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.

ATTORNEY FOR APPELLANT:

JEFFREY A. BALDWIN
Baldwin, Dakich & Maxwell
Indianapolis, Indiana

FILED
Jun 02 2010, 9:42 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

CHRIS GORDON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0909-CR-874
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa F. Borges, Judge
Cause No. 49G04-0806-MR-152204

June 2, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Following a jury trial, Appellant-Defendant Chris Gordon was convicted of Murder, a felony,[1] Carrying a Handgun Without a License, a Class A misdemeanor,[2] and Resisting Law Enforcement, a Class A misdemeanor,[3] and he was found to be a Habitual Offender.[4] Upon appeal, Gordon challenges his convictions and the habitual offender finding by claiming that the trial court erred in (1) admitting certain evidence procured in violation of his Fifth Amendment right against self-incrimination; (2) denying a mistrial following the State's alleged failure to disclose certain expert evidence; and (3) admitting certain expert testimony regarding firearm range determinations. In addition, Gordon challenges the sufficiency of the evidence to support his murder conviction. We affirm.

FACTS AND PROCEDURAL HISTORY

On June 20, 2008, Watasha Clark's father, Ronald Radford, drove with her mother and grandmother from Kentucky to Indianapolis to visit Clark. They arrived at Clark's apartment at the intersection of 46th Street and High School Road at approximately 11:00 p.m. or midnight. Clark, who had left to spend the evening with Chante Mayfield and other friends at Cloud Nine club, was not home when they arrived. Radford, together with Clark's mother, grandmother, and son, who was with them, went to sleep in Clark's apartment.

In the early morning hours of June 21, 2008, Mayfield drove Clark home and watched her enter her apartment. Later, Radford awoke briefly to see that Clark had

[1] Ind. Code § 35-42-1-1 (2007).

[2] Ind. Code § 35-47-2-1 (2007).

[3] Ind. Code § 35-44-3-3 (2007).

[4] Ind. Code § 35-50-2-8 (2007).

returned home. At some subsequent point, Clark's grandmother, who was sleeping in Clark's room, awoke to find a man walking around her room and into a nearby bathroom. The man was using a telephone to ask for help for a woman who had been shot.

After the man left her room and exited the front door, Clark's grandmother awoke Radford, who found Clark lying outside the front door of the apartment. Gordon, who was Clark's boyfriend and the father of her son, was beside Clark, holding her head in his hand and placing his mouth around a wound in her neck. Gordon grabbed Radford, pulled him down, and pushed the back of his head toward Clark's wound, telling him to keep blowing air into Clark's neck because he could not be there when police arrived. As Radford took hold of Clark, Gordon stood up, grabbed the pistol that had been sitting under his leg, and left the scene. Radford checked Clark and concluded that she was deceased.

Indianapolis Metropolitan Police Officers Chris Anderson and Scott Strietelmeier, who responded to the scene, saw Gordon leaving when they arrived. The officers chased Gordon, who Officer Anderson determined had a gun, and saw him throw something to the ground. When the officers apprehended Gordon shortly thereafter, Gordon did not have a gun on his person. Authorities subsequently discovered a semi-automatic handgun on the ground in the general vicinity of the chase. The handgun matched a cartridge case found near Clark's hand.

Upon apprehending Gordon, whose clothing was covered in blood, authorities placed him in handcuffs. Gordon asked authorities to summon an ambulance and said that the shooting had been an accident. Emergency responders arriving at the scene

confirmed that Clark was deceased. Later examination of Clark's body revealed that she had died as a result of a gunshot wound to the neck.

Indianapolis Metropolitan Police Detective Thomas Lehn also arrived on the scene, where he collected Gordon's clothing, provided him with a blanket, and had him transported to police headquarters for an interview. Prior to interviewing Gordon, Detective Lehn permitted him to sleep in the interview room because it was apparent to Detective Lehn that Gordon had been drinking. At 7:47 a.m., approximately three and one-half hours after Gordon was arrested, Detective Lehn woke Gordon up and read him his Miranda warnings. Gordon, who was initially groggy, waived his Miranda rights in writing. During the interview, Gordon claimed that he had accidentally shot Clark when his gun, which was in his pants pocket, had somehow fired, which he had not intended for it to do. Gordon also admitted that he and Clark had been arguing before she was shot and that their arguments had been physical in the past.

On June 26, 2008, the State charged Gordon with murder (Count I), carrying a handgun without a license as both a Class A misdemeanor (Count 2) and a Class C felony (Count 4), Class A misdemeanor resisting law enforcement (Count 3), and with being a habitual offender (Count 5).[5] On May 15, 2009, Gordon filed a motion to suppress his

[5] The State filed the habitual offender information on July 16, 2008. Appellant's appendix consists only of the chronological case summary for this case and the order following his motion to suppress. Necessary documents including the charging informations and the judgment of conviction and/or abstract of judgment are absent from the record. *See* Ind. App. R. 50(A)(2) (outlining necessary contents of Appellant's appendix). In addition, the Appellant's brief makes little reference to the appendix, and when reference is made, refers to certain numbered pages which are not, in fact, numbered in his Appendix. Indiana Appellate Rule 51(C) requires an appellant to number the pages of his appendix.

statements to Detective Lehn during questioning.[6] Following a hearing, on May 29, 2009, the trial court denied this motion.

