

1997

# City of Orem v. James Gedo : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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CITY OF OREM,	)	
	)	
Plaintiff/Appellee,	)	APPELLEE'S BRIEF
	)	
v.	)	
	)	
JAMES GEDO,	)	Case No. 970636-CA
	)	
Defendant/Appellant.	)	

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ON APPEAL FROM JUDGMENT IN THE FOURTH CIRCUIT COURT  
THE HONORABLE JOHN C. BACKLUND, PRESIDING

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**UTAH COURT OF APPEALS  
BRIEF**

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DOCKET NO. 970636-CA

**FILED**  
MAR 19 1998  
COURT OF APPEALS

**LIST OF PARTIES IN THE COURT BELOW**

The following is a complete list of all the parties in the proceedings before the Fourth Circuit Court, State of Utah, Utah County, Orem Department:

The Honorable John C. Backlund, Judge, Presiding

The City of Orem, Plaintiff, represented by Robert J. Church, Esq.

James Gedo, Defendant, represented by Randy Lish, Esq.

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### **STATEMENT OF JURISDICTION**

The Utah Court of Appeals has jurisdiction over this matter pursuant to Utah Code Ann. § 78-2a-3(2)(f) (1953, as amended).

### **STATEMENT OF THE ISSUE**

Were the defendant's convictions for two counts of disorderly conduct supported by evidence capable of finding him guilty beyond a reasonable doubt?

### **STANDARD OF REVIEW**

This Court will not reverse a conviction unless the evidence, viewed in a light most favorable to the verdict, is sufficiently inconclusive or inherently improbable that reasonable minds must have entertained reasonable doubt that the defendant committed the crime of which he was convicted. *State v. Price*, 909 P.2d 256 (Utah App. 1995). Furthermore, the factual findings underlying the trial court's conclusions will not be set aside unless they are clearly erroneous. In order to properly challenge the trial court's findings on appeal, the complaining party must marshal all the evidence in support of the trial court's findings and then show that even in viewing the evidence in the light most favorable to the court below, the evidence is insufficient to support its findings. *State v. Wright*, 893 P.2d 1113, 1119 (Utah App. 1995).

### **STATEMENT OF THE CASE**

On May 18, 1997, appellant, James Gedo, (hereinafter referred to as "appellant") was sitting on a couch in the foyer of an L.D.S. chapel, located at 1450 S. 800 E. in the City of Orem,

(hereinafter referred to as “the City”) while the local ward was in their meetings<sup>1</sup> (p. 10).

Previous to this date on March 20, 1997 (p. 9), the appellant had been counseled by the Bishop and then given a copy of a letter telling the appellant that he was welcome to attend the ward’s sacrament, gospel doctrine and priesthood meetings, but that he must be in the chapel or classrooms and participate without disruption (pp. 8-9). He was also told that he could not speak with anyone under the age of 18. These limitations on appellant’s presence at church were precipitated by appellant’s past actions that had caused a high degree of concern for the Bishop and ward members, namely that appellant would wander the hallways and approach children of all ages to try and indoctrinate them with his way of thinking. Appellant even went so far as to wait in the bathroom for the children so he could talk with them (pp. 7-8, 21).

On May 18, 1997, Sacrament Meeting had concluded and Sunday School was in progress. Because the defendant was on the couch and not in a Sunday School class where he was supposed to be, the Bishop asked him to go to class, which the appellant refused to do (p. 10). When the appellant repeatedly refused to go to class, the Bishop told the appellant to leave the building (p. 12). Again, appellant refused to leave so the Bishop asked a gentlemen, D’Lyn Hershey (hereinafter referred to as “Hershey”), to watch the appellant while the police were called (p. 13). Actually, at that point, the Bishop did not call the police, thinking that the threat of calling would cause the defendant to either go to class or leave the building, as it had done in the past (pp. 12-13).

While the Bishop was in his office, the appellant got up and proceeded to the back of the building, rather than exit the building through the doors that were a mere few feet away (p. 37).

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<sup>1</sup> All factual references will made to the transcript of trial and its page numbers.

Concerned, Hershey followed the appellant. Hershey enlisted the aid of Leon Hunsaker (hereinafter referred to as “Hunsaker”), a wheelchair bound man and George Takau (hereinafter referred to as Takau) to follow the appellant (pp. 28, 30). Both Hershey and Hunsaker were telling appellant that he needed to stay on the couch as per the Bishop’s instructions. It appeared to Takau that the appellant was trying to avoid having to leave the building in that appellant stated he was “not going to leave” (pp. 47-50).

