FILED
OCT 25 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed October 25, 1983
vs.	)	3-259 / 68497
LEONARD L. WRIEDEN,	)	
Defendant-Appellant.	)	

Appeal from Lee District Court, Harlan W. Bainter, Judge.

Defendant appeals from his conviction of first-degree arson as defined in Iowa Code sections 712.1 and 712.2. AFFIRMED.

Patrick R. Grady, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Mary Jane Blink, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, Hayden, and Sackett, JJ.

OXBERGER, C.J.

Defendant appeals from his conviction of first-degree arson as defined in Iowa Code sections 712.1 and 712.2. He asserts that the trial court violated Iowa Rule of Criminal Procedure 10(9)(b)(change of venue) and denied him a fair trial when it granted his motion for change of venue but only transferred the trial within Lee County, from Keokuk to Fort Madison. Defendant did not object to the Fort Madison venue and trial was held there. The jury returned a verdict of guilty and defendant appeals. We affirm.

I. Change of Venue

Iowa Code section 803.2 provides in part: "All objections to place of trial are waived by a defendant unless the defendant objects thereto prior to trial." Iowa Code § 803.2 (1981). We agree that since no objection was lodged after the trial court transferred the trial to Fort Madison, Wrieden waived any error premised upon venue.

However, assuming that error had been preserved, we would still affirm. Iowa Rule of Criminal Procedure 10(9)(b) states:

> If the court is satisfied from a motion for change of venue and evidence adduced in support thereof that such prejudice exists in the county in which the trial is to be had that there is a substantial likelihood that a fair and impartial trial cannot be had there, the court shall transfer the proceeding to another county in which no such situation exists.

Iowa R. Crim. P. 10(9)(b)(emphasis added). Wrieden claims that the "shall" language makes the transfer to another county mandatory. The general rule is that:

> If the prescribed duty is essential to the main objective of the statute, the statute ordinarily is mandatory and a violation will invalidate subsequent proceedings under it. If the duty is not essential to accomplishing the principal purpose of the statute but is designed to assure order and promptness in the proceeding, the statute ordinarily is directory and a violation will not invalidate subsequent proceedings unless prejudice is shown.

Taylor v. Department of Transportation, 260 NW.2d 521, 522-23 (Iowa 1977). The clear purpose of rule 10(9)(b) in jury trials is to allow the defendant a different source of jurors when it has been determined that a fair and impartial trial cannot be had in the present locality. A unique situation is presented in Lee County, however, in that there are two county courthouses. The fact that a defendant cannot get a fair trial in one part of the county does not preclude the fact that the same defendant cannot get a fair trial in another part of the county. We believe that without a fair showing to the contrary, there can be no reversible error. The defendant has not met his burden to establish prejudice in the transferee court.

AFFIRMED.