

Lashonda Coleman appeals her conviction for murder, a felony.¹ Coleman raises two issues, which we revise and restate as:

- I. Whether the trial court abused its discretion by admitting testimony regarding Carter's intent to end his relationship with Coleman; and
- II. Whether the evidence is sufficient to sustain Coleman's conviction for murder.

We affirm.

The relevant facts follow. Coleman and Sofarro Carter lived together for four years. There were multiple instances of domestic violence during the relationship. Three weeks prior to Carter's death, there was an altercation between Coleman and Carter in which Coleman sustained bruises to her face and Carter was stabbed, resulting in hospitalization for two days. Both were arrested, but only Carter was charged with domestic battery.

On the day of Carter's death, Coleman and an unidentified man were seen entering Coleman and Carter's home. Sometime after that, Carter arrived home from work and entered the house. Witnesses heard a loud noise that sounded "like an M-80."² Transcript at 112, 125. The unidentified man ran out of the house while pulling up his pants and fled the scene.³ Coleman exited the house and went to her next-door

¹ Ind. Code § 35-42-1-1 (2004).

² An M-80 is a "firecracker designed for military use as a 'gunfire simulator.'" Bob Weaver, What is an "M-80," Anyway? And Why Can't You Buy One? <http://www.fireworksland.com/html/m80.html> (last visited October 17, 2006).

³ It is unclear from the record whether the shot was fired before or after the unidentified man fled the home.

neighbor's house. She told the neighbor that Carter had been shot and that she wanted to use the telephone. Coleman called the police and also requested an ambulance.

When authorities arrived, they found Carter's dead body a few feet inside the front door of his home. When initially asked what happened by police, Carter told them that "her boyfriend had been shot," and that "the guy that shot him ran, I believe, through the gangway, heading, I believe, southbound." Id. at 135. According to Coleman, she was in her home speaking to the man, whom she identified as a potential landlord, about renting one of his properties when Carter came home and began to fight with this man. When questioned again at the police station, Coleman's story changed. She told officers that, before the unidentified man fled, he and Carter had a brief physical altercation when Carter arrived home to find the unidentified man attempting to place his penis in Coleman's mouth. Coleman claimed that after the unidentified man left the scene, Carter began to hit her, and she reached under the couch and grabbed a handgun. Coleman then claimed, "I pointed the gun at him and he struck me in my face and the gun went off." Id. at 289. Coleman also called Mother several days after the shooting and left a voice mail message indicating that Carter was shot as a result of a home invasion. Police found a gun hidden under a mattress at the neighbor's house, but was ruled out as the weapon used to kill Carter.

A grand jury indicted Coleman for murder. At the jury trial, Coleman did not testify, but asserted self-defense based upon her statements to the police. Carter's mother ("Mother") testified that, on the morning of his death, Carter came to her home and they discussed him ending the abusive relationship with Coleman and moving to Louisiana to

live with his father. The jury found Coleman guilty, and the trial court sentenced her to forty-five years. Additional facts will be provided when necessary.

I.

The first issue is whether the trial court abused its discretion by admitting testimony regarding Carter’s intent to end his relationship with Coleman. “The admissibility of evidence is within the sound discretion of the trial court, and the decision whether to admit evidence will not be reversed absent a showing of manifest abuse of the trial court’s discretion resulting in the denial of a fair trial.” Bailey v. State, 806 N.E.2d 329, 331 (Ind. Ct. App. 2004) (citing Johnson v. State, 785 N.E.2d 1134, 1138 (Ind. Ct. App. 2003)) trans. denied. An abuse of discretion occurs if “the decision is clearly against the logic and effect of the facts and circumstances.” Pierce v. State, 705 N.E.2d 173, 175 (Ind. 1998).

Coleman argues that the trial court committed “prejudicial error” by admitting the testimony Mother regarding her “impression” of Carter’s intent to end his relationship with Coleman and move to Louisiana with his father. Appellant’s Brief at 8-11. At trial, the following exchange occurred:

* * * * *

State: So, on this particular morning, the day that [Carter] had got shot, what did you talk to him about?

Mother: About leaving [Coleman] and going down south to stay with his dad for a while.

* * * * *

State: By the time that [Carter] left to go to work, what was your impression about whether he was going to go down south with his father?

