CHAPTER 21

Venue

**SECTION 17‑21‑10.** Venue where person causes injury within limits of State and death occurs elsewhere.

 When any person shall be struck, wounded, poisoned or otherwise injured or ill‑treated within the limits of this State and shall die thereof beyond the limits of this State, whether on the high seas or elsewhere, the person so striking, wounding, poisoning or otherwise causing death as aforesaid shall be subject to indictment, trial and punishment in the county in which the stroke, wound, poisoning or other injury or ill‑treatment was committed, in all respects the same as if the death had occurred in such county.

HISTORY: 1962 Code Section 17‑454; 1952 Code Section 17‑454; 1942 Code Section 1017; 1932 Code Section 1017; Cr. P. ‘22 Section 108; Cr. C. ‘12 Section 144; Cr. C. ‘02 Section 116; G. S. 2461; R. S. 116; 1859 (12) 822.

Library References

Criminal Law 108(1), 114.

Westlaw Topic No. 110.

C.J.S. Criminal Law Section 226.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Homicide Section 12, Venue.

Treatises and Practice Aids

Criminal Procedure, Second Edition Section 16.4(C), State Jurisdiction.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 17‑454] does not purport to make any change in the rules of criminal pleading, but is simply designed to prescribe a place of trial in certain cases where it was formerly doubtful as to where would be the proper place of trial. It does not declare in general terms that, no matter where the death ensues, the accused may be indicted and tried where the injury causing the death was inflicted, but it specifies particularly that where death ensues in a particular place, from an injury inflicted in another place, then the accused may be indicted and tried in a certain place, and so on. The Supreme Court does not see, therefore, how this section [Code 1962 Section 17‑454] can be regarded as having the effect of altering the established rules of criminal pleading, especially in cases not falling within any of the classes provided for by this section [Code 1962 Section 17‑454]. State v Coleman (1882) 17 SC 473. State v Platt (1930) 154 SC 1, 151 SE 206.

Indictments alleging that charged sexual offenses occurred in Beaufort County, South Carolina, on or about three specified dates, were sufficient to confer jurisdiction on court in that county to accept guilty pleas, even if defendant had not been present in that county at the times alleged. Jones v. State (S.C. 1998) 333 S.C. 6, 507 S.E.2d 324. Indictment And Information 86(2)

Assuming that deceased died in another state, court clearly had jurisdiction to try defendant for murder in county where fatal assault occurred, and proof of place of death had no effect upon court’s jurisdiction under this section [Code 1962 Section 17‑454]. State v. Bostick (S.C. 1963) 243 S.C. 14, 131 S.E.2d 841.

Applied in State v. Gantt (S.C. 1953) 223 S.C. 431, 76 S.E.2d 674, certiorari denied 74 S.Ct. 433, 347 U.S. 906, 98 L.Ed. 1065.

**SECTION 17‑21‑20.** Venue where person causes injury in one county and death occurs in another.

 When any person shall be struck, wounded, poisoned or otherwise injured in one county and dies thereof in another any inquisition or indictment thereon found by jurors of either county shall be as good and effectual in law as if the stroke, wound, poisoning or other injury had been committed and done in the county in which the party shall die. And the person guilty of such striking, wounding, poisoning or other injury and every accessory thereto, either before or after the fact, shall be tried in the county in which such indictment shall be found and, if convicted, punished in the same mode, manner and form as if the deceased had suffered such striking, wounding, poisoning or other injury and death in the county in which such indictment shall be found.

HISTORY: 1962 Code Section 17‑456; 1952 Code Section 17‑456; 1942 Code Section 1020; 1932 Code Section 1020; Cr. P. ‘22 Section 111; Cr. C. ‘12 Section 147; Cr. C. ‘02 Section 119; G. S. 2464; R. S. 119; 1880 (17) 336.

Library References

Criminal Law 112(6).

Westlaw Topic No. 110.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Homicide Section 11, Jurisdiction.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

Applied in State v Messervey (1916) 105 SC 254, 89 SE 662. State v Gantt (1953) 223 SC 431, 76 SE2d 674, cert den 347 US 906, 98 L Ed 1065, 74 S Ct 433.

