

**IN THE COURT OF APPEALS OF IOWA**

No. 9-323 / 08-0859  
Filed June 17, 2009

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**VICTOR SERRATO,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Muscatine County, Mark J. Smith,  
Judge.

Victor Serrato appeals following his convictions and sentences for first-degree murder and nonconsensual termination of a human pregnancy.

**REVERSED AND REMANDED FOR DISMISSAL.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson,  
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich and Laura M. Roan,  
Assistant Attorneys General, Gary R. Allison, County Attorney, and Alan R.  
Ostergren, Assistant County Attorney, for appellee.

Heard by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

**DOYLE, J.**

Victor Serrato appeals his convictions of first-degree murder in violation of Iowa Code sections 707.1 and 707.2(1) (2005), and nonconsensual termination of a human pregnancy in violation of section 707.8(4). Among other things, Serrato contends the State did not establish the requisite territorial jurisdiction to prosecute him in Iowa. Because we agree the State did not establish the requisite territorial jurisdiction to prosecute him in Iowa as a matter of law, we reverse and remand for dismissal.<sup>1</sup>

***I. Background Facts and Proceedings.***

On January 17, 2007, Victor Serrato was charged by an amended trial information with murder in the first degree and nonconsensual termination of a human pregnancy for the death of Miriam Carmona and her unborn child. Viewed in the light most favorable to the State, the jury could have found the following facts:

On the evening of Saturday, October 21, 2006, Carmona was at the Escorpion Bar in Muscatine, Iowa. Carmona was approximately six-months pregnant at that time. She had been involved in a sexual relationship with Serrato earlier that year.

Just after midnight on the 22nd, Serrato's girlfriend Angelica Chavez, who was pregnant with his child, arrived at the bar with her friend Esmerelda Perales. Carmona told Chavez that Serrato had fathered both women's children. Carmona and Chavez began arguing, and the fight got physical. Carmona

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<sup>1</sup> Because our determination of this issue is dispositive, we need not and do not address Serrato's additional claims.

slapped Chavez and pulled Chavez's hair and tried to kick Chavez. The fight was broken up, and Chavez and Perales left the bar.

Chavez was upset by the fight and Carmona's assertions. Both Chavez and Perales tried calling Serrato from their cell phones, but he did not answer, and their calls were forwarded to his voicemail. At that time, Serrato was at a dance in West Liberty. Chavez's phone died. Perales then received a call from Serrato and she told him about Carmona's actions. After talking to Perales, Serrato drove to Muscatine and met Chavez and Perales at Chavez's house. Serrato was upset but not angry when he arrived at around 1:00 a.m. Chavez told Serrato that if he was the father of Carmona's baby, he had better take care of it. Serrato denied the baby was his, but told Chavez he would take care of Carmona's baby if it was his. Approximately ten minutes after arriving at Chavez's house, Serrato went to the Escorpion Bar, located a few blocks from the house, to find Carmona.

Between 1:30 and 1:45 a.m., Carmona's friend Marciela Garcia drove by the Escorpion Bar with her friend Dago and three other passengers. Garcia and another passenger observed Carmona and Serrato arguing in the Escorpion Bar parking lot, standing on opposite sides of a black pickup truck. Garcia pulled into the parking lot, got out of her car, and asked Carmona what was going on. Garcia could tell Carmona had been crying. Carmona told her that Serrato denied he was the father of her child. Serrato asked Carmona if she was sure he was the father, and Carmona began hitting Serrato. She smacked Serrato on the side of his face with her cell phone. She kicked him on the leg. Serrato grabbed Carmona's hands, and pushed Carmona away. Garcia's friend Dago got out of

Garcia's car and broke up the fight, knocking Serrato to the ground. Dago told Serrato, "You're never to hit a woman when—especially when she's pregnant." Because Garcia did not want the police summoned, she told Carmona she would be right back and dropped Dago off down the street. She and her other passengers returned to the Escorpion Bar two or three minutes later, but Carmona was not there. Serrato and the black truck were also gone. Garcia did not see Carmona again.