Defense: Objection. Speculation
State: I'm asking for her impression.
Court: The objection is overruled.
Mother: I was thinking he was going to go.

Transcript at 45.⁴ On appeal, Coleman challenges Mother's testimony under Ind. Evidence Rule 602.⁵ Mother did not testify as to whether Carter was actually going to leave the relationship and move to Louisiana. She only testified to the fact that she and Carter had the conversation and as to whether *she* thought that Carter was going to end the relationship and move to Louisiana. Her personal knowledge cannot be questioned under Ind. Evidence Rule 602. Accordingly, the trial court did not err in admitting this testimony. See, e.g., Hicks v. State, 690 N.E.2d 215, 224 (Ind. 1997) (holding that witness's personal knowledge could not be questioned under Rule 602 where she did not testify to what was actually thought by police but only to the fact that she warned defendant what police might think).

⁴ Coleman argues that Mother's testimony that "I was thinking he was going to go" was an inadmissible opinion under Ind. Evidence Rule 704(b), which, in pertinent part, addresses opinion testimony concerning intent. Transcript at 45. We note that Coleman did not object at the trial on the basis of Ind. Evidence Rule 704(b). "A party may not present one ground for an objection at trial and assert a different one on appeal." In re Guardianship of Hickman, 805 N.E.2d 808, 822 (Ind. Ct. App. 2004) (citing Lashbrook v. State, 762 N.E.2d 756, 759 (Ind. 2002)) trans. denied. Consequently, Coleman has waived this argument. See, e.g., Lashbrook, 762 N.E.2d at 759 (holding "defendant may not present one ground for an objection at trial and assert a different one on appeal").

⁵ Ind. Evidence Rule 602 provides:
A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. A witness does not have personal knowledge as to a matter recalled or remembered, if the recall or remembrance occurs only during or after hypnosis. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness. This rule is subject to the provisions of Rule 703, relating to opinion testimony by an expert witness.

Even assuming that Mother’s testimony regarding her opinion should have been excluded, she had already testified, without objection, that she and Carter discussed his leaving Coleman and moving to Louisiana. Her opinion as to whether *she* thought Carter was going to leave is inconsequential. Ind. Trial Rule 61 states:

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order in anything done or omitted by the court or by any of the parties is ground for granting relief under a motion to correct errors or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order or for reversal on appeal, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

At its worst, her opinion is cumulative of evidence already heard by the jury, namely that Carter and Mother discussed his leaving. Therefore, Coleman was not harmed by the trial court allowing the testimony.⁶ See, e.g., Garner v. State, 777 N.E.2d 721, 725 (Ind. 2002) (holding that trial court’s erroneous admission of evidence did not warrant reversal where the evidence was cumulative of properly admitted evidence).

II.

⁶We further note that the State argues that Mother “testified to her present sense impression at the time of her conversation with her [Carter].” Appellee’s Brief at 10. This is an incorrect characterization by the State. Ind. Evidence Rule 803(1) defines a present sense impression as “a statement describing or explaining a material event, condition or transaction, made while the declarant was perceiving the event, condition or transaction, or immediately thereafter.” (emphasis added). Here, the State appeared to ask Mother her opinion regarding whether Carter was going to leave Coleman. Mother’s testimony did not describe or explain an event, condition, or transaction that she was perceiving as she spoke, and thus was not admissible under the hearsay exception for present sense impressions. See, e.g., Jones v. State, 780 N.E.2d 373, 377 (Ind. 2002) (holding that assertions regarding events not contemporaneously perceived do not satisfy the exception).

The next issue is whether the evidence is sufficient to sustain Coleman’s murder conviction. Coleman argues that the evidence is insufficient for two reasons: “[i]t is insufficient to overcome self-defense and it is insufficient to establish that the killing was committed knowingly or intentionally.” Appellant’s Brief at 6. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh’g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id. In order for a trier of fact to find Coleman guilty of murder, the State was required to prove beyond a reasonable doubt that she knowingly or intentionally killed Carter. See, Young v. State, 761 N.E.2d 387, 388 (Ind. 2002).

