MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Cara Schaefer Wieneke
Wieneke Law Office, LLC
Brooklyn, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

J.T. Whitehead
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Belinda A. Jones,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 28, 2023

Court of Appeals Case No. 22A-CR-3005

Appeal from the Shelby Superior Court

The Honorable R. Kent Apsley, Judge

Trial Court Cause No. 73D01-2107-F5-52

Memorandum Decision by Judge Bailey
Judges Brown and Weissmann concur.

Bailey, Judge.

Case Summary

[1] Belinda Jones appeals her convictions for intimidation, as a Level 5 felony,[1] and disorderly conduct, as a Class B misdemeanor.[2] Jones raises one issue for our review, namely, whether the State presented sufficient evidence to support her convictions. We affirm.

Facts and Procedural History

[2] On July 3, 2021, Colton Coon and his wife, Cinda, invited several friends to a barbecue at the home of his mother, Carol Taylor, and then to a nearby fireworks show in Waldron, Indiana. Brittany Chasteen drove herself, her husband Terry, Tiffany Moore, Jessica Stephens, Stephen's daughter, Shaun Dove, and three of her own children to Taylor's house. Johnny Phillips, who had ridden his motorcycle, arrived at Taylor's at the same time as Brittany. Both Brittany and Phillips parked their vehicles on the street in front of Jones' home, who is Taylor's neighbor.

[3] After they had parked, Jones exited her house and began "yelling" at the group that they were not allowed to park there because it was "her property." Tr. Vol. 1 at 12. Jones was "rude from the jump," but Brittany responded that they

---

[1] Ind. Code § 35-42-2-1(b)(2) (2022).

[2] I.C. § 35-45-1-3(a).

could park there because it was a "public road." *Id*. at 13. Brittany left her van where she had parked it, but Phillips moved his motorcycle to another location.

[4] The group then attended the barbecue for a while before they left for the fireworks show. Everyone went to the fireworks show except for Taylor, who remained at her home. In order to get to the location of the fireworks show, the group had to walk in front of Jones' house. Jones was again "mad" and "yelling at everybody" who walked past her house, including the members of the group. *Id*. at 15.

[5] After the fireworks show ended, the group walked back to their vehicles. Jones was on her porch, and she again yelled at them. The individuals "ignore[ed] her," and Jones entered her house and returned outside with a handgun. *Id*. at 17. Brittany was the first to see Jones with the handgun, and she started yelling: "She has a gun. Get in the car." *Id*. at 18. Some members of the group then began ushering the children into the car. Jones continued to "scream[]" at the group. *Id*. at 19. Jones "wav[ed] the gun" and "pointed it at all of" them. *Id*. at 53. She also pointed it "in the air" and tried to fire it, but "nothing actually came out." *Id*. at 20. Some of the group members heard the gun "clicking." *Id*. at 108. Jones continued yelling at the group to get off her property, and she continued to wave the gun around.

[6] As soon as he saw Jones with the handgun, Dove called 9-1-1 and then attempted to persuade Jones to put down the gun. Colton ran to Taylor's house and told Taylor that Jones had a gun. Taylor arrived at Jones' home. Taylor

confronted Jones, and the two proceeded to argue. At some point, Jones went inside her house, obtained a shotgun, returned outside, and stated: "this one is f**king loaded." *Id*. at 184

[7] The officers arrived shortly thereafter and deescalated the situation. After officers collected everyone's statements, they confiscated two firearms from Jones' possession, both of which were unloaded.[3] The State then charged Jones with intimidation, as a Level 5 felony (Count 1); criminal recklessness, as a Level 6 felony (Count 2);[4] pointing a firearm, as a Class A misdemeanor (Count 3);[5] disorderly conduct, as a Class B misdemeanor (Count 4); and attempted criminal recklessness, as a Level 6 felony (Count 5).[6] All of the charges related to Jones' actions with the handgun; none were based on her actions with the shotgun. *See* Appellant's App. Vol. 2 at 19-22, 58; *see also* Tr. Vol. 1 at 4-5.

[8] During the ensuing bench trial, Brittany testified that, while Jones had stated that the first firearm was not loaded, she "didn't trust" Jones. Tr. Vol. 1 at 24. She also testified that she felt that Jones had "targeted" her group because they had parked in front of Jones' home. *Id*. at 26. Brittany also testified that she was "scared." *Id*. at 21. Terry testified that Jones had pointed the handgun at

---

[3] The State contends that the firearms were both loaded. *See* Appellee's Br. at 8. However, the only evidence regarding the state of the firearms came from Corporal Nathan Batton who testified that, to the best of his memory, "they were unloaded." Tr. Vol. 2 at 231.

[4] I.C. § 35-42-2-2(b).

[5] I.C. § 35-47-4-3(b).

[6] I.C. §§ 35-42-2-2; 35-41-5-2.

"all of" them. *Id*. at 53. He also testified that he heard "clicking" when Jones attempted to fire the handgun, which he assumed was "dry firing," but that he was worried that the gun might be loaded but "jammed." *Id*. at 53, 76. Phillips also testified that he was "scared" because he did not know if the handgun was loaded or unloaded. *Id*. at 89. In addition, Dove testified that he felt "threatened" and "was in fear for [his] life." *Id*. at 126.

[9] Jones' husband Mark testified that, after the fireworks show, Jones had asked the group to leave her property but that they had responded by "charging towards her[.]" Tr. Vol. 2 at 26. Mark testified that, at that point, Jones "pointed [the handgun] up" in an attempt to fire "a warning shot" but that it just "clicked twice" because it was empty. *Id*. Further, Jones testified that she had intended to "fire a warning shot" to deter the group but that "nothing happened" when she pulled the trigger because she "must have forgotten to reload it[.]" *Id*. at 65.

[10] Following the bench trial, the court found Jones guilty as charged. However, due to double jeopardy concerns, the court only entered judgment of conviction on Counts 1 and 4. The court then sentenced Jones to concurrent terms of three years for Count 1 and 180 days for Count 4, all suspended to probation. This appeal ensued.

Discussion and Decision

[11] Jones contends that the State failed to present sufficient evidence to support her convictions for intimidation and disorderly conduct. Our standard of review on a claim of insufficient evidence is well settled:

> For a sufficiency of the evidence claim, we look only at the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess the credibility of witnesses or reweigh the evidence. *Id*. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id*.

Love v. State, 73 N.E.3d 693, 696 (Ind. 2017).

Intimidation

[12] Jones first contends that the State failed to present sufficient evidence to demonstrate that she had committed intimidation. To prove that Jones committed intimidation, as a Level 5 felony, the State was required to prove that she had communicated a threat to other individuals with the intent that those individuals be placed in fear of retaliation for a prior lawful act and that Jones drew or used a deadly weapon. *See* Ind Code § 35-45-2-1(b)(2). "'Threat' means an expression, by words or action, of an intention to . . . unlawfully injure the person threatened" or "commit a crime." I.C. § 35-45-2-1(c). A defendant's intent may be proven by circumstantial evidence alone, and knowledge and intent may be inferred from the facts and circumstances of each case. *B.B. v. State*, 141 N.E.3d 856, 860 (Ind. Ct. App. 2020).

[13] On appeal, Jones contends that the State failed to demonstrate that she had committed intimidation because there is no evidence that she "communicated a threat" to the group. Appellant's Br. at 15. In particular, Jones asserts that she did not threaten any of the individuals because she "never approached the group" and because "[e]veryone knew [her] handgun was not loaded[.]" *Id*. at 15-16. We cannot agree.