Both Perales and Chavez said Serrato was gone from the house for about twenty to thirty minutes after leaving for the bar. Perales left shortly after Serrato returned to the house. According to Chavez, Serrato spent the rest of the night at her house and that they slept in until about 1:00 p.m. the next afternoon.

At approximately 6:30 p.m. on October 22, 2006, Carmona's body was discovered by passersby in a ditch approximately forty-seven feet from the side of a road in Rock Island County, Illinois, not far from the Iowa-Illinois bridge.<sup>2</sup> A plastic bag was found next to her head, and her hair was entrapped in a portion of the bag.

An autopsy was performed in Rockford, Illinois, by pathologist Dr. Mark Peters. He opined that the cause of Carmona's death was asphyxia due to manual strangulation and that the fetus died as a result of its mother's death. He further opined that Carmona's death was a homicide and that based upon lividity, Carmona would have been dead before 3:00 to 6:00 p.m. He testified that her death theoretically could have occurred as early as 2:00 a.m. or as late as 6:00 a.m.

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<sup>2</sup> Rock Island County, Illinois, is directly across the Mississippi River from Muscatine.

A homicide investigation was initiated, and Serrato was interviewed several times during the course of the investigation. The plastic bag found entrapped in Carmona's hair was swabbed and sent for testing. No fingerprints were found on the bag; however, dried blood flakes were found inside the plastic bag. The flaked blood contained a mixture of DNA from two different sources, at least one of which was blood. The DNA matched the known DNA profiles of both Serrato and Carmona. It was also determined that Serrato was not the father of Carmona's baby.

The State charged Serrato by an amended trial information with murder in the first degree in violation of Iowa Code sections 707.1 and 707.2(1), and nonconsensual termination of a human pregnancy in violation of section 707.8(4). Serrato moved to dismiss arguing the State failed to establish territorial jurisdiction. The motion was denied. A jury trial followed.

After the State rested its case, Serrato moved for a verdict of acquittal. Among other things, Serrato argued the State failed to produce sufficient evidence to prove that any part of the offenses took place in Iowa. The State resisted, arguing there was evidence from which the jury could conclude that Serrato's murderous intent, premeditation, and malice aforethought were formed in Iowa by reason of his conversation with Chavez and the circumstances of his fight with Carmona outside the Escorpion Bar. The State also argued there was physical evidence suggesting the death occurred in Iowa. The district court denied Serrato's motion, finding there was sufficient evidence to indicate the malice aforethought and/or premeditation by Serrato was formed at the time of his altercation with Carmona in the parking lot of the Escorpion Bar.

The jury found Serrato guilty as charged. Thereafter, Serrato filed a motion in arrest of judgment and a motion for a new trial, asserting the evidence was insufficient to convict him of the charges and that the evidence was insufficient to establish the crimes took place in Iowa. The court denied the motions. Serrato was sentenced to life imprisonment for the first-degree murder conviction and an indeterminate term of imprisonment not to exceed twenty-five years for the nonconsensual termination of a human pregnancy conviction.

Serrato appeals.

## ***II. Discussion.***

On appeal, Serrato contends the State did not establish the requisite territorial jurisdiction to prosecute him in Iowa. He first argues that the element of intent is not “conduct” within the meaning of our territorial jurisdiction statute, Iowa Code section 803.1, and thus intent alone is not sufficient to subject him to Iowa’s jurisdiction. Additionally, he argues the State did not present sufficient evidence to prove he formed any criminal intent while in Iowa. We review jurisdictional claims for errors of law. Iowa R. App. P. 6.4; *State v. Wedebrand*, 602 N.W.2d 186, 188 (Iowa Ct. App. 1999).

