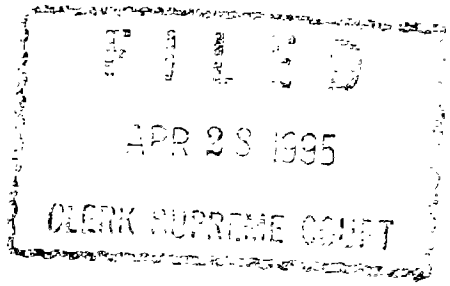
IN THE COURT OF APPEALS OF IOWA



No. 5-061 / 94-1124

IN THE INTEREST OF F.S., JR., Minor Child,

F.S., Jr.,

Appellant.

Appeal from the Iowa District Court for Des Moines County, Gary J. Snyder, District Associate Judge.

F.S., a juvenile, appeals the court's order adjudicating him delinquent for committing the act of second-degree robbery. **AFFIRMED.**

Kent W. Lewis of Beckman, Hirsh & Ell, Burlington, for appellant.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, Judy Sheirbon, Assistant Attorney General, and Ronald Robertson, Assistant County Attorney, for appellee-State.

Heard by Hayden, P.J., and Cady and Huitink, JJ., but decided en banc.

HUITINK, J.

On May 16, 1994, Michael Harris was assaulted and robbed by four males as he was delivering newspapers in Burlington, Iowa. Harris told Burlington police, and later testified at trial, he was surrounded by four males who forced him to the ground. He was repeatedly kicked in the head, shoulders, and back while lying on the ground. After he was told to stand, one of the four went through his pockets, taking a small amount of change.

Harris could clearly see two of his four assailants. He also recognized the clothing some of the others were wearing. Harris recalled one of his assailants was wearing a bandana and another was wearing a blue hooded sweatshirt.

Burlington police testified that, following Harris's complaint, F.S. and three others matching Harris's description were apprehended in the area of Burlington where the robbery occurred. Harris was taken to their location where he identified two of the four as his assailants. F.S. was not one of the two identified.

During his initial interview, F.S. denied he was present when Harris was robbed. He later told police the three others apprehended committed the robbery, and although he was nearby, he did not participate. F.S. had a bandana with him when he was arrested.

The juvenile court found F.S. had committed a delinquent act of robbery in the second degree. He, as a result, was placed at the training school in Eldora. On appeal,

F.S. contends the delinquency petition should be dismissed because the State failed to prove he committed this offense within the State of Iowa. He also argues the State's identification evidence was insufficient to connect him to this offense and the State failed to prove he had the intent to commit a theft, an essential element of robbery in the second degree.

Our review is de novo. Iowa R. App. P. 4. We review questions of both law and fact. Iowa Code § 232.133(1) (1993); *In re J.D.S.*, 436 N.W.2d 342, 343 (Iowa 1989). We give weight to the findings of fact made by the juvenile court, especially when considering credibility of witnesses, but are not bound by them. Iowa R. App P. 14(f)(7); *In re J.D.S.*, 436 N.W.2d at 343.

I. Jurisdictional Issue.

We initially consider Harris's claim the State of Iowa failed to prove beyond a reasonable doubt this offense was committed within its territorial jurisdiction. This is an essential element of the State's proof, and the fact this is a juvenile court proceeding does not change the State's burden. *In re T.J.*, 474 N.W.2d 562, 563 (Iowa 1985) (citing Iowa Code §§ 232.2(12)(a) and 232.8(1) (1991)).

Contrary to F.S.'s contentions, we find the record contains sufficient circumstantial evidence this offense was committed in Iowa. Harris testified he was delivering papers for a Burlington, Iowa, newspaper in an area identified by reference to streets within the City of Burlington. This incident was reported to and investigated

by Burlington, Iowa, police. Direct evidence of the location of the offense is not required, and it may be inferred if the evidence as a whole establishes the offense was committed in Iowa. *State v. Liggins*, 524 N.W.2d 181, 184-85 (Iowa 1994). The juvenile court accordingly affirmed on this issue.

