

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20040740-CA
v.)	
)	F I L E D
Wayne E. Phelps,)	(October 20, 2005)
)	
Defendant and Appellant.)	2005 UT App 451

Fifth District, St. George Department, 031501541
The Honorable G. Rand Beacham

Attorneys: Wayne E. Phelps, St. George, Appellant Pro Se

Before Judges Davis, McHugh, and Orme.

PER CURIAM:

Wayne E. Phelps appeals his conviction of "Threatening with or Using a Dangerous Weapon in a Fight or Quarrel," a class A misdemeanor.

We construe Phelps's appeal as claiming that the evidence was insufficient to support the jury verdict. The offense requires proof that the defendant drew or exhibited any dangerous weapon in an angry and threatening manner, and did not do so in necessary self-defense. See Utah Code Ann. § 76-10-506 (2003). Phelps also claims that (1) the State's witness, Lawrence Medley, did not testify truthfully; (2) the State was required to present more than one witness; (3) there was no quarrel or fight; and (4) Phelps did not act in an angry or threatening manner.

The standard of review for a sufficiency of the evidence claim "is highly deferential to a jury verdict." State v. Workman, 2005 UT 66, ¶29. "We begin by reviewing 'the evidence and all inferences which may be reasonably drawn from it in the light most favorable to the verdict.'" Id. (citations omitted). "We will reverse a jury verdict for insufficient evidence only if we determine that 'reasonable minds could not have reached the verdict.'" Id. (citations omitted). Stated another way, "[w]e will reverse a jury verdict only when, after viewing the evidence and all inferences drawn therefrom in a light most favorable to the verdict, we find that the evidence to support the verdict was completely lacking or was so slight and unconvincing as to make

the verdict plainly unreasonable and unjust." State v. Lopez, 2001 UT App 123, ¶10, 24 P.3d 993.

Considering the evidence and all inferences reasonably drawn from it in the light most favorable to the verdict, the evidence was sufficient to show that during a dispute in which Phelps expressed anger over a plumbing bill, he exhibited a gun as a threat to Medley. In addition, after claiming that Medley had threatened to shut off his water, Phelps himself testified that he removed a sheet of paper covering the gun, pushed the gun out in view with his fingers, and said, "Now you didn't want to shut off my water, did you?" Phelps's claims that there was no quarrel or fight and that he did not act in an angry and threatening manner are contrary to the testimony of both witnesses. There also was no credible evidence offered to demonstrate that Phelps was acting in self defense.

Phelps's additional claims on appeal are also without merit. It was not necessary that the State present more than one witness. "When the evidence presented is conflicting or disputed, the jury serves as the exclusive judge of both the credibility of witnesses and the weight to be given particular evidence." State v. Workman, 852 P.2d 981, 984 (Utah 1993). "Ordinarily, a reviewing court may not reassess the credibility or re-weigh the evidence, but must resolve conflicts in favor of the jury verdict." Id. The jury apparently found Medley's testimony to be more persuasive; however, Phelps's admissions removed any dispute about the elements. In addition, it was not necessary to prove that Phelps picked up the gun, pointed it, brandished it, or shot it. See Utah Code Ann. § 76-10-506 (requiring that the actor draw or exhibit a dangerous weapon). Phelps at no time has disputed that he exhibited his gun to Medley.

Considering the evidence and all reasonable inferences drawn from it in the light most favorable to the jury verdict, we conclude the jury verdict is supported by sufficient evidence. Accordingly, we affirm the conviction.

James Z. Davis, Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge