11.1 Location of Proper Venue

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11.1 Location of Proper Venue

A. Distinction between Jurisdiction and Venue

Venue concerns the issue of the proper place or county in which to try a case, while jurisdiction concerns the more fundamental question of whether a particular court has the authority to try a defendant. *See State v. Carter*, 96 N.C. App. 611 (1989) (discussing distinction between jurisdiction and venue); *State v. Bolt*, 81 N.C. App. 133 (1986) (same). Improper venue does not deprive the court of jurisdiction. *See Carter*, 96 N.C. App. at 615 (trial court has jurisdiction despite technically improper venue); *accord State v. Pulley*, 180 N.C. App. 54 (2006).

The practical significance of this distinction is that improper venue is a waivable error, while lack of jurisdiction is not waivable. Thus, if an indictment or other pleading fails to identify, or incorrectly alleges the county of an offense, the defendant must timely move to dismiss on the ground of improper venue, or he or she waives the right to do so. *See infra* § 11.2, Challenging Improper Venue. The county named in an indictment is prima facie evidence of proper venue unless and until the defendant offers evidence of improper venue. *State v. Batdorf*, 293 N.C. 486, 496–97 (1977).

B. Superior Court Proceedings

Trials. Venue for misdemeanor appeals lies in the county where the district court misdemeanor trial was held. *See* G.S. 15A-131(d). Venue for felony trials lies in the county where the charged offense occurred. *See* G.S. 15A-131(c).

G.S. 15A-131(c) includes special venue provisions for felony offenses committed within a municipality that is the seat of a superior court and whose corporate limits extend into more than one county. This special provision appears to apply only to High Point, North Carolina.

Probable cause hearings. Venue for probable cause hearings is in the county where the offense allegedly occurred (subject to the special rule for High Point described above under Trials). *See* G.S. 15A-131(c).

Indictments. Venue to indict exists concurrently with trial venue. *See* G.S. 15A-628(b); G.S. 15A-631. Thus, indictments should be returned by a grand jury from the county where the charged offense occurred.

Before 1986, the place for the return of an indictment was a matter of jurisdiction; the grand jury only had jurisdiction to indict for offenses that occurred within the county where the grand jury sat. *See State v. Randolph*, 312 N.C. 198 (1984). However, the legislature has since amended the law, which now states that the place for return of indictment (or presentment) is a matter of venue only. *See* G.S. 15A-631; *State v. Carter*, 96 N.C. App. 611 (1989) (if indictment is otherwise valid, it is not void for improper venue). Thus, the issue of venue is waived if the defendant does not timely challenge it. *See* G.S. 15A-952(b)(5), (e); *see also* G.S. 15-155.

Pretrial proceedings. Venue for pretrial proceedings in superior court is proper in the entire judicial district of the alleged offense, rather than being restricted to the county of the offense. *See* G.S. 15A-131(b).

Initial appearance. The initial appearance, usually before a magistrate, may be held anywhere in the state. *See* G.S. 7A-273(7). This provision also applies to judges who set pretrial release conditions in domestic violence cases subject to G.S. 15A-534.1. Thus, if a defendant is arrested in one county on a domestic violence charge brought in another county, a judge in the arresting county has venue to set pretrial release conditions. The failure to do so may require dismissal of the charges. *See supra* "Venue for out-of-county charges" in § 1.11B, Domestic Violence Cases (2013).

Probation. Discussion of proceedings to modify or revoke probation is beyond the scope of this manual. The pertinent venue and jurisdiction statutes for probation proceedings are: G.S. 15A-1345(d) (preliminary hearing on probation violation); G.S. 15A-1344 (probation violation hearing); G.S. 15A-1342(a1) (violation of probation pursuant to deferred prosecution or conditional discharge); G.S. 90-96 (violation of probation pursuant to conditional discharge); G.S. 15A-1344(a1) (violation of probation in local judicially managed accountability and recovery court cases); *see also* G.S. 7A-271(e) (violation of probation pursuant to guilty plea in district court to Class H or I felony).

Expunctions. Most expunction statutes specifically provide that venue lies in the county of the court of conviction (*see, e.g.*, G.S. 15A-145(a); G.S. 15A-145.5(c)) or dismissal (*see, e.g.*, G.S. 15A-146). Not all expunction statutes include a specific venue provision, but venue likely lies in the county of the conviction or dismissal. *See, e.g.,* G.S. 15A-145.2(b), (c) (expunctions of drug-related convictions and dismissals).

C. District Court Proceedings

Misdemeanor trials. Venue for trials of misdemeanor cases and other cases "within the original jurisdiction of the district court" lies in the county where the offense allegedly occurred. *See* G.S. 15A-131(a). Under G.S. 15A-131(d), venue for misdemeanors that are appealed to superior court lies in the county where the case was first tried. A defendant

can move to dismiss for improper venue on trial de novo in superior court as long as he or she did not stipulate to venue or expressly waive the right to contest venue in the district court proceeding with the benefit of counsel. *See* G.S. 15A-135.

Infractions. Venue for infractions lies in "any county where any act or omission constituting part of the alleged infraction occurred." *See* G.S. 15A-1112.

Pretrial proceedings. Venue for pretrial proceedings in district court is in the county where the offense allegedly occurred. *See* G.S. 15A-131(a).

Initial appearance, probation, and expunctions. Venue for these proceedings is the same as for superior court, discussed in B., above.

D. Concurrent Venue

General rules. There are three general rules governing concurrent venue, discussed below.

