

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

February 5, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

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No. 96-3148-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**In the Interest of Corey J.G.,
A Person Under the Age of 18:**

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

COREY J.G.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Fond du Lac County: JOHN G. BUCHEN, Judge. *Affirmed.*

SNYDER, P.J. Corey J.G. appeals from an order finding him guilty of two counts of delinquency. He argues that Fond du Lac County was not established as the proper venue for the delinquency allegations, and therefore "the evidence was insufficient to support a finding of delinquency" Because we conclude that the precise venue issue raised by this appeal is

not a sufficiency of the evidence question as Corey claims, but rather a question of statutory interpretation which was not properly raised or argued to the juvenile court, we affirm.

The facts are undisputed. A delinquency petition was filed in Fond du Lac County on March 21, 1996. It alleged criminal damage to property in violation of § 943.01(1), STATS., and battery contrary to § 940.19(1), STATS. The acts were alleged to have occurred on August 22 and August 24, 1995, respectively, in the City of Neillsville, in Clark County, Wisconsin. Corey was a resident at the Sunburst Youth Home in Neillsville on the dates in question, and the petition gave his address as that of the Sunburst Youth Home.

The Fond du Lac State Public Defender appointed Attorney Greg Vollan to represent Corey. This order listed Corey's address as 29 South Military, Fond du Lac, Wisconsin (his parents' address), and further stated that Corey was detained at St. Ives Center, 12893 Clover Lane, Merrill, Wisconsin.

Corey returned to Fond du Lac on April 25, 1996, and was ordered held in the Fond du Lac county secure detention facility. He entered not guilty pleas and the case was tried to a jury on May 16, 1996. After the State rested its case-in-chief, Vollan moved, inter alia, for dismissal of the delinquency counts on the basis that venue had not been established. The complete record text of the motion is:

MR. VOLLAN:I have one more motion. I would move to dismiss
for lack of establishment of
venue.

PROSECUTOR:Your Honor, I think the first witness testified that it was at Sunburst Youth Homes, which is in Neillsville, which is in Clark County, State of Wisconsin. I think that is sufficient venue.

THE COURT:All the witnesses testified to being employed at that place in Neillsville. I'm satisfied that venue has been established. Motion is denied.

It is from this denial that Corey appeals.

Corey raises one issue for appellate review: that “the evidence was insufficient to support a finding of delinquency because the State failed to prove venue.” We decline, however, to address Corey's argument in the manner he has structured it. *See generally State v. Waste Management of Wis., Inc.*, 81 Wis.2d 555, 564, 261 N.W.2d 147, 151 (1978). We see the appeal as presenting two separate issues: (1) whether the venue issue in this case raises a question as to the sufficiency of the evidence to support the delinquency petition or (2) whether the venue issue actually questions whether the delinquency petition could properly be brought in Fond du Lac County.

Issues of venue are governed by the Children's Code, *see* § 48.185(1), STATS.,¹ and thus present questions of statutory interpretation. It is also true that venue, in terms of addressing the *location of a delinquent act*, is a fact that must be proved beyond a reasonable doubt and is an issue to be

¹ This section, as well as the other sections within ch. 48, STATS., have been revised and renumbered. *See* 1995 Wis. Act 77 (eff. July 1, 1996).

established at trial regardless of where the delinquency proceedings take place. See *Pickens v. State*, 96 Wis.2d 549, 575, 292 N.W.2d 601, 614 (1980). Corey was not specific in his trial court venue motion, and both the State and the trial court viewed the motion as one challenging the proof that the offenses occurred in Clark County. Corey did not challenge this analysis of the motion, nor did he correct the motion to direct the court's attention to the statutory requirements that underscore his appeal.

The question of whether the State established Clark County as the location of the delinquent acts is reviewed by this court by applying the sufficiency of the evidence standard. See *State v. Poellinger*, 153 Wis.2d 493, 501, 451 N.W.2d 752, 755 (1990). However, Corey does not dispute the trial court's finding that there was sufficient evidence offered to establish Clark County as the location of the offenses. Instead, Corey agrees that “[v]enue in this juvenile case is governed by sec. 48.185(1), Stats.” and then contends that the statute was violated because the State “failed to introduce any evidence that [he] resided or was present in Fond du Lac County.”

Section 48.185(1), STATS., provides:
[V]enue for any proceeding [in a delinquency matter] may be in any of the following: *the county where the child resides, the county where the child is present or, in the case of a violation of a state law ... the county where the violation occurred.* [Emphasis added.]

Whether this section requires the State to prove that Fond du Lac County qualified as an appropriate county in which to bring the delinquency petition presents an issue of statutory interpretation. This is a question of law that we

normally decide without deference to the trial court. *See State v. Eichman*, 155 Wis.2d 552, 560, 456 N.W.2d 143, 146 (1990). As with any question of statutory interpretation, we first look to the language of the statute itself. *See J.A.L. v. State*, 162 Wis.2d 940, 962, 471 N.W.2d 493, 502 (1991).

By its plain language, § 48.185(1), STATS., provides that a delinquency petition may be brought in the county of the commission of the alleged acts or, alternatively, in *the county where the child resides or is present*. *See id.* We read this section as providing flexibility in juvenile procedures when it states that “venue for any proceeding ... *may be in any of the following: [counties].*” *Id.* (emphasis added). This section does not favor or direct one possible venue over any other; we are satisfied that the filing of a delinquency petition is appropriate in any county which the State determines complies with the provisions of § 48.185(1). Once the State files its petition, the juvenile may challenge the venue as not being within the purview of the statute.

Corey could have challenged the State's choice of Fond du Lac County as not being within the purview of § 48.185(1), STATS., during the ch. 48, STATS., proceedings in the court assigned to exercise juvenile jurisdiction. He failed to do so. His venue motion, made at trial and after the State rested its case-in-chief, did not specifically refer to § 48.185. Neither the State nor the court was advised or made aware that Corey's intention was to challenge the appropriateness of venue in Fond du Lac County for the delinquency proceedings. Corey's failure to raise this issue to the ch. 48 court, the court specifically assigned jurisdiction in this matter, *see* § 48.02(2m), STATS., deprived

that court of an opportunity to review this issue or to receive proof of the issue from the State. See *Cappon v. O'Day*, 165 Wis. 486, 490-91, 162 N.W. 655, 657 (1917).

We conclude that because the issue of venue here presented involves the application of a ch. 48, STATS., provision and is an argument that was not raised and argued before the ch. 48 court, it is not preserved for appellate review. This court is an error-correcting court, see *Hillman v. Columbia County*, 164 Wis.2d 376, 396, 474 N.W.2d 913, 920 (Ct. App. 1991), and we do not consider arguments raised for the first time on appeal. See *Meas v. Young*, 138 Wis.2d 89, 94 n.3, 405 N.W.2d 697, 699 (Ct. App. 1987).

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.