

### State v. Heffner

Court of Appeals of Wisconsin, District Four April 16, 1987, Decided and Filed No. 86-1281-CR

#### Reporter

1987 Wisc. App. LEXIS 3622 \*; 139 Wis. 2d 857; 407 N.W.2d 567

State of Wisconsin, Plaintiff-Respondent, v. Teddy L. Heffner, Defendant-Appellant

Notice: [\*1] UNPUBLISHED LIMITED PRECEDENT **OPINION** 

Subsequent History: Final Disposition By Denial of Review November 10, 1987

Prior History: APPEAL from a judgment and an order of the circuit court for Dane county, JAMES C. BOLL, Judge. Affirmed in part, reversed in part, and remanded.

Disposition: By the Court. -- Judgment and order reversed as to battery conviction and cause remanded for new trial on that charge. Judgment and order affirmed in all other respects.

### **Core Terms**

gun, sentence, battery, discovery, loaded, lesser, postconviction, consecutive, endangering, repeater, appoint, inmate

# Case Summary

#### **Procedural Posture**

Defendant sought review of a judgment and an order of the Circuit Court for Dane County (Wisconsin), which convicted him of endangering safety by conduct regardless of life in violation of Wis. Stat. § 941.30, battery in violation of Wis. Stat. § 940.19(1m), and possession of a firearm in violation of Wis. Stat. §

941.29(2).

After an altercation with customers in defendant's store, defendant was arrested for assaulting one of the customers with a gun. The court affirmed in part and reversed in part. The court rejected defendant's argument that the evidence was insufficient to support a conviction for intermediate battery, Wis. Stat. § 940.19(1m). The court refused to hold as a matter of law that the victim's injuries, including cuts that resulted in nine sutures as well as the loss of one or two teeth, did not constitute great bodily harm. However, the jury could also have concluded that the injuries only constituted bodily harm, so as to support a conviction for the lesser included offense of simple battery, Wis. Stat. § 940.19(1). The trial court thus erred in failing to instruct the jury on the lesser-included offense of simple battery, and defendant was entitled to a new trial on that charge. The court rejected defendant's argument that his sentence of 20 years in prison was unduly harsh. The trial court properly considered the seriousness of the crime, defendant's extensive criminal record, and his volatile and violent character.

#### Outcome

The court reversed the judgment of the trial court as to defendant's battery conviction and remanded for a new trial on that charge. The court affirmed the judgment as to defendant's other convictions.

#### LexisNexis® Headnotes

Criminal Law & Procedure > ... > Standards of Review > Substantial Evidence > Findings of Fact Criminal Law & Procedure > ... > Standards of Review > Substantial Evidence > General Overview

## **HN1** Substantial Evidence, Findings of Fact

In reviewing the evidence to determine if it supports a conviction, the appellate court considers it in a manner most favorable to the state. Reversal is required where the evidence viewed in this manner is so insufficient in probative value and force that, as a matter of law, no trier of fact acting reasonably could be convinced of guilt beyond a reasonable doubt.

Criminal Law & Procedure > Juries & Jurors > Province of Court & Jury > General Overview

### HN2 Juries & Jurors, Province of Court & Jury

The credibility of witnesses and weight of evidence is exclusively for the trier of fact.

Criminal Law & Procedure > ... > Use of Weapons > Simple Use > Elements

Criminal Law & Procedure > ... > Crimes Against Persons > Endangerment > General Overview

Criminal Law & Procedure > ... > Use of Weapons > Simple Use > General Overview

# <u>HN3</u>[ | Simple Use, Elements

A single threat with a deadly weapon can be sufficient proof of conduct evincing a depraved mind.

Criminal Law & Procedure > ... > Crimes Against Persons > Assault & Battery > General Overview

# HN4 Crimes Against Persons, Assault & Battery

See Wis. Stat. § 940.19(1m).

Criminal Law & Procedure > ... > Crimes Against Persons > Assault & Battery > General Overview

<u>HN5</u> **L** Crimes Against Persons, Assault & Battery

"Great bodily harm" is defined as bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury. Wis. Stat. § 939.22(14).