### ***A. Use of Element of Intent to Invoke Territorial Jurisdiction.***

“Generally, jurisdiction necessary to prosecute a public offense rests in the courts of the state where the offense was committed.” *Wedebrand*, 602 N.W.2d at 189 (citing *State v. Liggins*, 524 N.W.2d 181, 184 (Iowa 1994)). Iowa’s criminal jurisdiction statute, patterned in part upon the Model Penal Code, is codified in Iowa Code section 803.1. *State v. Wagner*, 596 N.W.2d 83, 86 (Iowa 1999). Section 803.1 provides, in relevant part:

1. A person is subject to prosecution in this state for an offense which the person commits within or outside of this state, by the person's own conduct or that of another for which the person is accountable, if:

(a) The offense is committed either wholly or partly within this state.

2. An offense may be committed partly within this state if *conduct which is an element of the offense or a result of which constitutes an element of the offense* occurs within this state. . . .

Iowa Code § 803.1 (emphasis added).<sup>3</sup> To ascertain whether territorial jurisdiction exists in Iowa, the court must examine the facts of the case “to determine whether conduct or a result of conduct constituting an element of the crime . . . took place in Iowa.” *Wagner*, 596 N.W.2d at 86.

Chapter 803 does not define the word “conduct” as used in section 803.1.<sup>4</sup> However, the definition of “conduct” as stated in the Model Penal Code is helpful in interpreting our statute. *See generally State v. Hogrefe*, 557 N.W.2d 871, 877 (Iowa 1996) (noting that our theft by deception statute, section 714.1(3), was based in part on the Model Penal Code and that “the Model Penal Code commentaries on the definition are persuasive authority in our interpretation of our own theft by deception statute”). Under the Model Penal Code, “conduct” means an action or omission *and its accompanying state of mind*, or, where relevant, a series of acts and omissions.” Model Penal Code § 1.13(5) (1962) (emphasis added). Although one’s intent without any accompanying action

<sup>3</sup> Section 803.1(2) further provides: “If the body of a murder victim is found within the state, the death is presumed to have occurred within the state.” Because the body was found in Illinois, this statutory provision is not applicable to establish territorial jurisdiction in Iowa. We note that Illinois has a similar statute. *See* 720 Ill. Comp. Stat. Ann. 5/1-5(b) (West 2009) (“[I]f the body of a homicide victim is found within the State, the death is presumed to have occurred within the State.”).

<sup>4</sup> The word “conduct” is not defined in chapter 702, nor is it defined in section 801.4.

would be insufficient to establish “conduct” under the Model Penal Code, an action evidencing one’s intent does satisfy the “conduct” definition.

We find support for the Model Penal Code definition in our general principles concerning proof of the element of intent. The Iowa Supreme Court has observed:

Intent is a state of mind difficult of proof by direct evidence. It may, however, be established by circumstantial evidence and by inferences reasonably to be drawn from the conduct of the defendant and from all the attendant circumstances in the light of human behavior and experience.

*State v. Casady*, 491 N.W.2d 782, 787 (Iowa 1992) (citations omitted). Proof of intent may be inferred by conduct.

We also find support for the Model Penal Code definition in our case *State v. Wedebrand*, 602 N.W.2d at 187. In *Wedebrand*, the victim was abducted and driven out to a rural Iowa location. *Id.* There, Wedebrand, Luis Lua, and others bound, gagged, and repeatedly beat the victim. *Id.* Lua pointed a gun at the victim, but did not shoot the victim after someone stated “not here.” *Id.* Wedebrand, Lua, and others placed the victim in the truck of their car and then drove the victim to Minnesota. *Id.* While driving, Lua told Wedebrand and the others he had enough ammunition for each of them to shoot the victim. *Id.* Wedebrand, Lua, and the others took the victim to an abandoned farmstead in Minnesota where Wedebrand shot the victim in the hip and Lua fatally shot the victim in the head. *Id.* Wedebrand was charged with first-degree murder and first-degree kidnapping in the victim’s death. *Id.* Ultimately, the jury found Wedebrand guilty of first-degree murder. *Id.* at 188.



