

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDWARD LEWIS,)
) No. 364, 2004
 Defendant Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for Kent County
)
 STATE OF DELAWARE,) Cr. ID No. 0305000877
)
 Plaintiff Below,)
 Appellee.)

Submitted: January 26, 2005
Decided: February 22, 2005

Before **STEELE**, Chief Justice, **HOLLAND**, and **JACOBS**, Justices.

ORDER

This 22nd day of February 2005, on consideration of the parties' briefs, it appears to the Court that:

1. Edward Lewis appeals his conviction in the Superior Court, claiming the trial judge erred by denying his motion for judgment of acquittal on the charges of aggravated menacing and possession of a deadly weapon during the commission of a felony (PDWDCF). Lewis contends that the State failed to prove the fear element in the menacing charge and the deadly-weapon element in the possession charge. Because the testimony at trial, when viewed in a light most favorable to the State, supports the conclusion that the victim feared Lewis would attack her

and that Lewis in fact did so, we find that the evidence was sufficient to support the jury's verdict. Accordingly, we affirm.

2. In May 2003, the Delaware State Police arrested Lewis and his girlfriend Clarissa Custis after receiving a domestic-dispute call. According to Custis, Lewis choked her after the two began fighting. Custis then picked up a tire iron. In response, Lewis struck Custis with a pipe. At the scene, police observed that Custis and Lewis suffered from a variety of lacerations.

3. At Lewis's March 2004 trial, Custis testified that Lewis had choked her but denied he actually hit her with the pipe. She also stated she was never afraid of him. Lewis testified in his own defense and disclaimed ever choking or hitting Custis. Following deliberations, the jury convicted Lewis of six counts related to the incident.¹ Lewis then moved for judgment of acquittal on three charges: aggravated menacing, PDWDCF, and endangering the welfare of a child. The trial judge granted the motion on the endangering count, but denied the motion on the other two charges.² Lewis claims that the trial judge erred by denying the motion for a judgment of acquittal, asserting that the State failed to present sufficient evidence to support a finding of guilt on the aggravated menacing and PDWDCF charges.

¹ *State v. Lewis*, Del. Super., I.D. No. 00122554 (Mar. 30, 2004).

² *State v. Lewis*, Del. Super., I.D. No. 00122554 (May 14, 2004).

4. We review the denial of a motion for acquittal *de novo*.³ Viewing the evidence in the light most favorable to the State, we look to whether a rational trier of fact could find Lewis guilty beyond a reasonable doubt.⁴ In reviewing the record, we do not distinguish between direct and circumstantial evidence of guilt.⁵

5. Lewis first contends that the State failed to prove the elements of aggravated menacing. A person is guilty of aggravated menacing when “by displaying what appears to be a deadly weapon[,] that person intentionally places another person in fear of imminent physical injury.”⁶ Because Custis testified that she was not afraid of being hit with the pipe, Lewis argues that the State failed to prove that Custis was in fear of imminent physical injury.

6. It is the sole province of the jury to resolve both questions of witness credibility and conflicts in witness testimony.⁷ A jury verdict based on conflicting evidence will not be set aside “if there [is] competent evidence upon which the verdict might reasonably be based.”⁸

³ *Hardin v. State*, 844 A.2d 982, 989 (Del. 2004).

⁴ *Id.*

⁵ *Cline v. State*, 720 A.2d 891, 892 (Del. 1998).

⁶ 11 *Del. C.* § 602(b).

⁷ *Pryor v. State*, 453 A.2d 98, 100 (Del. 1982).

⁸ *Zutz v. State*, 160 A.2d 727, 729 (Del. 1960).

7. Although Custis testified that she was not afraid of Lewis, the prosecution presented sufficient evidence to support the jury's aggravated-menacing verdict. First, the record reveals that Custis stated she *was* afraid while Lewis choked her. It was logical for the jury to infer that when Lewis picked up the pipe moments later, Custis remained fearful that he would continue attacking her. Furthermore, the fact that Custis armed herself with a tire iron also would permit the jury to infer that she was afraid Lewis would strike her with the pipe. Based on this evidence, we find the trial judge properly denied Lewis's motion for a judgment of acquittal on the aggravated menacing charge.

8. Lewis next challenges the sufficiency of the evidence surrounding the PDWDCF charge. Two elements underlie PDWDCF: a defendant's commission of a felony, and the possession of a deadly weapon during the commission of that felony.⁹ A deadly weapon can include a "bludgeon . . . which is used, or attempted to be used, to cause death or serious physical injury."¹⁰ Lewis claims that the State failed to prove that the pipe he was holding when police arrived constituted a deadly weapon because the State failed to prove that he hit or attempted to hit Custis with it.

⁹ 11 *Del. C.* §1447(a).

¹⁰ *Id.* § 222(5).

9. The jury heard conflicting evidence about whether or not Lewis struck Custis with the pipe. The arresting officer testified that in her post-arrest statement, Custis told police that Lewis hit her in the back of the head. At trial, the officer stated he observed an injury to the back of her head, and the State introduced a corresponding photograph. On taking the stand, however, Custis denied that Lewis struck her with the pipe.

10. The officer's testimony relating Custis's post-arrest statement, along with the photograph of the head wound, was sufficient to support the jury's finding that Lewis used the pipe to strike Curtis, and that the pipe was a deadly weapon. As previously stated, where conflicting evidence is presented at trial, we will not overturn a jury verdict so long as there is competent evidence to support that verdict.¹¹ We find that on this record, the State produced sufficient evidence to support the jury's finding of guilt on the PDWDCF charge. Accordingly, we find the trial judge did not err by denying Lewis's motion for judgment of acquittal.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹¹ *Zutz*, 160 A.2d at 729.