- An offense is considered to have occurred in a county if any act or omission that is part of the offense took place there. Any such county is a proper venue to try that offense. *See* G.S. 15A-131(e); G.S. 15A-132(a); *State v. Perry*, 159 N.C. App. 30 (2003) (venue for practicing medicine without a license and involuntary manslaughter proper in Buncombe County even though the face-to-face visits where the defendant impersonated a doctor occurred in another county; defendant telephoned victim, and victim died, in Buncombe County); *see also* Jonathan Holbrook, *Venue Vexation*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Aug. 13, 2019) (discussing situation in which crime may have occurred in more than one county but evidence is unclear about where crime actually took place).
- When charged offenses are joinable under G.S. 15A-926, any county that is a proper venue for one joinable offense has concurrent venue for all. *See* G.S. 15A-132(b).
- When an offense takes place in multiple counties, all those counties have concurrent venue until one county initiates a prosecution. The first county to initiate a prosecution by issuing process obtains exclusive venue. *See* G.S. 15A-132(c); *State v. Carter*, 96 N.C. App. 611 (1989) (where Wake and Franklin counties had concurrent venue, trial proper in Wake County because defendant first indicted there); *see also State v. Vines*, 317 N.C. 242 (1986) (where Ashe County returned "no true bill" it did not institute charges; thus, Buncombe County could initiate subsequent prosecution); *State v. Paige*, 316 N.C. 630 (1986) (county that had obtained exclusive venue by being first to file charges against defendant lost exclusive venue when charges dismissed).

Specific statutes. In addition to the above general rules, concurrent venue also is addressed in several statutes, including:

- G.S. 15-129 (offenses on waters dividing counties): Where an offense occurs on a waterway that marks the boundary of two counties, venue is proper in either of the two bordering counties. *See State v. Bullard*, 312 N.C. 129 (1984) (venue proper in

either Bladen or Sampson County where offense occurred at least in part on the bridge over river that divides the two counties).

- G.S. 15-130; G.S. 15-133 (assault in one county, death in another): Venue for homicide is proper either in the county where the assault occurred or the county where the victim died.
- G.S. 15A-136 (sex offenses in which defendant is alleged to have transported victim): Venue is proper in any county where the transportation was offered, solicited, or took place.
- G.S. 14-7 (accessory after the fact): Venue to try an accessory after the fact is proper in any county where the principal could be prosecuted or in the county where the defendant committed acts that form the basis of the charge of accessory after the fact.
- G.S. 14-56 (breaking or entering into or breaking out of railroad cars, motor vehicles, trailers, aircraft, boats, or other watercraft): Each county where violations of the statute occur has concurrent venue and acts occurring in more than one county involving the taking of property may be aggregated into a single violation.
- G.S. 14-71 (receiving stolen goods): Venue is proper in any county where the thief could be prosecuted or in any county where the defendant possessed the stolen goods. *See State v. Haywood*, 297 N.C. 686 (1979) (venue for receiving stolen goods proper in Guilford County where the defendant was in possession of the stolen goods there; State had no burden to show that the defendant received the goods in Guilford County).
- G.S. 14-71.1 (possession of stolen goods): Venue is proper in any county where the thief could be prosecuted or in any county in which the defendant possessed the property. *See State v. Brown*, 85 N.C. App. 583 (1987) (stating rule).
- G.S. 14-86.6(c) (retail theft): Thefts of retail property occurring in more than one county may be aggregated into an alleged violation, and each county where a part of the offense occurred has concurrent venue.
- G.S. 14-100(b1) (false pretenses): Effective for offenses committed on or after December 1, 2019, the State is not required to establish that all acts constituting false pretenses occurred in this State or within a single city, county, or local jurisdiction of this State.
- G.S. 14-113.6A (obtaining property or services by false or fraudulent use of credit device or other means): Venue is proper in the county where the telephone call or other communication was initiated or where it was received.
- G.S. 14-113.21 (identity theft): Venue is proper in any county where the victim resides, where the defendant resides, or where any part of the identity theft took place, or in any other county instrumental to the completion of the offense, regardless of whether the defendant was ever actually present in that county.
- G.S. 14-113.33 (Telephone Records Privacy Protection Act): Venue is proper in any county where the customer resides, where the defendant resides, or where any part of the offense took place, or in any other county instrumental to the completion of the offense, regardless of whether the defendant was ever present in that county.
- G.S. 14-118.8 (money laundering): Each county in which a violation of the statute occurs has concurrent venue as described in G.S. 15A-132 (a separate provision of the statute also provides that multiple acts of money laundering stemming from the same scheme or course of conduct may be aggregated into a single offense).

- G.S. 14-118.13 (mortgage fraud): Venue is proper in any county where the property to be mortgaged is located, where any act was committed in furtherance of the violation, where any defendant had control or possession of proceeds of a violation, where any closing occurred, or where any document containing a deliberate misrepresentation is filed with the registrar of deeds or with the Division of Motor Vehicles.
- G.S. 14-378 (bribery in athletic contests): Venue is proper in any county where the bribe was offered or accepted or where the relevant athletic contest occurred.
- G.S. 105-236(b) (violation of tax law): A violation of tax law is considered an act committed in part at the office of the Secretary of Revenue in Raleigh.
- G.S. 143-116 (stealing from state institutions in violation of G.S. 143-114 and G.S. 143-115): Venue is proper in Wake County, where such offenses are deemed to have occurred.
- G.S. 163-278.27 (excessive campaign contributions): Exclusive venue lies in the county where the offender resides. *See State v. Bolt*, 81 N.C. App. 133 (1986) (stating rule).

No specific statute (conspiracy): The courts have held that venue for conspiracy to commit an offense is proper in the county in which the agreement was formed or in any county in which an overt act was done by any of the conspirators in furtherance of the plan. *See State v. Louchheim*, 296 N.C. 314 (1979) (stating rule); *State v. Davis*, 203 N.C. 13 (1932) (to same effect).