[14] The evidence most favorable to the judgment shows that, when Brittany and Phillips first parked their cars in front of Jones' house, Jones was angry and began yelling at them to move their vehicles off of what she deemed to be her property. Phillips ultimately moved his motorcycle, but Brittany left her car where it was. After the group walked past Jones' house to go to the fireworks show, Jones was again "mad," and she yelled at the group members. Tr. Vol. 1 at 15. Then, when the group returned to the car from the fireworks show, Jones yelled at the group a third time. When the group ignored her, Jones obtained a handgun from her house and "wav[ed]" it around and "pointed it at" the members of the group. Tr. Vol. 1 at 53.

[15] Further, while Jones contends that the firearm was not loaded such that she could not have communicated a threat, we first note that Jones herself believed the gun to be loaded. Indeed, she admitted that she "must have forgotten to reload it[.]" Tr. Vol. 2 at 65. In addition, while several members of the group heard the gun "clicking" when she fired it into the air, which could have been the gun "dry firing," Terry testified that he feared the gun might have been loaded but "jammed." Tr. Vol. 1 at 76. Phillips testified that he did not know

if the gun was loaded or unloaded. And multiple group members testified that they were scared for either their lives or the lives of the children present.

[16] We note that, while the mere display of a firearm does not constitute a threat, "the existence of words or conduct that are reasonably likely to incite confrontation, coupled with the display of a firearm" may. *Johnson v. State*, 743 N.E.2d 755, 756 (Ind. 2001). And, here, the evidence shows that Jones did more than merely display a firearm. In particular, Jones—while angry at the group for parking their car in front of her home—yelled at the group numerous times and then waved it around and pointed it in their direction.[7] Based on that evidence, a reasonable fact-finder could readily infer that Jones had communicated a nonverbal threat to the group. We therefore hold that the State presented sufficient evidence to show that Jones committed intimidation.

Disorderly Conduct

[17] Jones next contends that the State presented insufficient evidence to prove that she committed disorderly conduct. To show that Jones committed disorderly conduct, as a Class B misdemeanor, the State was required to show that Jones had recklessly, knowingly, or intentionally engaged in fighting or in tumultuous conduct. *See* I.C. § 35-45-1-3(a)(1). "Tumultuous conduct" is defined as

[7] We note that Jones' conviction for intimidation was based only on her action of pointing the firearm, not for attempting to fire the gun into the air. Indeed, in its closing arguments, the State argued that the intimidation "is clear from pointing a firearm at that van because it is a clear communication of a threat." Tr. Vol. 2 at 101.

"conduct that results in, or is likely to result in, serious bodily injury to a person or substantial damage to property." I.C. § 35-45-1-1.

[18] Jones contends that the State failed to present sufficient evidence to support that conviction because "no one suffered any serious bodily injury" and because her act of waving of an unloaded handgun in the air was "not likely to result in serious bodily injury or substantial property damage." Appellant's Br. at 17-18. However, again, the evidence shows that Jones was angry at the group for parking in front of her house. The evidence further shows that, after she obtained a handgun, she attempted to fire a warning shot into the air. While the gun was fortunately unloaded, Jones herself believed that it was loaded. Indeed, Jones admitted that she had intended to "fire a warning shot" to deter the group but that "nothing happened" when she pulled the trigger because she "must have forgotten to reload it[.]" *Id*. at 65. It goes without saying that firing a gun around a group of people—even if the intent was not to actually strike anyone—is conduct that is likely to result in serious bodily injury. Based on that evidence, a reasonable fact-finder could infer that Jones had engaged in tumultuous conduct such that the State presented sufficient evidence to support her conviction for disorderly conduct.

Conclusion

[19] The State presented sufficient evidence to support Jones' convictions for intimidation and disorderly conduct. We therefore affirm her convictions.[8]

[20] Affirmed.

Brown, J., and Weissmann, J., concur.

[8] Because we affirm Jones' convictions, we need not address her argument that the State failed to present sufficient evidence to show that she committed criminal recklessness—a charge for which the court found her guilty but did not enter a judgment of conviction due to double jeopardy concerns.