

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20070403-CA	
v.)		
)	F I L E D	
Richard Willis Jones,)	(March 20, 2008)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2008 UT App 99</td></tr></table>	2008 UT App 99
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Third District, Salt Lake Department, 051907381
The Honorable Robin W. Reese

Attorneys: Andrea J. Garland and Lori J. Seppi, Salt Lake City,
for Appellant
Mark L. Shurtleff and Jeanne B. Inouye, Salt Lake
City, for Appellee

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Richard Willis Jones appeals his conviction for unlawful possession of a controlled substance, a third degree felony. We affirm.

Jones argues that the district court erred in allowing the State to reopen its case in order to present evidence demonstrating that the court was the appropriate venue for the trial. In so arguing, Jones asserts that Utah Code section 76-1-501 requires the State to prove facts establishing proper venue at trial. See Utah Code Ann. § 76-1-501 (2003) ("The existence of jurisdiction and venue are not elements of the offense but shall be established by a preponderance of the evidence."). However, Utah Code section 76-1-202(2) sets forth that "[a]ll allegations of improper place of trial are waived by a defendant unless made before trial." Id. § 76-1-202(2) (Supp. 2007). This provision unequivocally mandates that if a defendant wishes to contest venue, he must do so before trial. If he fails to do so, the issue is waived and he may not thereafter challenge venue during the course of his trial. See State v. Miller, 2003 UT App 76U n.2 (stating that "burden to prove venue vests only if venue is challenged before trial"); see also State v. Lovell, 758 P.2d

909, 911 (Utah 1988) (determining that the defendant waived any objection to venue because he did not raise the issue before trial); State v. Dunbar, 665 P.2d 1273, 1274 (Utah 1983) (applying waiver rule when a defendant did not raise issue of venue before trial); State v. Cauble, 563 P.2d 775, 777 (Utah 1977) (stating that when the defendant's first objection to venue was not made until the State had rested its case, the defendant "cannot be heard to raise the objection on appeal because the statute states it must be made before trial").¹ Therefore, because Jones did not raise the issue of venue before trial, he waived all arguments that venue was not proper, thereby obviating the State's need to adduce any evidence at trial concerning whether venue was proper.

Affirmed.

Russell W. Bench, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge

1. The court in State v. Cauble went on to examine whether the defendant would have been unjustly prejudiced by strict application of the procedural rule in a criminal proceeding because there was a significant question as to whether one of the charged offenses should have been brought in the venue at issue. See State v. Cauble, 563 P.2d 775, 778 (Utah 1977). The concerns in that case are not present here. Jones does not allege that venue was not proper. He merely alleges that the State failed to prove venue by a preponderance of the evidence.