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 19, 2025

To:

Hon. Eugene A. Gasiorkiewicz
Circuit Court Judge
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Taylor Elise Barnes-Gilbert
Electronic Notice

Sara Lynn Shaeffer
Electronic Notice

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

2024AP1356-CR State of Wisconsin v. Donzell P. Robinson, Jr.
(L.C. #2020CF1384)

Before Neubauer, P.J., Gundrum, and Grogan, 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).

Following a shooting, the State charged Donzell P. Robinson, Jr., with attempted first-degree intentional homicide, first-degree recklessly endangering safety, and felon in possession of a firearm. A jury acquitted him of attempted homicide but convicted him of first-degree recklessly endangering safety and felon in possession of a firearm. On appeal, Robinson attacks his conviction for first-degree recklessly endangering safety. He argues, in part, that the evidence presented at trial was insufficient. 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] We conclude the evidence was insufficient, and we reverse and remand with directions that the circuit court enter a judgment of acquittal on the first-degree recklessly endangering safety count.

As relevant, on October 18, 2020, Terrance[2] opened his apartment door and encountered an unknown male, later identified as Robinson, pointing a gun at Terrance's face. Terrance's girlfriend, Sharon, who also lived in the apartment, was behind him.

Robinson asked about a woman named Kenya, and Terrance replied he did not know a Kenya and no one by that name was there. Robinson asked who was in the house, and Terrance told him that Sharon was with him. Terrance ultimately closed the door. Sharon called 911, and she went into the bedroom because "it was the furthest and the safest."

Robinson returned and knocked on the door. Sharon called 911 a second time. Terrance did not open the door but talked to Robinson through the door, telling him he did not know a Kenya and to leave. Terrance then looked out his patio door and saw Robinson "come back out to the grass and I seen the gun and I said, man, just get away because I got a gun also." In response, Robinson "just shot."

Sharon testified that she was in the bedroom on the phone with 911 when she heard the shots. Terrance was hit in the stomach from Robinson's first shot, even though Robinson fired more than once. After Terrance was shot, Terrance "sent a shot off" in the living room. He then

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

[2] Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use a pseudonym when referring to "Terrance" and "Sharon."

ran to check on Sharon in the bedroom, rechambered his gun, and "let off some more shots." Terrance heard the police outside, and he ran to get to them.

When officers arrived at the apartment complex, they found Terrance lying on the ground shot. They later found Robinson. Police also located three spent shell casings inside Terrance's living room, five in the grass, and one on the patio. Nothing was found in the bedroom where Sharon was during the shooting. The jury eventually convicted Robinson of first-degree endangering safety as to Sharon.

On appeal, Robinson argues the evidence was insufficient to support his first-degree recklessly endangering safety conviction. Whether the evidence in a case is sufficient to sustain a guilty verdict is a question of law that the court reviews de novo. ***State v. Smith***, 2012 WI 91, ¶24, 342 Wis. 2d 710, 817 N.W.2d 410. In reviewing the sufficiency of the evidence,

> [w]e will not reverse a conviction for lack of sufficient evidence "unless the evidence, viewed most favorably to the [S]tate and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt."

State v. Owens, 2016 WI App 2, ¶17, 368 Wis. 2d 265, 878 N.W.2d 736 (citation omitted).

> If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellant court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it.

State v. Poellinger, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990).

In this case, to prove Robinson recklessly endangered Sharon's safety, the State was required to prove beyond a reasonable doubt: (1) that Robinson endangered Sharon's safety; (2) that her safety was endangered by criminally reckless conduct; and (3) that that conduct

showed utter disregard for human life. *See* WIS. STAT. § 941.30(1); WIS JI—CRIMINAL 1345. On appeal, Robinson argues the State failed to prove the first element—that he endangered Sharon's safety.

The first element of first-degree recklessly endangering safety "is that the victim's safety is *actually* endangered by the defendant's conduct." ***Balistreri v. State***, 83 Wis. 2d 440, 454, 265 N.W.2d 290 (1978) (emphasis added). Robinson argues the State failed to prove Sharon was actually endangered during the shooting. *See* ***id.*** Robinson emphasizes the evidence presented at trial established the shooting occurred in the living room/patio area—not the bedroom area. Sharon was in the bedroom at the time of the shooting. No spent shell casings were found in the bedroom. Further, Sharon described the bedroom as "the furthest and the safest." Terrance testified that when Robinson returned a second time, he told Sharon to go back to the bedroom because he did not want anything bad to happen to her.

The State responds it proved Robinson actually endangered Sharon's safety because it established Robinson knew Sharon was somewhere in the apartment when he fired shots. It asserts it "doesn't matter that the jury was aware that (1) Sharon was in a bedroom of the apartment when shots were fired, as opposed to the living room, and (2) none of the bullets' casings were recovered from the bedroom."

We disagree. The fact that Robinson knew Sharon was somewhere in the apartment when he fired shots does not establish that Sharon was "actually endangered" by the shooting. *See* ***id.*** The State failed to link the danger posed by the gunfire in the living room/patio area to the bedroom. The State did not establish the location of the bedroom in relation to the living room/patio area, whether the bedroom shared any walls with the living room/patio area, whether

any bullets fired during the exchange pierced through multiple walls, or whether any bullet holes or casings were next to the bedroom. We agree with Robinson that the evidence was insufficient to support his reckless endangerment conviction because there are no facts to show that Sharon was actually endangered. *See* ***id.*** We reverse and remand with directions that the circuit court enter a judgment of acquittal on the first-degree recklessly endangering safety count.[3] *See* ***State v. Ivy***, 119 Wis. 2d 591, 608, 350 N.W.2d 622 (1984) ("If an appellate court determines that the evidence is insufficient, the only remedy available to the court is to order a judgment of acquittal."). Therefore,

IT IS ORDERED that the judgment of the circuit court is summarily reversed and remanded with directions that the circuit court enter a judgment of acquittal on the first-degree recklessly endangering safety count. *See* WIS. STAT. RULE 809.21.

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

GROGAN, J. (*dissenting*). I am not convinced that under the sufficiency of the evidence standard we are obligated to apply—"'that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt'"—that Robinson did not or could not have recklessly endangered Sharon's safety. *See* ***State v. Owens***, 2016 WI App 32, ¶17, 368 Wis. 2d 265, 878 N.W.2d 736 (citation omitted); ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). In fact, this jury was properly instructed on the elements of the crime and found the State proved all the elements beyond a reasonable doubt. Viewing the evidence most favorably

[3] Because we agree with Robinson that reversal is required because the evidence was insufficient to support this conviction, we do not address Robinson's alternative argument that the circuit court erred by failing to instruct the jury on self-defense. *See* ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (cases decided on narrowest possible ground).

to the State and the conviction, I conclude there is a "possibility" that the jury "could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt[.]" *See* ***Poellinger***, 153 Wis. 2d at 507. I am not convinced this jury acted unreasonably when it found Robinson guilty. Accordingly, I respectfully dissent.

Samuel A. Christensen
Clerk of Court of Appeals