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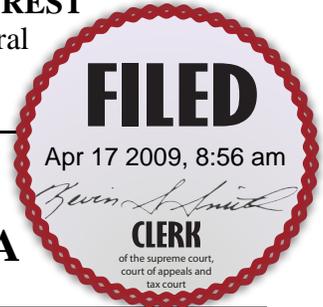
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**IN THE
COURT OF APPEALS OF INDIANA**

ROBBIE HOUSE,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 49A02-0809-CR-841

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebekah F. Pierson-Treacy, Judge
Cause No. 49F19-0805-CM-117546

April 17, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Following a bench trial, Appellant-Defendant Robbie House was convicted of Class A misdemeanor Battery¹ and Class B misdemeanor Public Intoxication.² Upon appeal, House challenges the sufficiency of the evidence to support her battery conviction. We affirm.

FACTS AND PROCEDURAL HISTORY

On the night of May 17, 2008, House was a customer at the Indianapolis tavern Club Level, where Elizabeth Schroeder was employed. Schroeder asked House to leave the section of the bar where Schroeder was working. According to Schroeder, House had previously been barred from Club Level due to their apparently contentious relationship. House refused to leave Schroeder's section of the bar and began screaming at Schroeder, who continued to ask House to leave. As lead security guard Guy Spears and other guards approached, House said, "F*** you, b****," then reached over the bar and "smacked" Schroeder in her face, leaving a red mark and causing Schroeder pain. Tr. p. 15. Spears and bartender Jessica Abbott saw House hit Schroeder in the face. Officer Kerry Morse removed House from the bar. In doing so, Officer Morse observed that House smelled of alcohol, had slurred speech, and her balance was unstable. Indianapolis Metropolitan Police Officer Troy Fitts assisted Officer Morse in handcuffing House.

On May 18, 2008, the State charged House with Class A misdemeanor battery (Count 1), Class B misdemeanor public intoxication (Count 2), and Class B misdemeanor disorderly conduct (Count 3). Following an August 12, 2008 bench trial, the trial court

¹ Ind. Code § 35-42-2-1 (2007).

² Ind. Code § 7.1-5-1-3 (2007).

found House guilty of Counts 1 and 2 and acquitted her of Count 3. The trial court subsequently sentenced House to 365 days on Count 1, with 355 days suspended to probation, and it imposed a \$150 alcohol treatment fee on Count 2. This appeal follows.

DISCUSSION AND DECISION

House challenges the sufficiency of the evidence to support her conviction for battery. Our standard of review for sufficiency-of-the-evidence claims is well-settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*. We consider only the evidence which supports the conviction and any reasonable inferences which the trier of fact may have drawn from the evidence. *Id.* We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. *Id.* It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Jones v. State*, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998)

Under Indiana Code section 35-42-2-1, a person who knowingly or intentionally touches another person in a rude, insolent, or angry manner resulting in bodily injury³ to another person commits Class A misdemeanor battery. House claims that Schroeder's testimony against her is inadequate to establish her battery conviction beyond a

³ "Bodily injury" means any impairment of physical condition, including physical pain. Ind. Code § 35-41-1-4 (2007).

reasonable doubt. House cites two cases in support of her position, *Gaddis v. State*, 253 Ind. 73, 251 N.E.2d 658 (1969), and *Vest v. State*, 621 N.E.2d 1094 (Ind. 1993).

In *Gaddis*, the Indiana Supreme Court reversed a defendant's conviction which rested solely upon an eyewitness's "vacillating, contradictory and uncertain" identification testimony. 253 Ind. at 79, 251 N.E.2d at 660-61. This eyewitness had been threatened with prison if he refused to testify against the defendant, and there was no circumstantial evidence to support the conviction. *Id.* Because the only evidence identifying the defendant as the perpetrator was "at best equivocal" and the result of coercion, the *Gaddis* court reversed upon incredible dubiosity grounds. *Id.* at 80-81, 251 N.E.2d at 662-63.

In *Vest*, the Supreme Court reversed a defendant's battery conviction for allegedly burning a three-year-old child with a cigarette because the conviction similarly rested upon insufficient identification grounds. 621 N.E.2d at 1095-96. Although testimony by a treating nurse referred to a statement by the child identifying the defendant as the perpetrator, a limiting instruction pursuant to Indiana Rule of Evidence 803(4) precluded the jury's use of this statement as substantive identification evidence. *Id.* at 1096. The jury's determination that the defendant was the perpetrator, therefore, was based upon the mere facts that he was a smoker, that the child was often in his company, that she had walked past his house two days before the injury was reported, and that he had altered his initial denial when asked if he may have accidentally burned the child while flipping his cigarette a month before the alleged battery. *Id.* The Supreme Court concluded that this evidence was insufficient. *Id.*

Neither *Gaddis* nor *Vest* is analogous to the instant case. Here, Schroeder, who was the victim, testified that House hit her during their heated confrontation. A conviction may rest upon the uncorroborated testimony of the victim. *Ludy v. State*, 784 N.E.2d 459, 461 (Ind. 2003). Schroeder's testimony was neither equivocal nor allegedly coerced. Further, additional witness testimony supports House's conviction for battering Schroeder. Both Spears and Abbott observed House hit Schroeder during their dispute. To the extent that there were contradictory accounts at trial regarding who hit whom, the trial court was within its discretion to credit Schroeder's, Spears's, and Abbott's version of the events in question. We will not reweigh that evidence.

The judgment of the trial court is affirmed.

CRONE, J., and BROWN, J., concur.