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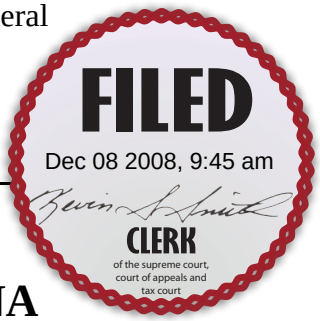

IN THE COURT OF APPEALS OF INDIANA

REYES MANUEL MALDONADO, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0804-CR-149
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0704-FB-38

December 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

On appeal from convictions of two counts of class B felony carjacking,[1] Reyes Manuel Maldonado, Jr., challenges the sufficiency of the "using or threatening the use of force" element.[2] We affirm.

In reviewing sufficiency challenges, we "neither reweigh the evidence nor judge the credibility of witnesses." *Sanders v. State*, 704 N.E.2d 119, 123 (Ind. 1999). Instead, we consider the evidence most favorable to the conviction and all reasonable inferences to be drawn therefrom. *See id.* If the evidence and inferences provide substantial evidence of probative value to support the conclusion of the trier of fact, then we will affirm. *See id*. The trier of fact is free to believe or disbelieve witnesses, as it sees fit. *McClendon v. State*, 671 N.E.2d 486, 488 (Ind. Ct. App. 1996).

The carjacking statute provides:

> A person who knowingly or intentionally takes a motor vehicle from another person or from the presence of another person:
> (1) *by using or threatening the use of force on any person*; or
> (2) by putting any person in fear;
> commits carjacking, a Class B felony.

Ind. Code § 35-42-5-2 (emphasis added). The State used the language in Indiana Code Section 35-42-5-2(1) in its informations charging Maldonado with the two carjackings.

The evidence most favorable to the convictions is as follows. On April 18, 2007, Cassandra Tarver left work and drove to her East Chicago home for lunch. Tr. at 183. When

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[1] *See* Ind. Code § 35-42-5-2.

she emerged from her home, she noticed Maldonado walking nearby. *Id*. at 185. She hurried to her car parked on her driveway, quickly hopped in, then locked the doors. *Id*. at 186. At that point, Maldonado ran up to Tarver's car and told her to open the car door. *Id*. Tarver momentarily considered driving off. However, Maldonado again instructed her to open the car door, and this time he showed her a weapon that was in his pants. Upon seeing Maldonado lift what Tarver believed to be a .38 caliber gun, she "knew" that he was "serious." *Id*. at 187. Thus, she acquiesced to his demand and exited her car. *Id*. at 188. Maldonado entered her vehicle, told Tarver not to call police, then drove away. *Id*. at 189.

That same day, not long after the above incident, Arthur Davis was leaving an office building located "a couple minutes" from Tarver's home. *Id*. at 191. As he walked to his car in the parking lot, Davis saw Maldonado approaching on foot and saying something that Davis could not hear. *Id*. at 146-49. Believing that Maldonado might need assistance/directions, Davis sat in his car and waited for Maldonado to get closer so he could speak with him. *Id*. at 149. Eventually, Maldonado was within three or four feet of Davis and stated that he needed Davis' car. *Id.* at 150-51. When Davis did not react, Maldonado repeated his statement, this time moving his shirt to reveal the handle of a pistol. *Id*. Maldonado then took what Davis believed to be a full size .38 caliber pistol out of his pants and pointed it at Davis. Davis immediately exited his car as Maldonado continued to point the weapon at him. *See id*. at 179 (Davis testified that "[s]eeing the gun was the decision to

[2] Following the jury's guilty verdicts on the two counts of carjacking, Maldonado admitted to being a habitual offender and then pled guilty to six separate counts of robbery as a class B felony. App. at 2, 62; Guilty Plea Tr. at 1-30. Sentencing in all the causes was consolidated, and Maldonado does not challenge his sentence on appeal. App. at 2; Tr. at 382; Appellant's Br. at 2. We do not include the cause numbers of the unchallenged convictions.

hand over the car. If [Maldonado] had no gun, he wouldn't have gotten the car."). Maldonado backed into the driver's seat, inquired if there were any unusual features to the vehicle, and shortly thereafter, drove away. *Id.* at 154.

Presented with the aforementioned evidence, the jury could easily find that Maldonado threatened the use of force when he displayed a deadly weapon while taking possession of Tarver's car. Likewise, the State clearly provided sufficient evidence that Maldonado threatened the use of force when he actually pointed the .38 at Davis while demanding his car. *See Sanders v. State*, 713 N.E.2d 918, 921 (Ind. Ct. App. 1999) (addressing challenge to instructions, and concluding that uncontradicted testimony that defendant pointed gun at victim and told him to get out of car was sufficient to establish threat of force necessary for carjacking); *Mendelvitz v. State*, 416 N.E.2d 1270, 1273 (Ind. Ct. App. 1981) (noting that in the case of robbery,[3] any threat of force, conveyed by word or gesture, or by the brandishing of a gun, knife or some other deadly weapon, will suffice); *cf. Scott-Gordon v. State*, 579 N.E.2d 602, 604 (Ind. 1991) (discussing how in the context of sexual battery or rape, force need not be physical or violent, but may be implied from the circumstances).[4]

Without a doubt, both Tarver and Davis gave up their respective vehicles when

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[3] As we have previously noted, Indiana's carjacking statute is "clearly based on its robbery statute[.]" *Allen v. State*, 875 N.E.2d 783, 786 (Ind. Ct. App. 2007). Thus, we find *Mendelvitz* instructive.

[4] Moreover, in instances of rape, "[f]orce or threat of force may be shown even without evidence of the attacker's oral statement of intent or willingness to use a weapon and cause injury, if from the circumstances it is reasonable to infer the attacker was willing to do so." *Lewis v. State*, 440 N.E.2d 1125, 1127 (Ind. 1982), *cert. denied*; *see also Tobias v. State*, 666 N.E.2d 68, 72 (Ind. 1996) (noting it is the victim's subjective perspective, not the assailant's, from which the presence or absence of forceful

Maldonado coupled his requests with the displaying/pointing of a deadly weapon. Indeed, his threat, in the form of the displaying/pointing the gun while expressing his "need" for the victims' cars was extremely effective. Accordingly, we conclude that sufficient evidence of the elements of carjacking was presented in each case. To reach any other conclusion would be to invade the jury's province as the factfinder.

Affirmed.

ROBB, J., and BROWN, J., concur.

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compulsion is to be determined).