

IN THE UTAH COURT OF APPEALS

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Provo City,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20060453-CA
v.)	
)	F I L E D
William Garcia-Sanchez,)	(May 1, 2008)
)	
Defendant and Appellant.)	2008 UT App 155

Fourth District, Provo Department, 041403660
The Honorable Claudia Laycock

Attorneys: Margaret P. Lindsay, Orem, for Appellant
Stephen H. Schreiner, Provo, for Appellee

Before Judges Greenwood, Bench, and Orme.

BENCH, Judge:

Defendant William Garcia-Sanchez appeals his conviction for unlawful detention, a class B misdemeanor. See Utah Code Ann. § 76-5-304(3) (2003). Defendant claims that the court's failure to record Defendant's testimony amounts to a violation of his due process rights and entitles him to a new trial.

Due process requires that there be a record adequate to review specific claims of error already raised. However, we do not presume error simply because a record is incomplete or unavailable. Rather, lack of an adequate record constitutes a basis for remand and a new hearing only where: (1) the absence or incompleteness of the record prejudices the appellant; (2) the record cannot be satisfactorily reconstructed (i.e., by affidavits or other documentary evidence); and, (3) the appellant timely requests the relevant portion of the record.

West Valley City v. Roberts, 1999 UT App 358, ¶ 11, 993 P.2d 252 (internal quotation marks and citations omitted). In other words, "a defendant is [not] entitled to a new trial whenever there is a gap in the record, just in case the missing record might reveal some error." State v. Russell, 917 P.2d 557, 559

(Utah Ct. App. 1996). Utah law "only requires that there be a record adequate to review specific claims of error already raised," but it "does not require a complete record so appellate counsel can go fishing for error." Id. (emphasis added). Furthermore, where "an appellant's best case is that he elicited contradictory evidence that is missing from the record, . . . an appellate court can rely on the presumption that the jury disbelieved the evidence in conflict with the jury verdict and find that there is evidence sufficient to support the jury's findings." State v. Gardner, 2007 UT 70, ¶ 25, 167 P.3d 1074; see also State v. Hardy, 2002 UT App 244, ¶ 11, 54 P.3d 645 ("[T]he existence of contradictory evidence or of conflicting inferences does not warrant disturbing the jury's verdict. . . . [because] [i]t is within the exclusive province of the jury to judge the credibility of the witness and the weight of the evidence." (third alteration in original) (internal quotation marks and citation omitted)).

Although Defendant points to a deficiency in the record, he does not raise any specific claims of error in his appeal. At most, Defendant asserts that the incomplete record either prevents his appellate counsel from being able to look for errors or precludes the appellate court from assessing the contradictions between the victim's testimony and his own. The fact that Defendant's testimony may have contradicted the victim's testimony does not require reversal of Defendant's conviction because we presume that the jury believed the testimony consistent with its verdict. Defendant therefore has not demonstrated how the missing portions of the record are necessary to achieve meaningful appellate review of any specific errors, and as a result, he has not demonstrated how the incomplete record prejudiced him. Defendant also has not alleged or shown that the record could not be satisfactorily reconstructed.

Accordingly, we affirm.

Russell W. Bench, Judge

WE CONCUR:

Pamela T. Greenwood,
Presiding Judge

Gregory K. Orme, Judge