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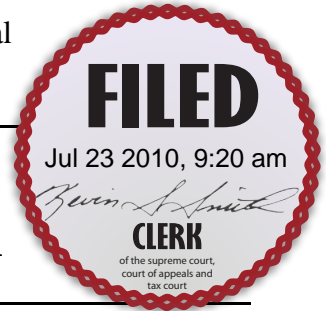
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**IN THE  
COURT OF APPEALS OF INDIANA**

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ANTHONY FRANKLIN,  
Appellant- Defendant,

vs.

STATE OF INDIANA,  
Appellee- Plaintiff,

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No. 49A02-0912-CR-1241

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Mark Stoner, Judge  
Cause No. 49G06-0710-MR-230285

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**July 23, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

### Case Summary and Issue

Anthony Franklin appeals his conviction of murder, a felony, following a bench trial. The sole issue for our review is whether the State presented sufficient evidence to rebut Franklin's claim of self-defense. Concluding the State's evidence that Franklin fired multiple shots at the unarmed victim after the victim gestured towards his waist sufficiently rebutted Franklin's self-defense claim, we affirm.

### Facts and Procedural History

On September 21, 2007, Franklin and a friend took Franklin's car to be repaired at the home of L.T. in the 1700 block of Carrollton Avenue in Indianapolis. Franklin and his friend left L.T.'s after Franklin's friend became involved in an altercation with Tyree Fox. Franklin returned to L.T.'s home later that afternoon. While Franklin was standing on the sidewalk, he noticed Fox approaching with his friend, Darrell Level. As the two men got closer to Franklin, Fox puffed his chest out and gestured at his waist. Franklin started to walk across Carrollton Avenue and began shooting at Fox. After the first shot, Fox turned, fell to the curb, and tried to crawl under a car to get away from Franklin. Franklin continued to shoot at Fox while he was on the ground. One of those shots hit Fox's spinal cord and exited his body at the base of his tongue. Franklin was charged with murder and carrying a handgun without a license.

At trial, Level testified Fox was unarmed, did not threaten Franklin, and did not give any indication to Franklin he had a weapon. Franklin testified a man in the neighborhood told him Fox was "on something" and was threatening to kill Franklin. Transcript at 214. The man in the neighborhood denied telling Franklin that Fox

threatened to kill him. Franklin also testified he thought he saw a gun handle when Fox gestured at his waist. He testified he shot Fox in self-defense. At the end of trial, the trial court found the evidence was “substantially a matter of credibility of witnesses.” Id. at 261. The trial court concluded Franklin’s claims that he saw a gun handle and was told Fox threatened to kill him were simply not supported by the evidence. The trial court also concluded the additional shots Franklin fired at Fox while Fox was on the ground took “this out of the area of self-defense . . . .” Id. at 267-68. The trial court convicted Franklin of murder. Franklin appeals.

#### Discussion and Decision

The sole issue for our review is whether the State presented sufficient evidence to rebut Franklin’s claim of self-defense. We review a challenge to the sufficiency of the evidence to rebut a claim of self-defense using the same standard as that used for any claim of insufficient evidence. Pinkston v. State, 821 N.E.2d 830, 841 (Ind. Ct. App. 2004), trans. denied. In so doing, we neither reweigh the evidence nor judge the credibility of witnesses. Id. The verdict will not be disturbed if there is sufficient evidence of probative value to support it. Id. at 841-42.

A valid claim of self-defense is a legal justification for an otherwise criminal act. Id. at 842. To prevail on such a claim, the defendant must show that he: 1) was in a place he had a right to be; 2) did not provoke, instigate, or participate willingly in the violence; and 3) had a reasonable fear of death or great bodily harm. Id. The amount of force an individual may use to protect himself must be proportionate to the urgency of the situation. Id. When a person uses more force than is reasonably necessary under the

circumstances, the right of self-defense is extinguished. Id. When a claim of self-defense is raised and supported by the evidence, the State bears the burden of negating at least one of the necessary elements. Id. The State may satisfy this burden by either rebutting the defense directly or relying on the sufficiency of the evidence in its case in chief. Id.

Here, in support of his self-defense claim, Franklin relies on his testimony that he thought he saw a gun handle when Fox gestured towards his waist and was told by another that Fox threatened to kill Franklin. The trial court, however, concluded Franklin's testimony was not supported by the evidence. In addition, Franklin fired multiple shots at Fox while Fox was on the ground attempting to hide under a vehicle. Firing multiple shots undercuts a claim of self-defense because it indicates the force used was not proportionate to the requirements of the situation. Simpson v. State, 915 N.E.2d 511, 515 (Ind. Ct. App. 2009) (holding State presented sufficient evidence to negate self-defense claim where evidence showed defendant fired multiple shots after fight was over), trans. denied.

The trial court, after listening to all of the evidence presented by both parties, observing the witnesses' demeanor, and judging their credibility, rejected Franklin's self-defense claim. We decline Franklin's invitation to reweigh the evidence. There is sufficient evidence to support the verdict.

#### Conclusion

The State presented sufficient evidence to rebut Franklin's self-defense claim and

his conviction of murder is therefore affirmed.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.