

**IN THE COURT OF APPEALS OF IOWA**

No. 9-968 / 09-0455  
Filed January 22, 2010

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

**vs.**

**LARRY ALLEN WENDT,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Mary E. Howes,  
Judge.

The defendant appeals from his conviction for first-degree theft.

**AFFIRMED.**

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

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney  
General, Michael J. Walton, County Attorney, and Jerald Feuerbach, Assistant  
County Attorney, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Mahan, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**EISENHAUER, P.J.**

Larry Allen Wendt appeals from his conviction for first-degree theft. He contends there was insufficient evidence he possessed the stolen goods in Iowa and therefore the State has failed the element of territorial jurisdiction. We review his claim for the correction of errors at law. Iowa R. App. P. 6.907.

The undisputed facts are as follows: In August 2008, a purchasing manager at LaFarge North America (LaFarge) discovered approximately 343 used metal grates with an estimated value of \$29,614 were missing from the company's Buffalo, Iowa property. The total weight of these grates was approximately 21,955 pounds and it would have required multiple trips to remove them from the property. The missing grates were taken to a scrap metal recycling center in Rock Island, Illinois by two men in numerous transactions over a four or five month period. The recycling center paid approximately \$20,000 for the metal. Wendt was identified by employees of the recycling center as one of the men involved in the transactions. Wendt drove to the recycling center with the grates in a blue truck owned by his brother.

Under Iowa Code section 803.1(1)(a) (2007), a person is subject to prosecution in Iowa for an offense committed wholly or partly within the state. 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." *State v. Wagner*, 596 N.W.2d 83, 86 (Iowa 1999). Wendt argues there is no evidence he possessed the grates in Iowa.

In determining the State had proved territorial jurisdiction, the district court found:

In this case the State has proven that the steel grates the defendants were in possession of were stolen from Buffalo, Iowa, a river town. Del Metals is a scrap metal business just across the river from Iowa. The defendant Wendt lives in Muscatine, Iowa, another river town. There is further evidence that they made numerous trips to Del Metals Company over a several-month period to turn in the scrap metal.

Ms. Christina Caldwell works at Del Metals and testified both defendants came in over a 4 or 5 month period with the castings, a minimum of 30 times. The time period coincides with when the steel castings were stolen from LaFarge. The Court finds based on the evidence introduced a reasonable inference can be made that they possessed the stolen castings in Iowa also. . . .

The Court finds there is very strong circumstantial evidence that the defendants were possession of the steel grates in Iowa.

We find no error in the district court's ruling. The 343 stolen grates weighed between seventy-five and eighty-five pounds each. The distance between LaFarge's location in Buffalo and the recycling plant in Rock Island, Illinois is not great. To conclude the heavy grates were stolen, transported a short distance across the border, and then handed over to Wendt is not reasonable, especially in light of the fact Wendt resided in Iowa. The theory is made more implausible because this complex orchestration of events would have had to have transpired on a minimum of thirty occasions. Although the evidence of territorial jurisdiction is circumstantial, direct and circumstantial evidence is equally probative. *State v. Blair*, 347 N.W.2d 416, 421 (Iowa 1984). The evidence here does more than create speculation, suspicion, or conjecture; it raises a fair inference of guilt. *Id.* Under these facts, we find the State has

established beyond a reasonable doubt the necessary elements to convict Wendt of first-degree theft.

**AFFIRMED.**

Mahan, S.J., concurs; Potterfield, J., dissents.

**POTTERFIELD, J.** (dissents)

I disagree with the majority that the circumstantial evidence does more than create “speculation, suspicion, or conjecture” that Wendt possessed the stolen property in Iowa. *State v. Blair*, 347 N.W.2d 416, 421 (Iowa 1984). The majority finds it unreasonable to conclude the heavy gates were “stolen, transported a short distance across the border, and then handed over to Wendt.” It is equally unreasonable to conclude the heavy gates were stolen, handed over to Wendt in Iowa, and then transported a short distance over the river thirty times. The majority’s choice of the Iowa possession alternative implicitly assumes that Wendt stole the gates himself, an alternative theory not charged or proven by the State at trial.

Wendt was a frequent customer of the scrap yard in Illinois. The evidence in this record does not correlate the range of dates during which the gates may have been stolen with the dates on which Wendt took gates to the scrap yard. It is speculation that the gates were transferred to Wendt in Iowa.

At the close of the State’s case, the State elected to proceed on the theory of theft by possession of stolen property, specifically declining to request a verdict on the alternative of theft by taking. The taking occurred in Buffalo, Iowa. The State proved that possession occurred in Illinois. To conclude that possession also occurred in Iowa, the majority finds circumstantial support in Wendt’s residence in Muscatine. I disagree that this Iowa connection supplies a sufficient territorial link to make the State’s case on territorial jurisdiction,

especially where a search of Wendt's truck and Iowa residence produced no evidence of the grates.

Our supreme court discussed sufficiency of the evidence to support territorial jurisdiction in another Scott County case, *State v. Liggins*, 524 N.W.2d 181, 184-86 (Iowa 1994). In *Liggins*, the body of a homicide victim found in Iowa triggered the statutory presumption<sup>1</sup> that the murder occurred in Iowa and supported the jury's verdict of guilt on the charge of murder. *Liggins*, 524 N.W.2d at 184. However, in ruling that territorial jurisdiction was an essential element of the crime that must be proven by the State beyond a reasonable doubt, the court found the evidence insufficient to show that the crimes which preceded the murder—assault, sexual abuse, and kidnapping—were committed in Iowa.<sup>2</sup> *Id.* at 184-85.

Reviewing the evidence in the light most favorable to the State, I find that the State failed to prove the essential element of territorial jurisdiction beyond a reasonable doubt. I would reverse Wendt's conviction for theft in the first degree.

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<sup>1</sup> Iowa Code section 803.1(2) (1989) created a permissive, or rebuttable, presumption of state jurisdiction when a body was found within the state.

<sup>2</sup> At *Liggins*'s retrial, evidence was admitted concerning the willful injury, sexual abuse, and kidnapping as predicate felonies of felony murder. *State v. Liggins*, 557 N.W.2d 263, 267-68 (Iowa 1996).