COURT OF APPEALS DECISION DATED AND FILED

December 19, 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. 2006AP1831-CR **Cir. Ct. No. 2005CM89**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JUAN C. PEREZ-ALCANTARA,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DANIEL L. KONKOL, Judge. *Affirmed*.

¶1 CURLEY, J.[1] Juan C. Perez-Alcantara appeals from the judgment, entered following a jury trial, convicting him of one count of entry into a locked

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2003-04).

vehicle, contrary to WIS. STAT. § 943.11 (2003-04).[2] He also appeals from the order denying his postconviction motion. Perez-Alcantara argues that the trial court erred in denying his motion to dismiss at the close of the State's case because there was insufficient evidence to convict him due to the State's failure to prove the fourth element of the offense that he intended to permanently deprive the owner of the use of his vehicle. Because the jury was entitled to disregard Perez-Alcantara's statement that he only "wanted to take [the truck] for a ride," and sufficient circumstantial evidence was admitted at trial that permitted the reasonable inference that he intended to permanently deprive the truck's owner, Jorge Villa, of the use of his truck, this court affirms the trial court's denial of his motion to dismiss. For the same reason, the trial court did not err in denying the postconviction motion to dismiss.

I. BACKGROUND.

¶2 On January 5, 2005, at approximately 10 p.m., Jesus Castillo looked out a window of the factory where he was working third shift and saw someone in the parking lot inside the truck owned by a co-worker, Villa. Surprised to see someone in the truck, he sought out Villa and told him what he saw. The two men then exited the factory and, when Villa yelled at the man in the truck, they saw Perez-Alcantara get out of the truck and run away. Castillo and Villa chased after him, and Castillo caught Perez-Alcantara after he slipped on the snow. Seconds later, Villa, who could not run as fast, reached the two men. Castillo later testified that he took out a knife he used in his work and displayed it to Perez-Alcantara

[2] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

after he caught him to discourage him from trying to resist. Once Villa caught up with Castillo and Perez-Alcantara, Villa grabbed ahold of Perez-Alcantara and Castillo ran back to the factory and called the police. Castillo later testified that, while waiting for the police to arrive, in response to his questioning Perez-Alcantara as to why he would attempt to steal the truck, Perez-Alcantara said he only wanted to take it for a ride. Villa later testified that Perez-Alcantara told him he would only be in jail for three days and then he would be released and he would "screw us up."

¶3 After the police arrived and Perez-Alcantara was arrested and placed in the squad car, the police officers, Villa and Castillo looked at the truck and discovered that the driver's side window had been completely broken out and the steering column had been stripped. Later, Perez-Alcantara was charged with entry into a locked vehicle.

¶4 A jury trial was held, at which five witnesses testified. Villa described the events of the evening in question and testified he had never seen Perez-Alcantara before that evening, and certainly had not given him permission to enter the truck. Castillo also testified, and explained his role in the incident. Both witnesses were adamant that they never lost sight of Perez-Alcantara, and they both identified Perez-Alcantara as the man they caught. Two police officers also testified. They both said that the damage to the truck was, in their professional opinions, consistent with someone trying to steal the truck, as the truck could be started without the key by stripping the steering column and starting the ignition with a hard object.

¶5 As noted, following the close of the State's case, Perez-Alcantara moved for a directed verdict and to dismiss, arguing that there was insufficient

evidence showing that he meant to permanently deprive Castillo of the truck's use because the only evidence was Perez-Alcantara's admission to Castillo that he only wanted to take it for a ride. The motion was denied. Perez-Alcantara then testified. He claimed that on the night in question he was living a couple blocks away from the factory and he had gone to the factory to get a job application. He stated that a friend, whose name he did not know, told him to go there. He explained that when he saw that the doors were closed, he was heading home when two men began yelling and approached him, putting a knife in his face, and making him accompany them. He denied entering the truck.

¶6 The jury convicted Perez-Alcantara and he was sentenced to six months in the House of Correction, to be served consecutive to another sentence. After he brought a postconviction motion, which was denied, arguing that there was insufficient evidence to convict him, Perez-Alcantara appealed.