Civil Procedure > Discovery & Disclosure > General Overview

Criminal Law & Procedure > Postconviction Proceedings > General Overview

Criminal Law & Procedure > Preliminary
Proceedings > Discovery & Inspection > General
Overview

### HN6 Civil Procedure, Discovery & Disclosure

The statutes and rules do not expressly provide for postconviction discovery, but a trial court may order such discovery upon a finding of particularized need. Its decision to do so is discretionary.

Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > General Overview

Criminal Law & Procedure > Sentencing > Multiple Convictions

# <u>HN7</u>[♣] Standards of Review, Abuse of Discretion

A trial court may enhance each of multiple sentences arising out of a single transaction.

Criminal Law &
Procedure > Sentencing > Appeals > General
Overview

## HN8 | Sentencing, Appeals

The appellate court's review of the trial court's sentencing discretion is limited. There is a strong public policy against interfering with the trial court's sentencing discretion. The trial court is presumed to have acted reasonably. The trial court has a great advantage in considering the relevant factors and the defendant's demeanor. However, there must be evidence that discretion was exercised. The trial court must go

through a reasoning process which depends on facts of record or reasonable inferences drawn therefrom to reach a conclusion based on a logical rationale founded upon proper legal standards.

Criminal Law &
Procedure > Sentencing > Imposition of
Sentence > Factors

Criminal Law & Procedure > Sentencing > Presentence Reports

### **HN9** Imposition of Sentence, Factors

The primary factors a sentencing court has to consider are the gravity of the offense, the character of the offender, and the need for public protection. Other relevant factors are: (1) Past record of criminal offenses; (2) history of undesirable behavior pattern; (3) the defendant's personality, character and social traits; (4) result of presentence investigation; (5) vicious or aggravated nature of the crime; (6) degree of the defendant's culpability; (7) defendant's demeanor at trial; (8) defendant's age, educational background and record; employment (9) defendant's remorse, repentance and cooperativeness; (10) defendant's need for close rehabilitative control; (11) the rights of the public; and (12) the length of pretrial detention.

Criminal Law &
Procedure > Sentencing > Imposition of
Sentence > Factors

Criminal Law &
Procedure > Sentencing > Appeals > General
Overview

## **HN10** Imposition of Sentence, Factors

The weight to be given to each sentencing factor is within a trial court's discretion. A trial court may base a sentence on any of the factors after all relevant factors have been considered.

Judges: Gartzke, P.J., Dykman and Sundby, JJ.

## **Opinion**

PER CURIAM. Teddy L. Heffner appeals from a

judgment of conviction for endangering safety by conduct regardless of life, sec. 941.30., Stats; battery, sec. 940.19(1m), Stats.; and possession of a firearm, sec. 941.29(2). He also appeals from an order denying his postconviction motion. He contends: 1) the evidence did not support the conviction for endangering safety by conduct regardless of life; 2) the evidence did not support the conviction for intermediate battery; 3) the trial court erred in refusing to submit an instruction on the lesser included offense of simple battery; 4) the trial court should have appointed stand-by counsel; 5) the district attorney asked prejudicial questions about his possession of guns, making harassing phone calls to witnesses, [\*2] use of subpoenas and offers to testify against other inmates; 6) his constitutional rights were violated by the state's receipt of information about appellant's trial strategy from a fellow inmate informant; 7) the fruits of the search should have been suppressed because the search was illegal; 8) his right to silence was violated by the district attorney questioning him about his refusal to make a statement to police; 9) the trial court improperly applied the repeater statute; 10) the trial court improperly imposed consecutive sentences; and 11) the sentence is unduly harsh.

We conclude that the trial court erred in failing to instruct the jury on the lesser included offense of simple battery. We reverse the judgment of conviction for battery and the order as to that conviction and remand for a new trial on that charge. We reject appellant's remaining arguments, and affirm the remainder of the judgment and order.

The evening of July 31, 1984, four men entered appellant's shop, the Custom Art Studio. One of the men spilled some beer on the counter. While cleaning up the beer, appellant picked up a disc-like object. He claimed it was a karate throwing star. One of the men, Robert [\*3] Walsh, said it was not. A bet was made. Appellant threw the disc into the wall and claimed that proved it was a karate star. Walsh said it proved nothing. Appellant demanded payment of the bet.

According to Walsh, appellant went into another room and returned with something behind his back. He placed the object at Walsh's temple and demanded payment of the bet. The other men testified that the object was a gun. Appellant then struck Walsh in the mouth with the gun, knocking out a tooth, causing another to loosen, and splitting his lip.

Appellant was arrested at his shop on August 13. The next day, police conducted a search pursuant to a warrant and seized a gun.

Appellant proceeded *pro* se at trial. He was convicted as charged and sentenced to five years for endangering safety by conduct regardless of life plus five years as a repeater; two years for battery plus five years as a repeater; and two years for possession of a weapon by a felon plus one year as a repeater, all to run consecutively, for a total of twenty years.

Appellant argues that the evidence was insufficient to support his conviction for endangering safety by conduct regardless of life, <u>sec. 941.30</u>, Stats., because [\*4] (1) there was no evidence that the gun was loaded or operable, (2) there was no evidence that he threatened to use the gun, and (3) striking Walsh only once did not evince a depraved mind.

HN1 The reviewing the evidence to determine if it supports a conviction, we consider it in a manner most favorable to the state. Reversal is required where the evidence viewed in this manner is so insufficient in probative value and force that, as a matter of law, no trier of fact acting reasonably could be convinced of guilt beyond a reasonable doubt. State v. Wyss, 124 Wis.2d 681, 693, 370 N.W.2d 745, 751 (1985). HN2 The credibility of witnesses and weight of evidence is exclusively for the trier of fact. Id. at 694, 370 N.W.2d at 751.

While there is no direct evidence that the gun was loaded and operable, other evidence supports this inference. Appellant's wife testified that she usually loads the gun at night before leaving the shop and leaves it loaded in the safe. A gun loaded with six rounds of ammunition was found in the safe fourteen days after the incident. Appellant told Barbara Hupp, a fellow tenant, that he had a gun at his place of business, could take care of any trouble, and that [\*5] she need not worry. A finding of guilt may rest upon evidence that is entirely circumstantial. Wyss, 124 Wis.2d at 692, 370 N.W.2d at 751. The jury could infer that the gun was loaded and operable the night of the crimes.

Appellant did not expressly threaten to use the gun. However, the jury could construe appellant's pointing a loaded gun while making demands as a threat to use the gun if the demands were not met.

Finally, the fact that appellant struck Walsh only once is not determinative of whether his conduct evinced a depraved mind. This charge was based on appellant's pointing the loaded gun at Walsh's head, not hitting him with the gun. HN3 A single threat with a deadly weapon can be sufficient proof of conduct evincing a

depraved mind. See, e.g., <u>State v. Kuta, 68 Wis.2d 641, 229 N.W.2d 580 (1975)</u>. We conclude the evidence was sufficient to support the conviction for endangering safety by conduct regardless of life.

Appellant argues that he did not cause great bodily harm since he only knocked out one tooth, loosened another, and caused cuts requiring nine sutures and no hospitalization. He claims these injuries are similar to those caused in *State v. Bronston, 7 Wis.2d 627, 97 N.W.2d 504, 98 N.W.2d 468 (1959)*, which were held as a matter of law not to constitute great bodily harm.

In *Bronston*, the victim suffered a two-inch scalp laceration which required four sutures to close. She was in the hospital only a few hours. She suffered temporary nervous headaches and pain in her jaw. The court did not view these injuries as "a permanent or protracted loss or impairment of the function of any bodily member or organ," pursuant to <u>sec. 939.22(14)</u>, Stats. <u>Id. at 633, 97 N.W.2d at 508</u>. Since the [\*7] facts as to the injury were undisputed, the court concluded as a matter of law that the injuries did not constitute great bodily harm.

La Barge v. State, 74 Wis.2d 327, 246 However, N.W.2d 794 (1976), questioned Bronston's logic. La Barge noted that Bronston had relied on the ejusdem generis rule to conclude that the injuries involved there were not in the same category or of the same kind as those enumerated in sec. 939.22(14), Stats. Id. at 331, 246 N.W.2d at 796. La Barge concluded that the phrase "other serious bodily injury" in sec. 939.22(14), which was added before Bronston, was intended to broaden the scope of the statute to include serious bodily injury of a kind not encompassed by the specifics in the original statute. Id. at 334, 246 N.W.2d at 797. However, La Barge did not disagree with Bronston's conclusion that the victim in that case had not suffered great bodily harm. Id. at 331, 246 N.W.2d at 796.

