15-132 (action in this state injuring person in another state).

C. Inchoate Offenses

Territorial jurisdiction over an offense can become complicated where the crime consists primarily of a mental act and the mental act occurs outside of North Carolina. Examples include a conspiracy entered into out of state or an out-of-state solicitation of a crime that physically occurs in North Carolina.

General approach. In *State v. Darroch*, 305 N.C. 196 (1982), the court adopted a flexible approach to the question of territorial jurisdiction. In *Darroch*, the defendant, while in Virginia, hired or encouraged two people to kill her estranged husband in North Carolina. The court held that North Carolina had jurisdiction to prosecute the defendant as an accessory before the fact to murder, holding that if the principal felony takes place within this state, North Carolina may prosecute any accessorial acts even if they take place outside this state. *Darroch* rested on *Strassheim v. Daily*, 221 U.S. 280, 285 (1911), which held that “[a]cts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a state in punishing the cause of the harm as if [the defendant] had been present at the effect” The reasoning of *Strassheim* and *Darroch* would justify prosecuting out-of-state solicitations or accessorial acts if they result in a crime actually being committed in North Carolina. See also G.S. 14-202.3 (jurisdiction over offense of solicitation of child by computer to commit an unlawful sex act if transmission originates or is received in North Carolina). However, North Carolina’s interest in prosecution may be too remote to support territorial jurisdiction if the contemplated crime never takes place here.

Conspiracy. Our courts have held that North Carolina may prosecute any member of a conspiracy if any of the co-conspirators commit an overt act in furtherance of the conspiracy in North Carolina, even if the conspiracy was entered into out of state. *See State v. Drakeford*, 104 N.C. App. 298 (1991) (North Carolina had jurisdiction over conspiracy charge where defendant arranged to sell drugs to undercover agent in North Carolina, then drove to Maryland to meet co-conspirator and continued to New York to procure drugs).

D. Continuing Offenses

A continuing offense is a “breach of the criminal law . . . which subsists for a definite period” or consists of numerous similar occurrences. *State v. Manning*, 139 N.C. App. 454, 467 (2000), *aff’d per curiam*, 353 N.C. 449 (2001). Drug trafficking, kidnapping, and failure to pay child support are examples of continuing offenses. If any part of a continuing offense takes place in North Carolina, the state has concurrent jurisdiction with other involved states over the offense. *See State v. Johnson*, 212 N.C. 566, 570 (1937) (“When [a continuing offense] runs through several jurisdictions, the offense is committed and cognizable in each.”).

E. Concurrent Jurisdiction

In some instances North Carolina will have concurrent jurisdiction over an offense with another state. There is no double jeopardy bar to a defendant being tried for the same offense by two different sovereigns. *See Heath v. Alabama*, 474 U.S. 82 (1985) (successive prosecutions for same offense in two states did not violate double jeopardy); *see also Gamble v. United States*, ___ U.S. ___, 139 S. Ct. 1960 (2019) (reaffirming separate sovereign exception to the Double Jeopardy Clause). The full faith and credit clause of the United States Constitution does not require one state to accept the judicial determination of another state as to which possesses jurisdiction over a criminal case. *See State v. Batdorf*, 293 N.C. 486 (1977) (citing *Thompson v. Whitman*, 85 U.S. 457 (1873)).

However, by North Carolina statute, if a charged offense occurs in part within and in part outside North Carolina, a person may be tried in North Carolina only “if he has not been placed in jeopardy for the identical offense in another state.” G.S. 15A-134. Additionally, for drug offenses, the General Assembly has created a statutory bar to prosecuting an offense that has resulted in a conviction or acquittal under federal law or the law of another state for the same act. *See* G.S. 90-97. The N.C. courts have also said that it would violate the spirit if not the letter of the prohibition against double jeopardy to try a defendant in two different states for the same crime. *See Batdorf*, 293 N.C. at 493–94.

Practice note: As a practical matter, there would be little sense in North Carolina expending its resources to try a person for a crime for which he or she is being punished elsewhere. Therefore, if there is any question about the location of a crime, you should check to see what actions, if any, the other state has taken to prosecute the crime.