Because they didn’t know where in the building the defendant was going and was in violation of the Bishop’s request (p. 35), Hunsaker attempted to grab the appellant by his beltloop in an attempt to hold him and prevent him from leaving the church until the police arrived (pp. 30, 31). While Hunsaker, from his wheelchair, was attempting to grab appellant’s belt, the appellant began thrashing around, to the point of almost pulling Hunsaker from his wheelchair (p. 43) and using “a lot of foul language. There were other people in classrooms and in the hallway there. Young people, little kids from another ward that were not in class. I felt like they shouldn’t be subject to that” (p. 30). At that point, “we [meaning Takau and Hershey (pp. 38, 44)] kind of tried to get a hold of him” (p. 30) because “he started swearing and yelling and making a scene for himself” (p. 31). During the scuffle that ensued, the appellant again used extremely vulgar profanities which could be heard throughout the building (pp. 14, 30). By then, the men were attempting to restrain the appellant’s aggressive behavior. During the struggle, the appellant’s shirt was ripped and he received some small cuts on his chest (pp. 23, 24, 45). Takau stated that the shirt was torn and the scratches received were a result of the defendant struggling in Takau’s grasp. Takau was attempting to restrain appellant from further violent behavior (p. 45).

At approximately that time, the bishop exited his office and could hear the appellant screaming vulgarities as well as threats from the other side of the building (p. 24). He located the appellant and three men on the other side of the church (pp. 13-14). When he arrived on the scene, all three men were standing around the appellant, not touching him. The appellant was screaming at them (p. 14). The Bishop again told the appellant to leave (p. 14). The appellant then looked at Takau, asked Takau if he knew what a gun was and said "I'm going to kill you" (p. 44). The appellant walked through the building and proceeded towards an exit (p. 15). The entire time he was leaving the building, he was screaming and he screamed at the Bishop as he walked past him out the building (p. 17). After the appellant left, the Bishop decided that the police needed to be informed of what had happened so they were called (p. 17).

The police responded, took statements from the witnesses at the church, then went to the appellants home (p. 53). The appellant indicated that he was going to return to the church to make a citizen's arrest on those men who had allegedly assaulted him (p. 53). The officers told him that he was not to return to the church and that if he did he would be arrested (p. 53). Appellant was then cited for disorderly conduct for what had happened at the church (p. 53). The appellant disregarded those instructions and returned to the church, just as the meetings were adjourning (pp. 18-19).

He then positioned himself on the sidewalk across the street from the church. As members of the ward began walking home, the appellant would attempt to intercept them to allegedly talk to them and show them his injuries. The Bishop observed the appellant's behavior as well as heard the appellant yelling from across the street (p. 18). Officer Harold Peterson

(hereinafter referred to as “Peterson”) testified that when he responded to the church he heard the appellant yelling that he was “going to settle the score” (p. 58). Several people were observed trying to avoid the appellant, by either walking on the other side of the street, then crossing over after they had walked past his location, or trying to ignore him as they walked along the sidewalk (p. 20). He approached small children and told them to stop at which point the children ran from him (p. 25). He was also seen charging at several people and/or families, yelling at them at which point “they’d make a beeline back to the church property” (p. 58). Once Peterson arrived and saw what was happening, the appellant was arrested for a second incident of disorderly conduct (p. 60).

### **SUMMARY OF THE ARGUMENT**

There was sufficient evidence presented by the City on which the trial court could find the appellant guilty of both counts of disorderly conduct. Appellant had been told by the Bishop to leave the building. When he refused, he instructed Hershey to watch the appellant while he called the police. The appellant then left the area where he was told to stay to wait for the police and began walking through the building. When Hunsaker attempted to restrain appellant by grabbing his belt, appellant began yelling obscenities and threats that could be heard throughout the building. He also fought with the men who were merely trying to enforce the Bishop’s request. As he was leaving, he threatened to get a gun and kill Takau.

Appellant was warned by the police not to go back to the church but did anyway. When he returned, he was standing across the street yelling threats that could be heard across the street. He was also yelling at and charging at people as they attempted to walk home.

Appellant was properly cited for two counts of disorderly conduct. The court properly convicted him of both counts of disorderly conduct.

### ARGUMENT

#### THE CITY PRESENTED SUFFICIENT EVIDENCE ON WHICH THE TRIAL COURT COULD PROPERLY CONVICT DEFENDANT OF DISORDERLY CONDUCT.

This court has repeatedly stated that it will not set aside the trial court's findings unless they are clearly erroneous. *State v. Wright*, 893 P.2d at 1119. Furthermore, the appellant must "marshal all the evidence in support of the trial court's findings and then demonstrate that even viewing it in the light most favorable to the court below, the evidence is insufficient to support the findings" *Id.*, quoting *State v. Moore*, 802 P.2d 732, 738 (Utah App. 1990). The appellant has failed to show how that the evidence was insufficient to support the trial court's findings of guilt on two counts of disorderly conduct.

