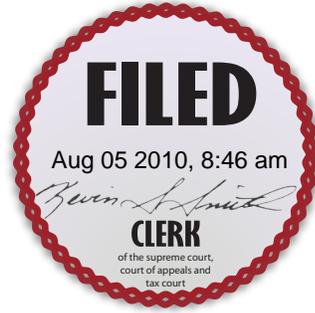


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

AGNES JONES,)
)
 Appellant-Defendant,)
)
 vs.) No. 49A02-0912-CR-1283
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Linda E. Brown, Judge
Cause No. 49F10-0908-CV-68753

August 5, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Agnes Jones (“Jones”) appeals her conviction, after a bench trial, of criminal recklessness, a class B misdemeanor.

We affirm.

ISSUE

Whether there is sufficient evidence to support Jones’ conviction of criminal recklessness.

FACTS

On July 31, 2009, at about two o’clock in the morning, two citizens waved down Officer Justin Toussing (“Toussing”) of the Indianapolis Metropolitan Police Department (“IMPD”). The two individuals stated that there were two aggressive dogs up the street preventing them from entering their home; and the dogs were known to be vicious. Toussing arrived at the residence indicated, which was Jones’ residence, and observed two large aggressive dogs in the front yard barking. One dog, Otis, was orange colored, and weighed approximately seventy (70) pounds; the other dog was white and tan and a bit smaller than Otis. Because the dogs were large and appeared to be aggressive, Toussing remained in his patrol car. He contacted his control operator, who called Jones and asked her to come out and retrieve the dogs. Jones advised “that the dogs...belonged to her son,” hung up the telephone, and she “went back to sleep.” (Tr. 33). When Jones did not emerge to secure the dogs, Toussing contacted Animal Control for assistance.

Officer Danny Reynolds of IMPD and Animal Control officer, Deborah Dobbins (“Dobbins”), arrived. As the three officers were attempting to collect the two dogs, Jones opened the front door and let Otis inside the house. Dobbins then tranquilized and collected the smaller dog.

Dobbins told Toussing that she intended to issue Jones a citation. Toussing and Reynolds knocked loudly on Jones’ front door several times before she finally answered the door. With the storm door between them, Toussing could see Otis behind Jones. He asked her to put Otis away and to step outside to speak with him. When Jones did not respond, Toussing, again, in a loud voice told her to put Otis away. After Toussing asked Jones to put Otis away, a third time, she opened the door and Otis exploded out of the door, charged and pushed Toussing down in the bushes, and climbed on top of him.

Otis was barking, growling, and attempting to bite Toussing’s neck. Because the dog was on top of him, Toussing was unable to reach his gun. However, Toussing was able to retrieve his flashlight, and struck Otis’ head multiple times with the flashlight. Otis bit Toussing’s hand, puncturing his pinky finger, snatched the flashlight away with his mouth, and tossed the flashlight into the bushes. Toussing managed to kick Otis off of him. As Otis charged Toussing again, Officer Reynolds shot Otis twice in the back. Otis fell down, but immediately got back up and, again, charged Toussing. Officer Reynolds then shot Otis two more times. When Otis began to crawl away, Officer Reynolds delivered a fatal shot to his neck. The ambulance arrived and took Toussing to be treated for his injury.

The State charged Jones with one count of criminal recklessness, as a class B misdemeanor. On December 2, 2009, a bench trial was held. Officers Toussing and Reynolds testified to the foregoing facts. Jones testified that the dogs belonged to her son, who resided at another location, and that she had little interaction with them. She also testified that after she was awakened by the phone call and was a bit incoherent, she let Otis in the house and told her son's father to put him in the garage. She testified that she thought Otis had been put away before she opened the door. She further testified that she was aware that Otis had attacked the meter maid the previous week. The trial court found Jones guilty of criminal recklessness. The trial court sentenced Jones to one hundred and eighty (180) days in jail; one hundred and seventy (170) days suspended; two days credit; and eight days remaining to be served. The court also placed Jones on probation for one hundred and seventy (170) days.

DECISION

When reviewing the sufficiency of the evidence to support a conviction, only the probative evidence and reasonable inferences supporting the verdict will be considered. *Drane v. State*, 867 N.E.2d 144 (Ind. 2007). We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.*

Jones argues that when she opened the door for the officers, she was under the impression that Otis was in the garage. She further argues that “cracking the door open, at the moment when [the dog] came up behind her, may have been due to inadvertence or

an error of judgment, but does not constitute recklessness.” Jones’ Br. 10. We do not agree.

Indiana Code section 35-41-2-2(c) provides that “a person engages in conduct ‘recklessly’ if [she] engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct.” A person who recklessly, knowingly, or intentionally performs an act that creates a substantial risk of bodily injury to another person commits criminal recklessness, a class B misdemeanor. Ind. Code §35-42-2-2(b)(1).

The State charged that Jones committed criminal recklessness, when she recklessly “let[] her dog out of the house unrestrained, which created a substantial risk of bodily injury to” the three officers. (App. 15). Because Jones was charged with criminal recklessness, the State need not have proved she acted intentionally. *Miller v. State*, 449 N.E.2d 1119, 1121 (Ind. 1983). Rather, the State must prove that her actions were reckless, or that she realized or should have realized there was a strong probability that bodily injury may have occurred as a result of her actions. *Id.*

In *Irwin v. State*, we found that the evidence was sufficient to convict the defendant of criminal recklessness where he served a customer ten double drinks over a period of 130 minutes and then allowed him to leave the premises, crashing and killing three people along the way. *Irwin v. State*, 744 N.E.2d 565, 567 (Ind. 2001). We held

that Irwin had unjustifiably disregarded the harm that might result, thereby performing an act that created a substantial risk of bodily injury to the general public. *Id* at 568.

Here, Jones admitted to knowing that Otis had attacked the meter maid a week before this incident and had been quarantined. She admitted that police dispatch called her by telephone and asked her to come outside and secure her dogs, but she did not; instead, she hung up the telephone and went back to sleep. As the three officers were trying to collect the dogs, Jones opened the front door and let Otis inside the house. Yet, she did not emerge from her residence to cooperate with the officers or to engage with them in anyway. Subsequently, in response to repeated loud knocks on her door, Jones at first opened her “solid front door,” and stood behind her storm door, with Otis behind her. (Tr. 11). She did not comply with the officers repeated “loud” orders that she put the dog away because they needed to speak with her. Based upon the totality of the facts and circumstances, Jones’ opening of the storm door was done in unjustifiable disregard of the harm that might result, thereby performing an act that created a substantial risk of bodily injury to the officers. *Irwin*, 744 N.E.2d at 567.

In light of the foregoing, we find that the evidence presented to the trial court supports the inference that Jones acted recklessly.

Affirmed.

BRADFORD, J., and BROWN, J., concur.