

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SEAN EDWARD STEVERSON,

Defendant-Appellant.

UNPUBLISHED

July 13, 2001

No. 225046

Calhoun Circuit Court

LC No. 99-002341-FC

Before: Saad, P.J., and Holbrook, Jr. and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of felon in possession of a firearm, MCL 750.224, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b, and felon in possession in connection with a shooting at a clothing store in Battle Creek. Complainant testified that defendant, whom he knew, came to the store and shot him. Complainant denied that the shooting was related to a narcotics transaction. Defendant testified and admitted being at the store to purchase narcotics, but denied carrying a gun. He stated that another person carried the gun. Defendant acknowledged that after the shooting, he took possession of the gun. Subsequently, the gun was found in the glove compartment when defendant's vehicle was stopped in Wayne County.

The court instructed the jury that it was required to find beyond a reasonable doubt that the offenses occurred in Calhoun County. The jury acquitted defendant of assault with intent to commit murder and felony-firearm, but convicted him of felon in possession.

Venue is a part of every criminal case, and must be proved by the prosecution beyond a reasonable doubt. *People v Fisher*, 220 Mich App 133, 145; 559 NW2d 318 (1996). Due process requires that a criminal prosecution take place before a trier of fact of the city or county where the offense occurred, except as otherwise provided by the Legislature. *People v Lee*, 334 Mich 217, 225-226; 54 NW2d 305 (1952). The indictment or information must state that the offense was committed in the county or within the jurisdiction of the court. MCL 767.45(1)(c).

The United States Constitution requires that a criminal conviction rest upon a jury determination that the defendant is guilty beyond a reasonable doubt of every element of the crime charged. US Const, Ams V, VI. An instructional error concerning one element of a crime, whether the error is one of omission or misdescription, is subject to a harmless error analysis. *People v Carines*, 460 Mich 750, 764-767; 597 NW2d 130 (1999). Error in instructing the jury is of constitutional magnitude. Forfeited constitutional error requires reversal only if the error resulted in the conviction of an actually innocent person, or seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.*, 761, 744; see also *People v Tate*, 244 Mich App 553, 567; 624 NW2d 524 (2001).

Defendant argues that he was denied a fair trial due to instructional error which allowed the jury to convict him of conduct, i.e., possessing a firearm as a felon, that occurred in Wayne County rather than in Calhoun County. We disagree and affirm defendant's conviction. Defendant acknowledges that evidence was presented relative to his possession of the firearm both in Calhoun County and in Wayne County. Ballistics evidence connected the firearm found in defendant's vehicle to the weapon used in the shooting in Battle Creek. Contrary to defendant's assertion, the court instructed the jury that it was required to find that the offenses occurred in Calhoun County. CJI2d 3.10. As a general rule, a jury is presumed to follow its instructions. *People v Torres (On Remand)*, 222 Mich App 411, 423; 564 NW2d 149 (1997). Moreover, the fact that the jury convicted defendant of felon in possession while acquitting him of assault with intent to commit murder and felony-firearm does not, in and of itself, require reversal of defendant's conviction. A jury has the power to acquit as a matter of leniency, and can render inconsistent verdicts. *People v Duncan*, 462 Mich 47, 54; 610 NW2d 551 (2000); *People v Lewis*, 415 Mich 443, 453; 330 NW2d 16 (1982). No instructional error occurred, and sufficient evidence supported defendant's conviction.

Affirmed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy