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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-704**

In the Matter of the Welfare of: A.D.F., Jr., Child

**Filed February 27, 2012  
Affirmed  
Huspeni, Judge\***

Hennepin County District Court  
File No. 27-JV-10-3197

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Jill Clark, Special Assistant State Public Defender, Golden Valley, Minnesota; and

David W. Merchant, Chief Appellate Public Defender, Jodie Lee Carlson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Stoneburner, Judge; and Huspeni, Judge.

**UNPUBLISHED OPINION**

**HUSPENI, Judge**

Appellant argues that the district court (a) erred by finding the evidence sufficient to sustain his juvenile-delinquency adjudication of felony simple robbery, and (b) violated his right to a speedy trial when it denied his motion to dismiss. Because

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

there was sufficient evidence to support adjudication of felony simple robbery, and because there was no violation of appellant's right to a speedy trial, we affirm.

### FACTS

On the night of April 11, 2010, J.B. was walking home from a Minneapolis bar with his friend B.B. when he noticed appellant, A.D.F., Jr., and his friend R.M. walk out of an alley. Appellant and R.M. began to walk parallel to J.B. and B.B. While the four men walked in this configuration, B.B. tripped, due to intoxication, and fell to the ground. Appellant and R.M. then approached J.B. and B.B. R.M. stepped between J.B. and B.B. and demanded to see J.B.'s wallet. J.B., for defensive reasons, then walked backwards; he observed appellant walking behind B.B.<sup>1</sup> R.M. continued to demand J.B.'s wallet and, as the situation escalated, J.B. pulled out a money clip that had a knife on it. In response, R.M. told J.B. that he had a pistol; R.M. made a reaching motion, but he never drew a weapon. Meanwhile, appellant pushed B.B. to the ground, facedown, grabbed his hand, and removed his wallet. Appellant looked inside the wallet, commented that it did not contain any money, and threw B.B.'s wallet to the ground. Appellant and R.M. then turned around and walked away.

J.B. instructed B.B. to continue to J.B.'s apartment, then J.B. called 911 and followed appellant and R.M. from a distance. J.B. spoke with the 911 operator and maintained visual contact with appellant and R.M. until police officers apprehended

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<sup>1</sup> In their testimony, J.B. and B.B. distinguished between appellant and R.M. by their heights, referring to the two as "the taller man" and "the shorter man." It is undisputed, and appellant testified, that appellant is taller than R.M.

appellant and R.M. The police conducted a show-up and J.B. identified both appellant and R.M.; B.B., who was brought to the scene by J.B.'s girlfriend, identified R.M.

Based on this incident, Hennepin County filed a petition alleging appellant is a juvenile delinquent under Minn. Stat. § 260B.007, subd. 6(1), because he committed the offenses of felony simple robbery and felony attempted simple robbery, in violation of Minn. Stat. §§ 609.17, .24 (2008). In January 2011, the district court conducted a bench trial. Appellant did not dispute that, on the night in question, there was a hostile interaction among the four men. He testified, however, that there was no physical contact among any of the parties. According to appellant, he and R.M. laughed after B.B. fell to the ground. A verbal altercation ensued but, when J.B. pulled out his knife, appellant and R.M. simply walked away. The district court did not find appellant's testimony credible and, in a written verdict and order filed on January 19, found appellant guilty of the felony of simple robbery of B.B.<sup>2</sup>

On February 3, the parties reconvened. At the outset of this proceeding, the district court stated that it had "screwed up" because the probation officer believed that the hearing was a pretrial, not a disposition.<sup>3</sup> Because the district court did not have the information required from the probation officer, the district court noted that it would need to reschedule the disposition hearing. Appellant's counsel then made a motion for judgment of acquittal and offered to brief the motion, if the court would "move out [the

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<sup>2</sup> In its order, the district court noted that the "count of felony attempted simple robbery is hereby merged into the completed felony of simple robbery."

<sup>3</sup> It is unclear whether the parties intended the February 3 proceeding to be a disposition hearing or merely a "come-back date."

parties'] ability to conclude that motion then at the next hearing.” The district court consented, noting that this would “preclude the necessity of setting a disposition date until that matter has been resolved.” The district court offered to give appellant 14 days to submit his brief, and the state 14 days to respond. Counsel for both parties agreed, and the district court said that the matter would be set for oral argument approximately 28 days out.

On March 18, the parties appeared for a ruling on appellant’s motion for a judgment of acquittal. At the beginning of this proceeding, appellant moved to terminate jurisdiction, arguing that the time to adjudicate him had passed because it had been more than 45 days since the general verdict and there was no waiver of speedy disposition. In response, the state asked that the motion be denied, arguing that the rescheduling was due to appellant’s motion for judgment of acquittal. The district court denied appellant’s motion to dismiss, finding waiver by action of counsel. The district court then denied appellant’s motion for acquittal and adjudicated appellant delinquent. The district court filed a disposition order on March 25, and this appeal followed.

## **D E C I S I O N**

### **I.**

In reviewing whether the evidence is sufficient to sustain a delinquency adjudication, we analyze the evidence in the light most favorable to the state and determine whether the fact-finder could have reasonably found that the juvenile committed the crime for which the juvenile was adjudicated. *See In re Welfare of M.E.M.*, 674 N.W.2d 208, 215 (Minn. App. 2004). The juvenile court’s findings of fact

will be upheld unless clearly erroneous. *Id.* While we give the district court's factual findings great deference, we are

not bound by and need not give deference to the district court's decision on a purely legal issue. When reviewing mixed questions of law and fact, we correct erroneous applications of law, but accord the [district] court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard.

*Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002) (quotation and citation omitted), *review denied* (Minn. June 26, 2002).

To support a finding of guilt on the charge of felony simple robbery, the state was required to prove beyond a reasonable doubt that appellant took personal property from the person of, or in the presence of, another, with the knowledge that he was not entitled to the property, and used, or threatened to imminently use, force against a person to overcome resistance to or compel acquiescence in the taking or carrying away of the property. *See* Minn. Stat. § 609.24.

#### A.

Appellant argues that the testimony of the alleged victims is so inconsistent that no reasonable trier of fact could have found them credible, and thus there is insufficient evidence of identity. It is the “exclusive role” of the fact-finder to determine witness credibility. *In re Welfare of A.A.M.*, 684 N.W.2d 925, 927 (Minn. App. 2004), *review denied* (Minn. Oct. 27, 2004). And “a conviction may rest on the testimony of a single credible witness.” *State v. Miles*, 585 N.W.2d 368, 373 (Minn. 1998).

Here, two eyewitnesses testified regarding the alleged robbery. Appellant argues that the district court's written verdict and order must be read to have discredited the testimony of one of these witnesses, J.B. We disagree. Initially, we recognize that it was the testimony of J.B. that identified appellant, the taller of the two men involved in the robbery, as the perpetrator of the robbery of B.B. It appears that it is that identification that appellant wishes to have discredited. Although the district court did not make a specific credibility determination, it did incorporate elements from each eyewitness's testimony into its findings and noted that "[w]hile there were minor inconsistencies between the testimony of [J.B.] and [B.B.] and among the statements made by [J.B.] and [B.B.] to various police officers, this is understandable, given the excitement of the moment, the fallibility of humans, and in [B.B.'s] case intoxication."

In addition to the testimony of J.B. regarding the actions of appellant, B.B. observed that appellant was in his general area at the time of the robbery. Although the testimony of J.B. and B.B. is not entirely consistent, the inconsistencies are not so substantial that a reasonable trier of fact could not have found them credible. Therefore, the record contains sufficient evidence of identity to sustain appellant's delinquency adjudication.

## **B.**

Appellant argues that even if the testimony of J.B. and B.B. is believed, indicating that appellant took B.B.'s wallet, checked its contents, and threw it on the ground, his actions are legally insufficient to constitute a taking under the robbery statute. We disagree. Under Minnesota law, a person is guilty of robbery if the person "takes"

personal property from the person or in the presence of another. Minn. Stat. § 609.24. The element of “taking” is complete once the actor has control or dominion over the property; the duration of the control or dominion is irrelevant. *State v. Solomon*, 359 N.W.2d 19, 21 (Minn. 1984) (“Defendant’s control or dominion over the money was complete, if only for a few seconds, once the money was in his hands; the fact that the control or dominion did not last long does not make any difference.”).

Appellant argues that he did not have control or dominion over B.B.’s wallet. However, the record establishes that appellant possessed the wallet and was able to examine its contents. Appellant also argues that he never removed anything from the wallet, and thus did not commit robbery. But removing the wallet’s contents was not necessary; the required taking was complete as soon as appellant had control or dominion over the wallet.<sup>4</sup> On this record, appellant’s conduct clearly satisfies the statutory requirement of a “taking.”

## II.

Finally, appellant argues that the district court erred by denying appellant’s motion to dismiss based on violation of the Minnesota Rules of Juvenile Delinquency Procedure. These rules permit the district court, after it finds that charges in the charging document have been proved, to continue the matter for a disposition hearing at a later time. Minn. R. Juv. Delinq. P. 15.02, subd. 1. The rules specify that, for a child not held in detention

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<sup>4</sup> Appellant notes in his brief that B.B.’s wallet contained credit cards and he did not even *attempt* to take these. However, given what is required for a “taking,” if B.B.’s wallet contained credit cards then appellant did in fact take both B.B.’s wallet and his credit cards.

(which was the case here), the district court may conduct a dispositional hearing immediately or within 45 days from the finding that the charges have been proved. Minn. R. Juv. Delinq. P. 15.02, subd. 1(A). But, “[f]or good cause, the court may extend the time period to conduct a disposition hearing for one additional period of thirty (30) days for a child not held in detention.” Minn. R. Juv. Delinq. P. 15.02, subd. 3. For good cause, therefore, the district court may conduct a disposition hearing, for a child not held in detention, within 75 days from the finding that the charges have been proved. “If a disposition hearing is not conducted . . . within the time limits prescribed by this rule, the court may dismiss the case.” *Id.*

Here, the district court conducted a disposition hearing more than 45 days but less than 75 days after it filed its written verdict and order. The district court did not make an express finding of “good cause,” but the rules do not specifically require an express finding. *See id.* When moving for acquittal on February 3, appellant’s counsel offered to brief the motion. The district court accepted and offered to give appellant 14 days to submit his brief, and the state 14 days to respond. Counsel for both parties agreed. Under these circumstances, the district court had good cause to enter a disposition hearing within the permissible 30-day extension.

**Affirmed.**