F. Procedure to Determine Territorial Jurisdiction

Pretrial motion to dismiss. G.S. 15A-954(a)(8) provides that the court on motion of the defendant must dismiss the charges if the court determines that it has no jurisdiction over the offense charged. Thus, the defendant may, although is not required to, make a motion before trial to dismiss for want of territorial jurisdiction. *See State v. Rick*, 342 N.C. 91, 98 (1995) (trial court held evidentiary hearing on motion before trial). If the evidence is insufficient to show that North Carolina has territorial jurisdiction over the offense, the court must dismiss the charges. *See State v. Batdorf*, 293 N.C. 486 (1977). If the court defers hearing the motion until the end of trial, the defendant should renew the motion at the close of the evidence. *See Rick*, 342 N.C. at 98 (indicating that court must dismiss charges if evidence is not sufficient to allow jury to find territorial jurisdiction).

The court's denial of a motion to dismiss for want of territorial jurisdiction, either before trial or at the close of the evidence, does not necessarily end the matter. If the question of territorial jurisdiction is in dispute, the jury must resolve the question, as described below.

Requirement of jury finding. If territorial jurisdiction is open to question and is contested by the defendant, the court must instruct the jury that unless the State has proven beyond a reasonable doubt that the crime occurred in North Carolina, a verdict of not guilty must be returned. The jury must be instructed to return a special verdict indicating a lack of jurisdiction if the State does not prove jurisdiction. Failure to give these instructions is reversible error. *See State v. Rick*, 342 N.C. 91 (1995) (new trial awarded where court did not give required jury instruction); *State v. Batdorf*, 293 N.C. 486 (1977) (when facts establishing jurisdiction are contested, jury must find that if the offense occurred, it took place in North Carolina).

If there is no real dispute regarding the location of the alleged offense, the defendant may not be able to get a jurisdiction instruction. *See State v. Drakeford*, 104 N.C. App. 298 (1991) (defendant not entitled to jurisdiction jury instruction; State presented evidence establishing beyond reasonable doubt that conspiracy occurred in North Carolina); *State v. Callahan*, 77 N.C. App. 164 (1985) (defendant not entitled to jury instruction on jurisdiction where he denied participating in offense but did not contest that location of drug sale in question was in North Carolina); *see also State v. Tucker*, 227 N.C. App. 627, 637–38 (2013) (“Where . . . a defendant's challenge is not to the factual basis for jurisdiction but rather to ‘the *theory* of jurisdiction relied upon by the State,’ the trial court is not required to give these instructions since the issue regarding ‘[w]hether the theory supports jurisdiction is a legal question’ for the court.” (citation omitted)).

The N.C. Court of Appeals has held that once a jury has decided the question of jurisdiction, it is the law of the case. *See State v. Dial*, 122 N.C. App. 298 (1996) (jury returned special verdict finding jurisdiction but was unable to reach verdict on guilt or innocence; court holds that principles of collateral estoppel barred defendant from relitigating issue of territorial jurisdiction at retrial); *cf. State v. Harris*, 198 N.C. App. 371 (2009) (noting that *Dial* is limited to verdicts entered and does not apply to

evidentiary rulings; where judge in first trial excluded Rule 404(b) evidence and then declared a mistrial after jury deadlocked, judge in second trial was not bound by that evidentiary ruling); 2 NORTH CAROLINA DEFENDER MANUAL § 31.10B, Rulings from Previous Trials (Dec. 2018).

G. Relationship of Jurisdiction and Venue

Under article IV, section 12 of the North Carolina Constitution, jurisdiction for criminal offenses is statewide. *See also* G.S. 7A-272 (implementing state constitution by granting statewide jurisdiction to district courts). Any court within this state has jurisdiction to consider criminal matters appropriate for that division of court, no matter where in the state the offense occurred. *See State v. Carter*, 96 N.C. App. 611 (1989) (noting that jurisdiction is statewide and thus that jurisdictional issues arise only in terms of whether North Carolina courts can hear the case and whether the case should be tried first in district or superior court); *accord State v. Bolt*, 81 N.C. App. 133 (1986).

Questions about which county within the state should properly try a case is a matter of venue, not jurisdiction. This distinction is significant because a defendant may request a change of venue but may not confer territorial jurisdiction on a court by request or consent. Moreover, objections to venue may be waived, while lack of territorial jurisdiction is a non-waivable error, which may be raised at any time. For a further discussion of venue, see *infra* Chapter 11, Venue.