

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 7, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2025AP2488-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2022CF840

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

REGINALD D. HUNTER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Kenosha County:
JASON A. ROSSELL, Judge. *Reversed and cause remanded for further
proceedings.*

Before Lazar, P.J., Gundrum, and LoCoco, JJ.

**Per curiam opinions may not be cited in any court of this state as precedent
or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

¶1 PER CURIAM. A jury convicted Reginald D. Hunter of two counts of child abuse and acquitted him of two counts of strangulation. Hunter seeks a new trial based on the circuit court’s failure to provide jury instructions on reasonable parental discipline and self-defense. We agree with Hunter that the circuit court erred in failing to give each of those instructions. The evidence presented at trial was sufficient to satisfy the low evidentiary bar in this state for both instructions. Accordingly, we reverse the judgment of conviction and remand the matter to the circuit court for a new trial.

BACKGROUND

¶2 Hunter was charged with two counts of strangulation and two counts of intentional child abuse after Hunter’s then 8-year-old son, Ian, and 13-year-old daughter, Rebecca, alleged that he grabbed their necks and squeezed, hurting them and making it difficult for them to breathe.¹ Rebecca also said that Hunter hit her in the face and hit Ian.

¶3 The scuffle between Hunter and his kids started when he confiscated Rebecca’s electronic devices at bedtime. Hunter denied ever physically harming his children, though he did state that he held Rebecca and Ian back to prevent them from getting to their electronics. Hunter’s girlfriend, Felicia Williams, was present during the altercation, though she was in a back bedroom for most of it. Williams stated that she never saw Hunter physically harm the children, despite the fact that she was the one who had called 911 during the event and reported that Hunter was “beating his kids.”

¹ We use the same pseudonyms as the parties to refer to the children. See WIS. STAT. RULE 809.19(1)(g).

¶4 The case proceeded to a jury trial. Ian and Rebecca testified that Hunter had strangled, shoved, punched, and grabbed them after he took Rebecca's electronic devices from her so that she could settle in for bed. Ian admitted to having kicked Hunter "in the nuts" on the night of the alleged abuse, which Rebecca confirmed on the stand. Rebecca testified that she had hit Hunter on the back of the head with a rock that night, which caused Hunter to fall down. Rebecca also testified that she had omitted the fact that she struck her dad from her statement to law enforcement.

¶5 Hunter testified on his own behalf at the trial. Both he and Williams testified that Hunter had struggled all day with the kids over their device-usage but never physically injured them. Both admitted that Hunter held the children back during the scuffle, however, to keep them separated and get the situation under control.

¶6 At the close of the evidence, Hunter asked that the circuit court give jury instructions on reasonable discipline of a child and self-defense. The court denied the requests, concluding that Hunter failed to provide evidence to support either privilege and thus was not entitled to either instruction. The court found that neither Hunter nor Williams testified that Hunter physically harmed his children in order to discipline them or as an act of self-defense, and the children's testimony indicated only that Hunter physically harmed them as an act of anger, frustration, or retaliation, not as an act of reasonable discipline or self-defense.

¶7 After deliberation, the jury convicted Hunter of one count of child abuse as to each Ian and Rebecca, but acquitted him on both strangulation counts. Considering the evidence at trial, arguments of the parties, and the PSI report, the circuit court sentenced Hunter to five years on each count, bifurcated as two years

of initial confinement and three years of extended supervision, consecutive to each other and to any other sentence. Hunter appeals.

¶8 We include additional facts below as necessary to our discussion.