We are unwilling to hold, as a matter of law, that Walsh's injuries did not constitute great bodily harm. They required twice as many sutures as in *Bronston*, as well as the loss of one or two teeth and the loosening of [\*8] one other, all of which will be permanent. A jury could reasonably conclude that the injuries constitute great bodily harm

However, the jury also could have concluded that the injuries only constituted bodily harm, so as to support a conviction for the lesser included offense of simple battery, <u>sec. 940.19(1)</u>, Stats. Appellant argues that the court should have submitted an instruction on the lesser included offense.

The state claims that appellant failed to explicitly request this instruction and therefore waived the right to have it submitted. During the instructions conference, appellant asked if there was supposed to be a "lesser" on the battery charge. We conclude that this was a sufficient request. We reverse and remand for a new trial on the battery charge, with directions to submit an instruction on the lesser included offense of simple battery.

Appellant contends that the trial court should have appointed stand-by counsel at his request. However, appellant did not request the assistance of an attorney. He stated that he would like to be assisted by a paralegal, but did not want anyone from the public defender's office or American Bar Association. At trial, he requested that [\*9] a fellow inmate be permitted to assist him. The court stated that appellant could have someone sit with and assist him but the court would not, for "security reasons," allow someone from the jail to sit with him. Appellant did not thereafter request appointment of an attorney as stand-by counsel.

The trial court was not obligated to appoint counsel on its own motion unless appellant was simply incapable, because of an inability to communicate or because of a complete lack of understanding, to present a defense that was at least prima facie valid. <a href="Pickens v. State, 96">Pickens v. State, 96</a> Wis.2d 549, 569, 292 N.W.2d 601, 611 (1980). Appellant does not contend that this standard applied. No error occurred in failing to appoint stand-by counsel.

Appellant contends that under <u>Thompson v. State, 83</u> <u>Wis.2d 134, 265 N.W.2d 467 (1978)</u>, which prohibited evidence that a defendant possessed a weapon which was not involved in the crime, the district attorney committed error by questioning his wife, business partner and himself about his possession of guns other

than that involved in this case.

Appellant objected only to the questions asked of his wife. His objections to the remaining questions were waived. [\*10] While he objected to the questions asked his wife on the ground of relevancy rather than prejudice, *Thompson* can be read to mean that "other guns" evidence is irrelevant. We review this objection, but conclude no abuse of discretion occurred.

Thompson condemned the admission of "other guns" evidence to show that a defendant is the sort of person who carries deadly weapons. 83 Wis.2d at 144, 265 N.W.2d at 472. Thompson imposed a rule similar to that set forth in sec. 904.04(2), Stats., that evidence of other crimes, wrongs or acts is inadmissible to prove a person's character to show that he or she acted in conformity therewith. However, such evidence is allowed to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

The other guns evidence was offered to impeach evidence appellant elicited on direct that he had no access to any guns on the premises. The trial court allowed the questions because appellant had raised an issue as to whether witnesses ever saw him with a gun. The evidence showed that appellant had the opportunity to obtain guns during the period in question. We do not read *Thompson* to exclude "other [\*11] guns" evidence when offered for this reason. *Compare* sec. 904.04(2), Stats. The district attorney's questions were proper. <sup>1</sup>

Appellant argues that the district attorney should have requested a hearing to determine the admissibility of evidence before questioning witnesses about whether he harassed the state's witnesses. The trial court stated that a hearing would be held before admission of such evidence. However, it warned appellant that he would open the door to the subject if he brought it up himself.

Appellant objects to questions posed to Linda Davel concerning his placing of phone calls to the district attorney. Appellant opened the door to the subject by asking Davel on direct whether she had placed calls for him. However, even if the questioning was error, it was harmless. The district attorney did not ask if appellant

<sup>&</sup>lt;sup>1</sup> The question is not admission of "other guns" evidence since Mrs. Heffner denied that appellant had other guns in his possession. Rather, it is whether the district attorney's question about other guns constituted misconduct. Since admission of "other guns" evidence would not have been improper, the questions did not constitute misconduct.

had **[\*12]** made threatening calls to her. She asked if he had called and she had refused to talk to him. Davel denied that this had occurred. This exchange could not have affected the trial's outcome. <u>State v. Dyess, 124 Wis.2d 525, 543, 370 N.W.2d 222, 231-32 (1985)</u>. Any error was harmless.

