T. JURISDICTION/VENUE

T.1. Constitutional/statutory/policy provisions

T.1.a. Extraterritorial jurisdiction

TITLE: Benham v. State
INDEX NO.: T.1.a.
CITE: (06-30-94), Ind., 637 N.E.2d 133
SUBJECT: Criminal jurisdiction over Ohio River
HOLDING: S. Ct. granted transfer of Ct. App.' decision at 622 N.E.2d 982 & held that while Ind. is constitutionally authorized to enact laws that extend criminal jurisdiction over entire Ohio River, present criminal jurisdictional statute, Ind. Code 35-41-1-1, does not extend such jurisdiction. Ct. App. had found jurisdiction extended to Kentucky shore. Ind. Code 35-41-1-1 states in relevant part that person can be convicted for offense if either conduct constituting element of offense or result that is element of offense, or both, occur in Ind. Ct. found statute to be unambiguous in restricting power to exercise criminal jurisdiction to Ind.'s actual territorial boundaries. Ct. also noted it is undisputed that Ind.'s southernmost territorial boundary along river is established by low-water line on northern side of river in 1792.

Ct. did not, however, find Tr. Ct. erred in denying D's motion to dismiss because it found dispute as to where offense actually occurred. Although State has to allege place of commission of offense with enough particularity to show jurisdiction, when D files motion to dismiss because of jurisdictional impediment, he bears burden to prove every essential fact by preponderance of evidence, Ind. Code 35-34-1-8(f). Because D failed in this proof, Tr. Ct. didn't err in denying dismissal, but Ct. noted that in event of trial, State will have to prove territorial jurisdiction based on opinion, beyond reasonable doubt. Held, Tr. Ct. affirmed, Sullivan, J., dissenting as to jurisdiction. **Note:** Decision contains extensive discussion of jurisdictional boundaries, including historical analysis.

TITLE: Peacock v. State
INDEX NO.: T.1.a.
CITE: (06-07-19), Ind. Ct. App., 126 N.E.3d 892
SUBJECT: Sufficient evidence of territorial jurisdiction in Indiana and venue in Marion County
HOLDING: In harassment prosecution, State presented sufficient circumstantial evidence from which the jury could have determined, beyond a reasonable doubt, that Defendant sent threatening text messages to his DCS case manager while in Indiana because the text messages where sent shortly after his CHINS hearing that was in Indiana. And the case manager testified she received the messages while she was living and working in Marion County. Defendant waived the issue of proper venue because he failed to raise the issue at trial. Waiver notwithstanding, evidence was sufficient to establish by a preponderance of the evidence that Defendant committed the offense in Marion County. Trial court's failure to instruct jury on jurisdiction and venue did not constitute fundamental error.

T. JURISDICTION/VENUE

T.1. Constitutional/statutory/policy provisions

T.1.c. Comity

TITLE: Weatherford v. State
INDEX NO.: T.1.c.
CITE: (6/2/75), Ind. App., 328 N.E.2d 756
SUBJECT: Comity -- State keeps jurisdiction over D even when D returned to federal prison
HOLDING: D was charged with burglary. His first trial resulted in conviction, but new trial was granted. Second trial resulted in deadlocked jury. At time of D's third trial, he was incarcerated in Federal Penitentiary at Terre Haute. Writ of habeas corpus ad prosequendum was issued against federal marshal and warden ordering production of D for trial. D was convicted. On appeal, D claimed that when he was returned to federal prison following trial, State lost jurisdiction over him, and, allegedly having no means by which to obtain control over him, should have discharged him. Court held that principles of comity in system of dual sovereignties permitted procedure which was followed in this case. Held, judgment affirmed.

T. JURISDICTION/VENUE

T.2. Specific jurisdiction

TITLE: Levy v. State
INDEX NO.: T.2.
CITE: (2nd Dist., 11-26-03), Ind. App., 799 N.E.2d 71
SUBJECT: Jurisdiction - unauthorized practice of law
HOLDING: D challenged denial of his motion to dismiss by Tr. Ct. through interlocutory appeal. Ct. rejected his arguments that 1) Indiana S. Ct. has exclusive jurisdiction over all matters relating to the unauthorized practice of law; & 2) that Ind. Code 33-1-5-1 (making it a Class B misdemeanor to hold oneself out as an attorney without admission by S. Ct.) violates the separation of powers doctrine. Ct. found that while Article 7, Section 4 of Indiana Constitution gave S. Ct. "original jurisdiction" as to the unauthorized practice of the law, that did not necessarily mean that "exclusive jurisdiction" was conferred on that Ct. While the Ct. *cited* several S. Ct. cases noting the Ct.'s exclusive jurisdiction as to the disbarment or discipline of attorneys & the regulation of professional legal activity, the S.Ct. recognized a difference between original & exclusive jurisdiction. The Ct. took guidance from Ind. App. Rule 4(B), effective January 1, 2001, that gave the S. Ct. "exclusive jurisdiction" over "the unauthorized practice of law (other than criminal prosecutions therefor)." The Ct. also relied on Ind. Code 33-2-3-1, which gives the S. Ct. exclusive jurisdiction to issue restraining orders & injunctions against the unauthorized practice of law. Based on this review, the Ct. found that while the Constitution did give the S. Ct. the power to entertain & decide all cases involving unauthorized practice, it did not do this to the exclusion of other Cts. The Ct. noted that the S. Ct. has cited the potential constitutional problems if it were to determine criminal liability, in that Ds would lose their rights to a public trial by an impartial jury & the right to appeal. State ex rel. Indianapolis Bar Ass'n v. Fletcher Trust Co., 211 Ind. 27, 5 N.E.2d 538 (1937). Ct. found no basis for D's separation of powers argument as Ind. Code 33-1-5-1 provides "the sole means to punish an individual's criminal act when that person is not a member of the Bar ..." Held, judgment affirmed.

T. JURISDICTION/VENUE

T.2. Specific jurisdiction

T.2.a. Tr. Ct.'s

TITLE: Bunch v. State
INDEX NO.: T.2.a.
CITE: (04/06/2022), Ind. Ct. App., 186 N.E.3d 1163
SUBJECT: Trial court was proper venue to hear defendant's petition to restore gun rights
HOLDING: Both federal and Indiana law provide that an individual who has been convicted of a crime of domestic violence may not possess a firearm. But federal law further indicates that an individual's federal rights may be restored if the individual's rights are restored in the applicable jurisdiction, in this case, Indiana. The Indiana General Assembly has created an avenue by which such an individual may petition to have their right to possess a firearm restored. Bunch alleged that he lost his right to possess a firearm after he pled guilty to and was convicted of Class B misdemeanor battery for acts committed against his then-wife. Bunch subsequently petitioned the trial court to restore his right to possess a firearm. The trial court denied the petition, finding that if Bunch's gun privileges had been revoked, the revocation was not the result of Indiana Code section 35-47-4-7, but rather the result of federal law and, as such, Bunch must seek relief in the federal courts. The Court of Appeals disagreed. Based on the plain language of the statute, the Court concluded that the proper venue for Bunch's request was the trial court regardless of whether his federal or state right to possess a firearm (or both) was revoked and that Bunch's conviction qualified as a crime of domestic violence. I.C. 35-47-4-7 therefore applied and Bunch appropriately relied on I.C. 35-47-4-7(b) in his attempt to have his right to possess a firearm restored. The Court rejected the State's alternative argument that, even if the trial court was the correct venue, denial of the petition was still the right result. "Because the trial court made no findings on whether restoration of Bunch's right to possess a firearm was proper pursuant to the factors listed in I.C. 35-47-4-7(b), we cannot merely agree with the State on this assertion. Rather, we must remand the matter to the trial court for further proceedings, during which the trial court may consider the merits of Bunch's petition." Held, judgment and remanded.

TITLE: Clark v. State
INDEX NO.: T.2.a.
CITE: (2nd Dist., 4-17-00), Ind. App., 727 N.E.2d 18
SUBJECT: Jurisdiction over probation revocation notwithstanding pending appeal
HOLDING: Tr. Ct. had subject matter jurisdiction over D's probation revocation proceedings even though record of proceedings for his direct appeal had been filed with Ct. App. D filed motion for relief from judgment pursuant to T.R. 60(B), arguing that order revoking his probation was void because at time Tr. Ct. entered order, direct appeal was pending before Ct. App. & therefore, Tr. Ct. no longer had subject matter jurisdiction over his case. D was not admitted to bail pending appeal of his conviction thus judgment of his conviction was not stayed & his sentence began to run from time of sentencing.

Tr. Ct. has statutory authority to revoke probation & order executed sentence if D violates conditions of his probation at any time during probationary period. Ind. Code 35-38-2-3(g). However, as general rule, once appeal is perfected Tr. Ct. loses subject matter jurisdiction over case. Bradley v. State, 649 N.E.2d 100 (Ind. 1995); Ind. Appellate Rule 3(A). Ct. noted that certain exceptions have been created to this rule, permitting Tr. Ct. to retain jurisdiction notwithstanding appeal. Following reasoning in Bradley, Ct. held that Tr. Ct. retained jurisdiction over probation revocation hearing because: 1) direct appeal is independent of probation revocation hearing, which does not occur until after criminal trial has been completed & sentence imposed; 2) appeal from order revoking probation may be taken apart from criminal trial; & 3) probation revocation hearing will not intermeddle with subject matter of criminal appeal, as order revoking probation changes only nature of sentence & not sentence itself. Because Tr. Ct. retained jurisdiction to conduct probation revocation hearing while D's appeal was pending, order revoking probation was not void. Held, judgment affirmed.

RELATED CASES: Jernigan, App., 894 N.E.2d 1044 (Tr. Ct. had no jurisdiction to rule on motion for credit time while appeal of sentence was pending).

TITLE: Powers v. State
INDEX NO.: T.2.a.
CITE: (1st Dist. 09/25/91), Ind. App., 579 N.E.2d 81
SUBJECT: Jurisdiction while rehearing pending
HOLDING: On 7/13/89, Ind. S.Ct. vacated D's convictions for burglary, & on 8/2/89, both parties petitioned for rehearing. On 9/20/89, clerk certified opinion, & next day Ct. denied rehearing to D. D was retried, convicted, & sentenced in 12/89, & appealed. On 2/14/90, S.Ct. denied State's petition for rehearing, & on 6/28/90, Ct. App. ordered D's appeal of December convictions terminated, & cause remanded for D to file for post-conviction relief (PCR). In 7/90, D filed petition for PCR, alleging Tr. Ct. had no jurisdiction to try him in 12/89, & PCR was denied. Ct. noted that when action is pending in Ind. S.Ct., entire cause is removed from jurisdiction of Tr. Ct., & any action taken by Tr. Ct. during that time is void. Ct. found that petition for rehearing to Ind. S.Ct. was pending action, depriving Tr. Ct. of jurisdiction. Ct. disagreed with State's position that clerk's erroneous certification of original opinion allowed Tr. Ct. to reacquire jurisdiction. Tr. Ct.'s finding of either concurrent jurisdiction or limited jurisdiction of S.Ct. was found inconsistent with goal of judicial efficiency & comity. Ct. App. also found no waiver due to D's lack of objection to retrial at time of trial, finding D's attorney was unaware of proceedings in S.Ct. at that time. Held, reversed & remanded for new trial because Tr. Ct. lacked jurisdiction for retrial.

