COURT OF APPEALS
DECISION
DATED AND FILED

January 8, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP109-CR **Cir. Ct. No. 2004CF2684**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DARRELL D. GRIFFIN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: ELSA C. LAMELAS, Judge. *Affirmed*.

Before Curley, P.J., Wedemeyer and Fine, JJ.

¶1 PER CURIAM. Darrell Griffin appeals from the judgment of conviction entered against him. He argues that the evidence the State produced at his trial was insufficient to convict him of one of the charges. Because we conclude that there was sufficient evidence, we affirm.

¶2 Griffin was convicted after a four-day trial of second-degree recklessly endangering safety, while armed, two counts of possession of a firearm by a felon, and possession of body armor by a felon, all as a repeat offender. The court sentenced him to thirteen years of initial confinement and five years of extended supervision for the recklessly endangering charge, six years of initial confinement and five years of extended supervision on each of the firearm charges, and four years of initial confinement and five years of extended supervision on the body armor charge. All sentences were consecutive to each other.

¶3 Griffin argues that the State did not produce sufficient evidence at his trial to convict him of recklessly endangering the safety of others, WIS. STAT. § 941.30(2) (2005–06).[1] When considering a challenge to the sufficiency of the evidence:

> [A]n appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. 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 appellate 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, 757–758 (1990) (citations omitted).

[1] All references to the Wisconsin Statutes are to the 2005–06 version unless otherwise noted.

¶4 To convict someone of the crime of second-degree reckless endangerment, the State must prove that the defendant endangered the safety of another human being, and that the defendant did so by criminally reckless conduct. WIS. STAT. § 941.30; WIS. JI—CRIMINAL 1347.[2] "'Criminally reckless conduct' means: the conduct created a risk of death or great bodily harm to another person; and the risk of death or great bodily harm was unreasonable and substantial; and the defendant was aware that [his or her] conduct created the unreasonable and substantial risk of death or great bodily harm." WIS JI—CRIMINAL 1347. Griffin argues that the evidence produced at trial did not establish that his conduct created an unreasonable and substantial risk of great bodily harm.

¶5 Griffin was charged for having fired a gun in the direction of a police officer as the officer pursued him. The evidence at trial established that two police officers stopped a group of men, including Griffin, on a rainy evening. One of the officers, Officer Grambow, testified that after they stopped the group he attempted to pat-down Griffin, but Griffin ran away. Grambow followed Griffin into an alley. When Grambow entered the alley, he did not see Griffin. Grambow, therefore, "went into search mode for [his] safety" and took out his flashlight. Then he saw "a hand emerge from behind" a building "and in that hand [was] a pistol." Grambow put his flashlight away and took out his own pistol. Grambow saw Griffin come out from behind the building, Griffin appeared to slip, and the pistol was pointed at Grambow. Grambow shouted: "Drop the gun, drop

[2] Griffin initially was charged with attempted first-degree homicide. Second-degree reckless endangerment is a lesser included offense of first-degree homicide. ***State v. Weeks***, 165 Wis. 2d 200, 205–206, 477 N.W.2d 642, 644 (Ct. App. 1991).

the gun." Griffin then turned towards Grambow, with the pistol pointed at him, and started to back away. Grambow testified that at this point he shot at Griffin because he feared for his own safety. Grambow admitted that he was the first to fire. Grambow then saw "flashes" from the muzzle of Griffin's pistol and heard gunshots. Grambow, believing he was being shot at, crouched down low, moved backwards, and continued to shoot at Griffin. Grambow testified that the whole sequence took a matter of seconds, and then "it seemed as if we were having an exchange of gun fire with each other."

¶6 Griffin testified that he was shot in the back before he fired his gun. He further stated that he was attempting to throw his gun away when he slipped in the mud and fired a shot. He then tried to stand up, heard the officer shouting at him, and so he fired off two more shots. He testified that he was not aiming at Officer Grambow and did not intend to shoot him. The jury also heard the testimony of Griffin's girlfriend from the preliminary hearing. She stated that Griffin told her he had shot at the police and that he was not going back to jail "without taking some cops with him."

¶7 We conclude that this evidence was sufficient for the jury to find that when Griffin fired his gun, he engaged in conduct that created "an unreasonable and substantial risk of death or great bodily harm" to Officer Grambow. Further, the jury could reasonably infer that Griffin knew when he fired the gun that his conduct could cause death or great bodily harm to Officer Grambow. We conclude that there was sufficient evidence to support the

conviction for second-degree reckless endangerment. We affirm the judgment of conviction.

By the Court.—Judgment affirmed.

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