Without first holding a hearing outside the jury's presence, the district attorney questioned appellant about calls he made to Walsh's mother in which he threatened her son. However, an admissibility hearing was held before Mrs. Walsh testified about the calls and the trial court ruled that the evidence was admissible. Thus, even if the court erred in not holding a hearing before the district attorney cross-examined appellant, the error was harmless since the court ultimately ruled that the evidence was admissible.

Appellant contends that the probative value of this evidence was outweighed by its prejudicial effect. This specific objection was not raised and need not be considered. We note that evidence that a defendant threatened a witness may be admitted as circumstantial evidence of consciousness of guilt. *Price v. State, 37 Wis.2d 117, 130-33, 154 N.W.2d 222, 228-30 (1967), cert denied,* [\*13] 391 U.S. 908 (1968).

Appellant next contends that his constitutional rights were violated by the state's receipt of information about his trial strategies from a fellow-inmate informant. Appellant discussed his case with inmate <u>Stephen Robeson</u>, and Robeson relayed this information to the state. The district attorney questioned appellant about three items of information relayed by Robeson. Robeson did not testify. The trial court denied appellant's motion for postconviction discovery and his postconviction motion for a new trial based on the state's improper use of information obtained from Robeson.

HN6 ↑ The statutes and rules do not expressly provide for postconviction discovery, but a trial court may order such discovery upon a finding of particularized need. Its decision to do so is discretionary. See, e.g., In Interest of T.M.J., 110 Wis.2d 7, 18 n.2, 327 N.W.2d 198, 204 (Ct. App. 1982).

Appellant's motion for postconviction discovery alleged that Robeson was jailed with appellant before and during the trial, that he discussed appellant's case with appellant, and that Robeson then provided information to the state about appellant's case. He alleged that if Robeson was an agent [\*14] of the state, his conviction must be set aside, citing *United States v. Papia*, 409 F.

Supp. 1307, 1318 (E.D. Wis. 1976), aff'd, 560 F.2d 827 (7th Cir. 1977); Hoffa v. United States, 385 U.S. 293, 306-07 (1966); Weatherford v. Bursey, 429 U.S. 545, 553-54 (1977); United States v. Henry, 447 U.S. 264 (1980); Maine v. Moulton, 474 U.S. , 106 S.Ct. 477 (1985); and United States ex rel. Shiflet v. lane, 625 F. Supp. 677, 684-89 (N.D. III. 1985). He claimed that Robeson had gained the confidence of defendants in two other criminal cases while incarcerated, and then reported to the state what he had learned. Appellant requested that the state be ordered to produce any information that it or its agents had concerning Robeson's relationship with the state.

The trial court noted that appellant had been given everything the district attorney had relative to Robeson, that he could talk to the police officers and employees in the district attorney's office and if he could come up with any facts to substantiate his claim that Robeson was an agent of the state, he could have a hearing. The court observed that appellant had not yet used his own investigator [\*15] to try to uncover any supporting facts.

Appellant's investigator then interviewed Detectives John Summers and Merlin Ziegler, deputy district attorney Steven Tinker, and Sergeant Mark Hamele. None of these persons could substantiate appellant's theory that Robeson had an on-going relationship with the state as its agent. The trial court denied the motion for discovery.

We conclude that the trial court properly exercised its discretion in denying the motion for discovery. Appellant was unable to uncover any facts supporting his theory. He does not indicate what other sources of information he could tap if granted discovery. Absent any indication that the information appellant seeks exists, the trial court did not abuse its discretion in denying the motion for discovery. Since appellant failed to establish that Robeson was an agent of the state, we do not address his claims that his constitutional right to effective assistance of counsel was abridged.

Appellant argues that the district attorney improperly questioned him about how long he had Walsh under subpoena, his offer to testify against other inmates, and his placing calls from the jail. Appellant failed to object at trial and [\*16] has therefore waived his right to have these alleged errors reviewed on appeal. Even if we were to review the objections, we would find no error. The questions were asked on cross-examination to counter impressions appellant created that he would not inform on others and that he had been hampered in his defense by being in jail and unable to contact witnesses.