II. ANALYSIS.

¶7 In a challenge to the sufficiency of the evidence in a criminal case, the appellate court must find that the evidence presented at trial was sufficient to prove the defendant's guilt beyond a reasonable doubt in order to affirm the conviction. ***State v. Poellinger***, 153 Wis. 2d 493, 506, 451 N.W.2d 752 (1990). The standard for reviewing whether the evidence was sufficient to support a conviction is that "an 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." ***Id.*** at 507.

¶8 The standard of review is the same in either a direct or circumstantial evidence case. ***Id.*** When faced with an evidentiary record which

supports more than one inference, this court must accept and follow the inference drawn by the trier of fact unless the underlying evidence is incredible as a matter of law. ***Id.*** at 506-07. In reviewing the sufficiency of circumstantial evidence, an appellate court need not concern itself in any way with evidence which might support other theories of the crime. ***Id.*** at 507-08. An appellate court need only decide whether the theory of guilt accepted by the trier of fact is supported by sufficient evidence to sustain the verdict rendered. ***Id.*** at 508. Indeed, "[o]nly when the evidence is inherently or patently incredible will [the court] substitute [its] judgment for that of the factfinder." ***State v. Saunders***, 196 Wis. 2d 45, 54, 538 N.W.2d 546 (Ct. App. 1995). A jury verdict "will be sustained if there is any credible evidence to support the verdict, especially if the verdict has the circuit court's approval." ***Trinity Lutheran Church v. Dorschner Excavating, Inc.***, 2006 WI App 22, ¶30, 289 Wis. 2d 252, 710 N.W.2d 680 (internal quotation marks omitted).

¶9 Perez-Alcantara argues that no evidence was admitted showing that he intended to permanently deprive Castillo of the use of his truck. He points out that the only testimony in the record is Castillo's testimony that Perez-Alcantara said he only wanted to take the truck for a ride. This court disagrees.

¶10 In order to convict a person of entry into a locked vehicle, the State must prove the following four elements: (1) "the defendant intentionally entered the locked and enclosed portion or compartment of the vehicle of another"; (2) "the defendant intentionally entered without the consent of a person authorized to give consent"; (3) "the defendant knew that the vehicle belonged to another person and knew that the entry was without consent"; and (4) "the defendant entered such (vehicle) (compartment) with intent to steal." WIS JI—CRIMINAL 1426. The fourth element "requires that the defendant had the mental purpose to

take and carry away movable property of another without consent and that the defendant intended to deprive the owner permanently of possession of the property." ***Id.***

¶11 "Circumstantial evidence is evidence from which a jury may logically find other facts according to common knowledge and experience." *See* WIS JI—CRIMINAL 170.

¶12 Perez-Alcantara denied entering Villa's truck. He explained his being in the area by claiming he was attempting to get a job application at 10 p.m. on a snowy January night, a time when most factories are not open to the public. Despite Villa's and Castillo's testimony, Perez-Alcantara insisted that he was a victim of mistaken identification, yet he never complained to the police, as he did in his testimony, that he was an innocent passerby who was approached by two strangers, one of whom brandished a knife.

¶13 Now, apparently abandoning his defense of mistaken identity, Perez-Alcantara urges us to accept his statement made to Castillo that he only wanted to take the truck for a ride, and thus never intended to permanently deprive Villa of his truck.

¶14 The jury obviously determined that not only was Perez-Alcantara's explanation of the events preposterous, but also that his statement to Castillo was untrue. Where there are inconsistencies within or between witnesses' testimonies, the jury determines the credibility of each witness and the weight of the evidence. *See* ***State v. Toy***, 125 Wis. 2d 216, 222, 371 N.W.2d 386 (Ct. App. 1985). Because the jury did not believe the testimony of Perez-Alcantara, the jury was free to disregard his earlier statement made to Castillo.

¶15 Moreover, there was ample circumstantial evidence to support the jury's verdict. While breaking a truck window to obtain access to the steering wheel and attempting to pry open the steering column could be consistent with either an attempt to "hot wire" the truck to steal it permanently or to go joy-riding, breaking in on a snowy January night in a parking lot with few cars in a fairly desolate spot does not suggest an impulsive desire to go joy-riding. Rather, it points to an intent to steal the vehicle permanently. Given Perez-Alcantara's feeble explanation and the weather, time and location, a reasonable jury could find that Perez-Alcantara was guilty of entry into a locked vehicle. Accordingly, this court affirms.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.