II. Sufficiency of the Evidence.

The State is required to prove beyond a reasonable doubt F.S. was the person who committed this offense. The State's identification evidence included Harris's testimony he was robbed by four people and at least one of his assailants was wearing a bandana similar to the one found on F.S. when he was arrested. F.S. admitted he was near the scene of the robbery but denies he was involved. He claims the other three individuals he was with were responsible. We are not obligated to accept this denial, and it does not establish reasonable doubt regarding F.S.'s involvement. We find, beyond a reasonable doubt, F.S. was one of the four persons who participated in the robbery.

To convict F.S. of robbery in the second degree, the State must prove F. S. had the specific intent to commit a theft. The State must also prove F.S. acted in a threatening manner or aided in the robbery and assault. Iowa Code § 711.1 (1993).

The State's evidence included Harris's testimony he was "surrounded" by four people. There were no indications any of the four withdrew or expressed any reservations about participating in the robbery. Harris also testified he was frightened

and thought he may be killed if he did not comply with his assailants' demands. Although one of the four told the others to stop when it appeared Harris had had enough, F.S. was not the person who made this statement. We find the State has established all four of Harris's assailants acted in concert and each, including F.S., assaulted or aided in assaulting and robbing Harris.

Specific intent is seldom capable of direct proof. *State v. Rinehart*, 283 N.W.2d 319, 320-21 (Iowa 1979), *cert. denied*, 444 U.S. 1088, 100 S. Ct. 1049, 62 L. Ed. 2d 775 (1980). It may be inferred from the circumstances of the offense, including presence, companionship, and conduct before and after the offense. *See, e.g., State v. Lockheart*, 410 N.W.2d 688, 693 (Iowa App. 1987). Harris was assaulted, and money was taken from his person. F.S. participated in the assault, and it is reasonable to infer from his actions and the actions of his companions he intended to commit a theft.

We find the State has met its burden to establish each element of robbery in the second degree. The juvenile court's delinquency adjudication is affirmed.

AFFIRMED.

All judges concur except Hayden and Sackett, JJ., who dissent.

HAYDEN, J. (dissenting)

I respectfully dissent. Because I believe the State failed to prove the offense was committed within its territorial jurisdiction, I would reverse the trial court and dismiss the case.

Our supreme court has held the law governing territorial jurisdiction of criminal actions applies to juvenile delinquency proceedings. *In re T.J.*, 474 N.W.2d 562, 563 (Iowa 1991) (citing Iowa Code §§ 232.2(12)(a), 232.8(1) (1991)). The law pertinent to this case is as follows:

> A person is subject to prosecution in this state for an offense which the person commits within or
>
> outside this state, by the person's conduct . . . , if:
>
> The offense is committed either wholly or partly within this state.

Iowa Code § 803.1(1)(a) (1993).

In any criminal case, it is incumbent on the State to prove the alleged acts occurred in Iowa. In fact, our supreme court has held state territorial jurisdiction is an essential element of the crime. *State v. Liggins*, 524 N.W.2d 181, 184 (Iowa 1994). The State is required to prove territorial jurisdiction beyond a reasonable doubt. *Id.* at 185.

In the instant case, there is no direct evidence whatsoever on the issue of territorial jurisdiction. There are only references to street addresses and testimony the incident was investigated by Burlington, Iowa, police. The majority believes this circumstantial evidence "by reference" can establish jurisdiction. However, this

mere scintilla of evidence certainly does not prove jurisdiction beyond a reasonable doubt, as is required.

When our supreme court was faced with a similar problem, they dismissed the case *See In re T.J.*, 474 N.W 2d 562 (Iowa 1991). In that case, the only evidence regarding jurisdiction was testimony about the juvenile's street address and the school he attended. *Id.* at 563 The Iowa Supreme Court held that the State failed to prove it had jurisdiction, and the case was dismissed *Id.*

The State failed to prove beyond a reasonable doubt -- whether by direct or circumstantial evidence -- the crime occurred in the city of Burlington, or Des Moines County, or even in Iowa.

I would reverse the trial court and dismiss this case for lack of sufficient proof of jurisdiction.

Sackett, J., joins this dissent.