This section [Code 1962 Section 17‑456] does not purport to make any change in the rules of criminal pleading, but is simply designed to prescribe a place of trial in certain cases where it was formerly doubtful as to where would be the proper place of trial. It does not declare in general terms that, no matter where the death ensues, the accused may be indicted and tried where the injury causing the death was inflicted, but it specifies particularly that where death ensues in a particular place, from an injury inflicted in another place, then the accused may be indicted and tried in a certain place, and so on. The Supreme Court does not see, therefore, how this section [Code 1962 Section 17‑456] can be regarded as having the effect of altering the established rules of criminal pleading, especially in cases not falling within any of the classes provided for by this section [Code 1962 Section 17‑456]. State v Coleman (1882) 17 SC 473. State v Platt (1930) 154 SC 1, 151 SE 206.

This section [Code 1962 Section 17‑456] did not apply to trial for murder from blows inflicted before its enactment. State v Sweat (1881) 16 SC 624. State v McCoomer (1908) 79 SC 63, 60 SE 237.

Venue in murder prosecution was proper in county in which defendant worked, even though victim’s body was found in another county; blood that could potentially have been victim’s was found on sofa at defendant’s workplace, and axe on which were found bloodstains and defendant’s palm print was likewise found at same location. State v. Brisbon (S.C. 1996) 323 S.C. 324, 474 S.E.2d 433. Criminal Law 108(1)

Stated in State v. Gregg (S.C. 1956) 230 S.C. 222, 95 S.E.2d 255.

This section [Code 1962 Section 17‑456] does not undertake to fix exclusive jurisdiction in either county. State v. Howell (S.C. 1951) 220 S.C. 178, 66 S.E.2d 701.

The court of the county where the wound was inflicted having first assumed exclusive jurisdiction of the case, accused cannot be proceeded against in the county where the person died. Ex parte Swygert (S.C. 1921) 117 S.C. 94, 108 S.E. 261.

2. Constitutional issues

The act of the General Assembly from whence this section [Code 1962 Section 17‑456] comes is constitutional, and the offense is to be considered committed in both counties and triable in either. State v McCoomer (1908) 79 SC 63, 60 SE 237. Ex parte Swygert (1921) 117 SC 94, 108 SE 261. State v Platt (1930) 154 SC 1, 151 SE 206.

**SECTION 17‑21‑30.** Venue where perpetrator of homicide and victim are in different states.

 When any person within the limits of this State shall inflict an injury on any person who at the time the injury is inflicted is beyond the limits of this State or when any person beyond the limits of this State shall inflict an injury on any person at the time within the limits of this State and such injury shall cause the death of the person injured, in either case the person causing such death shall be subject to be indicted, tried and punished in the first case in the county of this State where the person inflicting the injury was at the time when the injury was inflicted and, in the second case, in the county in which it was received. The procedure and punishment shall be in all respects the same as if both parties were within such county at the time the injury was inflicted and the homicide had been in all respects completed in such county.

HISTORY: 1962 Code Section 17‑455; 1952 Code Section 17‑455; 1942 Code Section 1018; 1932 Code Section 1018; Cr. P. ‘22 Section 109; Cr. C. ‘12 Section 145; Cr. C. ‘02 Section 117; G. S. 2462; R. S. 117; 1859 (12) 822.

Library References

Criminal Law 112(1), 112(6), 114.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 226 to 228.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Homicide Section 11, Jurisdiction.

Treatises and Practice Aids

Criminal Procedure, Second Edition Section 16.4(C), State Jurisdiction.

NOTES OF DECISIONS

In general 1

1. In general

In murder trial where victim’s body was never discovered, facts indicating that victim was last seen at his residence where there were found signs of struggle, and that ransom money was demanded and delivered in county of victim’s residence, was sufficient evidence to establish venue in victim’s county of residence, as venue in criminal case need not be affirmatively proved if there is sufficient evidence from which it can be inferred. State v. Owens (S.C. 1987) 293 S.C. 161, 359 S.E.2d 275, certiorari denied 108 S.Ct. 496, 484 U.S. 982, 98 L.Ed.2d 495. Criminal Law 564(1)

Stated in State v. Gantt (S.C. 1953) 223 S.C. 431, 76 S.E.2d 674, certiorari denied 74 S.Ct. 433, 347 U.S. 906, 98 L.Ed. 1065.

**SECTION 17‑21‑40.** Venue where perpetrator of homicide and victim are in different counties.

 When an injury is inflicted by any person within the bounds of one county of this State on a person within the bounds of another county and death shall ensue therefrom within this State, indictment, trial and punishment shall be the same as if the homicide had been committed altogether within the county in which the injured person dies. And when the injured person dies without the jurisdiction of this State, indictment, trial and punishment shall be the same as if the homicide had been completed in the county in which the injury causing death was received.