DISCUSSION

¶9 Hunter argues that the circuit court erred by denying his requests to instruct the jury on reasonable parental discipline and self-defense. “A circuit court has broad discretion in deciding whether to give a requested jury instruction.” *State v. Stietz*, 2017 WI 58, ¶12, 375 Wis. 2d 572, 895 N.W.2d 796. However, a court must “exercise its discretion in order ‘to fully and fairly inform the jury of the rules of law applicable to the case and to assist the jury in making a reasonable analysis of the evidence.’” *State v. Neumann*, 2013 WI 58, ¶89, 348 Wis. 2d 455, 832 N.W.2d 560 (citations omitted). The circuit court’s “discretion is far more limited in some circumstances—including determining whether the evidence presented supports instructing the jury on ... self-defense.” *State v. Johnson*, 2021 WI 61, ¶16, 397 Wis. 2d 633, 961 N.W.2d 18.

¶10 When, as here, a defendant asserts that the controversy was not fully tried due to a failure to instruct the jury as to the applicable law, we review that challenge de novo, benefitting from the circuit court’s analysis. See *Neumann*, 348 Wis. 2d 455, ¶89. If we conclude that the circuit court erred by refusing to give a jury instruction, we must then determine whether the error affected the defendant’s substantial rights. *Stietz*, 375 Wis. 2d 572, ¶61; WIS. STAT. § 805.18(2) (2023-24).²

² All references to the Wisconsin Statutes are to the 2023-24 version.

A defendant's substantial rights remain unaffected (that is, the error is harmless) if it is clear beyond a reasonable doubt that a rational jury would have come to the same conclusion absent the error or if it is clear beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.

Stietz, 375 Wis. 2d 572, ¶63. Whether a jury instruction error is harmless is a question of law that we review de novo. *Id.*, ¶62. We address each of the requested jury instructions in turn below.

I. Reasonable Parental Discipline

¶11 Specified conduct that constitutes physical abuse of a child is a felony in Wisconsin. WIS. STAT. § 948.03. As relevant here, “[w]hoever intentionally causes bodily harm to a child is guilty of a Class H felony.” Sec. 948.03(2)(b). “‘Bodily harm’ means physical pain or injury, illness, or any impairment of physical condition.” WIS. STAT. § 939.22(4). However, there is a complete defense in the form of a privilege when the accused was “responsible for the child’s welfare” at the time of the offense and the conduct entailed “reasonable discipline.” WIS. STAT. § 939.45(5)(b) (providing privilege for reasonable discipline for a child by a person responsible for the child’s welfare); *see also State v. Teynor*, 141 Wis. 2d 187, 200, 414 N.W.2d 76 (Ct. App. 1987) (stating that “parental status affords only a privilege which may be asserted as a defense to prosecution for any crime by a parent against his or her child if the conduct is reasonable discipline of the child”). The “reasonable discipline” sufficient to create this complete defense “may involve only such force as a reasonable person believes is necessary.” Sec. 939.45(5)(b).

¶12 A defendant is entitled to have the jury instructed as to an affirmative defense where: “(1) the defense relates to a legal theory of a defense,

as opposed to an interpretation of evidence; (2) the request is timely made; (3) the defense is not adequately covered by other instructions; and (4) the defense is supported by sufficient evidence.” *State v. Coleman*, 206 Wis. 2d 199, 212-13, 556 N.W.2d 701 (1996) (internal citations omitted).

¶13 Hunter argues that the circuit court erroneously denied his request to instruct the jury as to the affirmative defense available when the charged conduct constitutes reasonable parental discipline. See WIS JI—CRIMINAL 950; see also *State v. Kimberly B.*, 2005 WI App 115, ¶29, 283 Wis. 2d 731, 699 N.W.2d 641. As we now explain, we agree with Hunter because we conclude that the evidence, when viewed in the light most favorable to the defense, sufficiently supported instructing the jury as to reasonable parental discipline.

¶14 The circuit court concluded that the evidence presented at trial did not support presenting WIS JI—CRIMINAL 950 to the jury in this case. It concluded that because strangulation poses a substantial risk of death, the defense was not available to Hunter. To the contrary, we conclude that there was ample evidence presented by both Hunter and the State to put this defense before the jury.

