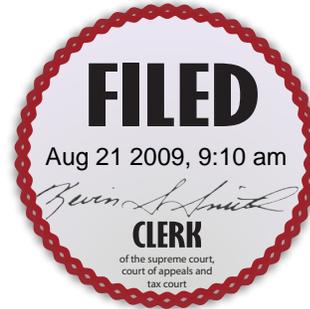


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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JUSTIN PARSLEY, )  
 )  
 Appellant-Defendant, )  
 )  
 vs. )  
 )  
 STATE OF INDIANA, )  
 )  
 Appellee-Plaintiff. )

No. 49A04-0901-CR-50

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Charles Wiles, Judge  
Cause No. 49F19-0811-CM-263527

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**August 21, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Justin Parsley appeals his conviction for Class A misdemeanor battery. We affirm.

### **Issue**

Parsley raises one issue, which we restate as whether there is sufficient evidence to support his battery conviction.

### **Facts**

On November 18, 2008, neighbors Michael Gomez and Barbara Lopez got in a verbal dispute about street parking in front of their houses. Suzanne Huffman, Gomez's fiancée, called the police. At some point, Lopez ran from her front porch to Gomez and Huffman's front porch, and Lopez and Huffman began physically fighting. Gomez did not intervene because he feared it would escalate the situation. Eventually, fourteen-year-old R.V. came over from Lopez's house and attempted to break up the fight. R.V. got entangled in the fight and became frustrated; Gomez grabbed R.V. and threw him off the porch. As the police arrived, Parsley ran from Lopez's house and tackled Gomez, pushing him off his porch. R.V. and Parsley began to strike Gomez. The responding officer, Robert Ferguson of the Indianapolis Metropolitan Police Department, repeatedly instructed all five people to get to the ground. The group did not respond until Officer Ferguson turned on his Taser. Officer Ferguson was able to gain control of the situation, and Parsley was arrested.

The State charged Parsley with Class A misdemeanor battery. After a bench trial, Parsley was found guilty as charged. Parsley now appeals.

## Analysis

Parsley argues there was insufficient evidence to support his battery conviction because he was acting in defense of R.V. “The standard of review for a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence challenge.” Sanders v. State, 704 N.E.2d 119, 123 (Ind. 1999). We neither reweigh the evidence nor judge the credibility of witnesses; instead, we consider the evidence most favorable to the verdict and all reasonable inferences drawn therefrom. Id. If there is substantial evidence of probative value to support the verdict, we must affirm the conviction. Id.

“A person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force.” Ind. Code § 35-41-3-2(a). When the defendant has raised a self-defense claim, the State must disprove at least one of the following elements beyond a reasonable doubt: 1) the defendant was in a place where he or she had a right to be; 2) the defendant was without fault; and 3) the defendant had a reasonable fear or apprehension of bodily harm. Boyer v. State, 883 N.E.2d 158, 162 (Ind. Ct. App. 2008). The State may disprove one of these elements by affirmatively showing the defendant did not act in defense or by relying on evidence elicited in its case-in-chief. Id. “The amount of force used to protect oneself must be proportionate to the urgency of the situation.” Hollowell v. State, 707 N.E.2d 1014, 1021 (Ind. Ct. App. 1999). “Where a person has used more force than necessary to repel an attack the right to self-defense is extinguished, and the

ultimate result is that the victim then becomes the perpetrator.” Id. (quoting Geralds v. State, 647 N.E.2d 369, 373 (Ind. Ct. App. 1995), trans. denied).

Parsley claims, “His actions were intended only to defend [R.V.] from his larger, more powerful and older aggressor, Mr. Gomez.” Appellant’s Br. p. 10. Even if that was Parsley’s intent, the State established that his actions exceeded the force necessary to defend R.V. As the trial court observed when it rendered its verdict,

Officer Ferguson clearly says that he saw Mr. Parsley run over, knock Mr. Gomez off the porch. Mr. Gomez went to the ground, contrary to what Mr. Parsley says. Both parties then started striking Mr. Gomez and refused to stop after commands loud enough that Officer Ferguson lost his voice. This clearly to me went beyond the point of trying to protect [R.V.], protect the property, resolve the dispute, and clearly became a battery on Mr. Gomez on his property.

Tr. p. 72. It was within the trial court’s prerogative to determine that Parsley’s actions were not proportionate to the urgency of the situation. To the extent Parsley argues otherwise, he is requesting us to reweigh the evidence. We cannot do that.

### **Conclusion**

The State presented sufficient evidence to rebut Parsley’s claim that he was defending R.V. We affirm.

Affirmed.

NAJAM, J., and KIRSCH, J., concur.