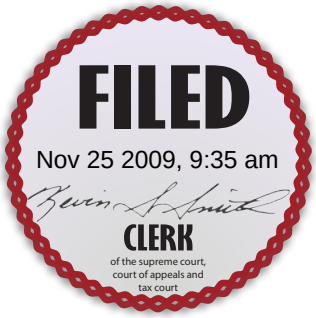

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IN THE
COURT OF APPEALS OF INDIANA

NOAH J. SPRINGER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0905-CR-257
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Rothenberg, Judge
Cause No. 49F09-0810-FD-232746

November 25, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Noah Springer appeals his convictions for criminal recklessness as a class D felony[1] and battery as a class A misdemeanor.[2] Springer raises one issue, which we revise and restate as whether the evidence is sufficient to sustain Springer's convictions. We affirm.

The facts most favorable to the conviction follow. William Groce knew Gabrielle Kozad as the girlfriend of his best friend. Kozad stayed at Groce's house in Indianapolis while Groce's best friend was in jail. At some point, Groce and Kozad had a "falling out" and Kozad moved out of Groce's house. Transcript at 9. On August 3, 2008, Kozad called Groce and asked him if she could have her cake pan and toys for her dog, and Groce said yes. Kozad told Groce that Springer was going to pick up the cake pan, and Groce said "okay." Id. at 12. Groce asked Kozad to "stop running [him] down to everybody." Id. at 9. Kozad began calling Groce names, and Groce hung up on her. Springer, who knew Groce through Kozad, called Groce, insulted him, called him names, and threatened him.

Later that day, Springer pulled up near Groce's house in a van with other people, including Springer's son. Groce was sitting on his porch and thought that Springer was coming for the cake pan. Springer went onto Groce's porch. Groce "got up and started in the house to pick up the cake pan" when Springer "bopped [Groce] across the elbow with a baseball bat," which "broke [Groce's] elbow." Id. at 12. Groce did not see the bat

[1] Ind. Code § 35-42-2-2 (Supp. 2006).

[2] Ind. Code § 35-42-2-1 (Supp. 2008) (subsequently amended by Pub. L. No. 131-2009, § 73 (eff. July 1, 2009)).

when Springer was approaching his house because Springer had the bat "down to his side." Id. After Springer struck Groce with the baseball bat, Groce went into his house to get a weapon. Springer followed Groce into the house.

Groce came back with a knife, and Springer "backed out" onto the porch but did not leave. Id. at 13. Groce and Springer then started fighting. Groce cut Springer on the arm, and Springer beat Groce with the bat. Springer knocked the knife out of Groce's hand with the bat and continued hitting Groce. Groce ended up on the ground, tried to cover his body, and went "in and out" of consciousness. After Springer "put [Groce] on the ground with the baseball bat," Springer told Groce that he was "going to kill [him]." Id. at 16. After Springer stopped beating Groce, Groce crawled up the steps, retrieved his cell phone, and called 911.

The State charged Springer with Count I, criminal recklessness while armed with a deadly weapon as a class D felony; Count II, criminal recklessness resulting in serious bodily injury as a class D felony; and Count III, battery as a class A misdemeanor.

At the bench trial, Springer testified that he went to Groce's house to get his eyeglasses, but he was afraid because Groce sounded angry on the phone. Springer testified that he did not see anything until Groce came toward him and attempted to stab him. Lastly, Springer testified that Groce stabbed him first and then Springer grabbed the bat and hit Groce twice with the bat. Springer's son, Joshua, testified that Springer and Groce "started arguing" and then Groce punched Springer with a knife. Id. at 127.

The trial court found Springer guilty of Counts I and III and not guilty of Count II. The trial court sentenced Springer to 910 days in the Department of Correction for Count I, criminal recklessness while armed with a deadly weapon, and 365 days for Count III, battery as a class A misdemeanor. The trial court ordered that the sentences be served concurrently.

The sole issue is whether the evidence is sufficient to sustain Springer's convictions. Springer argues that the evidence is insufficient to sustain his convictions because he acted in self-defense. Specifically, Springer argues that he had the right to be at Groce's house on the night of the altercation, that it was sensible for him to bring a baseball bat to Groce's house for protection, and that he never used more force than was reasonably necessary under the circumstances.

"A person is justified in using reasonable force against another person to protect the 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 had a right to be; (2) the defendant was without fault; and (3) the defendant had a reasonable fear or apprehension of bodily harm. White v. State, 699 N.E.2d 630, 635 (Ind. 1998). If a defendant is convicted despite his claim of self-defense, we will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. Wilson v. State, 770 N.E.2d 799, 800-801 (Ind. 2002). 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 claim. Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000). We neither reweigh the evidence nor judge the credibility of witnesses. Id. If there is sufficient evidence of probative value to support the conclusion of the trier of fact, then the verdict will not be disturbed. Id.

The State can disprove that the defendant was without fault by establishing that he used more force than was reasonably necessary under the circumstances. See Ind. Code § 35-41-3-2(a); see also Wade v. State, 482 N.E.2d 704, 706 (Ind. 1985); Boyer v. State, 883 N.E.2d 158, 162 (Ind. Ct. App. 2008). "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.

The facts most favorable to the conviction reveal that Springer approached Groce's house and held the baseball bat "down to his side." Transcript at 12. Springer went onto Groce's porch and "bopped [Groce] across the elbow" with the bat. Id. After Springer struck Groce with the bat, Groce went into his house to get a weapon. Springer followed Groce into the house. Groce came back with a knife, and Springer "backed out" onto the porch but did not leave. Id. at 13. Groce and Springer then started fighting. Groce cut Springer on the arm, and Springer beat Groce with the bat. Springer knocked the knife out of Groce's hand with the bat and continued hitting Groce. Groce ended up

on the ground, tried to cover his body, and went "in and out" of consciousness. After Springer "put [Groce] on the ground with the baseball bat," Springer told Groce that he was "going to kill [him]." Id. at 16. We also note the following exchange which occurred during the direct examination of Groce:

> Q And when you were on the ground were you fighting still?
>
> A Ma'am you don't fight when you've got a broke shoulder, broken elbow, and broken wrist. There's not much you can do except take a beating.

Id. at 14.

Based upon the record, we conclude that sufficient evidence existed from which the jury could find that Springer did not validly act in self-defense and that he was guilty of criminal recklessness as a class D felony and battery as a class A misdemeanor. See, e.g., Birdsong v. State, 685 N.E.2d 42, 46 (Ind. 1997) (affirming the defendant's convictions "[b]ecause there existed sufficient evidence from which the court could find that defendant did not validly act in self-defense and that he was guilty as charged . . . ."); Boyer v. State, 883 N.E.2d 158, 163-164 (Ind. Ct. App. 2008) (holding that there was sufficient evidence for the magistrate to find beyond a reasonable doubt that the State had disproved the defendant's claims that she was without fault).

For the foregoing reasons, we affirm Springer's convictions for criminal recklessness as a class D felony and battery as a class A misdemeanor.

Affirmed.

CRONE, J., and MAY, J., concur.