HISTORY: 1962 Code Section 17‑457; 1952 Code Section 17‑457; 1942 Code Section 1019; 1932 Code Section 1019; Cr. P. ‘22 Section 110; Cr. C. ‘12 Section 146; Cr. C. ‘02 Section 118; G. S. 2463; R. S. 118; 1859 (12) 823.

Library References

Criminal Law 112(6).

Westlaw Topic No. 110.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Homicide Section 11, Jurisdiction.

NOTES OF DECISIONS

In general 1

1. In general

In murder trial where victim’s body was never discovered, facts indicating that victim was last seen at his residence where there were found signs of struggle, and that ransom money was demanded and delivered in county of victim’s residence, was sufficient evidence to establish venue in victim’s county of residence, as venue in criminal case need not be affirmatively proved if there is sufficient evidence from which it can be inferred. State v. Owens (S.C. 1987) 293 S.C. 161, 359 S.E.2d 275, certiorari denied 108 S.Ct. 496, 484 U.S. 982, 98 L.Ed.2d 495. Criminal Law 564(1)

Stated in State v. Gantt (S.C. 1953) 223 S.C. 431, 76 S.E.2d 674, certiorari denied 74 S.Ct. 433, 347 U.S. 906, 98 L.Ed. 1065.

**SECTION 17‑21‑50.** Venue for trial of accessories before the fact.

 A person charged as an accessory before the fact may be indicted, tried and punished in the same court and county in which the principal felon might be indicted and tried, although the offense of counseling, hiring or procuring the commission of such felony is committed on the high seas or on land outside of the county either within or without the limits of this State.

HISTORY: 1962 Code Section 17‑452; 1952 Code Section 17‑452; 1942 Code Section 1021; 1932 Code Section 1021; Cr. P. ‘22 Section 112; Cr. C. ‘12 Section 921; Cr. C. ‘02 Section 636; G. S. 2612; R. S. 523; 1712 (2) 484; 1961 (52) 40.

CROSS REFERENCES

Punishment of accessories before the fact as principals, see Section 16‑1‑40.

Library References

Criminal Law 110.

Westlaw Topic No. 110.

C.J.S. Criminal Law Section 224.

NOTES OF DECISIONS

In general 1

1. In general

Applied in State v. Farne (S.C. 1939) 190 S.C. 75, 1 S.E.2d 912.

While this section [Code 1962 Section 17‑452] provides that an accessory before the fact may be indicted, tried, and punished in the same court and county where the principal felon might be indicted and tried, although the offense of counseling, hiring or procuring the commission of such felony is committed on the high seas or on land, either within or without the limits of this State, there is no such provision in regard to an accessory after the fact. State v. Burbage (S.C. 1898) 51 S.C. 284, 28 S.E. 937.

**SECTION 17‑21‑60.** Venue for trial of accessories after the fact.

 Whoever becomes an accessory to a felony after the fact may be indicted, convicted and punished, whether the principal felon has or has not been previously convicted or is or is not amenable to justice, by any court having jurisdiction to try the principal felon and either in the county in which such person became an accessory or in the county in which the principal felony was committed.

HISTORY: 1962 Code Section 17‑453; 1952 Code Section 17‑453; 1942 Code Section 1022; 1932 Code Section 1022; Cr. P. ‘22 Section 113; Cr. C. ‘12 Section 922; Cr. C. ‘02 Section 637; G. S. 2613; R. S. 524; 1714 (2) 543.

Library References

Criminal Law 110.

Westlaw Topic No. 110.

C.J.S. Criminal Law Section 224.

NOTES OF DECISIONS

In general 1

1. In general

The following elements must exist before an accused may be found guilty of being an accessory after the fact of a felony: (1) the felony has been completed; (2) the accused must have knowledge that the principal committed the felony; and (3) the accused must harbor or assist the principal felon. The assistance or harboring rendered must be for the purpose of enabling the principal felon to escape detection or arrest. In a prosecution for receiving stolen goods, for being an accessory after the fact of grand larceny, and for other offenses, the trial judge effectually ended the count of accessory after the fact when he directed a verdict on the count for receiving stolen goods, since the defendant would be compelled to know the goods were stolen if he had knowledge that the principal committed the felony. State v. Legette (S.C. 1985) 285 S.C. 465, 330 S.E.2d 293.

State is not barred from prosecuting and convicting accessory after the fact even though principal has been acquitted, but unless State can prove at accessory’s trial that principal is guilty, accessory cannot be convicted. State v. Massey (S.C. 1976) 267 S.C. 432, 229 S.E.2d 332. Criminal Law 80

This section [Code 1962 Section 17‑453] was not designed to effect any change in the rules of criminal pleading, and does not purport to do so. Its sole purpose was simply to prescribe a place of trial where the party charged might be indicted, convicted, and punished. State v. Burbage (S.C. 1898) 51 S.C. 284, 28 S.E. 937.

It does not dispense with the necessity of alleging in the indictment the time and place when and where defendant became an accessory after the fact. State v. Burbage (S.C. 1898) 51 S.C. 284, 28 S.E. 937.

**SECTION 17‑21‑70.** Venue in proceedings against corporations.

 No criminal proceeding shall be instituted against any corporation unless the offense charged or some part thereof shall have been committed in the county in which the prosecution shall be instituted.

HISTORY: 1962 Code Section 17‑451; 1952 Code Section 17‑451; 1942 Code Section 989; 1932 Code Section 989; Civ. C. ‘22 Section 4297; Civ. C. ‘12 Section 2830; 1911 (27) 39.

Library References

Criminal Law 108(1).

Westlaw Topic No. 110.

C.J.S. Criminal Law Section 226.

**SECTION 17‑21‑80.** Change of venue; notice, application, and affidavit.

 The circuit courts shall have power to change the venue in all criminal cases pending therein, and over which they have original jurisdiction, by ordering the record to be removed to another county in the same circuit. The application for removal must be made to the judge sitting in regular term by some party interested, by the solicitor of the circuit or by the accused, supported by affidavit that a fair and impartial trial cannot be had in the county where such action or prosecution was commenced. The State shall have the same right to make application for a change of venue that a defendant has in cases of murder, arson, rape, burglary, perjury, forgery or grand larceny; provided, that no change of venue shall be granted in such cases until a true bill has been found by a grand jury. Four days’ notice of such application in civil and criminal cases shall be given to the adverse party, and if a change is ordered, it shall be to a county in the same judicial circuit; provided, further, that such adverse party to whom notice is given shall have the right to waive it. The circuit judge shall have the power, upon application made to him by either party, upon proper cause shown, to shorten or extend the time for the hearing of the application for a change of venue.

HISTORY: 1962 Code Section 17‑458; 1961 (52) 562.

CROSS REFERENCES

Change of venue in magistrates’ courts, see Section 22‑3‑920.

Constitutional provision regarding venue and change of venue, see SC Const, Art V, Section 23.

Provisions for change of venue applicable to civil cases, see Sections 15‑7‑100, 15‑7‑110.

Library References

Criminal Law 115 to 144.

Westlaw Topic No. 110.

C.J.S. Corporations Section 319.

C.J.S. Criminal Law Sections 237 to 249.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Homicide Section 12, Venue.

Treatises and Practice Aids

Criminal Procedure, Second Edition Section 16.3(D), “Fair Trial” Venue Changes on Prosecution Motion.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina law: criminal law: adverse pretrial publicity. 28 S.C. L. Rev. 298.

United States Supreme Court Annotations

Change of venue in criminal case by reason of pretrial publicity affecting defendant’s right to fair trial. 10 L Ed 2d 1272.

Attorney General’s Opinions

A court’s decision on a motion to grant a change of venue is appealable only after conviction. 1974‑75 Op Atty Gen, No 3925, p 12 (January 07, 1975) 1975 WL 22223.

NOTES OF DECISIONS

In general 1

Affidavits 5

Discretion of court 3

Fair and impartial trial 4

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Presumptions and burden of proof 7

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Waiver 6

1. In general

Because right of State to request change of venue conflicts with accused’s right to be tried in county where alleged offense was committed, these two competing interests must be balanced. State v. Manning (S.C. 1997) 329 S.C. 1, 495 S.E.2d 191. Criminal Law 117

Because defendant’s right to be tried in county where alleged offense occurred is defeated when prosecution’s request for change of venue is granted, court should exercise great care and deliberation when changing venue at request of prosecution, and state’s motion and evidence supporting its motion should be strictly scrutinized to ensure defendant’s right is not abused. State v. Manning (S.C. 1997) 329 S.C. 1, 495 S.E.2d 191. Criminal Law 117

In a prosecution for trafficking in marijuana, the defendant was properly tried in the county where he was arrested, even though the marijuana was found in a different county, where the defendant had constructive possession of it in the county of his arrest, and possession was an act material to trafficking in marijuana. State v. Perez (S.C. 1993) 311 S.C. 542, 430 S.E.2d 503. Criminal Law 112(1)

Venue in rape case held to be in county where prosecuting witness alleged defendant had taken her, even though defendant asserted that crime, if any, had taken place in different county. State v. Gethers (S.C. 1977) 269 S.C. 105, 236 S.E.2d 419.

