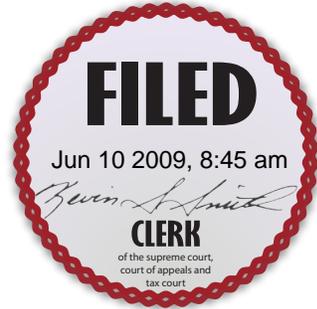


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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ROGELIO AMARO, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 49A05-0812-CR-718

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Linda E. Brown, Judge  
Cause No. 49F10-0806-CM-128615

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**June 10, 2009**

**MEMORANDUM DECISION– NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-defendant Rogelio Amaro appeals his conviction for Criminal Recklessness,<sup>1</sup> a class A misdemeanor. Specifically, Amaro argues that there was insufficient evidence to convict him. Finding the evidence to be sufficient, we affirm the judgment of the trial court.

### FACTS

On May 28, 2008, around 11:00 p.m., Officer Carol Carson of the Indianapolis Metropolitan Police Department investigated an illegally parked vehicle owned by Amaro. Officer Carson ticketed the vehicle and had it towed. As the tow truck and Officer Carson pulled out onto the street, a silver pickup truck being driven by Amaro passed both of them, made a u-turn, and pulled “dangerously close” behind Officer Carson. Tr. p. 8.

Amaro followed closely behind Officer Carson for a while and attempted to cut off the tow truck several times and forced it off its intended route. Officer Carson testified that there were “[m]inimal cars” on the streets at this time. *Id.* at 10. Amaro eventually passed the tow truck at a high rate of speed, veered to the left, and forced the tow truck to turn into a restaurant parking lot where other people were standing.

After turning into the parking lot, the tow truck made a u-turn to keep Amaro from getting in front of him. Officer Carson entered the parking lot on the driver’s side of the tow truck. At this point, the driver of the tow truck asked Officer Carson what he should do, and she instructed him to go to the Speedway parking lot, where additional police officers were

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<sup>1</sup> Ind. Code §§ 35-42-2-2(b), -2(c).

waiting to assist.

Amaro aggressively followed the tow truck and Officer Carson to the Speedway parking lot. Once they had reached the lot, Amaro exited his vehicle and began yelling.

On June 2, 2008, Amaro was charged with criminal recklessness, a class A misdemeanor. At his November 17, 2008, bench trial, Amaro was found guilty as charged and sentenced to 365 days incarceration, with 363 suspended and two days credit for time served. Amaro now appeals.

### DISCUSSION AND DECISION

Amaro's sole argument on appeal is that there was insufficient evidence to convict him of criminal recklessness. Specifically, Amaro contends that his actions did not rise to the level of recklessness and that there was no evidence that his actions created a substantial risk of bodily injury to another person.

When considering a challenge to the sufficiency of the evidence, we will neither reweigh the evidence nor judge witness credibility. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). Rather, we will consider only the evidence and reasonable inferences supporting the verdict. Id. This court will affirm if the evidence and reasonable inferences could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. Id.

Indiana Code section 35-42-2-2(b) provides that “[a] person who recklessly, knowingly, or intentionally performs . . . an act that creates a substantial risk of bodily injury to another person . . . commits criminal recklessness.” The offense is a class A misdemeanor “if the conduct includes the use of a vehicle.” I.C. § 35-41-2-2(c)(1). In addition, a person is

reckless if he “engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct.” I.C. § 35-41-2-2(c).

Here, Officer Carson testified that Amaro passed her vehicle and the tow truck at a “high rate of speed,” made a u-turn, and pulled up behind Officer Carson’s vehicle. Tr. p. 7. Amaro then followed Officer Carson at a “dangerously close space [sic].” Id. at 8. After following Officer Carson’s vehicle for a while, Amaro attempted to pass the tow truck. Officer Carson attempted to shield the tow truck from being passed, but eventually allowed Amaro to pass because she feared the two vehicles might collide. Amaro then passed the tow truck on its passenger side and “upon passing it[,] he immediately veered to the left . . . forcing [the tow truck] to turn left on to the parking lot of Joe’s Grill,” where people were standing on the lot. Id. at 10. To keep Amaro from getting in front of the tow truck, the driver was forced to make a u-turn in the parking lot, and Officer Carson directed the driver to go to the Speedway parking lot. Amaro continued to follow Officer Carson and the tow truck in an aggressive manner until reaching the Speedway parking lot, where police officers were waiting to assist Officer Carson.

In light of these circumstances, we cannot agree with Amaro’s contention that his actions were mere traffic violations. A reasonable trier of fact could have concluded that Amaro’s actions were reckless and posed a substantial risk of bodily injury to another person. In our view, corraling a tow truck with a pickup truck on public roads amounts to reckless conduct. Moreover, it is of no moment that there were few vehicles around at the time these

events occurred. Therefore, we conclude that there was sufficient evidence to convict Amaro of criminal recklessness.

The judgment of the trial court is affirmed.

MAY, J., and BARNES, J., concur.