The district attorney properly attacked appellant's credibility. Sec. 906.08(2), Stats.

Appellant argues that the trial court erred in failing to suppress the evidence obtained in the search of his place of business and denying his motion to suppress without a hearing. He notes that one paragraph of the search warrant complaint contains information obtained during the arrest. Even if this information was obtained unlawfully, the search warrant complaint contained information lawfully obtained from the victim and his friends sufficient to provide probable cause for the search. See United States v. Smith, 790 F.2d 789, 792 (9th Cir. 1986) (if affidavit supporting warrant contains some information unlawfully obtained, validity of warrant and search depends on whether untainted information alone establishes probable cause). [\*17] The trial court did not err in refusing to suppress the evidence or to hold an evidentiary hearing.

Appellant contends that the district attorney violated his right to remain silent by questioning him about his refusal to give a statement to the police. However, on direct examination appellant revealed that he had refused to talk to Detective Summers on the advice of counsel. In the circumstances, the district attorney's questions did not constitute impermissible comment on appellant's silence. Any error was harmless.

Appellant's final contentions relate to his sentence. He first claims that the court abused its discretion when it enhanced the sentence on each of the convictions since the convictions arose out of a single transaction. HNT

A trial court may enhance each of multiple sentences arising out of a single transaction. Melby v. State, 70 Wis.2d 368, 384, 234 N.W.2d 634, 642 (1975).

Appellant next argues that consecutive sentences are inappropriate where one incident led to all convictions. This claim has been rejected. See <u>State v. Curbello-Rodriguez, 119 Wis.2d 414, 436, 351 N.W.2d 758, 769 (Ct. App. 1984)</u> (trial court may impose consecutive sentences for multiple convictions [\*18] arising out of single incident).

Finally, appellant contends that his sentence to a total of twenty years imprisonment was unduly harsh. HNS Our review of the trial court's sentencing discretion is limited. State v. Harris, 119 Wis.2d 612, 622, 350 N.W.2d 633, 638 (1984). There is a strong public policy against interfering with the trial court's sentencing discretion. The trial court is presumed to have acted reasonably. Id. The trial court has a great advantage in considering the relevant factors and the defendant's

demeanor. Id.

However, there must be evidence that discretion was exercised. The trial court must go through a reasoning process which depends on facts of record or reasonable inferences drawn therefrom to reach a conclusion based on a logical rationale founded upon proper legal standards. Harris, 119 Wis.2d at 623, 350 N.W.2d at 639. HN9 The primary factors are gravity of the offense, character of the offender, and need for public protection. Id. Other relevant factors are:

(1) Past record of criminal offenses; (2) history of undesirable behavior pattern; (3) the defendant's personality, character and social traits; (4) result of presentence investigation; **[\*19]** (5) vicious or aggravated nature of the crime; (6) degree of the defendant's culpability; (7) defendant's demeanor at trial; (8) defendant's age, educational background and employment record; (9) defendant's remorse, repentance and cooperativeness; (10) defendant's need for close rehabilitative control; (11) the rights of the public; and (12) the length of pretrial detention.

Id. at 623-24, 350 N.W.2d at 639. HN10 ↑ The weight to be given to each factor is within the trial court's discretion. Ocanas v. State, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975). A court may base a sentence on any of the factors after all relevant factors have been considered. Anderson v. State, 76 Wis.2d 361, 367, 251 N.W.2d 768, 771 (1977).

The court reviewed the nature of the crimes, appellant's character, and the need for public protection. It focused on the seriousness of the crime, appellant's extensive criminal record and his volatile and violent character. It considered the district attorney's recommendation of twenty-seven years and the presentence report recommendation of twenty years. It concluded that appellant needed to be kept away from the public until he could learn to control his [\*20] aggression. The court considered the proper factors and explained the reason for its sentence. It did not abuse its discretion in applying the repeater statute to each sentence, imposing consecutive sentences, or sentencing on the underlying offenses. <sup>2</sup>

Publication in the official reports is not recommended.

<sup>&</sup>lt;sup>2</sup> This determination applies only to the sentences for possession of a firearm and endangering safety since the battery conviction is reversed.