¶15 To briefly recap, both Hunter and Williams testified that Hunter had been trying, but struggling, to enforce his household rules regarding electronic device usage by his children all day. Hunter testified that, in attempting to enforce his rules, he confiscated Rebecca’s phone and placed it out of the children’s reach. When both Rebecca and Ian refused to abide by their father’s rules, a scuffle ensued. According to the children’s testimony, Hunter pushed, grabbed, struck, and choked them. In contrast, Hunter testified that he held the children apart when they “c[a]me at [him] to try to get the phone” back. A reasonable construction of

this evidence was that Hunter used some force against his children to impose order or otherwise discipline them for their disobedience of his electronics-usage rules. See *Coleman*, 206 Wis. 2d at 213-14.

¶16 While it certainly is possible that a reasonable jury could have concluded that the alleged conduct of strangling Rebecca and Ian was known to cause or create a substantial risk of great bodily harm or death, as the circuit court observed in declining to give the instruction, the evidence also supported a finding that Hunter did not strangle either child, as evidenced by the jury’s refusal to convict Hunter of either count of strangulation. Rather, the evidence, when viewed in the light most favorable to Hunter, supported a finding that he only pushed, grabbed, or struck the children during the incident. Therefore, when the court denied the requested parental discipline instruction based on the severity of the strangulation allegations, it improperly weighed the evidence, thereby invading the province of the jury. See *Stietz*, 375 Wis. 2d 572, ¶¶16-18.

¶17 It also was not harmless error for the circuit court to deprive Hunter of the requested discipline instruction. An error is harmless only when “it is clear beyond a reasonable doubt that a rational jury would have come to the same conclusion absent the error or ... it is clear beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” *Id.*, ¶63. We cannot reach this conclusion on the Record before us. The jury’s acquittal as to the strangulation charges demonstrates that it had some doubts as to the children’s credibility, and both Hunter and Williams testified that Hunter was trying to enforce his household rules regarding electronic devices.

¶18 Hunter was entitled to have the jury consider whether his conduct constituted reasonable parental discipline. We cannot conclude beyond a

reasonable doubt that a rational jury would have convicted Hunter if the circuit court had properly instructed the jury to consider that privilege as an affirmative defense. *See id.* Accordingly, we reverse the convictions and remand to the circuit court for a new trial.

II. Self-Defense

¶19 We now turn to Hunter’s argument that the circuit court erred in denying Hunter’s request for a self-defense instruction to the jury. *See* WIS JI—CRIMINAL 800. Although this is a somewhat closer call than whether to instruct as to reasonable parental discipline, we similarly conclude that the circuit court erred in refusing to give that instruction.

¶20 “A jury must be instructed on self-defense when a reasonable jury could find that a prudent person in the position of the defendant under the circumstances existing at the time of the incident could believe that he was exercising the privilege of self-defense.” *Stietz*, 375 Wis.2d 572, ¶15. This benchmark sets a low bar which only requires the accused to produce some evidence in support of the privilege of self-defense. *Id.*, ¶16. This standard is met even if the evidence is “weak, insufficient, inconsistent, or of doubtful credibility[.]” *Id.*, ¶17.

¶21 Regardless of how strong or weak the evidence supporting the affirmative defense may seem, the instruction must be given “unless the evidence is rebutted by the prosecution to the extent that ‘no rational jury could entertain a reasonable doubt[.]’” *State v. Schuman*, 226 Wis. 2d 398, 404, 595 N.W.2d 86 (Ct. App. 1999) (citation omitted). In reaching this conclusion, circuit courts must not weigh the evidence; rather, the evidence must be viewed in the light most favorable to the defendant. *Stietz*, 375 Wis. 2d 572, ¶¶13, 18.