During the June 1-3, 2009 jury trial, Gordon re-objected when the State sought to introduce his statements to Detective Lehn. The trial court overruled this objection.

Also at trial, Gordon moved for a mistrial following testimony by pathologist Dr. Joye Carter that Clark was standing when she was shot. According to Gordon, Dr. Carter's opinion during depositions was that Clark's position could not be determined. At trial, when the State asked Dr. Carter for her opinion on this point given the crime scene evidence that a bullet hole in the wall measured four feet, seven inches from the ground, Dr. Carter opined that Clark was standing when she was shot. The trial court denied Gordon's motion.

In addition, Gordon objected at trial to certain opinion evidence by firearms expert Michael Cooper regarding the contact/near-contact nature of the gunshot wound. According to Gordon, Cooper was not qualified to give such an opinion.[7] The trial court denied Gordon's objection.

The jury found Gordon guilty of murder, carrying a handgun without a license as a Class A misdemeanor, and resisting law enforcement (Counts 1-3). The trial court subsequently found Gordon to be a habitual offender, and the State dismissed its charge against Gordon for Class C felony carrying a handgun without a license (Count 4).

---

[6] The motion to suppress is not in the appendix, but its basis can be inferred from the hearing on the motion to suppress.

[7] Gordon apparently filed a motion in limine on this subject, which he references during his objection at trial. This motion is not included in the record on appeal.

At a June 17, 2009 sentencing hearing, the trial court sentenced Gordon to concurrent sentences of ninety years, with eighty-five years executed in the Department of Correction, for murder; 365 days for carrying a handgun without a license; and 365 days for resisting law enforcement. In addition, the trial court enhanced Gordon's murder conviction by thirty years due to his habitual offender status. This appeal follows.

DISCUSSION AND DECISION

I. Admissibility of Gordon's Statements

Upon appeal, Gordon first challenges the trial court's denial of his motion to suppress his statements to Detective Lehn. Gordon claims that his intoxication at the time of the statements, together with his distress over Clark's death and the fact that he was minimally clothed, rendered his confession involuntary.

Initially, we observe that the State did not file an appellee's brief in this case. "The obligation of controverting arguments presented by the appellant properly remains with the State." *Mateyko v. State*, 901 N.E.2d 554, 557 (Ind. Ct. App. 2009), *trans. denied*. When, as here, the appellee fails to submit a brief, the appellant may prevail by making a prima facie case of error, i.e., an error at first sight or appearance. *Id.* Of course, we must still correctly apply the law to the facts of the record to determine if reversal is required. *Id.*

Our standard of review on the admissibility of evidence is the same whether the challenge is made by a pre-trial motion to suppress or by a trial objection. *Ackerman v. State*, 774 N.E.2d 970, 974 (Ind. Ct. App. 2002), *trans. denied*. The admission of

evidence is left to the sound discretion of the trial court, and this court will not reverse that decision absent an abuse of discretion. *Weis v. State*, 825 N.E.2d 896, 900 (Ind. Ct. App. 2005). An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it. *Id.*

The Fourteenth Amendment of the United States Constitution incorporates the Fifth Amendment's privilege against self-incrimination. *Withrow v. Williams*, 507 U.S.680, 689 (1993). Therefore, to be admissible consistent with those provisions, a suspect's confession must be voluntarily given. *Carter v. State*, 686 N.E.2d 1254, 1258 (Ind. 1997). Under the United States Constitution, the State must prove by a preponderance of the evidence that the defendant's confession was voluntary. *Clark v. State*, 808 N.E.2d 1183, 1191 (Ind. 2004). Under the Indiana Constitution, the State must show voluntariness beyond a reasonable doubt. *Id.*

The voluntariness of a defendant's confession is determined from the totality of the circumstances. *Washington v. State*, 808 N.E.2d 617, 622 (Ind. 2004). In turn, the "totality of the circumstances" test focuses on the entire interrogation rather than on any single act by police or condition of the suspect. *Id.* We review the record for evidence of inducement by way of violence, threats, promises, or other improper influences. *Id.* The decision whether to admit a defendant's confession is within the discretion of the trial court, and we will not reverse such decision absent an abuse of discretion. *See Carter v. State*, 730 N.E.2d 155, 157 (Ind. 2000). Upon reviewing a challenge to the trial court's decision to admit the defendant's confession, we do not reweigh the evidence but instead examine the record for substantial probative evidence of voluntariness. *Id.*

A confession may be given knowingly and voluntarily, notwithstanding voluntary intoxication. *Luckhart v. State*, 736 N.E.2d 227, 231 (Ind. 2000) (citing *Ellis v. State*, 707 N.E.2d 797, 802 (Ind. 1999)). We will deem a defendant's confession incompetent only when he is so intoxicated that it renders him not conscious of what he is doing or produces a state of mania. *Id.* Intoxication to a lesser degree only goes to the weight to be given to the confession, not its admissibility. *Id.*