T. JURISDICTION/VENUE

T.2. Specific jurisdiction

T.2.a.2. State

TITLE: $47,940 U.S. Currency v. State
INDEX NO.: T.2.a.2.
CITE: (5/31/2017), 77 N.E.3d 839 (Ind. Ct. App 2017)
SUBJECT: Dismissal of forfeiture case already pending in another Tr. Ct.
HOLDING: When two courts have concurrent jurisdiction over a case, the court first acquiring jurisdiction is considered to have exclusive jurisdiction over that case. Pivarnik v. N. Ind. Public Serv. Co., 636 N.E.2d 131 (Ind. 1994). Here, Tr. Ct. improperly granted State's notice to transfer seized funds when there was a similar action already pending in another court. Police officers had consent to enter and visually inspect suspicious parcels at a shipping company. During inspection, a parcel addressed to Sorhaindo was singled out for more investigation. After a K9 gave a positive indication of a controlled substance in Sorhaindo's package, State opened a miscellaneous criminal case in Marion Superior Court, Criminal Division, Courtroom 6, under Cause number 49G06-1506-MC- 022791 (MC-22791), and applied for a search warrant to search the parcel for drugs and/or evidence of drug trafficking. The search yielded $47,940.00 United States currency but no controlled substances. The State filed a Complaint for Forfeiture against Sorhaindo in Marion Superior Court, Civil Division, Courtroom 12, under cause number 49D12-1512-MI-042103 (MI-42103). The following day, under MI-42103, the State filed a Notice and Motion to Transfer Seized Property to the United States and Tr. Ct. granted the State's transfer motion. Sorhaindo unsuccessfully moved to dismiss MI-42103 because of the action pending in MC-22791 involving the same parties, search and seizure.

Court of Appeals held that the actions pending in Courtroom 6 and Courtroom 12 were substantially the same action. Courtroom 12, therefore, erred by denying Sorhaindo's motion to dismiss because Courtroom 6 retained exclusive jurisdiction over the original turnover action. The appropriate remedy is to set aside the turnover order issued in MI- 42103 and to remand this cause to MC-22791 for the commencement of turnover proceedings. Should Sorhaindo again choose to challenge the lawfulness of the search warrant leading to the seizure of his funds, he should be afforded a hearing on whether the seizure complied with the warrant's language. Held, turnover order issued in Courtroom 12 set aside and remanded to Courtroom 6 for the commencement of turnover proceedings.

TITLE: Pettiford v. State
INDEX NO.: T.2.a.2.
CITE: (4th Dist. 2/25/87), Ind. App., 504 N.E.2d 324
SUBJECT: Vacation of judgment - after 90 days
HOLDING: Interlocutory appeal. Tr. Ct. erred by vacating judgment granting PCR entered 92 days earlier. Here, 90 days after judgment, Tr. Ct. continued consideration pending receipt of White 497 N.E.2d 893 [case changing PCR law]. Two days later, Tr. Ct. set aside grant of PCR & ordered D to show cause why earlier conviction should not be reinstated. Ct. finds D's brief presents prima facie error. See Johnson County Rural Electric v. Burnell, App., 484 N.E.2d 989. Ind. Code 33-1-6-3 provides that Tr.Cts. retain power & control over judgments for a period of 90 days. Ninety-day limit is absolute. Wadkins v. Thornton, App., 279 N.E.2d 849. TR 52(B) covers amendment of findings & judgment & causes for such amendment. Rule requires that any amendment be made before 60-day period for filing motion to correct errors runs out. Ct. finds Tr. Ct. had no power or authority to change its judgment 92 days after its entry. Held, reversed with instruction to expunge order vacating grant of PCR.

TITLE: State ex rel. Adams v. Hendricks Circuit Ct.
INDEX NO.: T.2.a.2.
CITE: (9/16/86), Ind., 497 N.E.2d 546
SUBJECT: Jurisdiction - misdemeanor offenses can be heard by Hendricks Circuit Ct.
HOLDING: Ct. denies relator's petition to prohibit Hendricks Circuit Ct. from hearing misdemeanor cases. Here, relators contend creation of Hendricks Superior Ct. No. 2 stripped Hendricks Circuit Ct. of any jurisdiction over misdemeanor offenses. When legislature has intended particular Ct. to have exclusive jurisdiction it has said so. Ct. examines language of statute & finds no intent to confer exclusive jurisdiction. Held, petitions for writs of mandamus & prohibition denied. Givan DISSENTS without opinion.

TITLE: State v. Gaw
INDEX NO.: T.2.a.2.
CITE: (12/10/2015), 46 N.E.3d 1278 (Indiana Court of Appeals 2015)
SUBJECT: Court lacked jurisdiction to vacate other court's judgment
HOLDING: Madison Circuit Court 5 ("Court 5") lacked jurisdiction to consider and grant D's Motion for Relief from Judgment from an order issued earlier by another court, Madison Circuit Court 2 ("Court 2").

While D was incarcerated, his wife sought and obtained a divorce, and a support order, in Court 2. D later filed a motion to reduce or abate his support obligation while incarcerated, but Court 2 denied the request. Once the arrearage exceeded $15,000.00, the matter was referred for criminal proceedings. D later filed a Trial Rule 60(B)(8) motion in Court 5, asking that court to vacate Court 2's order and modify the arrearage that had accumulated while he was incarcerated. Court 5 granted his request. However, it lacked jurisdiction to do so. D was required to file his TR 60(B) motion with the court that issued the judgment, Court 2. See Kiskowski v. O'Hara, 622 N.E.2d 991, 993 (Ind. Ct. App 1993), *trans. denied*. Also, the court that issues a divorce decree retains exclusive and continuing jurisdiction over future modifications of child support. See Fackler v. Powell, 839 N.E.2d 165, 167 (Ind. 2005). Held, judgment reversed.

TITLE: Taylor-Bey v. State

INDEX NO.: T.2.a.2.

CITE: (4/28/2016), 53 N.E.3d 1230 (Ind. Ct. App 2016)

SUBJECT: Tr. Ct. had jurisdiction over "Moorish American National Sovereign" and "Secured Party Creditor"

HOLDING: Despite D's claimed status as a "Moorish American National Sovereign" and "Secured Party Creditor," the Tr. Ct. had both subject matter and personal jurisdiction over D's murder case. Under Ind. Code § 33-29-1.5-2, the Marion Superior Court has jurisdiction over all criminal cases allegedly committed in Marion County, and under Ind. Code § 35-41-1-1(b), the Marion Superior Court had personal jurisdiction over D because he committed his crime in Marion County. Held, judgment affirmed.

RELATED CASES: Brown, 64 N.E.3d 1219 (Ind. Ct. App 2016) (by the explicit authority of Indiana statute, the Marion Superior Court was vested with subject matter jurisdiction over D's criminal case, notwithstanding his claimed status as a "Moorish American National Sovereign" immune from state and federal law).

TITLE: Wilson v. State
INDEX NO.: T.2.a.2.
CITE: (4th Dist. 12/26/84), Ind. App., 472 N.E.2d 932
SUBJECT: Jurisdiction - Tr. Ct.; following successful appeal
HOLDING: Tr. Ct. was without jurisdiction to set cause for retrial or to rule on D's change of judge motion. Here, on 9/12/83 Tr. Ct. set cause for retrial, only five days after appellate reversal. Tr. Ct. has no jurisdiction over such a case until appellate opinion is certified. See Ind. Code 33-15-1-5; Clapper v. Bailey (1858), 10 Ind. 160. Certification cannot occur until expiration of time within which petition for rehearing & petition for transfer may be filed. AR 15(B). Opinion was not certified until 10/12/83. Held, conviction reversed on other grounds.

T. JURISDICTION/VENUE

T.2. Specific jurisdiction

T.2.a.2.a Circuit

TITLE: State v. Downey
INDEX NO: T.2.a.2.a.
CITE: (7/31/2014), 14 N.E.3d 812 (Ind. Ct. App 2014)
SUBJECT: Circuit court abused discretion setting aside superior court's order transferring D's money to feds
HOLDING: Clark Division One Circuit Court ("Circuit Court") lacked authority to set aside order of Clark Division Three Superior Court that had granted State's request to transfer $8765 seized from D to the federal government for forfeiture proceedings. Even though D was charged in Circuit Court and State should have filed transfer request in Circuit Court, that court had no power to override the execution of process of Division Three Superior Court, a court of "equal jurisdiction." See Gregory v. Perdue, 29 Ind. 66, 69 (1867) (citing The Ind.& Ill. R.R. Co. et al. v. Williams, 22 Ind. 198, 200 (1864)); see also Shideler v. Vrljich, 195 Ind. 563, 568, 145 N.E. 88 1, 883 (1925) (providing that one circuit or superior court has no supervisory power over the execution of process from another such court). Held, judgment affirmed; Robb, J., dissenting.

T. JURISDICTION/VENUE

T.2. Specific jurisdiction

T.2.a.2.b Superior

TITLE: State v. Downey
INDEX NO: T.2.a.2.b.
CITE: (7/31/2014), 14 N.E.3d 812 (Ind. Ct. App 2014)
SUBJECT: Circuit court abused discretion setting aside superior court's order transferring D's money to feds
HOLDING: Clark Division One Circuit Court ("Circuit Court") lacked authority to set aside order of Clark Division Three Superior Court that had granted State's request to transfer $8765 seized from D to the federal government for forfeiture proceedings. Even though D was charged in Circuit Court and State should have filed transfer request in Circuit Court, that court had no power to override the execution of process of Division Three Superior Court, a court of "equal jurisdiction." See Gregory v. Perdue, 29 Ind. 66, 69 (1867) (*citing* The Ind.& Ill. R.R. Co. et al. v. Williams, 22 Ind. 198, 200 (1864)); see also Shideler v. Vrljich, 195 Ind. 563, 568, 145 N.E. 88 1, 883 (1925) (providing that one circuit or superior court has no supervisory power over the execution of process from another such court). Held, judgment affirmed; Robb, J., dissenting.

T. JURISDICTION/VENUE

T.2. Specific jurisdiction

T.2.a.2.e. City/town

TITLE: Jones v. State
INDEX NO.: T.2.a.2.e.
CITE: (6-3-03), Ind., 789 N.E.2d 478
SUBJECT: Post-conviction relief not available in city Cts.
HOLDING: Post-conviction petitions may not be filed in city & town Cts.'. Upon filing of request with county clerk within fifteen days of being sentenced in city or town Ct., Ds are automatically entitled to trial de novo in circuit or superior Ct. Ind. Trial de Novo Rule 3(B)(1). A person who invokes right to trial de novo & is nonetheless convicted is entitled to pursue post-conviction relief in respect of that conviction. Given liberality of Indiana's approach to trial de novo & difficulty of litigating a post-conviction claim in Cts. that are not Cts. of record, post-conviction relief is not available. Held, transfer granted, remanded to City Ct. with direction to dismiss.