Cited in State v. Grant (S.C. 1941) 199 S.C. 412, 19 S.E.2d 638, certiorari denied 62 S.Ct. 942, 316 U.S. 662, 86 L.Ed. 1739.

Under the provision in this section [Code 1962 Section 17‑458] saying that a change of venue shall be to a county in the same judicial circuit, where there was but one county in the judicial circuit, it was said that a change of venue is a common‑law right and the court is bound to grant it unless that right is taken away by some express statute. The judge had a right to grant such a change in view of SC Const, Art 1, Section 5 [now Art 1, Section 3], and the Fourteenth Amendment. State v. Harvey (S.C. 1924) 128 S.C. 494, 122 S.E. 860.

Both the court of general sessions and of common pleas may be open at the same time, and hence an application for a change of venue may be heard after the opening of the court of common pleas. State v. Hunter (S.C. 1908) 79 S.C. 91, 60 S.E. 226.

2. Notice

Where the trial judge held that he could not entertain a motion for change of venue in that four days’ notice thereof had not been given as required by this section [Code 1962 Section 17‑458] and such notice was not waived by the State, it was held that no application having been made to the trial judge to shorten the time for the hearing of the motion, the defendants moving for a change of venue could not complain that the trial judge followed the statute law of the State. State v. Woods (S.C. 1939) 189 S.C. 281, 1 S.E.2d 190.

In a case where the defendant was arraigned on the 9th day of the month and the trial was set for the 12th, the last day of the term, it was held that there was no error in denying the motion then made for the first time for a continuance on the grounds that the arraignment was so delayed that it was impossible to give the required notice for a change of venue. State v. Bethune (S.C. 1910) 86 S.C. 143, 67 S.E. 466.

3. Discretion of court

A trial judge’s denial of a motion for change of venue, which was brought by the defendant on the ground that pretrial publicity precluded him from obtaining a fair and impartial jury at trial, was not an abuse of discretion even though a number of jurors were aware of the crime, where those jurors expressed to the trial judge no doubt or reservation as to their ability to impartially serve as jurors and to decide the matter solely on the evidence presented. State v. Caldwell (S.C. 1990) 300 S.C. 494, 388 S.E.2d 816.

There was no abuse of discretion in refusing a change of venue in a murder trial in which the defendant claimed prejudice due to the media attention and publicity given to the murder, where the trial judge carefully screened prospective jurors to insure the defendant a fair trial. State v. South (S.C. 1985) 285 S.C. 529, 331 S.E.2d 775, certiorari denied 106 S.Ct. 209, 474 U.S. 888, 88 L.Ed.2d 178, denial of post‑conviction relief affirmed 310 S.C. 504, 427 S.E.2d 666.

Trial court did not abuse its discretion in denying defendant’s motion for change of venue even though change of venue had been granted by another judge in related case, defendant alleged inability to obtain local counsel, and local newspapers had reported extensively concerning crime of which defendant was accused. State v. Massey (S.C. 1976) 267 S.C. 432, 229 S.E.2d 332.

Change of venue is addressed to judicial discretion of trial judge. State v. Fowler (S.C. 1976) 266 S.C. 203, 222 S.E.2d 497. Criminal Law 121

The power to change the venue as provided in this section [Code 1962 Section 17‑458] is discretionary. State v. Coleman (S.C. 1876) 8 S.C. 237.

4. Fair and impartial trial

A change of venue was granted where the sheriff was the brother of a person killed by the defendant, had taken part in the drawing of jurors, by his deputy had served them, and had just been re‑elected to his office for a term of four years. State v Sullivan (1893) 39 SC 400, 17 SE 865. State v Martin (1930) 155 SC 495, 152 SE 738.

