

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Kari Christina Spray,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

May 31, 2022

Court of Appeals Case No.  
21A-CR-2545

Appeal from the Jackson Superior  
Court

The Honorable James D. Worton,  
Special Judge

Trial Court Cause Nos.  
36D01-1906-CM-659  
36D01-1906-CM-660

**Tavitas, Judge.**

## Case Summary

- [1] Kari Spray (“Spray”) appeals her convictions for criminal trespass, a Class A misdemeanor, and four counts of unlawful use of 911 service, Class A misdemeanors. Spray argues that the evidence is insufficient to sustain her convictions. Finding that the evidence is sufficient, we affirm Spray’s convictions.

## Issue

- [2] Spray raises one issue, which we restate as whether the evidence is sufficient to sustain her convictions.

## Facts

- [3] Amber Schrader owns property in Seymour. During the relevant events, Schrader was dating Shane Spray (“Shane”), Spray’s ex-husband. On November 5, 2016, Schrader called the Jackson County Sheriff’s Department because Kari Spray was in Schrader’s driveway, and Schrader did not want Spray on her property. Deputy Jesse Hutchinson arrived at Schrader’s property, and Schrader asked Deputy Hutchinson to warn Spray about trespassing. Detective Mark Holt then met with Spray, repeatedly ordered Spray not to go to Schrader’s property, and told her that she would “go to jail next time” for criminal trespassing. Tr. Vol. II p. 18; State’s Ex. 1 at 5:50, 7:44.
- [4] On June 13, 2019, Shane was living with Schrader and received text messages from Spray because she believed Shane was harming their children. At the time, Spray was prohibited by court order from having unsupervised visitation

with the children. Spray pulled into the driveway of Schrader's residence and called out for the children. Spray then opened the doors to Shane's vehicle, "went through" the vehicle, and took pictures of the inside of the vehicle. Tr. Vol. II p. 32. Shane took photographs of Spray in the driveway of Schrader's residence and called the police. Deputy Hutchinson arrived at Schrader's property and located Spray at the neighbor's house. Spray admitted that she had been in Shane's driveway and claimed that she observed open alcohol containers in Shane's vehicle. *See State's Ex. 5.*

[5] On June 14, 2019, Spray made seven telephone calls to 911. Three of the calls were hang-up calls, but during the other calls, Spray repeatedly requested a welfare check on her children at Schrader's home. Although the 911 dispatcher advised Spray that the Department of Child Services and law enforcement had checked on the children, Spray kept calling 911.<sup>1</sup>

[6] In June 2019, the State charged Spray with one count of criminal trespass, a Class A misdemeanor, and seven counts of unlawful use of 911 services, Class A misdemeanors.<sup>2</sup> After a bench trial, Spray was found guilty of criminal trespass, a Class A misdemeanor, and four counts of unlawful use of 911 services, Class A misdemeanors. Spray now appeals.

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<sup>1</sup> Spray has previously made unsubstantiated reports of child abuse against Shane.

<sup>2</sup> The charges were filed under two separate cause numbers, but they were joined for trial.

## Analysis

- [7] Spray challenges the sufficiency of the evidence to sustain her convictions. Spray claims the State failed to prove that she acted with the requisite intent to commit trespass and unlawful use of 911 services.
- [8] Sufficiency of evidence claims “warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility.” *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id.* (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*, 139 S. Ct. 839 (2019)). “We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt.” *Id.* We affirm the conviction “unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)).

### *A. Criminal Trespass*

- [9] The offense of criminal trespass is governed by Indiana Code Section 35-43-2-2(b)(1), which provides: “A person who . . . not having a contractual interest in

the property, knowingly or intentionally enters the real property of another person after having been denied entry by the other person or that person's agent . . . commits criminal trespass, a Class A misdemeanor." "A person has been denied entry under subsection (b)(1) when the person has been denied entry by means of . . . personal communication, oral or written . . ." Ind. Code § 35-43-2-2(c).

[10] Spray argues "the State failed to prove that Spray had been previously denied access to the property by the property owner or the property owner's agent." Appellant's Br. p. 10. Spray contends that Schrader did not directly warn Spray to stay away from Schrader's property. Further, she argues that the State did not present evidence that Schrader "had control over the officer" or that Schrader told Spray the "officer was acting as [her] agent." *Id.* at 12.

[11] "When one person gives another person authority to act on his behalf, an agency relationship is created." *Glispie v. State*, 955 N.E.2d 819, 822 (Ind. Ct. App. 2011).

"Agency is a relationship resulting from the manifestation of consent by one party to another that the latter will act as an agent for the former." To establish an actual agency relationship, three elements must be shown: (1) manifestation of consent by the principal, (2) acceptance of authority by the agent, and (3) control exerted by the principal over the agent.

*Id.* (quoting *Demming v. Underwood*, 943 N.E.2d 878, 883 (Ind. Ct. App. 2011) (citations omitted), *trans. denied*).

[12] Schrader testified that she asked the officer to give Spray a trespass warning in 2016. The officer agreed to do so, and Detective Holt then warned Spray about criminal trespassing at Schrader's address. He repeatedly ordered Spray not to go to Schrader's property, told her that she would "go to jail next time," and recorded the conversation on his body camera. Tr. Vol. II p. 18; State's Ex. 1 at 5:50, 7:44. The officers were acting as agents at Schrader's behest and denied Spray entry to Schrader's property.

[13] Spray also argues that she had a reasonable belief that she could enter Schrader's property because she communicated with her ex-husband for three years after the 2016 warning and because she was securing the safety of her children. No evidence was presented that Spray and Shane had three years of communications after the 2016 trespass warning. Schrader testified that she never gave Spray permission to enter Schrader's property. Moreover, the trial court specifically noted at the sentencing hearing that it did not believe Spray was "concerned about [her] children." Tr. Vol. II p. 93. Spray's contention is merely a request that we reweigh the evidence, which we cannot do. The evidence is sufficient to sustain Spray's conviction for criminal trespass, a Class A misdemeanor.

### ***B. Unlawful Use of 911 Service***

[14] Indiana Code Section 36-8-16.7-46 provides: "A person who knowingly or intentionally places a 911 call: (1) for a purpose other than obtaining public safety assistance or emergency services . . . commits a Class A misdemeanor." Spray argues that her intent in calling 911 was to obtain public safety assistance

or emergency services for her children, whom Spray believed to be in danger. The State presented evidence that Spray called 911 seven times within a thirty-four-minute period. Spray merely hung up during three of the calls. In the other calls, Spray repeatedly requested welfare checks on her children. Although she was repeatedly informed that DCS and law enforcement had checked on the children and found nothing wrong, Spray persisted in calling 911.

- [15] The trial court did not believe that Spray was concerned about her children; instead, the trial court believed that Spray was using her children's safety as an "excuse to harass" her ex-husband and Schrader. Tr. Vol. II p. 93. Again, Spray's argument is merely a request to reweigh the evidence, which we cannot do. The evidence is sufficient to sustain Spray's convictions for four counts of unlawful use of 911 service, Class A misdemeanors.

## **Conclusion**

- [16] The evidence is sufficient to sustain Spray's convictions. Accordingly, we affirm.
- [17] Affirmed.

Riley, J., and May, J., concur.