Note: Because there is no specific provision in Indiana Trial De Novo Rules for belated trial de novo from misdemeanor conviction, consider invoking T.R. 60(B).

RELATED CASES: Freshwater, App., 834 N.E.2d 1133 (D's T.R. 60(B) motion in city court was inadequate to justify relief; "conspicuously missing" from motion was any justification for the 12-year delay in seeking relief & explanation as to how this delay was reasonable under T.R. 60(B)(8)).

TITLE: Mareska v. State
INDEX NO.: T.2.a.2.e.
CITE: (3d Dist. 2/20/89), Ind. App., 534 N.E.2d 246
SUBJECT: Jurisdiction - city Cts
HOLDING: Pursuant to Ind. Code 33-10.1-2-2, city Cts. have county-wide jurisdiction over misdemeanors & infractions. D was charged by affidavit in Knox city Ct. for incident which occurred in North Judson. D filed pro se motion to dismiss for lack of personal jurisdiction of city Ct., & preserved objection by refusing to appear personally in Ct. D was convicted in jury trial & appealed to Starke Circuit Ct. for trial de novo. D filed motion to dismiss based on lack of personal jurisdiction in circuit Ct., & again preserved his objection by refusing to appear. D was convicted in circuit Ct. & appeals on the jurisdictional issue. D argues that city Cts. are of limited & inferior jurisdiction, possessing only such jurisdiction as is expressly conferred by statute. Gill 111 N.E.2d 275. Ind. Code 33-10.1-2-2 provides that city Cts. have: 1) jurisdiction of all violations of city ordinances; & 2) jurisdiction of all misdemeanors & infractions. D argues that city Ct. cannot have jurisdiction over misdemeanor which was committed outside city limits. However, 2d prong of jurisdictional statute does not limit jurisdiction to city limits. Further, predecessor statute gave city Cts. concurrent jurisdiction with circuit Cts. for misdemeanors. There is no indication that current statute was intended to restrict that jurisdiction. Held, jurisdiction of city Ct. upheld. **Note:** Jury panel improperly excluded jurors from outside of city. See card at D.9.c.

RELATED CASES: Smith, ____ N.E.3d ____(Ind. Ct. App 2015) (PCR petition inappropriate to challenge traffic infractions).

T. JURISDICTION/VENUE

T.2. Specific jurisdiction

T.2.b. Appeals courts

TITLE: Johnson v. California
INDEX NO.: T.2.b.
CITE: 541 U.S. 428 (2004)
SUBJECT: Jurisdiction, final appealable orders
HOLDING: The California Court of Appeals reversed petitioner's conviction under Batson v. Kentucky, 476 U.S. 79 (1986), leaving other issues unaddressed. The California Supreme Court reversed the Court of Appeals and remanded for further proceedings. The U.S. Supreme Court granted certiorari on the Batson issue, but after argument, concluded that it was without jurisdiction to hear the case under 28 U.S.C. §1257. With other issues yet to be resolved by the state courts, the petitioner might prevail on the merits on non-federal grounds. The appeal was dismissed for want of jurisdiction.

T. JURISDICTION/VENUE

T.2. Specific jurisdiction

T.2.b.2. State

TITLE: Chambers v. State
INDEX NO.: T.2.b.2.
CITE: (1st Dist. 11/23/83), Ind. App., 456 N.E.2d 442
SUBJECT: Jurisdiction - PCR appeal
HOLDING: Ind. Ct. App. orders D's appeal from denial of PCR transferred to Ind. Supreme Ct. pursuant to AR 15(M). Rules concerning jurisdiction over appeal from denial of PCR refer to original sentence imposed. AR 4(A)(7); PCR 1(7). Here, D was originally sentenced to 12 years (rape), 5 years (robbery) to be served consecutively with 12-year sentence & 2 years (confinement) to be served concurrently. After an unsuccessful appeal (422 N.E.2d 11980, D commenced PCR proceedings. Tr. Ct. reduced 12-year sentence to 10 because reasons stated in record were insufficient to sustain enhancement. D's original sentence was 12 years, thus Ind. Supreme Ct. has jurisdiction. Held, appeal transferred.

T. JURISDICTION/VENUE

T.3. Jurisdiction over subject matter (offense)

TITLE: B.D.T. v. State
INDEX NO.: T.3.
CITE: (4th Dist.; 11-22-00), Ind. App., 738 N.E.2d 1066
SUBJECT: Subject matter jurisdiction – void judgment; no jeopardy
HOLDING: Juvenile Ct. committed fundamental error in failing to transfer jurisdiction of case to criminal docket because sixteen-year-old juvenile was charged with offense of criminal deviate conduct. Juvenile Ct. does not have jurisdiction over individual for alleged violation of Ind. Code 35-42-4-2 (criminal deviate conduct) if individual was at least sixteen years of age at time of alleged violation. Ind. Code 31-30-1-4. Judgment made when Ct. lacks subject matter jurisdiction is void. Clark, App., 727 N.E.2d 18. Objection to subject matter jurisdiction cannot be waived. Twyman, 459 N.E.2d 705 (Ind. 1984). However, such void judgment is no bar to subsequent indictment & trial in Ct. which has jurisdiction of offense. U.S. v. Ball, 163 U.S. 662 (1896). Here, because juvenile was sixteen when he allegedly committed criminal deviate conduct, adult Ct., rather than juvenile Ct., had subject matter jurisdiction, & thus, juvenile Ct. judgment is void. However, because judgment is void, it did not place juvenile in jeopardy & does not bar trial in adult Ct. Held, judgment vacated.

TITLE: Fuller v. State
INDEX NO.: T.3.
CITE: (7-31-01), Ind. App., 752 N.E.2d 235
SUBJECT: Subject matter jurisdiction of juvenile in adult Ct.
HOLDING: Tr. Ct. did not err in failing to transfer 16-year-old D's charge of possession & dealing in cocaine to juvenile Ct. Ind. Code 31-30-1-4(a) states in part that juvenile Ct. does not have jurisdiction over individual for alleged violation of dealing in cocaine if individual was at least 16 at time of alleged violation. D was convicted as an adult & challenged subject matter jurisdiction of Tr. Ct. under Ind. Code 31-30-1-9(a), which states in part that adult Ct. may only retain jurisdiction if child's act that could be considered murder, has left Indiana, or State cannot obtain jurisdiction over child in any other lawful manner. Statutes relating to same general subject matter should be construed together so as to produce harmonious statutory scheme. Brooks v. Gariup Constr. Co., 722 N.E.2d 834, 838 (Ind. Ct. App. 1999). Furthermore, in B.D.T. v. State, 738 N.E.2d 1066 (Ind. Ct. App. 2000), Ct. vacated juvenile conviction of 16-year-old charged with deviate conduct (which is set forth in Ind. Code 31-30-1-4 along with dealing in cocaine) because juvenile Ct. had no subject matter jurisdiction despite general language of Ind. Code 31-30-1-9. Held, judgment affirmed.

TITLE: Riggle v. State
INDEX NO.: T.3.
CITE: (07-16-20), 151 N.E.3d 766 (Ind. Ct. App 20)
SUBJECT: In offense on Indian land, state offered sufficient evidence of authority to charge Defendant and Defendant did not meet burden to show he was affiliated with any tribe in order to establish lack of jurisdiction
HOLDING: In offense on Indian land, state offered sufficient evidence of authority to charge Defendant and Defendant did not meet burden to show he was affiliated with any tribe in order to establish lack of jurisdiction.

TITLE: State v. Moore
INDEX NO.: T.3.
CITE: (2nd Dist., 07-22-09), 909 N.E.2d 1053 (Ind. Ct. App 2009)
SUBJECT: Tr. Ct. jurisdiction - DOC deprivation of credit via SOMM
HOLDING: Tr. Ct. erroneously found that it lacked jurisdiction to order DOC to restore prisoner's credit time classification and reinstate privileges relating to visitation and education. Indiana courts have no subject matter jurisdiction to review prison disciplinary actions. However, they do have jurisdiction to review other types of DOC actions, such as those involving a prisoner's constitutional rights.

Here, prisoner was convicted of a sex offense, but maintained his innocence throughout his trial and subsequent proceedings. Prisoner agreed to participate in the SOMM program but refused to admit his guilt. His attorney sent prisoner's SOMM counselor a letter citing to the Fifth Amendment and explaining that he advised prisoner to refrain from discussing details of his case. Without addressing the Fifth Amendment claim, DOC found prisoner violated SOMM requirements, demoting him from Credit Class I to Class III and ordering him "out of school." Prisoner filed a motion in the Tr. Ct. requesting DOC be ordered to restore his credit classification and privileges. Tr. Ct. originally granted the Motion, but later granted DOC's Motion to Correct Errors based on lack of subject matter jurisdiction. Although prisoner's Motion requested restoration of credit time and privileges imposed as part of DOC's discipline, the gravamen of prisoner's claims was based on the constitutionality of SOMM requirements. DOC cannot violate a prisoner's constitutional right against self-incrimination, impose sanctions because the prisoner asserts his rights, and then hide behind the shibboleth of "no review of prison disciplinary matter." Thus, Tr. Ct. had subject matter jurisdiction to review the deprivation of credit time and privileges after such deprivation occurred pursuant to prisoner's claim of his right against self-incrimination.

Because DOC based its entire defense on its subject matter jurisdiction argument, there is a clear non-constitutional basis for deciding the case. Although refusing to address the constitutionality of SOMM, Court noted it appears that SOMM is similar to the programs found unconstitutional in Johnson v. Fabian et al., 735 N.W.2d 295 (Minn. 2007) and Bender v. New Jersey DOC, 812 A.2d 1154 (2003). Held, judgment reversed and remanded with directions that Tr. Ct. vacate its grant of the motion to correct error and reinstate its original order in favor of prisoner.

T. JURISDICTION/VENUE

T.3. Jurisdiction over subject matter (offense)

T.3.a. Situs of crime

TITLE: McKinney v. State
INDEX NO.: T.3.a.
CITE: (3d Dist. 5/3/90), Ind. App., 553 N.E.2d 860
SUBJECT: Territorial jurisdiction - jury instructions; standard of proof
HOLDING: Tr. Ct. erred in refusing to instruct jury on issue of territorial jurisdiction, where body of murder victim was found in Ind., but there was some evidence that D may have killed victim in Ohio. After opening statements, & after 2 state witnesses testified that D had told them he killed victim in Ohio, D moved to dismiss murder charge due to lack of territorial jurisdiction. Tr. Ct. properly denied D's motion. Where body of victim is found in Ind., permissive presumption arises such that jury may infer that victim was killed in Ind. Ind. Code 35-41-1-1(b). Presumption may be rebutted, but D's hearsay statements were insufficient to justify dismissal due to lack of jurisdiction. D also tendered instruction requiring jury to return verdict of not guilty if it found that victim was shot in Ohio & died there. Instruction did not advise jury of presumption arising from location of body, & thus was not correct statement of law. However, its tender sufficiently preserved issue for review. D's instruction was correct so far as it went & should have alerted Tr. Ct. to its duty to properly instruct jury that state bore burden of proving territorial jurisdiction beyond reasonable doubt.

