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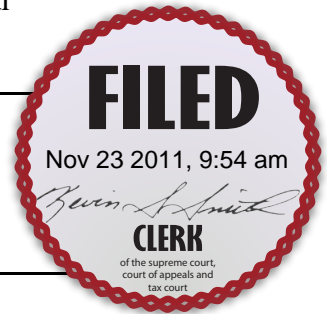
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**IN THE  
COURT OF APPEALS OF INDIANA**

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DAVID GARDNER, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 49A04-1104-CR-198

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Clark Rogers, Judge  
Cause No. 49G17-1011-CM-84673

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**November 23, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

David Gardner (“Gardner”) was convicted after a bench trial of domestic battery<sup>1</sup> as a Class A misdemeanor. He appeals, raising the following restated issue: whether the State presented sufficient evidence to support his conviction for domestic battery.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Gardner and Charrie Anderson (“Anderson”) were married on December 25, 2008 and were living together on November 7, 2010. The two began encountering marital problems when Gardner had an affair. On November 6, 2010, Gardner seemed irritated, and he and Anderson did not really talk. On November 7, 2010, Gardner woke up angry and frustrated, and when Anderson asked him about the location of some of her clothes, he did not respond at first. Gardner and Anderson then became involved in a verbal argument. During this argument, the two were face to face, and Gardner angrily told her to hit him. Anderson tried to back away, and Gardner swung at her with an open hand and hit her in the right eye, causing her eye to swell. Gardner then grabbed Anderson around the neck and shoved her up against the bedroom window and then against the living room wall. Gardner pushed Anderson out the front door of the house, which caused her to fall on the steps outside and injure her back. Anderson also injured her toe because she was not wearing shoes, and Gardner was wearing boots.

Anderson called her friend, Kami Carpenter (“Carpenter”), picked her up, and the two women returned to Anderson’s and Gardner’s home. When they arrived at the house, they saw Gardner throwing Anderson’s belongings into the trash. Gardner made

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<sup>1</sup> See Ind. Code § 35-42-2-1.3(a).

threats to Anderson that he would come back and “shoot up everybody in [her] house,” but, when Anderson called the police, Gardner left to walk to his father’s house, which was located nearby. *Tr.* at 13. But, before he left, Gardner grabbed Anderson’s keys from her hand, and the two fought over the keys.

The State charged Gardner with domestic battery as a Class A misdemeanor and battery as a Class A misdemeanor. A bifurcated bench trial was held, and at the conclusion of the trial, the trial court found Gardner guilty of domestic battery as a Class A misdemeanor but not guilty of battery as a Class A misdemeanor due to double jeopardy concerns. The trial court sentenced Gardner to 365 days, with 357 days suspended and credit for eight days served. Gardner now appeals.

### **DISCUSSION AND DECISION**

Gardner argues that the State failed to present sufficient evidence to support his conviction for domestic battery as a Class A misdemeanor. This court reviews a challenge to sufficiency of the evidence to rebut a self-defense claim under the same standard as any sufficiency of the evidence claim. *Boyer v. State*, 883 N.E.2d 158, 162 (Ind. Ct. App. 2008) (citing *Sanders v. State*, 704 N.E.2d 119, 123 (Ind. 1999)). That is, the verdict will not be disturbed if there is sufficient evidence of probative value to support the conclusion of the trier of fact. *Id.* Stated differently, a reviewing court will reverse a conviction where the defendant claimed self-defense only if no reasonable person could say the State disproved self-defense beyond a reasonable doubt. *Id.* (citing *Taylor v. State*, 710 N.E.2d 921, 924 (Ind. 1999)). In conducting this review, we neither reweigh the evidence nor judge the credibility of the witnesses. *Id.*

In order to convict Gardner of domestic battery, the State was required to prove that he knowingly or intentionally touched Anderson, who was his spouse, in a rude, insolent, or angry manner that resulted in bodily injury to Anderson. Ind. Code § 35-42-2-1.3(a). Here, the State charged Gardner only with “knowingly” committing the crime. *Appellant’s App.* at 16. A person engages in conduct “knowingly” if, when he engages in the conduct, he is aware of a high probability that he is doing so. Ind. Code § 35-41-2-2(b).

In the present case, the evidence most favorable to the verdict showed that Anderson testified that Gardner was irritated and frustrated in the morning of November 7, 2010, and they became involved in a verbal altercation. *Tr.* at 6-7, 8. During this argument, Gardner attempted to provoke Anderson into hitting him, and when she stepped back from him, he hit her with an open hand in the right eye, causing her eye to swell. Gardner then grabbed her around the neck and shoved her against the bedroom window and then against the living room wall. He pushed her out the front door of the house, causing her to fall down the outside steps and injure her back. Anderson’s toe was also injured because she was not wearing shoes, and Gardner was wearing boots. The State admitted photographs that documented Anderson’s injuries. We conclude that sufficient evidence was presented to support Gardner’s conviction for domestic battery as a Class A misdemeanor.

Affirmed.

BAKER, J., and BROWN, J., concur.