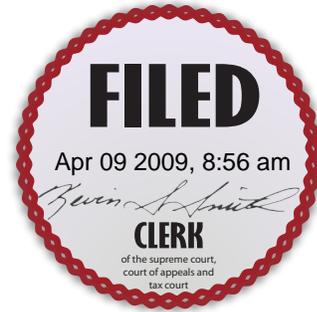


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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APRIL REED, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 49A02-0808-CR-769  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Annie Christ-Garcia, Judge  
Cause No. 49G17-0805-CM-106459

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**APRIL 9, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**HOFFMAN, Senior Judge**

April Reed, (“Reed”) appeals from her conviction for battery,<sup>1</sup> a Class A misdemeanor. Reed presents the following restated issue for our review: whether there was sufficient evidence to support Reed’s conviction and rebut her claim of self-defense.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On April 29, 2008, Theresa Hall (“Hall”), Chief of Staff of the Marion County Clerk’s Office, was working inside the Marion County election warehouse, when she heard claims that Maurice Smith (“Smith”), a seasonal employee of the Marion County Clerk’s Office, was arguing with another person in the parking lot outside the election warehouse. Reed testified that she was involved in a romantic relationship with Smith. Hall went outside to investigate and observed Reed pushing Smith on his upper body and then slapping his face at least three times while shouting profanities. When Hall and other employees threatened to call the police, Hall observed Reed switch from slapping to punching Smith in the head, neck, and upper chest. Reed refused to stop, and Hall went into the warehouse where she called the police.

When Hall returned to the warehouse parking lot, Hall observed Smith on the ground between two vehicles as Reed continued to punch Smith. Hall thought she observed Reed kick Smith at one point. Smith placed his arms over his head to deflect Reed’s punches. The only physical contact Hall observed from Smith was his attempt to grab Reed’s arms to prevent her from hitting him. Another warehouse employee physically removed Reed from Smith. Smith walked to the warehouse dock, and Hall

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<sup>1</sup> See Ind. Code § 35-42-2-1.

observed Reed walk toward the dock, but then leave in her car prior to police officers arriving on the scene.

Hall observed what she described as a welt on Smith's neck and red marks on the opposite side of his head immediately after the incident. Hall had been in contact with Smith prior to the incident that day and did not observe the injuries until after the incident occurred.

The State charged Reed with one count of domestic battery, a Class A misdemeanor, and one count of battery, a Class A misdemeanor. At the conclusion of Reed's bench trial on July 25, 2008, the trial court found Reed guilty of battery, a Class A misdemeanor. The count charging domestic battery was dismissed on Reed's Trial Rule 41(b) motion at the conclusion of the State's case. The trial court sentenced Reed to 180 days with 176 days suspended and four days executed, and credited Reed for time served. Reed now appeals.

### **DISCUSSION AND DECISION**

Reed claims that there was insufficient evidence to support her conviction of battery. More specifically, Reed claims that there is insufficient evidence to support the conviction given the absence of Smith's testimony about his injuries or pain, and that there was insufficient evidence to rebut Reed's claim of self-defense.

In reviewing the sufficiency of evidence, we neither reweigh the evidence nor judge the credibility of the witnesses. *Cox v. State*, 774 N.E.2d 1025, 1028 (Ind. Ct. App. 2002). We only consider evidence favorable to the judgment along with reasonable inferences drawn therefrom. *Id.* We will affirm a conviction if evidence and inferences

establish that a trier of fact could reasonably conclude that the defendant was guilty beyond a reasonable doubt. *Id.*

In order to convict Reed of battery as a Class A misdemeanor, the State had to prove beyond a reasonable doubt that Reed touched Smith in a rude, insolent, or angry manner, and that the touching resulted in bodily injury to Smith. *See* Ind. Code § 35-42-2-1. Hall testified that Reed slapped and punched Smith approximately ten to fifteen times while shouting profanities, and that Reed appeared angry. Even after police were called, Reed had Smith down on the ground between two vehicles continuing to strike Smith. Smith placed his hands over his head to deflect Reed's punches, and then attempted to grab Reed's arms to prevent her from striking him. Further, Hall testified that after the incident she observed that Smith had a welt on his neck and red marks on the opposite side of his head, and that those injuries were not there when she had seen Smith earlier that day. The officer dispatched to the scene testified that he observed a scratch on Smith's neck and red spots on the opposite side of his face. The evidence was sufficient to support Reed's conviction.

Reed takes issue with Smith's failure to testify at trial. However, the uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal. *See Johnson v. State*, 804 N.E.2d 255, 257 (Ind. Ct. App. 2004)(testimony of eyewitness about battery of defendant's daughter sufficient). Hall's testimony was sufficient to sustain Reed's conviction. Moreover, the trial court was not required to believe Reed's testimony that the blotches depicted in photographs after the incident, and observed by witnesses after the incident were from Smith's pre-existing

lupus disorder. It is the domain of the trier of fact to sift through conflicting accounts of events and determine not only whom to believe, but also what portions of conflicting testimony to believe. *Ryle v. State*, 549 N.E.2d 81, 83 (Ind. Ct. App. 1990).

Next, Reed challenges the sufficiency of the evidence by contending that the State failed to rebut her claim of self-defense. Reed alleges that the record does not contain evidence to contradict her claim that she acted in self-defense.

A valid claim of self-defense is legal justification for an otherwise criminal act. *Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000). In order to prevail on such a claim, the defendant must show that she: (1) was in a place where she had a right to be; (2) was without fault; and (3) had a reasonable fear or apprehension of bodily harm. *White v. State*, 699 N.E.2d 630, 635 (Ind. 1998). The State may disprove one of these elements by affirmatively showing the defendant did not act to defend herself or by relying on evidence elicited in its case-in-chief. *Hollowell v. State*, 707 N.E.2d 1014, 1021 (Ind. Ct. App. 1999). Whether the defendant acted in self-defense is a question of fact for the fact-finder. *Green v. State*, 870 N.E.2d 560, 564 (Ind. Ct. App. 2007). Appellate review of the challenge to the sufficiency of the evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. *Wallace*, 725 N.E.2d at 840.

During her testimony Reed claimed that she previously had been abused by Smith, that he pushed her first on the date in question when no one else was outside, and that she was afraid of Smith. However, on cross-examination, Reed testified that she was not afraid of Smith on the date of the incident in question, but feared him because of Smith's

prior aggressive behavior. However, the evidence established that Reed was the only one throwing punches, and could have retreated at any time. Even if Smith pushed Reed first, Reed was observed slapping and punching Smith as many as fifteen times. The evidence was sufficient to rebut Reed's claim of self-defense.

Affirmed.

KIRSCH, J. and CRONE, J., concur.