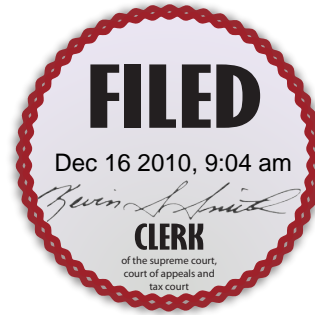


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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BYRON DIXON,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A04-1005-CR-314

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Robert Altice, Judge  
Cause No. 49G02-0912-FB-98677

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**December 16, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Byron Dixon appeals his conviction for Class B felony carjacking. We affirm.

### **Issue**

Dixon raises one issue, which we restate as whether there is sufficient evidence to support his carjacking conviction.

### **Facts**

On the morning of December 2, 2009, Y.C-R. picked up Dixon, her estranged husband, in Indianapolis in a car they had previously purchased together. The couples' two children were also in the car. Y.C-R. drove Dixon to a storage facility in Indianapolis so that he could pick up some of his belongings. While they were at the storage unit, the couple began arguing over the car. Dixon physically assaulted Y.C-R., got into the car, and drove away with their son, who was still in the car. Dixon drove the car through the gate at the entrance of the storage facility, evaded police, and was eventually detained in Jasper County.

The State charged Dixon with Class B felony carjacking, Class C felony battery, Class D felony domestic battery, Class D felony criminal recklessness, Class D felony neglect of a dependent, Class A misdemeanor criminal recklessness, and Class A misdemeanor domestic battery. A jury found Dixon guilty as charged.<sup>1</sup> Dixon now appeals his carjacking conviction.

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<sup>1</sup> The trial court did not enter convictions on the misdemeanor charges.

## Analysis

Dixon argues there is insufficient evidence to support his carjacking conviction. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). “It is the fact-finder’s role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction.” Id. We affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Id.

A person who knowingly or intentionally takes a motor vehicle from another person or from the presence of another person by using or threatening to use force on any person or by putting any person in fear commits Class B felony carjacking. Ind. Code § 35-42-5-2. Under certain circumstances, theft is an inherently included offense of carjacking. See Sanders v. State, 713 N.E.2d 918, 921 (Ind. Ct. App. 1999) (“Thus, if carjacking is established by proof of the same material elements as Class A robbery, and theft is established by proof of the same material elements as robbery, then theft is an inherently included offense of carjacking.”). Based on this rationale, Dixon argues that to prove the offense of carjacking, the State was required to prove not just that he took the car from another person but that the car was the property of another person. Compare I.C. §35-42-5-2 with I.C. § 35-43-4-2(a) (“A person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class D felony.”).

Dixon contends that the car belonged to him and asserts that he “committed a Battery and then fled in his own vehicle.” Appellant’s Br. p. 9. Dixon acknowledges Indiana Code Section 35-41-1-23(b), which provides, “Property is that ‘of another person’ if the other person has a possessory or propriety interest in it, even if an accused person also has an interest in that property.” Dixon argues, however, even if Y.C-R. at some point had permission to possess the vehicle, it is clear that his “actions constituted an unequivocal revocation of that permission. . . .” Id.

Assuming, without deciding, that the State must prove a motor vehicle is the property of another person to establish carjacking, there is evidence that Y.C-R. had a possessory interest in the car. Although the car was originally titled in Dixon’s name only, Y.C-R. testified that they purchased it together while they were married and shared it until Dixon left the country in February or March of 2009. Further, Y.C-R. had been driving it exclusively from the time Dixon left the country until the December 2, 2009 incident. In fact, while Dixon was out of the country, Y.C-R. filed paperwork to have the car titled in her name so that she could renew the registration. Dixon offered into evidence Bureau of Motor Vehicle documents confirming this. There is sufficient evidence to establish that Dixon took the property of another person when he fled in the car.

### **Conclusion**

There is sufficient evidence to support Dixon’s carjacking conviction. We affirm.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.