The nature of the crime, i.e., the killing of a police officer, and the fact that a large percentage of prospective jurors remembered pretrial publicity did not establish actual juror prejudice as result of pretrial publicity, and thus, change in venue was not required. Sheppard v. State (S.C. 2004) 357 S.C. 646, 594 S.E.2d 462. Criminal Law 126(2)

Mere exposure to pretrial publicity does not automatically disqualify a prospective juror, and the relevant question is not whether the community remembered the case, but whether the jurors had such fixed opinions that they could not judge impartially the guilt of the defendant. Sheppard v. State (S.C. 2004) 357 S.C. 646, 594 S.E.2d 462. Jury 100

When jurors have been exposed to pretrial publicity, a denial of a change of venue is not error where jurors are found to have the ability to lay aside any impressions or opinions and render a verdict based on the evidence presented at trial. State v. Tucker (S.C. 1999) 334 S.C. 1, 512 S.E.2d 99, certiorari denied 119 S.Ct. 2407, 527 U.S. 1042, 144 L.Ed.2d 805. Criminal Law 126(1)

When a change of venue motion is predicated on pre‑trial publicity, the relevant inquiry is whether potential jurors have such fixed opinions that they could not judge impartially the guilt of the defendant. State v. Gardner (S.C. 1998) 332 S.C. 389, 505 S.E.2d 338, rehearing denied, certiorari denied 119 S.Ct. 1260, 526 U.S. 1022, 143 L.Ed.2d 356, denial of habeas corpus affirmed 511 F.3d 420, certiorari denied 2008 WL 2328355. Criminal Law 126(1)

Evidence was insufficient to establish actual juror prejudice toward State in murder prosecution, as required to change venue, at State’s request, on basis of pretrial publicity; State’s witnesses only offered their opinions and conclusions that State and defendant could not receive fair trial in county because most people in county knew about case, none of the witnesses could point to any actual prejudice suffered by State because of pretrial publicity, underlying newspaper articles were remote in time and showed no prejudice toward State, and no attempt was made to voir dire potential jurors. State v. Manning (S.C. 1997) 329 S.C. 1, 495 S.E.2d 191. Criminal Law 134(4)

A criminal defendant, who planned to bring a civil suit for injuries he sustained while resisting arrest, was not entitled to a change of venue on the ground of bias by the potential jurors, who as taxpayers would have a monetary interest in the outcome of the civil case, where the trial court conducted an adequate voir dire, including questions propounded by the defendant. State v. Hawkins (S.C.App. 1992) 310 S.C. 50, 425 S.E.2d 50.

A trial court’s denial of a defendant’s motion for change of venue was not improper, in spite of the defendant’s assertion of pervasive and prejudicial pretrial publicity, where the trial court questioned each prospective juror who was exposed to pretrial publicity, and all of the jurors indicated that they would not be influenced by media coverage in reaching their verdict, they had not formed an opinion as to the guilt or innocence of the defendant, and they could give the defendant a fair trial. State v. Nathari (S.C.App. 1990) 303 S.C. 188, 399 S.E.2d 597.

A trial court properly denied a defendant’s motion for change of venue, which was based on the contention that jurors in that county were more likely to impose a death sentence on a black defendant, where the defendant cited statistics that 8 of 9 black defendants received death sentences while only 4 of 8 white defendants received death sentences, but the statistical evidence presented contained no details of the nature of the crimes involved or the composition of the juries which heard the cases. State v. Green (S.C. 1990) 301 S.C. 347, 392 S.E.2d 157, certiorari denied 111 S.Ct. 229, 498 U.S. 881, 112 L.Ed.2d 183, rehearing denied 111 S.Ct. 548, 498 U.S. 995, 112 L.Ed.2d 556, denial of habeas corpus affirmed 220 F.3d 220. Criminal Law 134(4)

Failure of appointed counsel to move for a change of venue as permitted by this section [Code 1962 Section 17‑458] did not deny the accused the constitutional guarantee of a fair and impartial trial where no showing was made at the habeas corpus hearing which would have warranted the granting of a motion to change venue. Hughey v. State (S.C. 1970) 255 S.C. 155, 177 S.E.2d 553.

But where the sheriff has no personal interest or personal connection with the prosecution a change of venue will not be granted. State v. Martin (S.C. 1930) 155 S.C. 495, 152 S.E. 738.

