

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**JUNE 25, 1996**

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 95-2761-CR-NM**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**JAMEL GREGORY,**

**Defendant-Appellant.**

APPEAL from a judgment of the circuit court for Milwaukee County: JOHN A. FRANKE, Judge. *Affirmed.*

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

PER CURIAM. Counsel for Jamel Gregory has filed a no merit report pursuant to RULE 809.32, STATS. Gregory has filed a response arguing that the State presented insufficient evidence to support the jury verdict finding Gregory guilty of second-degree recklessly endangering safety. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S.

738 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal.

Gregory was convicted of second-degree recklessly endangering safety while armed and felon in possession of a firearm. He was sentenced as a habitual criminal to eleven years in prison. The no merit report addresses three issues: (1) whether the trial court erred when it responded to the jury's request for a medical dictionary by denying that request without notifying or consulting with the parties; (2) whether the State presented sufficient evidence to support the verdicts; and (3) whether the court properly instructed the jury. Our independent review of the record confirms counsel's analysis of these issues.

Gregory argues that the State presented insufficient evidence that he recklessly endangered safety. Before a jury may convict a defendant of second-degree recklessly endangering safety, the jury must be convinced beyond a reasonable doubt that the defendant endangered the safety of another human being and did so by criminally reckless conduct. *See State v. Johnson*, 184 Wis.2d 324, 346, 516 N.W.2d 463, 470 (Ct. App. 1994). Criminally reckless conduct is established by proof that the defendant's conduct created an unreasonable and substantial risk of death or great bodily harm to another person and that the defendant was aware that his conduct created such a risk. *Id.*

The State presented ample evidence from which the jury could reasonably find that Gregory was aware that his actions created an unreasonable risk of death or great bodily harm to others. The evidence shows that Gregory brandished a handgun in a grocery store, waving it at the employees and numerous patrons. He then pulled a twenty dollar bill out of a bag, threw it in the air and shot at it, the bullet striking a patron in the ankle. He then ran from the store. From this evidence, the jury could reasonably infer that Gregory knew that his actions created an unreasonable risk of death or great bodily harm to others.

At trial, Gregory offered a defense of involuntary intoxication. In addition to his bizarre behavior in the store, Gregory presented the testimony of Brynettira Wilson who testified that she placed a substance that she believed to be LSD in a beverage Gregory was drinking shortly before the incident.

Gregory testified that he had not willingly ingested any alcohol or drugs on the day in question and could not account for his behavior in the store, did not think he was in possession of a handgun at the time he left home and has no conscious memory of the events until he awakened in the hospital. In rebuttal, the State presented medical records stating that Gregory tested positive for the presence of cocaine at the time of his admission to the hospital. The medical records were silent as to the presence of LSD in Gregory's system. As the arbiter of the witnesses' credibility, the jury could reasonably reject the defense of involuntary intoxication. *See State v. Holt*, 128 Wis.2d 110, 121, 382 N.W.2d 679, 685 (Ct. App. 1985).

Our independent review of the record discloses no other potential issues for appeal. Therefore, we relieve Attorney Ann Auberry of further representing Gregory in this matter and affirm the judgment of conviction.

*By the Court.*— Judgment affirmed.