

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20050670-CA
v.)	
)	
David Carl Reed,)	F I L E D
)	(June 2, 2006)
)	
Defendant and Appellant.)	2006 UT App 220

Third District, Salt Lake Department, 041905261
The Honorable Dennis M. Fuchs

Attorneys: Lisa J. Remal and Lori Seppi, Salt Lake City, for
Appellant
Mark L. Shurtleff and Joanne C. Slotnik, Salt Lake
City, for Appellee

Before Judges Bench, Davis, and McHugh.

BENCH, Presiding Judge:

Defendant David Carl Reed appeals his jury conviction of attempted child kidnapping, a first degree felony. See Utah Code Ann. §§ 76-5-301.1 (2003), -4-101 (Supp. 2005). Reed argues that the evidence presented at trial was insufficient to support a conviction. "[W]e view the evidence and all reasonable inferences in a light most favorable to that verdict and recite the facts accordingly." State v. Winfield, 2006 UT 4, ¶2, 128 P.3d 1171 (quotations and citation omitted).

In Utah, a person commits child kidnapping "if the [person] intentionally or knowingly, without authority of law, and by any means and in any manner, seizes, confines, detains, or transports a child under the age of [fourteen] without the consent of the victim's parent or guardian, or the consent of a person acting in loco parentis." Utah Code Ann. § 76-5-301.1. A person is guilty of attempted child kidnapping if a person "engages in conduct constituting a substantial step toward" child kidnapping, and "intends to commit" child kidnapping or "when causing a particular result is an element of [child kidnapping], he acts

with an awareness that his conduct is reasonably certain to cause that result." Id. § 76-4-101.

Reed claims that the evidence presented at trial was insufficient to support a conviction because his actions did not constitute "a substantial step toward" child kidnapping. Id. We disagree. "[T]o overturn a conviction based on insufficient evidence, a court must find that the evidence is sufficiently inconclusive or inherently improbable such that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime." Winfield, 2006 UT 4 at ¶25 (quotations and citation omitted). However, we "will not lightly overturn a jury verdict. . . . When there is any evidence, including reasonable inferences that can be drawn from it, from which findings of all the requisite elements of the crime can be reasonably made, our inquiry stops and we sustain the verdict." State v. McClain, 706 P.2d 603, 605 (Utah 1985).

In this matter, the child testified that Reed yelled at her and attempted to expose himself from his parked vehicle. She testified that Reed then followed her in his vehicle, opened his car door, and demanded that she get in his vehicle. An eyewitness neighbor testified that Reed pulled over, was talking with the child, and that the child repeatedly shook her head in a negative manner in response to Reed. Additionally, the grandmother of the child's friend testified that the child, in an attempt to get away from Reed, came to her home. The child was crying, hysterical, and shaking. She told the grandmother that there was a man in a car trying to get her. Viewing the facts and inferences in the light most favorable to the verdict, we hold that Reed's actions--opening his car door and demanding that the child get in his vehicle--constitute a substantial step towards committing child kidnapping. See Utah Code Ann. §§ 76-5-301.1, -4-101.

Reed also asserted at trial, and now asserts on appeal, that the child's testimony is questionable and imprecise. Reed's argument amounts to an attack on the credibility of the child. It is well settled that "determinations of witness credibility are left to the jury. The jury is free to believe or disbelieve all or part of any witness's testimony." State v. Hayes, 860 P.2d 968, 972 (Utah Ct. App. 1993). As a result, the question before this court is whether the evidence provided by the child witness "is so insubstantial that the jury must necessarily have entertained a reasonable doubt that the defendant committed the

crime charged." State v. Jonas, 793 P.2d 902, 905 (Utah Ct. App. 1990). We hold that it was not.

Accordingly, we affirm.

Russell W. Bench,
Presiding Judge

WE CONCUR:

James Z. Davis, Judge

Carolyn B. McHugh, Judge