A motion for a change of venue was erroneously refused, in view of a showing of a strong sentiment against defendant in the county where the offense was committed. State v. Davis (S.C. 1927) 138 S.C. 532, 137 S.E. 139. Criminal Law 126(1)

In a capital case it is not sufficient cause to change the venue to show that a sum of money has been raised by subscription by some of the citizens of the district to apprehend the criminal, he having escaped from custody. State v. Williams (S.C. 1823). Criminal Law 126(2)

5. Affidavits

Affidavit for change of venue showing extensive publicity during first trial failed to prove that the defendant could not receive a fair retrial 6 years later. State v. Thomas (S.C. 1977) 268 S.C. 343, 234 S.E.2d 16.

The provision of this section [Code 1962 Section 17‑458] that the application for removal be “supported by affidavit” is complied with when witnesses are introduced in open court, and sworn by the presiding judge, and their statements, at the time and place, are reduced to writing by the official stenographer. State v. Sullivan (S.C. 1893) 39 S.C. 400, 17 S.E. 865.

The affidavits provided for by this section [Code 1962 Section 17‑458] should be strong. State v. Williams (S.C. 1823).

6. Waiver

By making the motion for a change of venue, which could only be made under the conditions named, the defendants recognized the fact, or were estopped from denying, that a true bill had been returned. Their time to object to the indictment was when the bill was returned, and their failure to object then was a waiver of the irregularity complained of. State v. Bradford (S.C. 1971) 256 S.C. 51, 180 S.E.2d 632.

Motion for a change of venue brought after the return of a true bill by the grand jury, as required by law, was held to be a waiver of an irregularity in the drawing of the grand jury where the error complained of was not jurisdictional, and the defendant was estopped to deny that the bill was valid. State v. Richardson (S.C. 1928) 149 S.C. 121, 146 S.E. 676.

7. Presumptions and burden of proof

A defendant who seeks a change of venue bears the burden of proving actual juror prejudice, and the trial court’s ruling on the venue motion will not be reversed on appeal absent an abuse of discretion. State v. Gardner (S.C. 1998) 332 S.C. 389, 505 S.E.2d 338, rehearing denied, certiorari denied 119 S.Ct. 1260, 526 U.S. 1022, 143 L.Ed.2d 356, denial of habeas corpus affirmed 511 F.3d 420, certiorari denied 2008 WL 2328355. Criminal Law 134(1); Criminal Law 1150

8. Review

In order to reverse a ruling of the trial judge under this section [Code 1962 Section 17‑458] it would have to appear that he exercised his judicial discretion in an arbitrary manner. State v Woods (1939) 189 SC 281, 1 SE2d 190. State v Jackson (1918) 110 SC 273, 96 SE 416. State v Davis (1927) 138 SC 532, 137 SE 139. State v Francis (1929) 152 SC 17, 149 SE 348, 70 ALR 1133.

A motion for a change of venue is addressed to the discretion of the trial judge, and his disposition of such motion will not be reversed unless it is shown that there was an abuse of discretion. State v Britt (1959) 235 SC 395, 111 SE2d 669. State v Moorer (1963) 241 SC 487, 129 SE2d 330.

When a trial judge bases the denial of a motion for a change of venue because of pretrial publicity upon an adequate voir dire examination of the jurors, his decision will not be disturbed absent extraordinary circumstances. Sheppard v. State (S.C. 2004) 357 S.C. 646, 594 S.E.2d 462. Criminal Law 1150

Abuse of discretion standard should be applied when State is granted change of venue. State v. Manning (S.C. 1997) 329 S.C. 1, 495 S.E.2d 191. Criminal Law 1150

Motion for change of venue is addressed to the judicial discretion of trial judge, and his decision will not be disturbed absent showing of abuse of that discretion. State v. Neeley (S.C. 1978) 271 S.C. 33, 244 S.E.2d 522. Criminal Law 121; Criminal Law 1150

Where trial judge’s ruling on motion for change of venue is based on adequate voir dire examination of jurors, his conclusion that the objectivity of jury panel has not been polluted with outside influence will not be disturbed absent extraordinary circumstances. State v. Neeley (S.C. 1978) 271 S.C. 33, 244 S.E.2d 522. Criminal Law 1150

Denial of a motion for change of venue will not be reversed on appeal absent a showing of abuse of discretion by the trial judge. State v. Thomas (S.C. 1977) 268 S.C. 343, 234 S.E.2d 16. Criminal Law 121; Criminal Law 1150

Trial judge did not abuse discretion in denying motion for change of venue based on pretrial publicity. State v. Fowler (S.C. 1976) 266 S.C. 203, 222 S.E.2d 497. Criminal Law 121

