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**DISTRICT II**

August 9, 2017

To:

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

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2016AP2023-CR

State of Wisconsin v. Roberto D. Garcia, Jr. (L.C. # 2015CF90)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Roberto Garcia, Jr. appeals from a circuit court judgment convicting him of several offenses after a jury trial. Garcia argues and the State concedes that the evidence was insufficient to convict him of carrying a concealed weapon as party to the crime (count two) and misdemeanor bail jumping (count four). Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2015-16). We agree with Garcia and the State. We reverse the convictions for counts

two and four and remand to the circuit court for entry of a judgment of acquittal for these two counts.

Whether the evidence was sufficient to convict Garcia of counts two and four presents a question of law that we decide independently of the circuit court. *State v. Smith*, 2012 WI 91, ¶24, 342 Wis. 2d 710, 817 N.W.2d 410. We will reverse if the evidence viewed most favorably to the State “is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *Id.* (citation omitted).

Garcia and the State agree that the direct and circumstantial evidence was insufficient to convict Garcia of counts two and four. The charge arose from allegations that Garcia asked Randall Majors to hold his handgun,<sup>1</sup> and the handgun was found concealed on Majors’s person. But, as Garcia and the State explain, there was no evidence that Garcia intentionally aided and abetted Randall Majors in carrying a concealed weapon because there was no evidence (1) about how the handgun came to be concealed on Majors’s person, (2) that Garcia knew or believed that Majors intended to commit the crime of carrying a concealed weapon, and (3) that Garcia knowingly assisted Majors in committing that crime. *See* WIS JI—CRIMINAL 1335 (the elements of carrying a concealed weapon are being armed with a dangerous weapon, being aware of the presence of the weapon and the weapon is hidden from ordinary observation) and WIS JI—CRIMINAL 400 (a defendant intentionally aids and abets the commission of a crime when the defendant knows that the other person is committing or intends to commit the crime and the defendant has the purpose to assist the commission of that crime). The evidence was insufficient

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<sup>1</sup> Garcia was convicted of being a felon in possession of a firearm, which he does not challenge on appeal.

to convict Garcia of count two, carrying a concealed weapon, and count four, a related misdemeanor bail jumping charge.<sup>2</sup>

While the parties agree that the evidence was insufficient, they disagree on the remedy. Garcia seeks a judgment of acquittal; the State seeks resentencing. The State's resentencing argument is not sufficiently developed, and we decline to develop the argument. *Vesely v. Security First Nat'l Bank*, 128 Wis. 2d 246, 255 n.5, 381 N.W.2d 593 (Ct. App. 1985). Therefore, the remedy is acquittal for charges for which Garcia should not have been convicted in the first instance.

The judgment of conviction is affirmed in part and reversed in part.<sup>3</sup> The convictions for carrying a concealed weapon (count two) and misdemeanor bail jumping (count four) are reversed, and the cause is remanded to the circuit court for entry of a judgment of acquittal for counts two and four due to insufficient evidence.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is affirmed in part and reversed in part and the cause is remanded with directions.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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

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<sup>2</sup> The parties do not dispute that only one of the misdemeanor bail jumping counts related to the carrying a concealed weapon offense.

<sup>3</sup> The judgment of conviction also contains a conviction for count three, another count of misdemeanor bail jumping. This count is not appealed, and the conviction for count three is affirmed.