NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c)
Ariz. R. Crim. P. 31.24

DIVISION ONE
FILED: 01/19/2010
PHILIP G. URRY, CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 08-0548
	)	
Appellee,	)	DEPARTMENT B
	)	
v.	)	**MEMORANDUM DECISION**
	)	
PHILIP JERELL MADISON,	)	(Not for Publication –
	)	Rule 111, Rules of the
Appellant.	)	Arizona Supreme Court)
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-141739-001 DT

The Honorable Jeanne M. Garcia, Judge

AFFIRMED

Terry Goddard, Attorney General — Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
and Susanne Bartlett Blomo, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender — Phoenix
By Karen M. Noble, Deputy Public Defender
Attorneys for Appellant

B A R K E R, Judge

¶1 Philip Jerell Madison appeals his conviction for disorderly conduct, a dangerous offense, on the ground of insufficiency of the evidence. Specifically, he argues that the State failed to offer sufficient evidence that the persons in another vehicle were "in repose" before he displayed a handgun, that display of the handgun actually disturbed their peace, and that display of a handgun in a vehicle on Arizona highways would disturb a reasonable person's peace. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") §§ 12-120.21(A)(1) (2030), 13-4031 (2001), and 13-4033(A)(1) (Supp. 2009).

Discussion

¶2 Madison's arguments stem from a misunderstanding of the elements of the offense of disorderly conduct. Madison was charged with disorderly conduct for "intentionally or knowingly disturb[ing] the peace or quiet of a neighborhood, family, or person, by recklessly handling, displaying, or discharging a handgun," conduct allegedly arising during a road rage incident on June 27, 2007. The jury convicted Madison of the charged offense and found it to be a dangerous offense.[1] The offense of disorderly conduct requires that a person, "with intent to disturb the peace or quiet of a neighborhood, family or person,

[1] The judge sentenced Madison to 1.5 years in prison, and Madison timely appealed.

or with knowledge of doing so . . . [r]ecklessly . . . displays . . . a deadly weapon." A.R.S. § 13-2904(A)(6) (2001). To convict Madison of disorderly conduct, the State was not required to prove, as Madison argues, that either of the occupants of the other vehicle were at peace or "in repose" when he displayed the handgun, or that the display actually disturbed their peace. Madison's reliance on *Maricopa County Juvenile Action No. JV133051*, 184 Ariz. 473, 910 P.2d. 18 (App. 1995), *overruled by State v. Miranda*, 200 Ariz. 67, 22 P.3d 506 (2001), is misplaced. That case held that a conviction for disorderly conduct requires a finding that the victim was at peace when the conduct occurred. *See id*. at 475, 910 P.2d at 20. In *Miranda*, our supreme court held that the statute "does not require that one actually disturb the peace of another through certain acts," but rather "requires the commission of certain acts 'with intent to disturb the peace . . . or with knowledge of doing so.'" *Miranda*, 200 Ariz. at 69, ¶ 5, 22 P.3d at 508. The court further held that "insofar as our holding is inconsistent with those of the court of appeals in *In re JV133051* and *Cutright*,[2] we expressly disapprove those opinions." *Id.* In accordance with the express direction of *Miranda*, the State was required to prove in pertinent part only that Madison recklessly displayed a

[2] *State v. Cutright,* 196 Ariz. 567, 2 P.3d 657 (App. 1999).

handgun, with the intent to disturb the peace of another person, or with knowledge of doing so. *See id.*[3]

¶3 In reviewing the sufficiency of evidence, we view the evidence in the light most favorable to upholding the jury's verdict and resolve conflicting evidence against the defendant. *State v. Girdler,* 138 Ariz. 482, 488, 675 P.2d 1301, 1307 (1983). Credibility determinations are for the factfinder, not this court, *see State v. Dickens,* 187 Ariz. 1, 21, 926 P.2d 468, 488 (1996), and no distinction exists between circumstantial and direct evidence. *State v. Stuard*, 176 Ariz. 589, 603, 863 P.2d 881, 895 (1993). "To set aside a jury verdict for insufficient evidence it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987).[4]

¶4 Viewing the evidence in the light most favorable to upholding the conviction, the record supports Madison's conviction for disorderly conduct. The driver of the other

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[3] Contrary to Madison's argument, the term "neighborhood" as used in this statute has its ordinary meaning, which has no applicability to these facts. *See State v. Johnson*, 112 Ariz. 383, 385, 542 P.2d 808, 810 (1975).

[4] Madison also mentions the risk of duplicitous indictments, a resulting non-unanimous jury verdict, and statutory vagueness issues that he did not raise below and does not clearly raise on appeal. We accordingly construe these claims as abandoned and waived. *See State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989).

vehicle, a tow truck, testified she was driving onto I-17 on June 27, 2007, at about 10:30 p.m. when Madison tried to sideswipe her vehicle and repeatedly drove in front of her vehicle and hit the brakes. She further explained that while Madison was driving to the right of her vehicle, he pointed a gun at her and her passenger through the open driver's side window. She told the jury she was scared when she saw the handgun. An officer who interviewed her immediately after the incident said she told him that she "felt very threaten[ed] and that she thought that he might actually shoot." Her passenger confirmed that Madison kept braking in front of their vehicle and pointed a black semiautomatic at them when he was beside them. He testified that he "got scared" when Madison pointed the gun at him. The driver called 9-1-1 to report that Madison had pointed a gun at them. Police found a black semiautomatic handgun under the driver's-side seat in Madison's vehicle, although Madison denied pointing it at the other vehicle, explaining that his vehicle windows were tinted.

¶5 A reasonable jury could have concluded on this evidence that Madison recklessly pointed the gun at the occupants of the other vehicle, intending to disturb their peace, or with full knowledge that he was disturbing their peace by doing so. We reject Madison's argument that gun ownership is so accepted in this State that a person of ordinary

sensitivities driving the Arizona highways might not be disturbed by having a gun pointed at them. We find that the jury could reasonably have inferred that disturbing the peace was precisely Madison's intent in pointing the gun at the occupants of the other vehicle. On this record, the jury had more than sufficient evidence to convict Madison of disorderly conduct.

Conclusion

¶6 For the foregoing reasons, we affirm Madison's conviction and sentence.

/s/
_____
DANIEL A. BARKER, Judge

CONCURRING:

/s/
_____
PATRICIA K. NORRIS, Presiding Judge

/s/
_____
PETER B. SWANN, Judge