A person is guilty of disorderly conduct if:

(b) Intending to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof:

- (i) He engages in fighting or in violent, tumultuous, or threatening behavior; or
- (ii) He makes unreasonable noises in a public place; or
- (iii) He makes unreasonable noises in a public place which can be heard in a public place; or
- (iv) He engages in abusive or obscene language or makes obscene gestures in a public place; or
- (v) He obstructs vehicular or pedestrian traffic.

Utah Code Ann. § 76-9-102 (1953, as amended).

Prior to May 18, 1997, the appellant had been clearly told that he could attend the meetings at the church but only under certain conditions. On May 18, 1997, he was in violation

of those conditions. When asked to go to class, he refused. When asked to leave he refused. The Bishop asked Hershey to keep an eye on the appellant while the police were called. When the appellant got up and began walking away, Hershey enlisted the aid of two other gentlemen to keep an eye on the appellant. When Hunsaker attempted to grab the appellant by his beltloop, the appellant began spewing forth a tirade of obscenities and threats. It was after the appellant began swearing and thrashing to the point of pulling Hunsaker out of his wheelchair and because there were small children in the vicinity, that Hershey and Takau intervened and took hold of appellant. It was appellant's thrashing in the grasp of Takau that caused appellant's shirt to be ripped and his chest to be scratched. Appellant continued yelling vulgarities as he exited the church and threatened Takau that he would get a gun and kill Takau.

Despite being told by Orem police officers not to return to the church, the appellant did so. He charged at and yelled at people, families and small children to the point of causing them to try and ignore him as they walked past, walk out of their way to avoid him or to retreat back to the church. He was also yelling and making threats that he would "settle the score."

There is nothing inconclusive or inherently improbable that would cause reasonable minds to entertain any reasonable doubt as to appellant's guilt on these charges. *State v. Price*, 909 P.2d at 257. Appellant engaged in fighting, violent and tumultuous behavior. Appellant would have this Court believe that when Hunsaker grabbed appellant by the beltloop that that constituted an assault. Such is not the case. There was no intent to inflict "bodily injury." Utah Code Ann. §76-5-102 (1953, as amended). The testimony was undisputed that when the appellant was touched on the belt that that's when he began yelling obscenities and thrashing to

the point of pulling Hunsaker from his wheelchair. Merely touching a person on the beltloop is not justification for appellant's response. Charging and yelling at people as they walk home from church to the point of causing them to retreat back to the sanctity of the church grounds is only further evidence of tumultuous behavior. Utah Code Ann. § 76-9-102(i) (1953, as amended). He engaged in threatening behavior when he threatened to get a gun and kill Takau. He further engaged in threatening behavior when he was outside the church threatening to "settle the score."

*Id.*

Appellant was in a public building, a church, yelling obscenities to the point that he could be heard throughout the entire building. Small children were in the immediate vicinity and were forced to witness and listen to this tirade. The testimony is again undisputed, that when the Bishop arrived, Hershey, Hunsaker and Takau were not touching the appellant, yet the appellant continued to yell forth obscenities and did so as he was exiting the building. Utah Code Ann. §76-9-102(ii) (1953, as amended).

The language that he used was obscene and abusive and completely inappropriate for a church where families and small children are present. He blocked the sidewalk as the ward members were trying to go home to the point that many of them had to walk on the other side of the street to avoid him. Those that attempted to walk on the sidewalk where the appellant was located either then had to try and ignore him as they walked past or resorted to fleeing back to the church grounds. Utah Code Ann. §76-9-102(iv, v) (1953, as amended).

Based on the testimony presented, the facts were overwhelmingly in support of a finding of guilt on both counts. The City never denied nor did the witnesses deny that appellant's shirt was ripped or that his chest was scratched during the scuffle. Takau was very honest with the

court in stating that the appellant's shirt was ripped and appellant's chest scratched while Takau attempted to restrain appellant. However, the injuries were received because of appellant's initial disorderly conduct and his refusal to calm down, not because appellant had been assaulted.

### CONCLUSION

Upon viewing the facts in a light most favorable to the trial court, it is clear that the trial court was correct in finding the appellant guilty of two counts of disorderly conduct. Therefore, this court should affirm appellant's convictions.

RESPECTFULLY SUBMITTED this 18 day of March, 1998.

A handwritten signature in black ink, appearing to read "R. Church", is written over a solid horizontal line.

ROBERT J. CHURCH  
Orem City Prosecutor

**CERTIFICATE OF SERVICE**

I hereby certify that I mailed two true and correct copies of the foregoing Appellee's Brief, postage prepaid, this 19 day of March, 1998, to the following:

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