

Linda Patton challenges her conviction of reckless homicide as a Class C felony.¹ The trial court did not abuse its discretion in admitting copies of nitrite test sheets. The State negated at least one element of Patton's claim of self-defense. We affirm.

FACTS AND PROCEDURAL HISTORY

Michael Phillips was staying with Patton on October 30, 2005. Early that morning, after they argued, Patton told Phillips to leave. Phillips packed, put his belongings on the front porch, and waited on the porch for someone to pick him up. Patton locked the door behind him. At some point, Phillips began banging on the window and the door. He told Patton he was going to stay at a neighbor's house until daylight when his ride would come. Patton and Phillips then began arguing again. Patton put a .357 revolver in her pocket, "put her shirt over it," (Tr. at 228), and went outside to talk to Phillips.

When Phillips saw the gun in Patton's pocket, he tried to grab it. She pulled it out of her pocket and they "started tussling over the gun." (*Id.* at 222.) The gun went off and Phillips was shot once in the chest. When Patton realized Phillips had been shot, she attempted to perform CPR on him. Patton's ten-year-old grandson, J.B., who witnessed the altercation, ran to a neighbor's house and called 911.

Patton was charged with murder, but the jury found her guilty of the lesser-included offense of reckless homicide. The trial court sentenced her to a four-year executed sentence.

¹ Ind. Code § 35-42-1-5.

DISCUSSION AND DECISION

1. Admission of Evidence

The admission 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 discretion by the trial court resulting in the denial of a fair trial. *Williams v. State*, 782 N.E.2d 1039, 1045 (Ind. Ct. App. 2003), *trans. denied* 792 N.E.2d 43 (Ind. 2003). A decision is an abuse of discretion if it is clearly against the logic and effect of the facts and circumstances before the court. *Id.* In reviewing the decision, we consider the evidence in favor of the trial court's ruling and any unrefuted evidence in the defendant's favor. *Id.*

Cole Goater, a forensic scientist specializing in firearms examination, performed various tests, including a Greiss test, to establish the distance between Phillips and the gun when it was fired. A Greiss test is a "chemical examination to determine the presence of nitrites." (Tr. at 167.) From five different distances, Goater test-fired the gun through a piece of cotton cloth, placed a specially treated piece of paper on the cloth, and allowed a chemical reaction to take place.² Goater explained the "color of the chemical reaction tends to fade away over time, so there is no point in keeping [the original test paper]." (*Id.* at 169.) To preserve the results of the test, however, Goater made a copy of the test paper. When asked whether the copies were the first photocopies

² After establishing an approximate range, Goater performed this test on two pieces of material cut from Phillips' jacket. He then compared the nitrite patterns from the seven test pieces to the nitrite pattern on Phillips' jacket caused by the bullet that killed Phillips.

he took of the test papers, Goater stated: “Well, they are the first that I felt *accurately represented* what I was seeing on the nitrite test sheets. I had to adjust the settings [on the copier].” (*Id.* at 171) (emphasis added).

The State sought to admit the copies of the test papers. Patton asked preliminary questions including what kind of copier was used, whether Goater knew the copier’s maintenance schedule, and whether the glass on the copier was dirty, and she objected regarding foundation. Goater then testified he had visually examined the original and the copy to ensure the copy “accurately reflected what was appearing on the test-fire cloths.” (*Id.* at 172-73.) The copies were admitted as Exhibits 33-40 over objections regarding foundation and relevance. During subsequent testimony, Goater identified some “dark, smudgy areas” on the copies as “artifacts from the copying machine, because the paper was moist from the chemicals and not exactly flat.” (*Id.* at 177.)

Patton does not challenge the scientific reliability of the Geiss *test*; rather she argues the State failed to establish the reliability of the *copies* of the test sheets. Patton also characterizes Goater’s testimony about the copier flaws as “conced[ing] the exhibits are unreliable.” (Br. of the Appellant at 9.) We disagree.

Considering the evidence most favorable to the trial court’s ruling, we note Goater testified as follows: 1) the copies “accurately represented,” (Tr. at 171), and “accurately reflected,” (*id.* at 174), the result on the original test sheets; 2) the original test sheets “accurately reflected,” (*id.* at 172), the results on the test cloths; 3) he “wiped off the glass” of the copier before making copies and “tried to make sure that there weren’t any markings on the copies that weren’t on the actual paper,” (*id.*); and 4) specific “dark,

smudgy areas,” (*id.* at 177), on the copies were from the copying machine and were not part of the test results. Given this testimony, the trial court did not abuse its discretion in admitting the copies of the test sheets.

Moreover, the purpose of Goater’s testimony and the admission of the test sheets was to establish the distance from which Phillips had been shot. Goater estimated a range from six inches to four feet. Dr. Radentz performed the autopsy and testified there was no stippling around Phillips’ wound, indicating the gun was likely fired from a distance of twelve or more inches. J.B. testified Phillips and Patton were fighting over the gun, from which the jury could have inferred a distance within the estimated range. Thus, we conclude any error in admitting the copies was harmless. *See Williams*, 782 N.E.2d at 1047 (error in admission of evidence is not prejudicial if the evidence is merely cumulative of other evidence in the record).

2. Self-Defense

Self-defense is a legal justification for an otherwise criminal act. Ind. Code § 35-41-3-2(a). To prevail, the defendant must show 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. *Ballard v. State*, 808 N.E.2d 729, 732 (Ind. Ct. App. 2004), *summarily affirmed by* 812 N.E.2d 789 (Ind. 2004). When a claim of self-defense is raised, the State must disprove at least one of the elements of self-defense beyond a reasonable doubt. *Id.* The State may meet its burden by either rebutting the defense directly or relying on the sufficiency of evidence in its case-in-chief. *Id.* Whether a defendant acted in self-defense is generally a question of fact for

the jury and the jury's conclusion is entitled to considerable deference. *Taylor v. State*, 710 N.E.2d 921, 924 (Ind. 1999). A conviction in spite of a claim of self-defense will be reversed only if no reasonable person could say that the claim was negated by the State beyond a reasonable doubt. *Id.*

Patton argues the State failed to present any evidence to rebut her claim of self-defense. However, in its case-in-chief, the State provided evidence: 1) Patton had locked Phillips out of her house after telling him to leave; 2) after Phillips pounded on her doors and windows, he told her he planned to leave her porch and spend the night elsewhere; 3) Patton put a gun in her pocket, hid it underneath her shirt, and went outside to confront Phillips; 4) although Phillips lunged for the gun when he saw it in Patton's pocket, she retained enough control of the gun to pull it out of her pocket; 5) they fought over the gun and it went off; 6) Phillips had not touched, hit, or pushed Patton that evening; and 7) Patton's initial story to the police—that Phillips had shot himself while she was inside the house with her grandchildren—was inconsistent with J.B.'s testimony and the forensic evidence.³

From this evidence, the jury could have reasonably concluded Patton provoked, instigated or participated willingly in the violence because she took a gun with her to confront Phillips. The jury also could have reasonably concluded Patton did not have a reasonable fear of death or great bodily harm because Phillips had not assaulted her that

³ The gun was found about four feet from the body, there was no blood trail between the gun and the body, and the shot was fired from between six inches and four feet away.

evening, she was inside her locked house, and Phillips was outside. The State's evidence was sufficient to negate an element of self-defense.

CONCLUSION

The trial court did not commit reversible error in admitting copies of the test sheets from the Greiss test. The State presented sufficient evidence to disprove one or more elements of Patton's claim of self-defense. Accordingly, we affirm.

Affirmed.

SHARPNACK, J., and BAILEY, J., concur.