RELATED CASES: Ortiz, 766 N.E.2d 370 (where, as here, there is no serious evidentiary dispute that Tr. Ct. has territorial jurisdiction, then a special instruction on territorial jurisdiction need not be given to jury).

TITLE: Mure v. State
INDEX NO.: T.3.a.
CITE: (3d Dist. 9/27/84), Ind. App., 468 N.E.2d 591
SUBJECT: Situs of crime
HOLDING: Renewal in IN of offer made in MI to work for D as prostitute satisfies requirement of Ind. Code 35-41-1-1 that either conduct or result (element of offense) occur in IN. Here, D contends conviction is contrary to law because material element did not occur in IN. D first encouraged Woods to work as prostitute at her office in MI, but renewed offer in toto to her in IN. D also encouraged confidential informant in IN to work for him as prostitute. Held, no error.

TITLE: Sowers v. State
INDEX NO.: T.3.a.
CITE: (1st Dist. 11/29/89), Ind. App., 546 N.E.2d 1230
SUBJECT: Jurisdiction - out-of-state offense integrally related to Ind. offense
HOLDING: Because D stole checks in Ind. (IN), IN had jurisdiction to try D for forgery committed in Illinois (IL). Evidence showed that D & brother-in-law discussed taking checks from D's sometime employer. D suggested that checks were worthless to him since he could not read or write, but brother-in-law offered to make checks out to D & sign victim's name. D took checks, brother-in-law made out check to D for $80 & signed victim's name, & D endorsed it & deposited it in IL bank account via automatic teller & then withdrew $80. D was charged in IN with forgery. Three days before trial state charged D with theft of checks & moved to join charges for trial, which was denied. D was convicted of forgery & appeals, alleging that IN lacked subject matter jurisdiction because he committed crime of forgery entirely within IL. IN Cts. have held that IN's jurisdiction extends to crimes commenced in IN & completed out of state if out of state crime is integrally related to IN crime. [Citations omitted.] D argues that he committed no crime in IN. Although IN theft charge was not joined for trial with forgery, Ct. App. finds no authority requiring it to ignore theft, especially since evidence presented at forgery trial established commission of theft. Forgery was integrally related to theft of checks, giving IN jurisdiction to try D for forgery. Ct. further finds that IN had jurisdiction under Ind. Code 35-41-1-1, because conduct occurred in IN establishing complicity in commission of forgery in IL, & forgery is offense in both IL & IN. Held, conviction affirmed.

RELATED CASES: Koch, 952 N.E.2d 359 (Ind. Ct. App 2011) (Indiana had jurisdiction over battery and robbery which occurred in New Mexico because they were part of a continuance transaction with the kidnapping that occurred in Indiana).

TITLE: Sundling v. State
INDEX NO.: T.3.a.
CITE: (4th Dist., 5-15-97), Ind. App., 679 N.E.2d 988
SUBJECT: Conviction reversed for lack of territorial jurisdiction
HOLDING: In prosecution for several counts of child molesting, State failed to prove territorial jurisdiction beyond reasonable doubt. Person may be convicted of crime in Indiana if either conduct that is element of offense, result that is element, or both, occur in Indiana. Ind. Code 35- 41-1-1(a)(1). Here, there was no evidence that complaining witnesses (CW) #1 was molested in Indiana. Testimony from CW #2 merely established that CW #1 & two other children were present at Indiana motel at time CW #2 was molested. Record was devoid of any evidence that D also molested CW #1 in Indiana. Held, conviction reversed.

TITLE: State v. Taylor
INDEX NO.: T.3.a.
CITE: (3rd Dist., 12-27-93), Ind. App., 625 N.E.2d 1334
SUBJECT: Nonsupport - Jurisdiction over foreign orders
HOLDING: Ind. has jurisdiction to charge Ds with nonsupport of children residing in Ind., even if Ds have no other contacts with State & support orders were entered in other jurisdictions. D was married & had two children in Michigan (MI) & was ordered to pay child support in MI. Ex-wife & children eventually moved to Ind., but D remained in MI & never visited children in Ind. He failed to pay child support & was charged with nonsupport of child, pursuant to Ind. Code 35-46-1-5(a). He responded to charges by appearing in Ct. & filing motion to dismiss on ground Ind. lacked jurisdiction to prosecute him. Tr. Ct. granted motion, finding that although nonsupport was omission to perform duty in violation of Ind. law, there was no jurisdiction over D because he was nonresident, had no contacts with Ind., & acts of nonsupport occurred in MI. State appealed dismissal. Ind. law imposes duty to support dependent children, irrespective of location of child or parent, Miami Coal Co. v. Peskir, App., 139 N.E. 684, State v. Leed, 186 N.E.2d 5. Ct. found general criminal jurisdiction statute, Ind. Code 35-41-1-1 applied here, & concluded it provided for proper jurisdiction. Ind. Code 35-41-1-1(a)(5) provides that person may be convicted under Ind. law if offense is based on omission to perform duty imposed by Ind. law with respect to domicile, residence, or relationship to person, thing, or transaction in Ind. Because support is duty to be performed in county where child resides, nonsupport is omission occurring in that county, Gilmour, 104 N.E.2d 127. Therefore, D's nonsupport occurred in Ind. & Ind. had jurisdiction to prosecute D for nonsupport even though no Ind. Ct. issued support order, & he was nonresident who never resided in Ind. Held, reversed & remanded for trial on merits.

TITLE: Taylor-Bey v. State

INDEX NO.: T.3.a.

CITE: (4/28/2016), 53 N.E.3d 1230 (Ind. Ct. App 2016)

SUBJECT: Tr. Ct. had jurisdiction over "Moorish American National Sovereign" and "Secured Party Creditor"

HOLDING: Despite D's claimed status as a "Moorish American National Sovereign" and "Secured Party Creditor," the Tr. Ct. had both subject matter and personal jurisdiction over D's murder case. Under Ind. Code § 33-29-1.5-2, the Marion Superior Court has jurisdiction over all criminal cases allegedly committed in Marion County, and under Ind. Code § 35-41-1-1(b), the Marion Superior Court had personal jurisdiction over D because he committed his crime in Marion County. Held, judgment affirmed.

RELATED CASES: Brown, 64 N.E.3d 1219 (Ind. Ct. App 2016) (by the explicit authority of Indiana statute, the Marion Superior Court was vested with subject matter jurisdiction over D's criminal case, notwithstanding his claimed status as a "Moorish American National Sovereign" immune from state and federal law).

TITLE: U.S. v. Cabrales
INDEX NO.: T.3.a.
CITE: 524 U.S. 1 (1998)
SUBJECT: Venue -- Federal Money Laundering Charge
HOLDING: The state that was the situs of the criminal conduct that produced the money allegedly laundered elsewhere is not proper venue for trial on money laundering charges, under 18 U.S.C. 1956(a)(1)(B)(ii) & 1957, against D who is not alleged either to have transported funds from that state, or to have participated in criminal conduct from which funds derived.

T. JURISDICTION/VENUE

T.3. Jurisdiction over subject matter (offense)

T.3.b. Concurrent jurisdiction

TITLE: Anderson v. State
INDEX NO.: T.3.b.
CITE: (1st Dist. 8/9/83), Ind. App., 452 N.E.2d 173
SUBJECT: Concurrent jurisdiction - multistate crime
HOLDING: Tr. Ct. did not err in refusing to grant D's motion to dismiss robbery count on jurisdictional grounds where evidence establishes continuous transaction in which events in KY were integrally related to occurrences in IN. Ind. Code 35-1.1-20-1(e), now repealed & reenacted with changes as Ind. Code 35-32-2-1; Conrad 317 N.E.2d 789. Here, D & co-D met victim in Louisville bar. Victim bought D/co-D drinks. Three men left together in victim's car to meet women in Columbus, IN. Watch & money clip were removed from victim's possession while in KY. Victim was kept at knifepoint & stabbed during drive to IN. D tried to remove victim's ring in Columbus & when it would not come off, attempted to cut off victim's finger. Ct. finds no indication D/co-D ever abandoned plans or digressed from activities begun in KY. A person who commits a crime partly in one state & partly in another may be tried in either state. 6th Amend.; Lane v. State, (Fla. 1980) 388 So.2d 1022. Held, no error.

T. JURISDICTION/VENUE

T.4. Jurisdiction over person (IC 35-41-1-1)

T.4.b. Defective jurisdiction over person

T.4.b.3. Misrepresentations/ consent by D

TITLE: Twyman v. State
INDEX NO.: T.4.b.3.
CITE: (2/10/84), Ind., 459 N.E.2d 705
SUBJECT: Exclusive jurisdiction - juvenile misrepresents age
HOLDING: Where juvenile D perpetrated fraud on Marion Superior Ct. by claiming to be 20, D is estopped from raising issue in PCR proceeding. Ct. accepts petition to transfer & vacates 1st Dist. opinion (452 N.E.2d 434). Age of offender is determinative of subject matter jurisdiction in juvenile Ct., but is merely restriction on personal jurisdiction of criminal Ct. Statute establishing criminal Ct. jurisdiction (IC 33-9-1-4) does not include age of offender as factor in its exercise of subject matter jurisdiction. Ct. distinguishes Cummings 251 N.E.2d 663 (D challenged personal jurisdiction of criminal Ct. 3 days after conviction). Here, D raises issue in PCR petition, filed 8 years after conviction, contending conviction is void & cannot form basis for habitual. Ct. adopts large portions of 1st Dist. opinion which discussed 3 types of jurisdiction - subject matter (cannot be waived) & person or particular case (can be waived). Other states hold it is personal rather than subject matter jurisdiction that is at issue when juveniles are charged with crime in adult Ct. Held, denial of PCR affirmed. DISSENT by DeBruler argues statutory creation of Marion County Juvenile Ct. conferred subject matter jurisdiction exclusively on that Ct.

RELATED CASES: But see DISSENT by Buchanan in Owens, App., 455 N.E.2d 359 (age is question of subject matter jurisdiction, *citing* Cummings & Hicks 230 N.E.2d 757; majority opinion follows 1st Dist.'s decision in Twyman).

T. JURISDICTION/VENUE

T.6. Venue (CR 12; Ind. Code 35-32-2)

T.6.a. Proof of venue

TITLE: Baugh v. State
INDEX NO.: T.6.a.
CITE: (2nd Dist., 1-15-04), Ind., 801 N.E.2d 629
SUBJECT: Venue - offense committed near dividing line between counties
HOLDING: Individual stopped for driving while intoxicated on public road divided by two counties could be prosecuted in either county. D challenged his prosecution under Ind. Const. Art. I, § 13 which provides that, "In all criminal prosecutions, the accused shall have the right to a public trial ... in the county where the offense has been committed ...." The Ct. App. agreed that proper venue was in the county where D was driving & reversed the Tr. Ct. Baugh v. State, 781 N.E.2d 1141 (Ind. Ct. App2002).

However, on transfer, S.Ct. disagreed, finding that a driver on a border road "trigger[s] consequences on both sides of the road" & "imposes hazards in both counties." Ct. noted that drunk driving poses a "public danger" to those sharing the roadway with the impaired driver. State v. Gerschoffer, 763 N.E.2d 960, 971 (Ind.2002). Ind. Code 35-32-2-1(I) provides that "[i]f an offense is committed on a public highway ... that runs on & along a common boundary shared by two (2) or more counties, the trial may be held in any county sharing the common boundary." By implication, Ct. found this statutory language constitutional. Held, denial of motion to dismiss affirmed.

RELATED CASES: Smith, App., 809 N.E.2d 938 (act in furtherance of conspiracy to commit dealing in meth., i.e., possession of two chemical reagents or precursors, occurred in prosecuting county as alleged in charging information).

TITLE: Cutter v. State
INDEX NO.: T.6.a.
CITE: (3-17-00), Ind., 725 N.E.2d 401
SUBJECT: Venue - proof; jury instruction not always required
HOLDING: Tr. Ct. did not err by refusing to instruct jury on venue. Venue is commonly issue for determination by jury. However, even when venue turns on issues of fact, trial judge may refuse to instruct jury on venue if it presents no genuine issue. U.S. v. Massa, 686 F.2d 526 (7th Cir. 1982). If offense is committed in Indiana & it cannot readily be determined in which county offense was committed, trial may be in any county in which act was committed in furtherance of offense. Ind. Code 35-32-2-1(d). Here, on last night victim was seen alive, she was seen socializing & eventually leaving bar with D. Victim's body was found few days later in another Indiana county. D requested that Ct. instruct jury that if jury finds that offense was not committed in Marion County & was not part of common plan or course of action to kill victim, then State has no jurisdiction to prosecute & jury must find D not guilty. Although it is unclear in which county victim was actually murdered, fact that witness saw D help victim into his car at Marion County bar, which may itself have been innocent, but nonetheless in furtherance of crime, satisfied State's burden of proving venue by preponderance of evidence. Thus, there was no genuine issue of fact as to venue on which to instruct jury. Held, judgment affirmed in part & reversed in part on other grounds.

TITLE: Eckstein v. State
INDEX NO.: T.6.
CITE: (4th Dist., 12-19-05), Ind. App., 839 N.E.2d 232
SUBJECT: Venue proper where security fraud occurred, not where D failed to register
HOLDING: Ct. found proper venue existed where criminal charges were filed for selling or offering to sell securities in Indiana without first registering the security & for employing fraudulent or deceitful acts as to those offers of sale. See Ind. Code 23-2-1-3; 23-2-1-8; 23-2-1-12. D moved to dismiss the charges based on improper venue, arguing that the charges against him involved the omission of a particular act -- registering with the Securities Division of the Secretary of State's office -- & thus venue for the charges rested in Marion County. It has been held that when a crime charged is an omission to do an act, venue of the offense is in the county where the act should have been performed. Gilmour v. State, 104 N.E.2d 127 (Ind.1952). Ct. disagreed that D's acts constituted an omission to act as D was accused of selling unregistered securities, acting as an unregistered broker dealer, & using fraudulent & deceitful acts to carry out his business, all of which occurred in the county where he was charged. Additionally, in cases where it cannot readily be determined in which county the offense was committed, trial may be held in any county where an act was committed in furtherance of the offense. Ind. Code 35-32-2-1(d). Furthermore, the alleged victims in this case were located where the charges were filed. Ind. Code 35-32-2-1(b). Held, judgment affirmed.

TITLE: Navaretta v. State
INDEX NO.: T.6.a.
CITE: (4-3-00), Ind., 726 N.E.2d 787
SUBJECT: Venue - offense committed near dividing line between counties
HOLDING: Ind. Code 35-32-2-1(h) provides that if offense is committed at place which is on or near common boundary which is shared by two or more counties & it cannot be readily determined where offense was committed, then trial may be had in any county sharing common boundary. In this case, D was tried in Hamilton Co. for criminal conduct committed on 96th Street, which is dividing line between Hamilton Co. & Marion Co. When D was first observed by deputy sheriff, he was traveling eastbound on south side of 96th Street centerline. Officer testified that D did not cross centerline, but that, shortly thereafter, he turned right, crashed his vehicle, & was arrested in Marion Co. Hamilton Co. Surveyor testified that line dividing Hamilton & Marion counties lies along centerline of 96th Street, with margin or error of two feet. Surveyor acknowledged that it could not be determined whether car traveling entirely in eastbound lane on 96th Street might nevertheless extend two feet into Hamilton Co. Because record contained evidence that southern border of Hamilton Co. may extend up to two feet south of centerline of 96th Street, which had one eastbound & one westbound lane at time of incident, Ct. found that substantial evidence was presented to establish that it cannot be readily determined in which county offense was committed, thus permitting D's trial to occur in Hamilton Co. or in Marion Co. Thus, Tr. Ct. did not err in denying D's motion for judgment on evidence or his request to transfer to Marion Co. Held, transfer granted, Ct. App. decision at 699 N.E.2d 1207 vacated, judgment of Tr. Ct. affirmed.

Note: Effective July 1, 2000, P.L. 98-2000 amends criminal venue statute to provide that if a person commits a crime on a public highway that runs on & along a common boundary shared by at least two counties, trial may be held in any county that shares the common boundary.

RELATED CASES: Weiss, App., 735 N.E.2d 1194 (Tr. Ct. did not err in denying D's motion to transfer venue from Morgan to Monroe Co.).

TITLE: Peek v. State
INDEX NO.: T.6.a.
CITE: (3d Dist. 9/29/83), Ind. App., 454 N.E.2d 450
SUBJECT: Proof of venue may be circumstantial
HOLDING: Tr. Ct. did not err in denying D's motion for directed verdict made in part because venue had not been shown; venue is not element of crime of robbery & does not go to guilt or innocence of accused. Hatton 439 N.E.2d 565; Smith, App., 408 N.E.2d 614. Direct evidence of venue is preferred; however, circumstantial evidence may be sufficient to prove venue by a preponderance of the evidence. Hatton; Morris 409 N.E.2d 608. Here, street address where robbery took place was in evidence. Lake County police investigated incidents; one officer described boundaries of territory he was assigned to on that night. Jury could reasonably have inferred crime occurred in Lake County. Record contains sufficient evidence of venue. Held, no error.

RELATED CASES: Peacock, 126 N.E.3d 892 (Ind. Ct. App. 6-6-19) (in harassment prosecution, State presented sufficient circumstantial evidence to show that D committed his offense in Marion County); Perry, 78 N.E.3d 1, (State failed to prove proper venue for 4 of 5 domestic violence-related counts against D; see full review at K.3.a.1).

TITLE: Williams v. State
INDEX NO.: T.6.a.
CITE: (5/31/94), Ind. App., 634 N.E.2d 849
SUBJECT: Venue -- proof of; sufficiency
HOLDING: D argued that convictions could not stand because State failed to properly prove venue. Venue relates to and defines particular county or territorial area within State or district in which cause of prosecution must be brought or tried. Bledsoe, 64 N.E.2d 160. State must prove proper venue by preponderance of evidence, and circumstantial evidence may be sufficient to establish proper venue. Gillie, 512 N.E.2d 145. D argued that there was no evidence in record that charged crimes took place in State of Indiana. There was testimony from police officers that they were employed by LaPorte County Sheriff's office and that escape was made from LaPorte County Jail. Also, one officer testified that he received training for his jail service at Indiana State Law enforcement Academy located in Plainfield, Indiana. Ct. held that this testimony and reasonable inferences from it warranted finding that conduct constituting these alleged offenses occurred in State of Indiana and that State sustained its burden of proof on this issue. Held, affirmed in part and reversed in part on other grounds; Givan, J., dissenting.

RELATED CASES: Norcutt, App., 633 N.E.2d 270 (State has met burden of establishing venue in criminal case if facts and circumstances of case permit jury to infer that crime occurred in given county).

T. JURISDICTION/VENUE

T.6. Venue (CR 12; Ind. Code 35-32-2)

T.6.b. County of venue

TITLE: Abran v. State
INDEX NO.: T.6.b.
CITE: (1st Dist., 04-12-05), Ind. App., 825 N.E.2d 384
SUBJECT: Venue proper for drug dealing despite police chase to different county
HOLDING: Ct. rejected D's contention that venue was improper in county where police chase ended. D argued that if he possessed methamphetamine with intent to deliver & related charges, his intent was to do these criminal activities in the county he was chased out of & venue should have been in that county. If all charges are integrally related, then the crimes may be considered a single chain of events for purposes of venue. French v. State, Ind., 362 N.E.2d 834 (1977). Here, the crimes clearly were linked & assuming that D intended to commit the majority of the crimes in his originating county, his attempt to avoid prosecution for these crimes led him to commit other offenses of resisting law enforcement & reckless driving in the second county. The facts & circumstances of the case permitted the jury to infer that all of the crimes were committed in the second county. In so holding, Ct. relied on Chavez v. State, 722 N.E.2d 885 (Ind. Ct. App2000), where D unsuccessfully argued that venue was not proper where his accomplice was arrested in one county with drugs, but it was his practice to sell them from another county. Held, judgment affirmed.

TITLE: Bryant v. State
INDEX NO.: T.6.b.
CITE: (8/7/2015), 41 N.E.3d 1031 (Ind. Ct. App 2015)
SUBJECT: No *mens rea* requirement in venue statute
HOLDING: Ind. Code § 35-32-2-1(b) provides that if a person committing an offense upon the person of another is located in one (1) county and the person's victim is located in another county at the time of the commission of the offense, the trial may be in either of the counties. This statute contains no mens rea provisions, and Court is unwilling to read a mens rea requirement into the statute.

Here, D owned and operated a pawnshop in Allen County and was required by a local ordinance to upload records of all items purchased by him or pawned at his shop. He was convicted of two counts of Class D felony aiding, inducing or causing receiving stolen property and Class C felony corrupt business influence. On appeal, he argued that the State failed to establish Wells County as a proper venue for his prosecution because it produced no evidence that he knew the items were stolen from victims in Wells County. However, there is no requirement that D knew his victims were in Wells County, only that they were, in fact, located there. State adequately established proper venue in Wells County despite D's lack of knowledge. Held, judgment affirmed.

