

FILED

APR 30 1985

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed April 30, 1985

vs.

)

DARYL EUGENE BROOKS,

)

5-41

84-726

Defendant-Appellant.

)

Appeal from the Iowa District Court for Warren County - M. C. Herrick,
Judge.

The defendant appeals from his convictions for two counts of second-degree
burglary. **AFFIRMED.**

Charles L. Harrington, Appellate Defender, and John P. Messina, Assistant
Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Steven K. Hansen, Assistant
Attorney General, for plaintiff-appellee.

Heard by Donielson, P.J., and Snell and Schlegel, JJ.

DONIELSON, P.J.

The defendant appeals from his convictions in Warren County District Court for two counts of second-degree burglary. The defendant contends that the trial court erred by denying his motion for a change of venue to a county with a larger population of black people in its population. We affirm.

Defendant Daryl Eugene Brooks was convicted on two counts of second-degree burglary in Warren County District Court. Prior to trial, Brooks filed a motion for change of venue. He alleged that Warren County has a small black population, that he had experienced numerous accounts of racial prejudice, and that he was entitled to be tried in a county where "a jury pool can be drawn from a community that reflects a fair cross-section or representation of the black society." The trial court denied the motion for a change of venue. Brooks has appealed.

The sole claim on appeal is that the defendant could not receive a fair trial in Warren County due to racial imbalance and prejudice in the community. Since there is no challenge to the jury panel, we need not consider whether there was a systematic exclusion of blacks from the jury pool. Rather, our analysis will be limited to the question of venue.

In considering defendant's appeal, we review the record de novo to determine whether the district court abused its discretion in denying the motion for a change of venue. State v. Johnson, 318 N.W.2d 417, 421 (Iowa 1982); State v. Love, 302 N.W.2d 115, 122 (Iowa 1981). Under rule 10(10)(b) of the Iowa Rules of Criminal Procedure, a change of venue must be granted when the court, upon review of evidence introduced in support of the motion, is "satisfied such degree of prejudice exists in the county in which the trial is to be had that there is a substantial likelihood a fair and impartial trial cannot be preserved with a jury selected from that county" Therefore a defendant seeking a change of venue on the grounds of racial prejudice has the burden of coming forward with evidence

showing a substantial likelihood that such prejudice will preclude a fair and impartial trial.

We do not believe that Brooks has met this burden. The only evidence Brooks provided were personal statements that he had experienced a number of racially discriminatory encounters with citizens of Warren County, and statistics showing that only 118 blacks lived in Warren County. Brooks did not challenge either the actual voir dire of the jury or the manner in which it was carried, nor did he show that any members of the venire or jury panels were prejudiced or not fair and impartial. Brooks additionally failed to produce any evidence showing that Warren County was rife with racial prejudice as alleged.

Because Brooks failed to produce any evidence showing that he could not be afforded a fair and impartial trial in Warren County, we believe the trial court was correct in denying the motion for a change of venue. Iowa R. Crim. P. 10(10)(b).

AFFIRMED.