

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1061**

State of Minnesota,
Respondent,

vs.

Ciera Lakay Fulford,
Appellant.

**Filed August 12, 2024
Affirmed in part, reversed in part, and remanded
Johnson, Judge**

Hennepin County District Court
File No. 27-CR-22-18262

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A Hennepin County jury found Ciera Lakay Fulford guilty of making a threat of violence by displaying a BB gun in a threatening manner. The jury's verdict is based on evidence that, during a verbal confrontation with a group of teenagers in a city park, Fulford

held a BB gun in her hand in a way that scared the teenagers and caused them to run to safety. The district court imposed a stayed sentence of 365 days in jail. We conclude that the evidence is sufficient to support the conviction. But we conclude that Fulford is entitled to a one-day reduction of her sentence in light of recent statutory amendments. Therefore, we affirm in part, reverse in part, and remand for resentencing.

FACTS

During the afternoon of June 21, 2022, Fulford and her then-boyfriend, Emmery Thomas, were looking for Thomas's two teenage nephews, who had not attended school that day and were not at home. Fulford and Thomas drove to Jackson Square Park in Minneapolis, which is across the street from the nephews' high school. Thomas approached a group of teenagers and asked about the nephews. One of the teenagers in the group, T.B., a 15-year-old girl who attended the same high school as the nephews, said that she did not know their whereabouts. As Thomas spoke, he was verbally aggressive and lifted his shirt to reveal a BB gun in his waistband. Thomas walked back to his vehicle, where Fulford was sitting in the passenger seat using her phone, not paying attention to Thomas's interactions with the group of teenagers.

Thomas drove his vehicle around the block and parked in a different place on the perimeter of the park. Fulford saw a group of approximately a dozen teenagers, some of whom were familiar to her. Fulford exited the vehicle and approached the teenagers, which included some persons with whom Thomas had interacted earlier. Fulford asked the group of teenagers about Thomas's nephews. The teenagers again said that they did not know the nephews' whereabouts. Fulford threatened to call the police, told the group that they

would be in trouble for not disclosing information, and said that they would be going to jail. After T.B. spoke in response, Fulford replied to her by saying, in a raised voice, “You’re getting smart, little girl. I’ll smack you.” T.B. said that she was going to call her mother, but her phone was turned off, so she asked her cousin, A.S., to place the call.

Fulford then said to Thomas, “Babe, give me my gun.” Thomas did not give Fulford the BB gun that was in his waistband. Fulford walked over to Thomas, lifted his shirt, and removed the BB gun. T.B. was scared because she believed that Fulford was going to shoot her. She ran and hid outside the park. While hiding, T.B. called 911 and said that a woman was threatening kids in the park with a gun and had threatened to shoot. A.S. also called 911 and told the dispatcher that a woman had a gun and was threatening to “shoot at a whole bunch of kids.”

A law-enforcement officer went to the park in response to the 911 calls. He described the scene as “hectic,” with “kids running all over the place.” He spoke with multiple persons, who told him that Fulford had “pull[ed] a gun and point[ed] it in the general direction of a group of kids, causing panic [and] causing them to disperse.” After the incident, the officer interviewed Fulford by telephone. Fulford admitted to the officer that she held a gun during the incident at the park and said that she used it “as a scare tactic” but that it was not a “real” gun because it was a BB gun. Fulford told the officer that she “wanted the kids to be scared” and that she “flash[ed] it” in a way that would not “allow[] the kids to get too good of a look at it because she didn’t want them to know it was fake.”

In September 2022, the state charged Fulford with two counts of making a threat of violence by displaying, exhibiting, brandishing, or otherwise employing a replica firearm

or BB gun in a threatening manner, in violation of Minn. Stat. § 609.713, subd. 3(a)(2) (2020). The state alleged in the first charge that Fulford threatened T.B. and in the second charge that Fulford threatened A.S.

The case was tried to a jury on two days in March 2023. The state called four witnesses, including T.B. and the officer who responded to the 911 calls and interviewed Fulford. A.S. did not testify. After the state rested its case, Fulford moved for a judgment of acquittal on count 2, which alleged a threat against A.S. The district court granted the motion.

In the defense case, Fulford testified that the teenagers, which included both girls and boys, were behaving in an intimidating and threatening way toward her. She testified that she grabbed the BB gun from Thomas's waistband because the teenagers were close to her, she was backed up against a fence, and she thought that the teenagers were going to "jump" her. She testified that, as soon as she removed the BB gun from Thomas's waistband, she put it in her own pants. She testified that she "did not want to scare" the teenagers but wanted them to "give [her] space."

In closing argument, Fulford's attorney argued that Fulford did not display, exhibit, brandish, or otherwise employ the BB gun in a threatening manner and, in the alternative, that she acted in self-defense when she removed the BB gun from Thomas's waistband and put it in her own pants. The jury found Fulford guilty on count 1, which alleged a threat against T.B. In May 2023, the district court imposed a sentence of 365 days in jail, which is a downward durational departure, but stayed execution of the sentence and placed Fulford on probation for two years. Fulford appeals.

DECISION

I. Sufficiency of the Evidence

Fulford first argues that the evidence is insufficient to support the conviction.

In analyzing an argument that the evidence is insufficient to support a conviction, this court undertakes “a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient.” *State v. Jones*, 977 N.W.2d 177, 187 (Minn. 2022) (quotation omitted). We “carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the factfinder to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). “We assume that the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Friese*, 959 N.W.2d 205, 214 (Minn. 2021) (quotation omitted).

The statute setting forth the offense of conviction provides that a person commits a crime if she “displays, exhibits, brandishes, or otherwise employs a replica firearm or a BB gun in a threatening manner” and “(1) causes or attempts to cause terror in another person; or (2) acts in reckless disregard of the risk of causing terror in another person.” Minn. Stat. § 609.713, subd. 3(a).

Fulford contends that the evidence is insufficient to prove beyond a reasonable doubt that she displayed, exhibited, brandished, or otherwise employed the BB gun. Specifically, she contends that the evidence is insufficient because T.B. testified that she

ran away as soon as she saw Fulford grab the BB gun from Thomas's waistband but did not testify about what Fulford did with the gun after grabbing it.

In response, the state contends that the evidence is sufficient to prove that Fulford engaged in one of the prohibited acts, with emphasis on the word "displays." Accordingly, we will focus our review on the question whether the state's evidence is sufficient to prove that Fulford displayed the BB gun. The word "displays" is not defined within section 609.713 or chapter 609. *See* Minn. Stat. §§ 609.02, 609.713. In a different context, this court has stated that the common and ordinary meaning of the word is "to present or hold up to view." *State v. Johnson*, 713 N.W.2d 64, 67 (Minn. App. 2006) (citing *The American Heritage College Dictionary*, 400 (3d ed. 2000)).

Fulford is correct that T.B. did not specifically testify about what Fulford did with the gun or how she held it after she grabbed it from Thomas's waistband. But there is other evidence in the record on that issue. The responding officer testified that, immediately after the incident, eyewitnesses told him that Fulford had "pull[ed] a gun and point[ed] it in the general direction of a group of kids causing panic [and] causing them to disperse." The officer also testified that, in a telephone interview after the incident, Fulford admitted that she used the BB gun "as a scare tactic" and that she intentionally "flash[ed] it" in a way that would not "allow[] the kids to get too good of a look at it because she didn't want them to know it was fake." The state's evidence is corroborated by Fulford's own trial testimony, in which she stated that she grabbed the BB gun from Thomas's waistband because she felt threatened by the group of teenagers and wanted them to "give [her] space." In addition, in the 911 calls, T.B. said that Fulford "took [the BB gun] out

and . . . told me she was gonna shoot,” and A.S. said that Fulford was “threatening to shoot at a whole bunch of kids,” that she “brought the [BB] gun out,” and that “everybody saw the [BB] gun.” This evidence is sufficient to prove that Fulford “displayed” the BB gun by presenting it or holding it up to view. *See Johnson*, 713 N.W.2d at 67.

Thus, the evidence is sufficient to support Fulford’s conviction of making a threat of violence by displaying a BB gun in a threatening manner.

II. Duration of Sentence

Fulford argues in the alternative that her 365-day jail sentence must be reduced by one day to 364 days. She asserts that the district court intended to impose a gross-misdemeanor sentence and that, although 365 days was the maximum sentence for a gross-misdemeanor offense at the time of the sentencing hearing, she is entitled to have her sentence reduced due to subsequent statutory amendments that were signed into law only a few days after her sentencing hearing.

The statutory amendments identified by Fulford provide that the maximum period of incarceration for a gross misdemeanor is 364 days rather than one year, that the change in duration applies retroactively to sentences imposed before the effective date, that a district court “may at any time correct or reduce” a sentence based on the change in law, and that a district court “shall issue a corrected sentencing order upon motion of any eligible defendant.” 2023 Minn. Laws, ch. 52, art. 6, §§ 5-6, at 918; *see also* Minn. Stat. §§ 609.03(2), 609.0342 (Supp. 2023).

The state agrees with Fulford and concedes that appellate relief is appropriate. We agree as well. Accordingly, we reverse the sentence imposed and remand to the district court with instructions to correct Fulford's sentence by reducing it from 365 days to 364 days.

Affirmed in part, reversed in part, and remanded.