TITLE: Burgess v. State
INDEX NO.: T.6.b.
CITE: (4/17/84), Ind., 461 N.E.2d 1094
SUBJECT: Venue - county; time for challenge
HOLDING: Failure to raise venue issue by appropriate motion at trial constitutes waiver. Here, D raised issue for first time in MCE. In Reynolds 260 N.E.2d 793, Ct. held civil procedure statute required criminal Ds to raise venue issue at trial. Although statute in Reynolds is repealed, rationale is still applicable to venue provisions in effect when D was tried. Held, any error is waived.

RELATED CASES: Wurster, 715 N.E.2d 341 (Ds should be permitted to challenge venue in pretrial motion).

TITLE: Clark v. State
INDEX NO.: T.6.b.
CITE: (05-30-19), 124 N.E.3d 1284 (Ind. Ct. App 2019)
SUBJECT: Venue for theft case
HOLDING: State established by a preponderance of the evidence that proper venue for theft prosecution was located in Hamilton County.

Defendant rented a lawn mower in Hamilton County by signing an agreement that authorized him to use the lawnmower for one day but then he sold the lawnmower in Marion County. On appeal, Defendant argued that because the agreement authorized the first day of his possession of the mower, the theft occurred in Marion County the next day when his authorization expired, therefore making Marion County the proper venue.

If a person committing an offense is in one county and the person's victim is in another at the time of the offense or if a crime is commenced in one county but consummated in another, the trial may be held in either county. Venue ws proper in Hamilton County because the victim of the theft was in Hamilton County.

TITLE: Eberle v. State
INDEX NO.: T.6.b.
CITE: (01-28-11), 942 N.E.2d 848 (Ind. Ct. App 2011)
SUBJECT: Venue for stalking established - CW's county of residence
HOLDING: In stalking prosecution, venue was established by preponderance of evidence in Ohio County, where D was tried. Alleged offenses were committed by transmissions from D's cell phone. D lived in Lawrenceburg, Dearborn County and complaining witness (CW) was in Florence, Kentucky, when D made five or six calls to CW's cell phone. Ind. Code 35-32-2-1(k) provides that where an offense is committed outside Indiana by use of electronic communication upon an Indiana resident, "trial may be held in the county where the victim resides at the time of the offense." At the time of the offense, CW was a resident of Ohio County; thus, venue was proper in Ohio County. Moreover, because Lawrenceburg is on the banks of the Ohio River-- a common boundary shared by Ohio and Dearborn Counties--D's trial could properly "be held in any county sharing the common boundary" pursuant to Ind. Code 35-32-2-1(h). Held, judgment affirmed in part and remanded on other grounds.

RELATED CASES: Jones, 967 N.E.2d 549 (Ind. Ct. App. 2012) (State proved by preponderance of evidence that proper venue was in Marion County where both victims testified they were at their homes in Marion County when D phoned them).

TITLE: Lashbrook v. State
INDEX NO.: T.6.b.
CITE: (2/26/90), Ind. App., 550 N.E.2d 772
SUBJECT: County of venue -- conversion
HOLDING: D was convicted of conversion, gambling, and professional gambling, all arising out of his involvement in airplane investment program. D obtained possession of investor's money in Boone county, and contends that venue of prosecution for conversion was properly in Tippecanoe County and not Boone County because Tippecanoe County is where his control over money became unauthorized. Person may be tried for conversion in any county in which he exerts unauthorized control over property of another. Ind. Code 35-32-2-2(a). Because D obtained money in Boone County, his control over it started there. Thus, assuming his control was unauthorized at outset, venue properly lay in Boone County. Held, conviction affirmed.

RELATED CASES: Kindred, 540 N.E.2d 1161 (evidence sufficient to support conclusion that D forged check in Morgan County and committed acts in furtherance of offense in Morgan County).

TITLE: Neff v. State
INDEX NO.: T.6.b.
CITE: (2nd Dist, 11-03-09), (Ind. App. 2009) 915 N.E.2d 1026
SUBJECT: Venue - child solicitation over internet; failure to prove venue does not bar retrial
HOLDING: The State failed to prove that proper venue existed in Hamilton County, since all of the internet chats occurred between D at his computer in Madison County and a woman, who was in Georgia, posing as a twelve-year old. Concurrent venue in more than one county may exist when elements of the crime are committed in more than one county. Here, D exchanged sexually explicit emails soliciting sex from a person alleging to be a twelve-year-old girl, "Lizzy," living in Hamilton County, Indiana. However, the alleged girl was really an adult woman volunteer with an organization called Perverted Justice. D drove to Hamilton County to meet "Lizzy" and possibly have sex with her as the two planned. D was arrested in Hamilton County where he admitted he had driven to the Dairy Queen to meet a twelve-year-old girl he had been chatting with online. Although venue for a chain of criminal events may lay in any county in which any of the events occurred, the D did not engage in any conduct in furtherance of child solicitation in Hamilton County. D completed the act of child solicitation over the computer. The fact that he was apprehended in Hamilton County and some evidence that he had committed child solicitation might have been gathered there, he committed no criminal acts in that county. The State's argument that D's traveling to Hamilton county, in accordance with his and "Lizzy's" plans establishes venue in Hamilton County encourages forum shopping. That is, in order to obtain a trial before a prosecutor, Tr. Ct., and/or potential jury pool that law enforcement believes would be harsher on Ds, the State could direct Perverted Justice or other out-of-state volunteers to make their child "victim" a resident of whatever county they wished. Thus, State failed to prove sufficient evidence that proper venue lay in Hamilton County.

Double jeopardy does not bar retrial in the proper county, Madison County. Although the Court of Appeals in Williams v. State, 634 N.E.2d 849 (Ind. Ct. App 1994), held that failure to prove venue is an acquittal for double jeopardy purposes and D cannot be retried, Williams is arguably inconsistent with Wurster v. State, 715 N.E.2d 341 (Ind. 1999). Wurster suggests it is preferable for Ds to challenge venue before trial, with the result of a successful challenge being transferred to the proper county, not dismissal of the charges. Thus, failure to prove venue is similar to a trial error and does not bar retrial. Held, judgment reversed and remanded with directions that the case be transferred to Madison County.

RELATED CASES: Neff, 922 N.E.2d 44 (On rehearing, Ct. clarified that retrial of D does not violate double jeopardy prohibition and that Hamilton County Superior Court still has authority to transfer case to Madison County, even though the Hamilton County court failed to transfer the case to Madison County "before verdict or finding," as required by Ind. Code 35-32-2-5(a)).

TITLE: Osborne v. State
INDEX NO.: T.6.b.
CITE: (9/28/81), Ind., 426 N.E.2d 20
SUBJECT: Venue -- county; single chain of events
HOLDING: If commission of offense is commenced in one county and is consummated in another county, trial may be had in either county. Ind. Code 35-1.1-2-1(d). In addition, one act leading to another may be considered to be in single chain of events. Here, D convicted of kidnaping and theft in Adams Circuit Ct. D alleged that theft was actually committed in Delaware County and that Tr. Ct. should have dismissed this count for lack of venue. Ct. held that kidnaping and theft were part of one continuous chain of events that were integrally related. Held, conviction affirmed.

RELATED CASES: Wurster, 715 N.E.2d 341 (there was no basis for venue in Marion County, where allegedly perjurious statement was submitted to BMV office in Hendricks County); Andrews, App., 529 N.E.2d 360 (venue proper in county other than county in which D actually committed incestuous act inasmuch as D formed criminal intent to commit act in that county before transporting his daughter to other county; single chain of events where D told his daughter, whom he had history of molesting, that he planned to give her birthday present following day, and drove her next day to secluded locale, where they had intercourse); Davis, 520 N.E.2d 1271 (venue was proper in Vanderburgh County, where sex offenses were part of continuous chain of integrally-related events which began in Vanderburgh County).

TITLE: Sears v. State
INDEX NO.: T.6.b.
CITE: (11/29/83), Ind., 456 N.E.2d 390
SUBJECT: Venue - county
HOLDING: Where events in Lawrence County were not integrally related to crime in Martin County, Tr. Ct. erred in denying D's motion to transfer case from Lawrence to Martin County. Here, D & co-D & victim met in bar in Lawrence County. Victim voluntarily accompanied D & co-D on car ride. Car stopped in Martin County where D & co-D conspired to & did force victim at knifepoint to perform fellatio on them. D was charged in Lawrence County with criminal deviate conduct, criminal confinement & conspiracy to commit felony. Jury acquitted D of latter 2 charges. Had D been convicted of those crimes, venue would have been proper in Lawrence County. Situation is analogous to Strickland, 29 N.E.2d 950 & Fritz, (1924) 194 Ind. 242. Held, conviction must be set aside; criminal deviate conduct & habitual charges ordered transferred to Martin County.

RELATED CASES: Weaver, 583 N.E.2d 136 (although information charged that D killed victim in Boone County, & it was clear that victim was killed in Marion County, & body was disposed of in Boone County, venue was not im- proper because D was not misled in preparation of his defense or placed in danger of double jeopardy. While variance in information & proof at trial is improper, it is fatal to state's case only if such prejudice is shown); Co- Burn, App., 461 N.E.2d 1154 (county in which phone calls - to obtain money by creating false impressions - received is proper venue for theft trial).

TITLE: Smith v. State
INDEX NO.: T.6.b.
CITE: (2nd Dist., 10-20-05), Ind. App., 835 N.E.2d 1072
SUBJECT: Sufficient contacts established venue in drug case
HOLDING: In drug dealing prosecution, Ct. held that venue was established by a preponderance of the evidence in Hamilton County where D was tried. Informant for Hamilton Drug Task Force telephoned D several times to set up deal & picked up D in Hamilton County where D received payment for heroin to be purchased in Marion County. D received & handed the heroin over to the informant in Marion County. Ind. Code 35-48-4-1(a)(1) notes a person "who knowingly or intentionally *delivers* a narcotic drug" can be convicted of dealing in a narcotic drug. *(Ct.'s emphasis). Ind. Code* 35-48-1-11 defines delivery as (1) an actual or constructive transfer from one person to another of a controlled substance ...; *or* (2) the organizing or supervising of an activity described in subdivision (1). "Delivery" may also be satisfied by "organizing or supervising" the transfer under subsection (2). D offered his services to the informant, procured the help of another dealer, & collected the money to buy the heroin in Hamilton County. Concurrent venue is possible when elements of the crime are committed in more than one county. Baugh v. State, 801 N.E.2d 629 (Ind.2004). Ct. found Stroup v. State, 810 N.E.2d 355 (Ind. Ct. App2004) distinguishable from present case & disagreed with D's assertion that Culbertson v. State, 792 N.E.2d 573 (Ind. Ct. App2003) dictates that "delivery" may be defined as organizing or supervising only in cases where a D directs a third party to sell a narcotic, as the statute is written in the disjunctive. Held, judgment affirmed

TITLE: Stroup v. State
INDEX NO.: T.6.b.
CITE: (2nd Dist., 6-15-04), Ind. App., 810 N.E.2d 355
SUBJECT: Failure to establish venue - forgery
HOLDING: State failed to meet its burden of establishing proper venue in which to charge D with forgery. Offense of forgery includes two distinct & independent crimes: 1) making & 2) uttering a forged instrument. Jordan v. State, 502 N.E.2d 910 (Ind. 1987). Here, State charged D with "making" variant of forgery & contended the intent element of forgery was not consummated until D presented her prescription in Marion County &, accordingly, Marion County was proper venue. However, Ind. Code 35-53-5-2(1) clearly indicates that forgery's mens rea is consummated upon completion of forged instrument. State also claimed that if D had not presented prescription slip to be filled in Marion County, she would not have completed the crime, regardless of where the prescription slip was made. However, "to present" is "to utter." Ind. Code 35- 41-1-27. Requiring State to prove D "presented" the forged instrument when seeking a conviction pursuant to the "make" variant of forgery ignores the make/utter distinction required by our S.Ct. in Jordan. Because every element supporting D's forgery conviction was completed in Hamilton rather than Marion County, State did not establish venue. Held, forgery conviction vacated.

