OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

November 25, 2026

To:

Hon. Timothy D. Boyle
Circuit Court Judge
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Angela Conrad Kachelski
Electronic Notice

Alexander Schmidt
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2025AP2341-CR State of Wisconsin v. Johnny M. Walrup, Jr.
(L.C. #2021CF1125)

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

Summary disposition orders 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).

Johnny M. Walrup, Jr., appeals from a circuit court judgment of conviction. Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).[1] For the following reasons, we affirm.

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

The State charged Walrup with 31 offenses after he allegedly punched and stalked the mother of his two children in violation of a restraining order. Walrup pled not guilty, and the case proceeded to a jury trial on 30 counts. Initially, the trial unfolded smoothly. But following the close of evidence, and while the circuit court was instructing the jury, Walrup had an angry outburst. He pounded on the defense table and yelled, "Man, y'all going to kill my son." Both Walrup and the jury were removed from the courtroom. Defense counsel then made a motion for mistrial, which the court denied after hearing arguments from both sides. The court reasoned that the jury had already heard all of the evidence, and that the court could admonish the jury to solely consider that evidence and ignore Walrup's outburst. When the jury re-entered and proceedings continued (in Walrup's absence), the court ordered the jurors to "completely and utterly disregard" Walrup's outburst and "make a decision solely on the evidence that was presented and offered at trial." The court also asked the jurors if any of them were incapable of disregarding the outburst and considering the evidence alone; none indicated they were incapable of doing so. The jury ultimately returned a verdict of guilty on 18 of the 30 counts.

On appeal, Walrup argues the circuit court erroneously exercised its discretion by denying his motion for mistrial, insisting the defendant's outburst rendered a fair trial impossible. "A motion for mistrial is committed to the sound discretion of the circuit court" and "will be reversed only on a clear showing of erroneous use of discretion." ***State v. Ford***, 2007 WI 138, ¶¶28-29, 306 Wis. 2d 1, 742 N.W.2d 61. Where no structural error is alleged, "the circuit court must decide, in light of the entire facts and circumstances, whether the defendant can receive a fair trial," specifically examining "whether the claimed error is sufficiently prejudicial to warrant a mistrial." ***Id.***, ¶29.

We conclude that the circuit court appropriately exercised its discretion in determining that Walrup's outburst was not so prejudicial as to justify a mistrial. Since the circuit court was actually present for the outburst, it is in a better position than this court to assess its likely impact on the jury. *See* ***Schultz v. Darlington Mut. Ins. Co.***, 181 Wis. 2d 646, 657, 511 N.W.2d 879 (1994). On this Record, we have no cause to disagree with the circuit court's determination that, with evidence already closed, the court had sufficiently mitigated any prejudice by immediately removing the jury upon the occurrence of Walrup's outburst, instructing them to disregard the event, and receiving confirmation from the jurors that they could do so. *See* ***State v. Debrow***, 2023 WI 54, ¶18, 408 Wis. 2d 178, 992 N.W.2d 114 (upholding the circuit court's denial of a motion for mistrial because the court "considered the facts and circumstances in the record, heard arguments from both parties, assessed available remedies, and concluded that the error was not so prejudicial as to warrant a mistrial"). Indeed, the fact that the jury acquitted Walrup on twelve counts suggests it complied with the court's instructions.

Walrup argues that the circuit court's single statement that denying his motion would not result in a "manifest injustice" shows it applied the wrong standard. *See* ***State v. Seefeldt***, 2003 WI 47, ¶19, 261 Wis. 2d 383, 661 N.W.2d 822 ("manifest necessity" for mistrial ordered over defendant's objection). We agree with the State that Walrup's argument is speculative and that, read as a whole, the Record supports affirmance. *See* ***State v. Morgan***, 195 Wis. 2d 388, 443, 536 N.W.2d 425 (Ct. App. 1995) (this court will "probe for reasons to sustain a [circuit] court's discretionary ruling").

Therefore,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals