IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

MICHAEL SHERMAN WALKER III,
Appellant.

No. 2 CA-CR 2021-0029
Filed October 26, 2021

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Pima County
No. CR20173416001
The Honorable Javier Chon-Lopez, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Linley Wilson, Deputy Solicitor General/Section Chief of Criminal Appeals
By Mariette S. Ambri, Assistant Attorney General, Tucson
Counsel for Appellee

James Fullin, Pima County Legal Defender
By Robb P. Holmes, Assistant Legal Defender, Tucson
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MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Espinosa and Vice Chief Judge Staring concurred.

E C K E R S T R O M, Judge:

¶1 After a jury trial, Michael Walker III was convicted of disorderly conduct. The trial court sentenced him to an enhanced, slightly mitigated prison term of 1.75 years. On appeal, Walker contends the state presented insufficient evidence to support the conviction. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to affirming the jury's verdict. *See State v. Buccheri-Bianca*, 233 Ariz. 324, ¶ 2 (App. 2013). Late one evening in April 2012, K.J. returned to the apartment complex where she lived in midtown Tucson, after having dinner at a restaurant with her family. When she got out of her car, she retrieved a pizza box containing leftovers from the backseat, shut the door, and then proceeded to the front of her car on the way to her apartment. However, she heard footsteps "pounding" behind her and turned around. She saw a young man dressed in all black and a beanie-cap running at a fast pace directly at her between the cars. When he was within a couple of feet of her, K.J. threw the pizza box at him. As a result, K.J. lost her balance, landed on the ground, set off her car alarm, and began screaming for help. Before she fell, she saw a flash, heard a "muffled" bang, and smelled gun smoke. The man, who had also fallen down, got up and ran away in the opposite direction.

¶3 K.J. ran to her apartment, where she called 9-1-1. After officers arrived, they found a shell casing by the curb near the front of K.J.'s car and an impact site from a bullet in the apartment wall. Several years later, in 2017, analysts matched a DNA sample collected from Walker in an unrelated case to DNA collected from the pizza box.

¶4 A grand jury indicted Walker on one count of aggravated assault involving a deadly weapon or dangerous instrument. At trial, the jury acquitted him of that offense but found him guilty of the lesser-

included offense of disorderly conduct, a dangerous-nature offense. During the subsequent aggravation phase of trial, Walker testified. He explained that he had been running through the parking lot that night to escape an officer because he thought the officer saw him make a drug transaction. Walker testified that the parking lot had been dark and that he had not seen anyone until he was hit with what he assumed was a car mirror. He further stated that he had been carrying the gun in his hand because it was falling down his pant leg as he was running. The jury found the aggravators of significant emotional harm and lying in wait not proven.

¶5 After trial, Walker renewed his motion for a directed verdict, pursuant to Rule 20(b), Ariz. R. Crim. P., or alternatively requested a new trial. He argued, in part, that the state had failed to present evidence of the requisite mental states for disorderly conduct. The trial court denied the motion for a judgment of acquittal and for a new trial. The court found the evidence presented at trial sufficient to convict Walker of disorderly conduct, noting that Walker was essentially asking it to consider the evidence in the light most favorable to acquitting him. Thereafter, the court sentenced Walker as described above. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Discussion

¶6 Walker contends the state presented insufficient evidence to support his conviction for disorderly conduct. We review de novo the sufficiency of the evidence. *State v. Snider*, 233 Ariz. 243, ¶ 4 (App. 2013). In doing so, we view the evidence in the light most favorable to sustaining the jury's verdict and resolve all inferences against the defendant. *State v. Felix*, 237 Ariz. 280, ¶ 30 (App. 2015).

¶7 The trial court must enter a judgment of acquittal "if there is no substantial evidence to support a conviction." Ariz. R. Crim. P. 20(a)(1); *see also State v. Lopez*, 230 Ariz. 15, ¶ 3 (App. 2012). "Substantial evidence is such proof that 'reasonable persons could accept as adequate and sufficient to support a conclusion of [the] defendant's guilt beyond a reasonable doubt.'" *State v. Sharma*, 216 Ariz. 292, ¶ 7 (App. 2007) (quoting *State v. Mathers*, 165 Ariz. 64, 67 (1990)). "If reasonable [persons] may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial." *State v. Davolt*, 207 Ariz. 191, ¶ 87 (2004) (alteration in *Rodriguez*) (quoting *State v. Rodriguez*, 186 Ariz. 240, 245 (1996)). Substantial evidence may be direct or circumstantial. *State v. Pena*, 209 Ariz. 503, ¶ 7 (App. 2005).

