

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**November 7, 2006**

Cornelia G. Clark  
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. 2006AP799-CR**

**Cir. Ct. No. 2004CF989**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JESSE R. JONES,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Brown County:  
PETER J. NAZE, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Jesse Jones appeals a judgment convicting him of first-degree reckless endangering safety, fleeing or eluding an officer, and operating a vehicle while intoxicated, causing injury. He argues that the State did not present sufficient evidence to prove the reckless endangerment charge because

it did not prove that he demonstrated utter disregard for human life. We reject that argument and affirm the judgment.

¶2 This court must affirm the jury's verdict unless the evidence 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. *See State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). A reviewing court must consider the evidence in the light most favorable to the verdict. *Id.* at 503.

¶3 An element of first-degree reckless endangering safety is that the defendant's conduct showed utter disregard for human life. That element is measured objectively on the basis of what a reasonable person in the defendant's position would have known. *See State v. Jensen*, 2000 WI 84, ¶¶16-17, 236 Wis. 2d 521, 613 N.W.2d 170. Factors the jury should consider include what the defendant was doing, why he was engaged in that conduct, how dangerous the conduct was, how obvious the danger was, whether the conduct showed any regard for life, and all other facts and circumstances related to the conduct. *See WIS JI—CRIMINAL 1345* (2003). The ultimate question regarding this element is whether the totality of the circumstances showed any regard for human life. *See State v. Edmunds*, 229 Wis. 2d 67, 77, 598 N.W.2d 290 (Ct. App. 1999).

¶4 The State presented sufficient evidence to establish that Jones's conduct demonstrated utter disregard for human life. A police officer testified that he witnessed two vehicles racing on a city street. When the officer caught up to the vehicles, the vehicle driven by Jones went through a stop sign, made a U-turn in the middle of an intersection and swerved around the squad car in an effort to evade being stopped. Jones then turned onto a residential street with a twenty-five

mile per hour speed limit and went through another stop sign at a high rate of speed. The Officer had to go seventy miles per hour to keep up with Jones, although Jones was not driving that fast because, unlike the officer, he did not slow down at intersections. After going through another stop sign without braking or appearing to look for other cars or pedestrians, Jones's car went "airborne" with all four wheels off the ground, causing him to almost lose control. After going through another stop sign Jones lost control of his car and spun 180 degrees, coming to rest facing the squad car. When the cars were five-to ten-feet apart, Jones accelerated toward the squad car, ramming it. Both Jones and the officer were treated for minor injuries at the hospital.

¶5 The totality of Jones's conduct establishes his lack of regard for human life. He engaged in this conduct to avoid apprehension for racing with another car while severely intoxicated. He did not stop at stop signs or slow down at intersections, even after his car went airborne. Swerving to avoid striking the squad car and ultimately ramming it at a low rate of speed does not demonstrate any regard for human life. Unlike the defendant in *Balistreri v. State*, 83 Wis. 2d 440, 458, 265 N.W.2d 291 (1978), Jones did not honk his horn or swerve and brake to avoid collisions. The fact that no pedestrians or other traffic crossed his path was merely a fortuitous circumstance beyond his control and does not contradict the jury's finding that he displayed utter disregard for human life.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2003-04).