¶22 Based on our review of the trial testimony, we conclude that there was sufficient evidence presented at trial to warrant consideration of self-defense by the jury. Ian and Rebecca testified that Hunter escalated the verbal disagreement into a physical altercation by throwing Ian onto a couch or grabbing his neck. Hunter, on the other hand, testified that the incident only became physical when Ian kicked him “in the nuts.” Additionally, both children testified that, at some point during the disagreement, Rebecca hit Hunter on the back of the head with a rock, which caused him to fall face down on the floor. When, as here, the evidence supports a finding that physical harm was inflicted in response to physical harm, it is for the jury to decide whether the conduct constitutes reasonable self-defense. See *id.*, ¶¶15-16.

¶23 When Hunter requested that the circuit court instruct the jury as to self-defense, his trial counsel argued that the children’s testimony established “that it was reasonable for Mr. Hunter to believe that he was placed in imminent danger and he needed to take steps to protect himself.” The court concluded that the instruction was not warranted. Basing this decision on its “confus[ion] in its terms of chronology” stemming from conflicting trial testimony, the court stated that:

[I]t makes it more difficult for the [c]ourt to see evidence ... in the defendant’s favor in the sense that I don’t know if the choking occurred before or after the kicking in the shin or in the groin area. If I take the testimony of [Ian] or if I take the testimony of Mr. Hunter.

The court wrongly invaded the province of the jury by improperly weighing the evidence presented at trial. See *id.*

¶24 In finding that Hunter’s alleged use of force was the type intended or likely to cause great bodily harm or death, the circuit court noted that “[t]he number one cause of death is the cessation of breathing. So it’d be hard for this

[c]ourt -- when people stop breathing they die. I mean, that's the exact clinical definition. People that are not breathing, blood is not being oxygenated, and then [death] occurs." The court's conclusion rests on the finding that strangulation was the only means of force Hunter used. The verdict belies this conclusion. The jury obviously rejected the children's testimony that Hunter had strangled the children and instead accepted that he had used some other type of force against them.

¶25 The circuit court also concluded that the instruction was not warranted because it found that Hunter testified "that he did not believe that any of the actions complained [of] by the State ... were reasonable." Based on its finding that Hunter did not have a reasonable belief that his use of force was necessary, the court concluded that self-defense had not been placed at issue by the testimony. As Hunter correctly observes, however, contrary to the court's findings about his testimony, Hunter did not testify that he believed the alleged use of force was unreasonable. Instead, Hunter merely testified that strangulation is not an appropriate form of discipline for a child; he said nothing regarding whether pushing, grabbing, shoving, or striking may have been appropriate in response to the kicking and hitting from the children. To the contrary, he explained that when his children "c[a]me at [him] to try to get the phone" he held them apart to "stop[]" them.

¶26 In sum, the evidence presented at trial could well have supported a finding that Hunter reasonably believed that his children were unlawfully interfering with his person by kicking him in the groin and striking him with a rock, and that he used force such as pushing, grabbing, or striking that he reasonably believed was necessary to terminate the unlawful interference. The instruction regarding Hunter's privilege to use force in self-defense was supported by the evidence and the circuit court thus erred in failing to so instruct the jury.

¶27 We further conclude that the circuit court’s failure to properly instruct the jury as to self-defense was not harmless. An error is harmless only when “it is clear beyond a reasonable doubt that a rational jury would have come to the same conclusion absent the error or ... it is clear beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” *Id.*, ¶63. As previously noted, the jury acquitted Hunter of strangulation. “The[se] acquittals suggest that the jury believed all or some of the defendant’s testimony and, if given the self-defense instruction, might have acquitted the defendant on one or both of the two charges upon which they convicted the defendant.” *Id.* at ¶64. Accordingly, regardless of the strength of the evidence, we cannot conclude that a reasonable jury would have reached the same conclusion as to child abuse if given the self-defense instruction. *See id.*, ¶63.

CONCLUSION

¶28 For the foregoing reasons, we conclude that Hunter is entitled to a new trial, and we reverse his judgment of conviction and remand to the circuit court for that purpose.

By the Court.—Judgment reversed and cause remanded for further proceedings.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

