IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Joseph Ferreri, Defendant and Appellant.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20040838-CA F I L E D (November 3, 2005) 2005 UT App 465

Sixth District, Manti Department, 041600056
The Honorable K.L. McIff

Attorneys: John D. Sorge, Salt Lake City, for Appellant
Ross C. Blackham and Brodie Keisel, Manti, for Appellee

Before Judges Billings, Davis, and Orme.

DAVIS, Judge:

Joseph Ferreri appeals his conviction, based on a jury verdict, of one count of custodial interference, a class A misdemeanor, in violation of Utah Code section 76-5-303. See Utah Code Ann. § 76-5-303 (2003). We affirm.

Defendant argues that the jury failed to give sufficient weight to evidence indicating he had "good cause" for detaining the child and that the detention was not "for a period substantially longer than the parent-time." Id. "In reviewing a jury verdict, we view 'the evidence and all reasonable inferences drawn therefrom in a light most favorable to the verdict,'" and we reverse "'only when the evidence, so viewed, is sufficiently inconclusive or inherently improbable such that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime.'" State v. Hamilton, 2003 UT 22,¶18, 70 P.3d 111 (citations omitted). Simply put, Defendant must demonstrate that the jury verdict is "clearly erroneous." See State v. Martinez, 2002 UT App 126,¶40, 47 P.3d 115.

To meet this burden, Defendant "must '"marshal the evidence in support of the verdict and then demonstrate that the evidence is insufficient."'" State v. McDonald, 2005 UT App 86,¶16, 110

P.3d 149 (quoting State v. Pritchett, 2003 UT 24,¶25, 69 P.3d 1278 (other citation omitted)). It is not enough for Defendant to simply show that his evidence contradicts the jury verdict or to reargue the weight of that evidence on appeal while ignoring contrary evidence. See State v. Lopez, 2001 UT App 123,¶19, 24 P.3d 993. Here, where Defendant has only reasserted the evidence he presented at trial and has not marshaled the evidence supporting the jury verdict, we are unable to review his challenge.

Defendant also claims that his efforts to obtain a protective order evince good cause as a matter of law, but the fact that he was rebuffed by the courts could also support the jury's contrary conclusion.[1] Finally, we are reluctant to determine, as Defendant posits, that detaining a child for a brief time in an effort to obtain a protective order is conclusive proof of good cause.[2]

Accordingly, we affirm the conviction.

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James Z. Davis, Judge

WE CONCUR:

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Judith M. Billings,
Presiding Judge

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[1]Although not directly argued by Defendant on appeal, even if the trial court erroneously ruled that evidence of the criminal history of the victim's step-grandfather was inadmissible, the error was harmless because his criminal history was before the jury by other means. See State v. Colwell, 2000 UT 8,¶29, 994 P.2d 177 ("Where evidence is excluded by the trial court and the substance of such evidence is later admitted through some other means, any error which may have resulted is cured.").

[2]Defendant relies on Nielsen v. Nielsen, 620 P.2d 511, 513 (Utah 1980). Not only was Nielsen a civil case, but the portion relied upon by Defendant is dicta.

Gregory K. Orme, Judge