

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 23, 2003

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. 03-0311-CR
STATE OF WISCONSIN**

Cir. Ct. No. 01CF000121

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEFFREY M. PEDERSEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Marinette County: DAVID G. MIRON, Judge. *Affirmed.*

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

¶1 PER CURIAM. Jeffrey Pedersen appeals a judgment convicting him of eight counts of first-degree recklessly endangering safety for pouring gasoline onto the floor of a mobile home while threatening to kill its eight inhabitants. The jury acquitted him of eight other counts of the same offense for breaking the propane tank feeder line to the mobile home. Pedersen argues that he

should have been convicted of second-degree reckless endangering safety because the State failed to establish utter disregard for human life, an element of first-degree recklessly endangering safety.¹ We reject that argument and affirm the judgment and the order denying Pedersen's postconviction motion.

¶2 Shortly before 3 a.m., Pedersen broke into a mobile home occupied by his estranged wife and seven other individuals and began pouring gasoline on the floor near the entrance. He threatened to kill everyone and burn them out. One of his wife's children struggled with him, eventually succeeding in throwing the gas can out of the home and shoving Pedersen out the door. Pedersen then returned to another mobile home on the same property where he was later found sleeping.

¶3 Pedersen argues that this behavior does not establish utter disregard for human life, an element of first-degree recklessly endangering safety. He contends that the State was required to prove that he attempted to ignite the gasoline or that it was highly likely to be ignited by some other source.

¶4 Whether conduct demonstrates utter disregard for human life is evaluated by applying an objective standard of what a reasonable person in Pedersen's position would have known. Utter disregard can be established by evidence of heightened risk, special vulnerabilities of the victims or evidence of a particularly obvious, potentially lethal danger. See *State v. Jensen*, 2000 WI 84, ¶¶17, 23, 236 Wis. 2d 521, 613 N.W.2d 170. Imminently dangerous conduct is

¹ Pedersen also argues that the trial court erred by considering his conduct involving the propane tank when it denied his postconviction challenge to the sufficiency of the evidence. Because we conclude that the State presented sufficient evidence without considering the damage to the propane line, we need not address that question.

inherently and consciously dangerous to life, not such as casually produces death by misadventure. *State v. Davis*, 144 Wis. 2d 852, 863, 425 N.W.2d 411 (1988). The conduct must go beyond mere criminal recklessness to encompass something that, although falling short of an intentional crime, still deserves to be treated more seriously under the law and punished more severely. *Jensen*, 236 Wis. 2d 521 at ¶17.

¶5 Pouring gasoline on the floor of a mobile home, particularly across the entryway, shows utter disregard for human life. It was not necessary for the State to establish that Pedersen attempted to light the gasoline. His threats showed his intention to do so. He was prevented from completing his plan because he was ejected from the dwelling. Unlike the circumstances in the cases Pedersen cites, he took no action to avoid hurting people. His actions cannot be described as conduct that might casually produce death by misadventure. In addition, the jury could utilize its common knowledge regarding the dangers posed by gasoline fumes. See *Kujawski v. Arbor View Center*, 139 Wis. 2d 455, 463, 407 N.W.2d 249 (1987). One need only read the warning placed on gasoline pumps to appreciate the danger of explosion or fire that Pedersen created.

By the Court.—Judgment and order affirmed.

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

