IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

MICHAEL LAWRENCE MORALES, *Appellant*.

No. 1 CA-CR 18-0780
FILED 10-29-2019

Appeal from the Superior Court in Mohave County
No. S8015CR201701282
The Honorable Richard Weiss, Judge, *Retired*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Michael F. Valenzuela
Counsel for Appellee

Mohave County Legal Defender's Office, Kingman
By Eric Devany
Counsel for Appellant

MEMORANDUM DECISION

Judge Jennifer M. Perkins delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge Paul J. McMurdie joined.

P E R K I N S, Judge:

¶1 Michael Lawrence Morales appeals his conviction and sentence for one count of disorderly conduct involving a weapon. Morales argues that the conviction is unsupported by the evidence and that his sentence is illegal because the jury did not make a separate finding of dangerousness. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 We view the facts in the light most favorable to upholding the jury's verdict. *State v. Payne*, 233 Ariz. 484, 509, ¶ 93 (2013). On September 2, 2017, Morales and the victims, O.D. and N.Z., were separately vacationing in Lake Havasu City. N.Z. lost her iPhone, and a member of Morales' party discovered the phone and gave it to him. O.D. called N.Z.'s phone, Morales answered, and they scheduled a time to retrieve the phone from Morales' rental house. When O.D. and N.Z. showed up in their car, Morales walked towards them with the iPhone and his hand resting near the butt of a gun tucked into his waistband. Morales demanded $200 for returning the phone, but O.D. refused. During the confrontation, N.Z. reached out of the car and pulled her phone out of Morales' back pocket. As they drove away, O.D. saw Morales pull the gun out of his waistband and point it at them.

¶3 The State charged Morales with theft by extortion and disorderly conduct involving a weapon, alleged as dangerous felony offenses. At trial, Morales argued self-defense in response to the disorderly conduct charge. Morales and his brother testified that Morales drew the gun after O.D. threatened to "shank" him. The jury convicted Morales of disorderly conduct involving a weapon but found him not guilty of theft by extortion. The jury also found that Morales "[u]se[d], threatened use or possess[ed] a deadly weapon or dangerous instrument during the commission of the crime." The court sentenced Morales as a first-time dangerous offender to a mitigated term of 1.5 years in prison. Morales now appeals.

DISCUSSION

I. Sufficiency of the Evidence

¶4 Morales argues that the State failed to present sufficient evidence that he intended or knew his conduct disturbed the peace and quiet of the victims. We review whether there was sufficient evidence to sustain the verdict *de novo*. *State v. West*, 226 Ariz. 559, 563, ¶ 19 (2011).

¶5 Sufficient evidence exists when there is substantial evidence to support the jury's verdict. *State v. Duarte*, 246 Ariz. 338, 344, ¶ 16 (App. 2018). Substantial evidence "is such proof that reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Borquez*, 232 Ariz. 484, 487, ¶ 9 (App. 2013) (internal quotations omitted). We review the evidence admitted at trial in the light most favorable to sustaining the verdict. *Id.*

¶6 Here, Morales was charged with intentionally or knowingly disturbing the peace or quiet of a neighborhood by recklessly handling, displaying, or discharging a deadly weapon. A.R.S. § 13-2904(A)(6). There were no named victims in the indictment; thus, we reject Morales' argument that the State had to show he disturbed the peace and quiet of O.D. and N.Z. *See State v. Burdick*, 211 Ariz. 583, 585, ¶ 8 (App. 2005) (when charged with disturbing the peace of the neighborhood, "the defendant's conduct may be measured against an objective standard and the state need not prove a particular person was disturbed"); *State v. Miranda*, 200 Ariz. 67, 69, ¶ 5 (2001) ("[T]he statute defining disorderly conduct does not require that one actually disturb the peace of another through certain acts."). We also reject Morales' contention that the evidence is insufficient because only O.D. saw the gun. *See State v. Snider*, 233 Ariz. 243, 247, ¶ 11 (App. 2013) (dangerousness finding supported when witnesses, not the victims, saw the gun).

¶7 There is sufficient trial evidence to support Morales' intentional or knowing state of mind. Morales testified that he displayed the firearm to the victims "like as a warning," "aiming [the gun] at the floor just to let [the victims] know I had a firearm on me." The jury properly could conclude these statements showed Morales acted with intent when he displayed the gun. Morales also testified that he brought the gun to the meeting "[j]ust in case anything does go very south, I wanted to make sure I had some type of protection on me." Finally, any differing witness testimony as to whether Morales pointed the gun at the victims or at the ground was a factual issue for the jury to resolve. *See State v. Manzanedo*,

210 Ariz. 292, 293, ¶ 3 (App. 2005) (jury resolves conflicts in evidence). Because Morales' "conduct and comments are evidence of his state of mind," there was substantial evidence from which reasonable jurors could have found Morales guilty of disorderly conduct beyond a reasonable doubt. *State v. Bearup*, 221 Ariz. 163, 167, ¶ 16 (2009) (quoting *State v. Routhier*, 137 Ariz. 90, 99 (1983)).

II. Dangerous Offense Allegation

¶8 Morales argues the enhanced sentence was illegal because the jury did not make a specific dangerousness finding. *See* A.R.S. § 13-704(L). Because Morales did not object at trial, we limit our review to fundamental, prejudicial error. *State v. Escalante*, 245 Ariz. 135, 142, ¶¶ 12, 21 (2018).

¶9 A dangerousness finding enhances a defendant's sentence, and, generally, must be found by a jury. *State v. Larin*, 233 Ariz. 202, 212, ¶ 38 (App. 2013). A separate jury finding is not required if dangerousness is inherent in the verdict or the dangerous nature is "admitted or found by the trier of fact." *State v. Andersen*, 177 Ariz. 381, 384 (App. 1993) ("The defendant's testimony can supply the requisite admission."); *see, e.g.*, *State v. Gatliff*, 209 Ariz. 362, 365, ¶ 17 (App. 2004) (dangerousness is inherent to the crime of arson of an occupied structure).

¶10 Morales was charged with disorderly conduct for "recklessly handling, displaying or discharging a deadly weapon." A.R.S. § 13-2904(A)(6). A "dangerous offense" may be found when there is "the discharge, use or threatening exhibition of a deadly weapon . . . ." A.R.S. § 13-105(13). While a finding of dangerousness may not be inherent in the disorderly conduct charge under these facts (because the gun was not discharged), Morales' admissions at trial supply the facts required for a finding of dangerousness.

¶11 The unchallenged trial evidence is that Morales exhibited the gun as the victims drove away. While our criminal code does not define "exhibition," our supreme court previously noted its meaning includes "to present to public view; show; *display*." *Andersen,* 177 Ariz. at 384 (quoting *Webster's New Universal Unabridged Dictionary* (2d ed. 1983)) (emphasis added). Further, Morales' admissions that he displayed the gun as a warning to the victims support the finding that it was a "*threatening* exhibition of a deadly weapon." Because Morales admitted to exhibiting the gun in the presence of the victims, there is sufficient evidence that the offense was dangerous. Therefore, it was not necessary to submit the

allegation of dangerousness to the jury, and the court did not err by imposing an enhanced sentence.

CONCLUSION

¶12 We affirm Morales' convictions and sentences.