On appeal, Wedebrand claimed that the victim was shot and died in Minnesota, and thus the State lacked territorial jurisdiction. *Id.* at 189. Wedebrand argued, as Serrato argues now, the remaining elements of premeditated murder, malice aforethought, and specific intent to kill, were not predicate conduct implicating Iowa's jurisdiction under sections 803.1(1) and 803.1(2). *Id.* Our court disagreed, noting that "[p]roof of the requisite intent or malice aforethought may be accomplished by inferences made from the acts and conduct of the defendant and the means used in doing the wrongful and injurious acts." *Id.* (citing *State v. Olson*, 373 N.W.2d 135, 136-37 (Iowa 1985) (citations omitted); *State v. Nunn*, 356 N.W.2d 601, 603 (Iowa Ct. App. 1984)). We concluded:

We are unable to reconcile Wedebrand's argument with the plain language of [section 803.1(1) and (2)]. Section 803.1 expressly provides for prosecution of offenses committed partially within or outside of Iowa. As an alleged aider and abettor, Wedebrand was subject to prosecution in Iowa under the "conduct . . . of another for which the person is accountable" language of section 803.1. Moreover, evidence of Wedebrand's presence, encouragement, and participation in [the victim's] beating in Iowa is conduct from which the principal's specific intent to kill, malice aforethought, and Wedebrand's knowledge thereof may be inferred. Because Wedebrand can be held accountable for conduct in Iowa which constitutes an essential element of first-degree murder, Iowa's territorial jurisdiction to prosecute this offense was properly invoked.

*Id.* at 189-90. Thus, we determined that when a person's state of mind, i.e., knowledge, intent, or malice aforethought, is an essential element of the crime charged, actions by that person occurring within Iowa which infer his or her state of mind constitute conduct upon which the requirements of section 803.1 are satisfied. *Id.*

Serrato cites *State v. Wagner*, 596 N.W.2d 83 (Iowa 1999), to suggest one's intent does not describe "conduct" as contemplated by section 803.1. In *Wagner*, Wagner was convicted in Iowa for an escape that occurred in Texas while he was being transported from the Iowa State Penitentiary to a prison in New Mexico. *Id.* at 85. On appeal, Wagner argued that none of the elements of the offense of escape, Iowa Code section 719.4 (1999), constituted conduct to subject him to Iowa's territorial jurisdiction. *Id.* The State argued that because Wagner's underlying felony occurred in Iowa, the first element of escape, "[a] person convicted of a felony," took place in Iowa, subjecting Wagner to Iowa's territorial jurisdiction. *Id.* at 86. The court disagreed, determining the first element did not describe "conduct," as contemplated by section 803.1(2) but rather described a "status." *Id.*<sup>5</sup>

*Wagner* is distinguishable from the present case. *Wagner* did not address the question of whether the element of intent was "conduct" within the meaning of section 803.1. Unlike one's status, proof of one's intent is inferred from conduct; one's status simply is.

We conclude the proper definition of "conduct" is the one found in the Model Penal Code, and agree with our earlier conclusion in *Wedebbrand* that under the language of section 803.1, conduct in Iowa establishing intent is sufficient to subject a defendant to Iowa's territorial jurisdiction.

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<sup>5</sup> In making this determination, our supreme court compared the definitions of "conduct" and "status" as found in the Webster's Third New International Dictionary. See *Wagner*, 596 N.W.2d at 86. Webster's Third New International Dictionary defines "conduct" as "behavior in a particular situation or relation or on a specified occasion." Webster's Third New Int'l Dictionary 474 (unabr. ed. 1993). "Status" is defined as "the condition (as arising out of . . . crime . . . ) of a person that determines the nature of his legal personality, his legal capacities, and the nature of the legal relations to the state." *Id.* at 2230.

