

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20050631-CA
v.	)	
	)	F I L E D
John Norman Phillips Jr.,	)	(May 25, 2006)
	)	
Defendant and Appellant.	)	<span style="border: 1px solid black; padding: 2px;">2006 UT App 211</span>

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Second District, Ogden Department, 051901331  
The Honorable Pamela G. Heffernan

Attorneys: Dee W. Smith, Ogden, for Appellant  
            Mark L. Shurtleff and Brett J. Delporto, Salt Lake  
            City, for Appellee

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Before Judges Greenwood, McHugh, and Orme.

PER CURIAM:

John Norman Phillips Jr. appeals his conviction for aggravated robbery. Phillips argues that his conviction should be reversed because the district court committed plain error by failing to enter a directed verdict in his favor.

To prevail on a claim that the district court erred in failing to sua sponte order a directed verdict, Phillips must demonstrate that the district court committed plain error. See State v. Dunn, 850 P.2d 1201, 1208-09 (Utah 1993) (concluding that plain error standard of review applies to issues not preserved for appeal). To establish plain error when a defendant alleges that the district court failed to direct a verdict in his favor, the defendant "must demonstrate first that the evidence was insufficient to support a conviction of the crime charged and second that the insufficiency was so obvious and fundamental that the trial court erred in submitting the case to the jury." State v. Holgate, 2000 UT 74, ¶17, 10 P.3d 346. Phillips fails to demonstrate that there was insufficient evidence to support his conviction.

"A person commits aggravated robbery if in the course of committing a robbery he . . . uses or threatens to use a dangerous weapon as defined in section 76-1-601."<sup>1</sup> Utah Code Ann. § 76-6-302(1)(a) (2003). In turn, "[a] person commits robbery if . . . the person intentionally or knowingly uses force or fear of immediate force against another in the course of committing a theft or wrongful appropriation." Id. § 76-6-301(1)(b) (Supp. 2005). The robbery statute goes on to state:

- (2) An act is considered to be 'in the course of committing a theft or wrongful appropriation' if it occurs:
  - (a) in the course of an attempt to commit theft or wrongful appropriation;
  - (b) in the commission of theft or wrongful appropriation; or
  - (c) in the immediate flight after the attempt or commission.

Id. § 76-6-301(2). Phillips does not contest that he was in the process of committing a theft when the incident with the security guard occurred. Instead, he argues that he did not commit a robbery because he did not intentionally or knowingly use force or fear of immediate force when committing that theft. We disagree.

In attempting to escape from the library's security personnel, Phillips stated: "I have a knife." He then displayed a knife that was hidden in his sleeve. The security guard, who feared for his safety, grabbed Phillips's arm and the two began to scuffle. The security guard feared that if he let go of Phillips's arm he would be stabbed. Eventually, the security guard was able to gain some control over Phillips with the assistance of other employees. This evidence demonstrates, at a minimum, that by flashing the knife during his attempted escape, Phillips used the fear of force in the immediate flight after his theft of the compact discs. This constitutes robbery. Because he committed the robbery with a dangerous weapon, Phillips committed aggravated robbery. Accordingly, the evidence was sufficient to support the conviction, and the district court did

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<sup>1</sup>"'Dangerous weapon' means . . . any item capable of causing death or serious injury." Utah Code Ann. § 76-1-601(5)(a) (2003).

not commit plain error in failing to enter a directed verdict in Phillips's favor.

Affirmed.

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Pamela T. Greenwood,  
Associate Presiding Judge

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Carolyn B. McHugh, Judge

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Gregory K. Orme, Judge