T. JURISDICTION/VENUE

T.6. Venue (CR 12; Ind. Code 35-32-2)

T.6.c. Change of venue (IC 35-36-6, CR 12)

TITLE: Bradberry v. State
INDEX NO.: T.6.c.
CITE: (5/22/74), Ind. App., 311 N.E.2d 437
SUBJECT: Change of venue -- hearing required for second motion
HOLDING: Hearing must be held or opportunity must be given to D to present additional evidence in support of verified motion for change of venue from county or from judge, even though it may be second or subsequent verified motion for change of venue. Here, denial of second and verified motion for change of judge without conducting hearing was error. Held, reversed and remanded for new trial.

RELATED CASES: Burton, 292 N.E.2d 790 (fourth motion for change of venue properly denied where showing of bias or prejudice was inadequate).

TITLE: Burdine v. State
INDEX NO.: T.6.c.
CITE: (12/2/87), Ind., 515 N.E.2d 1085
SUBJECT: Change of venue - test jury
HOLDING: Tr. Ct. did not err in granting state's motion to call test jury to help determine whether a change of venue because of prejudicial pretrial publicity was warranted. Over D's objection, Tr. Ct. granted state's motion & ordered 6 venire members to attend hearing on motion for change of venue. Attorneys conducted voir dire of these 6, posing questions about their knowledge of case & ability to act as impartial jurors. Test jury is novel concept. In Boyd 494 N.E.2d 284, Ind. S. Ct. held it was not error for Tr. Ct. to refuse to call test jury sought by D for purposes of motion for change of venue. That ruling rested on conclusion that "such body is unknown to our legal process" & Tr. Ct. had no obligation to allow it. However, Tr. Ct. is not prohibited from allowing test jury. Tr. Ct. has discretion to guide course of proceedings before it. Bruce 375 N.E.2d 1042. Held, Tr. Ct. did not abuse discretion in allowing test jury.

TITLE: Chapman v. State
INDEX NO.: T.6.c.
CITE: (7/18/90), Ind., 556 N.E.2d 927
SUBJECT: Motion for change of venue -- verification or affidavit required
HOLDING: Tr. Ct. did not err in denying D's motion for change of venue. CR 12 requires that motion shall be verified or accompanied by affidavit signed by D or prosecuting attorney setting forth facts in support of statutory basis or bases for change. Here, there was no such verification or affidavit accompanying D's motion. Held, judgment affirmed.

RELATED CASES: Jones, 517 N.E.2d 405 (affirmation of truth must be made under penalty of perjury); Tabor, 461 N.E.2d 118 (failure of D to verify motion for change of venue from count justified denial of motion).

TITLE: Epps v. State
INDEX NO.: T.6.c.
CITE: (11/8/77), Ind., 369 N.E.2d 404
SUBJECT: Change of venue -- time limit for filing
HOLDING: D must file motion for change of judge or venue within ten days after pleas of not guilty; however, if he first obtains knowledge of cause for change of venue from judge or county after ten days, he may file verified application alleging when cause was first discovered, how it was discovered, facts showing cause for change, and why such cause could not have been discovered before by exercise of due diligence. CR 12. Here, D filed for change of venue ten months after date of his arraignment, eighteen days from date trial was to begin. Motion was denied without hearing. Ct. held that Tr. Ct. did not err in denying motion without hearing because motion was filed ten months after D's arraignment, and that it contained no allegations of when cause for motion was discovered, how it was discovered, facts showing cause or why cause could not have been discovered before exercise of due diligence. Held, conviction affirmed.

TITLE: Kirby v. State
INDEX NO.: T.6.c.
CITE: (8/5/85), Ind., 481 N.E.2d 372
SUBJECT: Change of venue - jurors from another county
HOLDING: Tr. Ct. erred in selecting 5 jurors from Marshall County & remainder from Porter County; however, D is not entitled to reversal unless he can show he was entitled to a change of venue (COV) from Porter County. Here, only 5 people were willing to serve as jurors in Marshall County. Voir dire record shows Tr. Ct. was able to select 7 jurors in Porter County able to render verdict based on evidence & not upon preconceived notion of guilt (based on publicity re earlier hung jury). Thus, D was not entitled to COV. Had he been entitled to COV, then empaneling of jury consisting of any member of suspect county would be reversible error. Held, conviction affirmed.

TITLE: Lindsey v. State
INDEX NO.: T.6.c.
CITE: (11/22/85), Ind., 485 N.E.2d 102
SUBJECT: Change of venue - ruling reserved
HOLDING: Tr. Ct. did not err in reserving ruling on D's motion for change of venue from county until after voir dire. Here, D argued prejudicial pretrial publicity required change of venue. Tr. Ct. reserved ruling to see whether fair & impartial jury panel could be selected. D argues deferral constituted fundamental error & that judge abdicated responsibility to make factual determination based on record presented. Ct. finds that postponing ruling until after voir dire "can only aid parties seeking change of venue." Because issue is right to impartial jury, Ct. finds external evidence may convince Tr. Ct. that finding impartial jurors will be so difficult that motion should be granted. Similarly, where voir dire reveals potential jurors are able to set aside preconceived notions of guilt & render verdict based solely on evidence, motion for change of venue need not be granted. Johnson 472 N.E.2d 892; Drummond 467 N.E.2d 742. Held, no abuse of discretion.

TITLE: Perkins v. State
INDEX NO.: T.6.c.
CITE: (10/25/85), Ind., 483 N.E.2d 1379
SUBJECT: Change of venue (COV) - jointly charged Ds
HOLDING: COV for one of 2 or more jointly charged Ds is COV for all, absent showing of prejudice.
State ex rel. Banks v. Hamilton Superior Ct. 304 N.E.2d 776. Here, D1's COV motion was granted. D2's COV motion was denied. D2 was notified of COV but not of time to appear in Ct. to participate in venue selection. D2 did not participate in selection process. Ct. finds D2 failed to show prejudice by COV to Elkhart County. Held, no error. Prentice CONCURS IN RESULT.

TITLE: Petruso v. State
INDEX NO.: T.6.c.
CITE: (11/12/82), Ind., 441 N.E.2d 446
SUBJECT: Change of venue
HOLDING: Failure to follow clear dictates of CR 12 justifies denial of motion for change of venue. Carroll 438 N.E.2d 745; Epps 369 N.E.2d 404. Here, (under old CR 12), pro se motion was not properly verified. D's counsel's motion failed to allege when & how cause was first discovered, facts establishing cause for change & why such cause could not have been discovered before by exercise of due diligence. Held, no error in denial of motion.

TITLE: Ward v. State
INDEX NO.: T.6.c.
CITE: (6-30-04), Ind., 810 N.E.2d 1042
SUBJECT: Denial of change of venue motion - reversible error
HOLDING: In capital case, Tr. Ct. abused its discretion in denying change of venue or in the alternative drawing jury from out of county, where pattern of deep & bitter hostility toward D was shown to be present throughout the community & was clearly reflected in juror questionnaires. Questionnaires revealed that majority of those in community not only believed D was guilty, but that they believed mere lethal injection was too kind a way to kill him. On perfunctory questioning, most jurors said they could set aside their opinions & render an impartial verdict, but presumption of truthfulness of their answers is overcome by showing of general atmosphere of prejudice throughout community. More disturbing, one juror admitted under oath, "I don't know," when asked whether she could set aside her belief that D was guilty. "This juror's view alone requires that we grant D a new trial. 'If even one [partial] juror is empaneled & the death sentence is imposed, the State is disentitled to execute the sentence.' State v. Dye, 784 N.E.2d 469, 476 (Ind. 2003) (*quoting* Morgan [v. Illinois], 504 U.S. [719] at 729.)" Held, conviction & death sentence reversed & remanded for new trial.

RELATED CASES: Myers, App., 887 N.E.2d 170 (although D proved prejudicial pretrial publicity, he failed to prove that jurors were prejudiced by publicity; no empaneled juror expressed uncertainty about his or her ability to set aside an opinion of guilt).

TITLE: Wilson v. State
INDEX NO.: T.6.c.
CITE: (4th Dist. 12/26/84), Ind. App., 472 N.E.2d 932
SUBJECT: Change of judge (COJ) - CR 12 mandates hearing
HOLDING: Tr. Ct. erred in denying D's motions for COJ without a hearing. Here, D moved for change after successful appeal. (Conviction reversed for denial of right to jury trial. D alleged bias of judge.) After judge refused to grant prosecutor's motion to dismiss DWI charge & set cause for trial, D again moved for COJ. Ct. finds language of CR 12 mandates hearing on COJ or COV motions. Ct. distinguishes cases decided under previous CR 12, which provided for "hearing or other opportunity" to substantiate motion. See Otte v. Tessman 426 N.E.2d 660 (TR 56 language mandates hearing on summary judgment). Ct. distinguishes Linder 456 N.E.2d 400: D merely argued Hanrahan 241 N.E.2d 143 was applicable to COV motion; D did not argue CR 12 on appeal. Held, reversed & remanded.
RELATED CASES: Gibson, App., 518 N.E.2d 1132 (CR 12 mandates hearing on COV motion).

T. JURISDICTION/VENUE

T.6. Venue (CR 12; Ind. Code 35-32-2)

T.6.c.1. Grounds (publicity, see D.1.a)

TITLE: Bauer v. State
INDEX NO.: T.6.c.1.
CITE: (12/2/83) Ind., 456 N.E.2d 414
SUBJECT: Change of venue – community bias or prejudice
HOLDING: Tr. Ct. did not err in denying D's motion for change of venue where D failed to prove community bias or prejudice. Here, D contends pretrial publicity (50 pre-arrest, 180 post- arrest articles) concerning "silver compact car rapist" created atmosphere which prevented selection of impartial jury. His prior trial & conviction in same county generated publicity which D argues prejudiced potential jurors in this trial. Phrase "silver compact car rapist" was connected with 13 incidents; D was charged with 3. D was not charged with rape in this case. Tr. Ct. postponed this trial 2 months when it found it could not select fair/impartial jury. Tr. Ct. has discretion re change of venue motions & must balance rights of news media, D & citizens. Comstock 406 N.E.2d 1164. D has burden of showing local prejudice & corrupted trial atmosphere; amount of pretrial publicity does not automatically produce such an atmosphere. Murphy v. FL (1975) 421 U.S. 794, 95 S. Ct. 2031, 44 L.Ed.2d 589; Drollinger 408 N.E.2d 1228; Haybron 396 N.E.2d 891. D must show community bias-prejudice sufficient to convince Tr. Ct. D cannot obtain fair trial in that county. Mere possibility of prejudice does not entitle D to change of venue. Trevino, App., 428 N.E.2d 263. Mere knowledge of crime does not necessarily produce a venire that cannot fairly judge D based on evidence adduced at trial. Held, no abuse of discretion.

RELATED CASES: Hadley 496 N.E.2d 67 (Crim L 1164(4); judge should have allowed D to present testimony of 3 witnesses re existence of community bias/prejudice, but in light of other evidence, error does not require reversal); Bixler 471 N.E.2d 1093 (survey results discounted entirely): Kappos 465 N.E.2d 1092 (survey results did not demonstrate pattern of deep/bitter resentment in community); Tabor 461 N.E.2d 118; McReynolds 460 N.E.2d 960.

TITLE: Hare v. State
INDEX NO.: T.6.c.1.
CITE: (8/22/84), Ind., 467 N.E.2d 7
SUBJECT: Change of venue -- publicity and prejudice
HOLDING: Tr. Ct. did not err by denying D change of venue from county based on publicity by local newspaper. Burden rests with D to establish either high probability or existence of such widespread bias in community that impartial jury cannot be obtained. Haybron, 396 N.E.2d 891. Here, Ct. was not furnished transcript of voir dire examination of second jury panel so it could not determine frame of mind of jurors selected to try D. Also, D did not show or claim that prospective jurors in new panel had indicated that they had preconceived notions of guilt which they were unable to set aside so as to base verdict upon evidence. Although D produced several newspaper articles which mentioned offense, none exhibited pattern of deep and bitter prejudice against D throughout community. Held, conviction affirmed; DeBruler, J., concurring.

RELATED CASES: Nix, 158 N.E.3d 795 (Denial of change of venue affirmed despite juror's post-trial comments indicating knowledge of D's criminal history); Green, App., 753 N.E.2d 52 (although D showed existence of prejudicial pretrial publicity, he failed to show that seated jurors were unable to set aside any preconceived notions of guilt, & decide case based upon evidence); Jarver, 356 N.E.2d 215 (Tr. Ct. may not act arbitrarily in deciding whether to grant motion for change of venue from county based upon prejudicial pretrial publicity; Tr. Ct. should consider right of news media to fairly and accurately report news, right of D to fair trial before impartial tribunal, and rights of citizens to fully comprehend and analyze portent and direction of administration of Ct. system).

TITLE: Kahn v. State
INDEX NO.: T.6.c.1.
CITE: (5/29/86), Ind. App., 493 N.E.2d 790
SUBJECT: Change of venue -- pre-trial publicity
HOLDING: Grant of denial of motion for change of venue is governed by Ind. Code 35-1-25-1 et seq., CR2, and constitutional right to trial before impartial jury. Ind.Const.Art. 1, 13; U.S. Const. Amend. 14. Question whether change of venue is warranted lies within sound discretion of Tr. Ct.; burden rests with movant to establish either high probability or existence of such widespread bias in community that impartial jury cannot be obtained. Here, D convicted of securities fraud, corrupt business influence, 15 counts of sale of unregistered securities and 15 counts of sale of securities by unregistered agent. D argued that Tr. Ct. erred in refusing to grant change of venue under Trial Rule 12, claiming that fair and impartial trial could not be held in Marion County due to publicity, excitement, and prejudice. However, D made no showing of jury prejudice because record was totally devoid of any indication of pretrial publicity or any type of prejudice. Held, conviction affirmed.

TITLE: Schweitzer v. State
INDEX NO.: T.6.c.1.
CITE: (1/5/89), Ind., 531 N.E.2d 1386)
SUBJECT: Prejudicial pre-trial publicity - denial of change of venue; sequestration motions.
HOLDING: Tr. Ct.'s denial of change of venue motion was not abuse of discretion where about 30% of sample jury doubted their ability to be impartial. Error to deny COV only if D shows prejudicial pre-trial publicity & juror inability to render impartial verdict on evidence. Burdine 515 N.E.2d 1085; Slone 496 N.E.2d 401; Smith 474 N.E.2d 973. Here D offered letter to editor, local news article, & sample voir dire showing 5 of 17 jurors at least doubted their impartiality, 2 of whom stated they could not be impartial. Ct. finds responses of sample jury negatives inability to be impartial. Affirmed in part, vacated in part on other grounds.

RELATED CASES: Hopkins 582 N.E.2d 345 (not error to deny D's motions for change of venue from county, for test jury to determine prejudice from publicity, & for increase in peremptory challenges. Publicity included articles in daily newspaper & on radio, including statement by prosecutor that "[i]t was a particularly brutal & violent crime. I cannot see any justification for not seeking the death penalty...," & fact that D was out on bond for unrelated felony charges & had turned himself in on instant charges. D did not show jurors were unable to set aside their preconceptions, or that any challenges for cause were improperly denied).

T. JURISDICTION/VENUE

T.6. Venue (CR 12; Ind. Code 35-32-2)

T.6.c.2. Waiver of objection

TITLE: McDaniel v. State
INDEX NO.: T.6.c.2.
CITE: (5/12/78), Ind., 375 N.E.2d 228
SUBJECT: Change of venue -- failure to strike counties
HOLDING: D was granted change of venue but failed to strike from list of counties submitted to him after judge had decided to limit change of venue to counties contiguous to county in which homicide occurred. Ct. held that by failing to strike, D waived his right to change of venue and that Tr. Ct. did not err by resuming jurisdiction in case and proceeding with trial. Held, conviction affirmed.

. JURISDICTION/VENUE

T.6. Venue (CR 12; Ind. Code 35-32-2)

T.6.c.3. Selction of other county

TITLE: James v. State
INDEX NO.: T.6.c.3
CITE: (4/29/93), Ind., 613 N.E.2d 15
SUBJECT: Change of venue -- selection of counties
HOLDING: D convicted of felony-murder in connection with death of victim during robbery. D had moved for change of venue from LaPorte County, where crime was committed, because of pre-trial publicity. According to D's evidence at trial, LaPorte's population is comprised of twenty per cent African-Americans while surrounding counties have either minority population of less than one per cent or unknown amount of minorities. Tr. Ct. refused to name non-adjoining counties to panel of receiving counties in connection with D's motion for change of venue. D argued that because two of three counties designated as receiving counties had low minority populations, he was denied right to impartial jury. Ct. held that D was not denied right to impartial jury, and that decision as to whether to add non-adjoining counties to panel of receiving counties is within Tr. Ct.'s discretion and will be reversed only for abuse of that discretion. McDaniel, 375 N.E.2d 228. Held, conviction affirmed, remanded for sentence.

T. JURISDICTION/VENUE

T.6. Venue (CR 12; Ind. Code 35-32-2)

T.6.d Venue - Dismissal after change of venue

TITLE: State ex rel. Camm v. Floyd Circuit Ct.
INDEX NO.: T.6.d.
CITE: (05-27-05), Ind.
SUBJECT: New prosecution for same offense after change of venue
HOLDING: Ind. Code 35-36-6-4 provides that: "If it is necessary to institute a new prosecution for the same offense after a change of venue has been taken, the D in the case shall elect, when required to do so by the Ct., the Ct. in which he prefers the new prosecution to be instituted." The D "may choose either the Ct. from which venue was granted or the Ct. to which venue was granted, &, after his choice, further prosecution shall be instituted in that Ct." Id. This statute is intended to preserve for a D in a criminal case the right to be tried in county to which a change of venue has been granted. State ex rel. Schaaf v. Rose, 222 Ind. 96, 51 N.E.2d 856 (1943).

Here, State originally charged D with three counts of murder in Floyd Superior Ct. Following a conviction on those charges & an appellate reversal & remand, the State & D agreed to a change of venue to Warrick Superior Ct., & that Ct. assumed jurisdiction over the case. State later dismissed those charges without prejudice & almost immediately refiled three counts of murder along with a new count of conspiracy to commit murder & similar charges against a new co-D in Floyd Circuit Ct. Three counts of murder are the same offenses that were previously venued to & pending in Warrick Superior Ct. before their dismissal. Consequently, D has a right to elect & has elected to answer those charges in Warrick Superior Ct. Moreover, because State has elected to join conspiracy charge against D with the three murder charges against him, conspiracy charge must also be transferred to Warrick Superior Ct. Held, petition for writ of mandamus & prohibition granted, case ordered transferred to Warrick Superior Ct. No. 2.

T. JURISDICTION/VENUE

T.7. Forum shopping (se also B.12.b)

TITLE: Harris v. State

INDEX NO: T.7.

CITE: (03-16-12), 963 N.E.2d 505 (Ind. 2012)

SUBJECT: D need not show prejudice from violation of forum shopping rule

HOLDING: A D claiming a violation of a local felony case assignment rule need not establish prejudice to prevail on appeal. A criminal D has a right to a fair trial before an impartial judge. Everling v. State, 929 N.E.2d 1281 (Ind. 2010). In the eyes of the public, and certainly of the D, a judge's impartiality seems less convincing if the prosecution can select the judge before whom it will be heard. Ind. Crim. Rule 2.2 requires Tr. Ct.'s of each county to formulate a local rule for the nondiscretionary assigning of all felony and misdemeanor cases. Purpose of Rule 2.2 is to prevent State from gaining, at the moment of filing, an advantage that might not rise to the level of bias or prejudice that would entitle a D to a change of judge under Criminal Rule 12(B).

Here, in murder prosecution, D argued that the only reason his trial occurred in Howard Superior 1 was because prosecutors engaged in forum shopping. The Howard County courts adopted a rule requiring prosecutors to file felony charges in the court designated by a weekly rotation based on when the offense occurred. An exception says that when a D already faces an earlier criminal charge in a court not on rotation, the prosecutor must file the felony charge in that court. In this case, D already had a pending criminal charge in Howard Superior 1 on date he committed his second offense, but the pending charge had been resolved by the time the second charge was filed.

Although D need not show prejudice to win a reversal on this issue, in this case D did not show a violation. Tr. Ct.=s interpretation of its own rule was plausible and entitled to Asome deference@ on appeal, but Court asked that Howard County judges draft amendments to the rule sufficient to prevent reoccurrence of the situation in this case. Held, transfer granted, Court of Appeals' memorandum opinion affirmed as to remaining issues, judgment affirmed.

RELATED CASES: Gracia, 976 N.E.2d 85 (Ind. Ct. App 2012) (D failed to show fundamental error from State's forum shopping in violation of Howard County local rule).