***B. Sufficiency of the Evidence to Invoke Territorial Jurisdiction.***

Serrato further argues that even if the intent element alone is sufficient to subject a defendant to Iowa's territorial jurisdiction, the State failed to present sufficient evidence to prove he had the specific intent to kill and malice aforethought in Iowa to invoke the state's territorial jurisdiction.<sup>6</sup> The evidence relied upon by the State to establish territorial jurisdiction was that Serrato's actions of returning to Muscatine after speaking with Chavez and then confronting and arguing with Carmona in Iowa supported the inference that he had formed the requisite intent and malice in Iowa to kill Carmona. The State argues this evidence is similar to the evidence of the *Wedebbrand* case. We disagree.

As stated above, in *Wedebbrand*, an aiding and abetting case, Wedebbrand participated in beating the victim in Iowa. *Wedebbrand*, 602 N.W.2d at 187. A gun was pointed at the victim in Iowa, but the victim was not shot after someone stated "not here." *Id.* Wedebbrand helped place the victim in the car and transport the victim to Minnesota, where Wedebbrand shot the victim and another person shot the victim fatally. *Id.* Wedebbrand's participation in these events in Iowa, i.e., his conduct, evidenced his intent to participate in the victim's murder. *Id.*

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<sup>6</sup> Iowa Code section 707.1 provides: "A person who kills another person with malice aforethought either express or implied commits murder." Section 707.2(1) provides: "A person commits murder in the first degree when the person commits murder under any of the following circumstances: (1) The person willfully, deliberately, and with premeditation kills another person." Section 707.8(1) provides: "A person who terminates a human pregnancy without the consent of the pregnant person during the commission of a forcible felony is guilty of a class 'B' felony." (Murder is a "forcible felony" under section 702.11(1)). In this case, murder was the predicate offense for the termination of pregnancy offense.

Here, all we have is evidence of Serrato's return to Muscatine after Carmona and Chavez fought and Serrato's confrontation with Carmona at the Escorpion Bar. After being told of Carmona's altercation with Chavez and of her allegations that she was carrying Serrato's child, Serrato was upset but not angry when he arrived at Chavez's house. Upon confronting Carmona at the Escorpion Bar, the witnesses' accounts of this fight state that Serrato acted defensively, trying to stop Carmona from hitting him. An intent to kill may not be inferred from this conduct. We find, as a matter of law, that the inferences to be reasonably drawn from Serrato's conduct, and from all the attendant circumstances in the light of human behavior and experience, do not establish beyond a reasonable doubt that Serrato formed the specific intent to kill Carmona, or the requisite malice aforethought, premeditation, or deliberation.

We note the State also argues there was substantial evidence from which the jury could have inferred that Serrato actually killed Carmona in Iowa and transported her over the Illinois line only to dispose of her body. The State argues the existence of the plastic bag found entangled in Carmona's hair suggests that Serrato murdered her before taking her body from Iowa to its Illinois resting place. The State argued this evidence suggested the bag was placed over Carmona's head to contain blood from her facial injuries as her body was transported from the site of the murder to the location where it was found. Even if we accept this speculation to be true, the evidence does not establish from where the body was transported or that the murder occurred in Iowa. Many suggestions can be spun from the evidence presented at trial, but none of the

evidence, including the plastic bag, establishes Carmona's murder occurred in Iowa.

Consequently, we must conclude as a matter of law that the State failed to present sufficient evidence to invoke the state's territorial jurisdiction.

***III. Conclusion.***

Because we conclude the element of intent alone is sufficient to invoke the state's territorial jurisdiction, but conclude the State failed to present sufficient evidence to prove Serrato had the specific intent to kill and malice aforethought while he was in Iowa to invoke the state's territorial jurisdiction, we reverse and remand for dismissal.

**REVERSED AND REMANDED FOR DISMISSAL.**