A. Self Defense

“The standard of review for a challenge to the sufficiency of the evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim.” Randolph v. State, 755 N.E.2d 572, 575 (Ind. 2001). “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. (internal citations omitted). “Self-defense is recognized as a valid justification for an otherwise criminal act.” Brand v. State, 766 N.E.2d 772, 777 (Ind. Ct. App. 2002) (citing Miller v. State, 720 N.E.2d 696, 699 (Ind. 1999)) reh’g denied, trans. denied. “In order to prevail on such a claim, [Coleman] must show that [she]: (1) was in

a place where [she] 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.” Wilson v. State, 770 N.E.2d 799, 800 (Ind. 2000) (citing McEwen v. State, 695 N.E.2d 79, 90 (Ind. 1998)).

“When a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements.” Id. “The State may meet this burden by rebutting the defense directly, by affirmatively showing the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief.” Creager v. State, 737 N.E.2d 771, 777 (Ind. Ct. App. 2000) (citing Lilly v. State, 506 N.E.2d 23, 24 (Ind. 1987)) trans. denied. “Whether the State has met its burden is a question of fact for the jury.” Id. (citing Birdsong v. State, 685 N.E.2d 42, 45 (Ind. 1997)). “If a defendant is convicted despite his claim of self-defense, this Court will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt.” Wilson, 770 N.E.2d at 800 (citing Taylor v. State, 710 N.E.2d 921, 924 (Ind. 1999)).

Coleman argues that the State failed to present evidence to contradict her version of the events that took place on the day Carter was killed. Specifically, Coleman argues that the bruises she sustained from being struck by Carter and her conduct in calling for help immediately following the shooting are consistent with her claim of acting in self-defense. The State presented testimony from Coleman’s neighbor that Coleman was not injured when Coleman came to her home to call police. The State also presented the jury with the inconsistent statements that Coleman made to authorities following the shooting.

In addition, the jury heard evidence that Coleman stabbed Carter three weeks before his death during a domestic dispute. Carter was hospitalized for approximately two days as a result of the stabbing.

“It is within the province of the jury to determine whether the defendant’s evidence was believable, unbelievable, or sufficient to warrant the use of force.” Howard v. State, 755 N.E.2d 242, 247 (Ind. Ct. App. 2001). “Inconsistencies go to the weight and credibility of the testimony, the resolution of which is within the province of the trier of fact.” Jordan, 656 N.E.2d at 818. We will not judge witness credibility or reweigh the evidence. Id. Upon a review of the record, we find that the evidence was sufficient to disprove Coleman’s claim of self-defense. See, e.g., Randolph, 755 N.E.2d at 576 (holding that the jury was free to disbelieve defendant’s own self-serving statements claiming self-defense). Therefore, we cannot say that a reasonable person could not find that self-defense was negated by the State beyond a reasonable doubt.

B. Intent to Kill

Coleman argues that there is insufficient evidence to show that she intended to kill Carter. In support of her argument, Coleman only offers her own statement to police that she did not intentionally shoot Carter. In a signed formal statement, Coleman stated: “I reached under the couch and grabbed a handgun. I yelled at [Carter] to stop. [Carter] spun me around and hit me in my stomach again. *I pointed the gun at him* and he struck me in my face and the gun went off.” Appellant’s Appendix at 177. (emphasis added)

The Indiana Supreme Court has held that “the intent to kill may be inferred from the deliberate use of a deadly weapon in a manner likely to cause death or serious injury.”

Bethel v. State, 730 N.E.2d 1242, 1245 (Ind. 2000). The Court further has held that a weapon fired in the direction of the victim is “substantial evidence from which a jury may infer intent to kill.” Shelton v. State, 602 N.E.2d 1017, 1022 (Ind. 1992).

Here, Coleman grabbed a gun and shot Carter in his face from close range. In addition, this was not the first instance of Coleman using deadly force to injure Carter. Three weeks prior, Coleman responded to a physical altercation by stabbing Carter, resulting in his hospitalization. Based on the evidence, a reasonable trier of fact could infer that Coleman intended to kill Carter. See, e.g., id. (holding that evidence that defendant pointed handgun at victim and shot him twice from distances of twelve and thirty feet was sufficient to prove intent to kill).

For the foregoing reasons, we affirm Coleman’s conviction for murder.

Affirmed.

KIRSCH, C. J. and MATHIAS, J. concur

