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**DISTRICT I/IV**

April 15, 2014

To:

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You are hereby notified that the Court has entered the following opinion and order:

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2013AP1512-CR                      State of Wisconsin v. Pedro Garcia-Reyes (L.C. # 2012CF2994)

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

Pedro Garcia-Reyes appeals a judgment of conviction for multiple counts of first-degree sexual assault of a child and repeated sexual assault of the same child. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).<sup>1</sup> We summarily affirm.

The sole issue raised on appeal is whether the evidence was sufficient to support the jury verdicts. Whether evidence was sufficient to support a conviction is a question of law, which we

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

review de novo. See *State v. Smith*, 2012 WI 91, ¶24, 342 Wis. 2d 710, 817 N.W.2d 410. The question is whether the evidence, viewed in a light most favorable to the convictions, is so lacking in probative value that no reasonable fact finder could have found Garcia-Reyes guilty. See *State v. Poellinger*, 153 Wis. 2d 493, 451 N.W.2d 752 (1990).

Garcia-Reyes contends first that the evidence was insufficient to support the jury verdicts because there was no evidence of physical damage to the victim's hymen despite claims of forced intercourse. Garcia-Reyes cites testimony by the nurse practitioner who examined the victim that the victim's hymen was normal, with "no tearing, no sign of scarring, no injury[] whatsoever." However, as the State points out, the nurse practitioner also testified that hymens are very stretchable and also heal quickly, and therefore the majority of girls who have been sexually assaulted will have normal hymens even following intercourse. Accordingly, we reject Garcia-Reyes' argument that physical evidence was necessary to support the convictions.

Garcia-Reyes also argues that the evidence was insufficient because the victim recanted her accusations. Garcia-Reyes contends that the evidence at trial was insufficient because the victim's testimony was that she did not remember some of the allegations of abuse attributed to her and that all her allegations of abuse were untrue. However, as the State points out, the trial evidence also included testimony by the investigating officer as to the victim's detailed reports of the sexual assaults. The State also presented testimony by two of the victim's friends, a school counselor, a social worker, and the victim's sister that the victim had reported the sexual assaults to them as well. The State's evidence was sufficient to support the jury verdicts, despite the victim's recantation.

The jury was presented with evidence both that the victim reported that Garcia-Reyes sexually assaulted her, and that the victim later claimed her reports of abuse were untrue.<sup>2</sup> It was the jury's role to weigh the credibility of the witnesses and reconcile any inconsistencies in the testimony. *See id.* at 506. We discern no basis to disturb the jury verdicts.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*

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<sup>2</sup> Garcia-Reyes has submitted an affidavit from the victim with his reply brief, in which the victim states again that her reports of sexual abuse by Garcia-Reyes were untrue. The affidavit was not part of the evidence at trial, and thus it is not relevant to our analysis of the sufficiency of the evidence to support the jury verdicts. In any event, the information in the victim's affidavit mirrors the victim's testimony at trial, which the jury did not find credible.