

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 27, 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. 2005AP809-CR**

**Cir. Ct. No. 2003CF4887**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**LUIS SANCHEZ,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: VICTOR MANIAN, Judge. *Affirmed.*

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

¶1 PER CURIAM. Luis Sanchez appeals from a judgment of conviction for attempted armed robbery as a party to the crime. The issue is whether there was sufficient evidence to convict Sanchez of that offense. We conclude that the evidence and the reasonable inferences from that evidence were

sufficient to convict Sanchez of an attempted armed robbery as a party to the crime. Therefore, we affirm.

¶2 A jury found Sanchez guilty of attempted armed robbery with the threat of force as a party to the crime, in violation of WIS. STAT. § 943.32(2) (amended Feb. 1, 2003), 939.32 (amended Feb. 1, 2003) and 939.05 (2003-04), and not guilty of possessing a short-barreled shotgun, contrary to WIS. STAT. § 941.28 (amended Feb. 1, 2003).<sup>1</sup> Sanchez and some other men, all members of either the Latin Kings or a rival gang, the Mexican Posse, brought guns, including a sawed-off shotgun, to the home of Jennifer Garcia.<sup>2</sup> Garcia testified that Sanchez told her that the guns were from a robbery they committed against one of his neighbors. They saw the victim, Miguel Flores, walking along the street, and Sanchez and another man told Garcia, “[t]o go behind the guy [Flores] and put the gun to him and tell him to get on the ground and try to rob him.” Sanchez gave Garcia the sawed-off shotgun, and she approached Flores and asked him to get on the ground, but he did not. Garcia thought that perhaps Flores had not heard her because he was wearing headphones. She “asked him again to get on the ground,” both in Spanish and in English. Flores turned around, “grabbed the shotgun” from Garcia, and fled. Sanchez and the others were watching from Garcia’s house, and when they saw Flores take the gun, they chased him and beat him. Sanchez returned, carrying Flores’s compact discs.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

<sup>2</sup> Some of them, including Sanchez, were seeking to become members of the Latin Kings.

¶3 Sanchez admits that there was overwhelming evidence of an assault, but contends that there was insufficient evidence to convict him of an armed robbery as a party to the crime since no robbery was intended, committed or thwarted. Flores testified that he dropped the walkman during his encounter with Garcia; it was not taken from him.

¶4 An armed robber is defined by WIS. STAT. § 943.32(1) and (2) (amended Feb. 1, 2003) as: “Whoever, with intent to steal, takes property from the person or presence of the owner by ... us[ing] or threat[ening] [the] use of a dangerous weapon ... used or fashioned in a manner to lead the victim reasonably to believe that it is a dangerous weapon...” Sanchez does not dispute the attempt or party to the crime aspects of the offense.

¶5 Our standard of review is limited:

[I]n reviewing the sufficiency of the evidence to support a conviction, an appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the [S]tate 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. If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it.

*State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990) (citation omitted).

¶6 Sanchez contends that there was no evidence of anyone’s intent to steal from Flores. He cites the testimony of Garcia and Flores. Garcia testified however, that Sanchez told her to “rob” Flores. Flores testified that “[a]t that

exact moment I didn't know whether [Garcia] was just gonna rob me or – I don't know because this was the first time that anybody ever pointed a gun at me.”

¶7 Although the jury could have parsed the testimony as Sanchez suggests, Garcia's testimony that Sanchez told her to “rob him [Flores],” her approaching Flores, pointing a shotgun at him and telling him to “get on the ground,” was sufficient to prove Garcia's attempt (at Sanchez's behest) to steal from Flores at gunpoint. The jury's inferences from the evidence, that Garcia intended to rob Flores, were reasonable. Moreover, after the beating, Garcia saw Sanchez with Flores's compact discs; the fact that Garcia testified that she did not believe that had Flores acquiesced to her demand “to get on the ground,” that anything would have been taken from him (Flores) does not exculpate Sanchez (as a party to the crime) from what the jury reasonably inferred was an armed robbery “gone bad,” when Flores surprisingly disarmed Garcia.

¶8 Sanchez also points to the jury acquitting him of possessing a short-barreled shotgun to demonstrate the inconsistency of this jury's verdicts, admitting that there was overwhelming evidence that he possessed the short-barreled shotgun. We do not address this contention because it does not negate the sufficiency of the evidence of Sanchez's guilt of attempted armed robbery as a party to the crime. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (unnecessary to address non-dispositive issues).

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