¶8 As relevant here, A.R.S. § 13-2904(A)(6) provides: "A person commits disorderly conduct if, with intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, such person . . . [r]ecklessly handles, displays or discharges a deadly weapon or dangerous instrument." Thus, a conviction of disorderly conduct requires proof of two mental states: (1) intent or knowledge of disturbing the peace or quiet and (2) reckless handling or discharging of a weapon. *Id.*; *In re Robert A.*, 199 Ariz. 485, ¶ 13 (App. 2001). Intent means "a person's objective is to cause that result or to engage in that conduct," while knowledge occurs when "a person is aware or believes that the person's conduct is of that nature or that the circumstance exists." A.R.S. § 13-105(10)(a), (b). By contrast, reckless means "a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists." § 13-105(10)(c); *see also Robert A.*, 199 Ariz. 485, ¶ 14. "The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation." § 13-105(10)(c).

¶9 As he did below, Walker argues the state "failed to present any evidence" of the required mental states for disorderly conduct. As to his intent or knowledge of disturbing K.J.'s peace or quiet, Walker contends that "the act of accidently running into someone [he] did not know was in the way, without more is insufficient to establish an intent to disturb someone's peace." And as to his reckless handling or discharging of a weapon, Walker asserts that K.J. "did not see a firearm" and "was not even sure that what she saw and heard was gunfire." Thus, "[c]onsidering the sequence of events and the fact the bullet struck a wall in the apartment complex," Walker reasons that "he did not intentionally pull the trigger under reckless circumstances but rather inadvertently hit the trigger as he fell, causing it to fire accidentally."

¶10 As a preliminary matter, the premise of Walker's argument—that his running into K.J. was an accident—seemingly relies on his testimony presented during the aggravation phase of trial that he did not see her in between the cars. But no such evidence was presented during the guilt phase of trial. And when we review the sufficiency of the evidence, we are limited to the evidence that was before the trier of fact at the time of its determination—the evidence presented during the guilt phase. *See Felix*, 237 Ariz. 280, ¶ 30. Thus, to the extent Walker asks us to consider his testimony presented during the aggravation phase, we will not do so.

¶11 As Walker points out, "[m]ental states cannot be assumed." *Robert A.*, 199 Ariz. 485, ¶ 14. But he fails to appreciate that evidence of a

defendant's mental state "will rarely be provable by direct evidence and the jury will usually have to infer it from his behaviors and other circumstances surrounding the event." *State v. Noriega*, 187 Ariz. 282, 286 (App. 1996); *see also In re William G.*, 192 Ariz. 208, 213 (App. 1997) ("[A]bsent a person's outright admission regarding his state of mind, his mental state must necessarily be ascertained by inference from all relevant surrounding circumstances."). "[T]he probative value of the evidence is not reduced simply because it is circumstantial." *State v. Anaya*, 165 Ariz. 535, 543 (App. 1990).

¶12 Here, the state presented substantial, albeit circumstantial, evidence that Walker had intended to disturb the peace or quiet of K.J. or acted with the knowledge of doing so.[1] *See* § 13-2904(A)(6). Late in the evening, Walker ran at a fast pace through an apartment complex parking lot. K.J. was by herself in the dark, heading to her apartment. Walker ran directly at K.J. in the narrow space between two parked cars. K.J. testified that they had "looked directly at each other" and that she believed he had seen her. Yet, the only thing that stopped Walker was K.J. throwing the pizza box at him. Afterward, Walker got up and immediately ran away. He did not apologize to K.J., ask if she was okay, or otherwise explain that there had been an accident or a misunderstanding. K.J. testified that she had been afraid Walker was going to attack her and she was going to get hurt.

¶13 The state also presented substantial evidence that Walker had recklessly handled, displayed, or discharged a deadly weapon. *See* § 13-2904(A)(6). Although K.J. did not see a firearm and did not know at the time that a gun had been discharged, she saw a flash, heard a bang, and smelled gun smoke. K.J.'s roommate heard a gunshot from their apartment. And officers later recovered a shell casing near the front of K.J.'s car, as well as bullet fragments, and they identified an impact site from a bullet in the apartment wall, slightly below a door handle. Even were we to accept

[1]Walker suggests that because the jury acquitted him of aggravated assault, which required an intent to place K.J. in reasonable apprehension of imminent physical injury, *see* A.R.S. §§ 13-1203(A)(2), 13-1204(A)(2), it could not have found him guilty of disorderly conduct, which has the same mental state, *see* § 13-2904(A). But as discussed above, that element of disorderly conduct has two alternate mental states: intent or knowledge. *See* § 13-2904(A). An acquittal on intending to place K.J. in reasonable apprehension of imminent physical injury does not preclude a conviction on knowing that he disturbed her peace or quiet.

Walker's account that he accidently discharged the firearm when he fell to the ground, there was substantial evidence that he had recklessly handled the weapon: he was running quickly through a dark apartment complex parking lot and directly approached K.J. in the narrow space between two cars with a loaded firearm in his hand. In sum, the state presented sufficient evidence from which reasonable persons could find Walker guilty of disorderly conduct beyond a reasonable doubt. *See Snider*, 233 Ariz. 243, ¶ 4.

Disposition

¶14 For the foregoing reasons, we affirm Walker's conviction and sentence.