In the absence of a showing of abuse of discretion by the trial judge in refusing to grant motion for change of venue on ground that defendant could not obtain a fair and impartial trial, the Supreme Court will not interfere with trial court’s ruling. State v. Fuller (S.C. 1955) 227 S.C. 138, 87 S.E.2d 287. Criminal Law 1150

Denial of change of venue to defendant giving no notice of application and making no affidavit showing impartial trial could not be had in county, was held not abuse of discretion, in State v. Floyd (S.C. 1931) 160 S.C. 420, 158 S.E. 809. Criminal Law 121

**SECTION 17‑21‑85.** Order for jury selection in criminal case be conducted in another county; expenses.

 A circuit judge may, in a criminal case in which he determines that an unbiased jury cannot be selected in the county in which the defendant was indicted, order that jury selection go forward in some other county and the jury, when selected, be transported to the county in which the indictment was returned for the duration of the trial. In making a determination whether to proceed as allowed by this section or to order a change of venue for a trial, the court shall consider all the logistical and expense elements and, consistent with the demands of justice, choose the method that results in the least expense and greatest convenience for all parties involved in the case. All expenses of jury selection in another county must be paid by the county in which the trial occurs.

HISTORY: 1990 Act No. 313, Section 1.

Library References

Jury 33(3).

Westlaw Topic No. 230.

C.J.S. Juries Sections 210 to 211, 224, 237, 245, 249, 266 to 267.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Homicide Section 12, Venue.

Treatises and Practice Aids

Criminal Procedure, Second Edition Section 23.2(C), Change of Venire.

NOTES OF DECISIONS

In general 1

Review 2

1. In general

Empaneling jury pursuant to statute permitting jury to be selected in another county is similar in effect to change of venue and is subject to same scope of review. State v. Manning (S.C. 1997) 329 S.C. 1, 495 S.E.2d 191. Criminal Law 1134.38; Jury 33(3)

The trial court properly ordered the selection of jurors from another county, even though the statute granting this authority (Section 17‑21‑85) did not become effective until after the defendant committed the crime for which he was on trial, since Section 17‑21‑85 is a procedural tool and thus would be accorded a retroactive application to pending actions and proceedings. State v. Davis (S.C. 1992) 309 S.C. 326, 422 S.E.2d 133, rehearing denied, certiorari denied 113 S.Ct. 2355, 508 U.S. 915, 124 L.Ed.2d 263.

2. Review

The court did not abuse its discretion under Section 17‑21‑85 by transferring the jury to a county in which the indictment was returned for trial following the jury’s selection in another county, since the defendant failed to show that the jury was tainted by actual juror prejudice from pretrial publicity. State v. Longworth (S.C. 1993) 313 S.C. 360, 438 S.E.2d 219, rehearing denied, certiorari denied 115 S.Ct. 105, 513 U.S. 831, 130 L.Ed.2d 53. Criminal Law 126(1)

**SECTION 17‑21‑90.** Costs when venue is changed; disposition of fine.

 Whenever a criminal case is transferred from one county to another for trial all the costs and expenses of such trial shall be paid by the county in which the bill of indictment was found. The clerk of court of the county in which the bill of indictment was found, his deputy or some other person designated for the purpose by such clerk of court shall attend upon such trial to issue vouchers or warrants for such costs and expenses in like manner as if the case were tried in the county in which the bill of indictment was found and such costs and expenses shall be paid by the treasurer of such county as other court expenses of such county are paid. And in the event a verdict of guilty is returned against the defendant named in the bill of indictment and a fine is imposed as well as any other penalty and such fine be paid the proceeds of such fine shall be delivered to the clerk of court of the county having original jurisdiction by the clerk of court of the county in which the verdict was obtained.

HISTORY: 1962 Code Section 17‑556; 1952 Code Section 17‑556; 1942 Code Section 1023; 1932 Code Section 1023; Civ. C. ‘22 Section 5722; Civ. C. ‘12 Section 4205; 1902 (22) 1087; 1930 (36) 1097; 1933 (38) 441.

CROSS REFERENCES

Assessment, upon conviction for an offense against the state, and allocation proceeds to specified funds, see Sections 14‑1‑206 to 14‑1‑208, 14‑1‑211.

Library References

Costs 295.

Fines 20.

Westlaw Topic Nos. 102, 174.

C.J.S. Fines Section 6.