Here, the trial court found that while Gordon may have been suffering some "remaining effects" from his earlier ingestion of intoxicants, he was not in a state of unconsciousness or mania. The record supports this finding. While authorities on the scene concluded that Gordon was under the influence of intoxicants, they waited more than three hours after apprehending him to interview him, and they permitted him to sleep for more than an hour prior to the interview. During the interview, Gordon responded to Detective Lehn's questions with relevant answers and relevant questions of his own, he showed clear distress upon hearing that Clark had died, and he maintained a consistent version of the events in question, namely that the shooting was accidental on his part. These circumstances demonstrate that to the extent Gordon was under the effect of intoxicants, he was neither unconscious of his actions nor in a state of mania. Under *Luckhart*, therefore, Gordon's statements may have carried less weight, but they were fully admissible. *Id.*

Gordon also claims that his distress over Clark's death and the fact that he was placed alone in an interrogation room while not fully clothed, together with his intoxication, compounded the involuntary nature of his statements. Yet Gordon's distress

over Clark's death merely underscores his accurate understanding of the events in question, reinforcing the voluntariness of his statements. Gordon cannot point to his accurate understanding of the facts at issue, including the victim's death, to somehow undermine the reliability of his statements regarding those facts.

As for Gordon's time alone in the interrogation room and his minimal clothing, the trial court found that he slept for an hour of the one-and-one-half-hour period he claims to have been in the room. His clothing may have been minimal, but he was wearing boxer shorts and given a blanket, and he said nothing about being cold or embarrassed or somehow otherwise affected by these circumstances. The mere fact that an adult man is dressed only in his boxers does not demonstrate that his will has been overborne, especially in circumstances where he is provided a blanket and permitted to sleep. Moreover, given Gordon's distress over Clark's death, the removal of his clothing, stained with her blood, just as likely reduced his distress as increased it. Further still, Gordon's alleged intoxication and ability to sleep likely minimized any trauma over his circumstances. Based upon the totality of the circumstances, we cannot conclude from Gordon's voluntary intoxication, his distress, his clothing, and his allegedly lengthy placement in an interrogation room that his statements were involuntary. We find no abuse of discretion in the trial court's admitting them.

II. Denial of Mistrial

Gordon next claims that the trial court abused its discretion by denying his motion for a mistrial following the State's alleged discovery violation in eliciting Dr. Carter's

testimony at trial, which differed from her deposition testimony, that Clark was standing at the time she was shot.

During Dr. Carter's deposition, she testified that Clark could have been standing or sitting at the time she was shot. Following depositions but prior to trial, the prosecutor apparently asked Dr. Carter whether evidence of a bullet hole at four feet, seven inches in the wall would be more consistent with Clark's being in a standing or sitting position. Given this additional evidence, Dr. Carter opined that Clark was in a standing position. The prosecutor did not apprise defense counsel prior to trial that Dr. Carter's opinion about the position of Clark's body had changed based upon this crime scene evidence. There is no dispute that defense counsel was aware of the crime scene evidence.

The trial court typically enjoys broad discretion in ruling on discovery violations, and may be reversed only for an abuse of that discretion involving clear error and resulting prejudice. *Berry v. State*, 715 N.E.2d 864, 866 (Ind. 1999). Generally the proper remedy for a discovery violation is a continuance. *Id.* Exclusion of the evidence is an extreme remedy and is to be used only if the State's actions were deliberate and the conduct prevented a fair trial. *Id.*

The purposes of pretrial discovery are to enhance the accuracy and efficiency of the fact-finding process and to prevent surprise by permitting the parties adequate time to prepare their cases. *Beauchamp v. State*, 788 N.E.2d 881, 892 (Ind. Ct. App. 2003). In order to establish reversible error on the grounds of a discovery violation, the defendant must show (1) the State violated a discovery rule; (2) the State did so deliberately; and (3)

this prejudiced the defendant's right to a free trial. *Ware v. State*, 859 N.E.2d 708, 722 (Ind. Ct. App. 2007), *trans. denied*.

Indiana Trial Rule 26(E), which governs supplementation of responses for discovery purposes, provides as follows:

> A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:
>
> (1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to:
>
> (a) the identity and location of persons having knowledge of discoverable matters, and
>
> (b) the identity of each person expected to be called as an expert witness at trial, the subject-matter on which he is expected to testify, and the substance of his testimony.
>
> (2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which
>
> (a) he knows that the response was incorrect when made, or
>
> (b) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.
>
> (3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

In support of his claim, Gordon relies upon *Beauchamp*, wherein this court, interpreting Rule 26(E)(1), found that the State's failure to disclose certain expert witness testimony constituted a discovery violation warranting a new trial. In *Beauchamp*, the defendant was charged with various crimes associated with the death of a child. 788 N.E.2d at 884. The defendant's theory of defense was that he had tripped while holding the child in his arms, and the child had died as a result of injuries sustained in this fall and in a previous accident. *Id.* at 894. Prior to trial, defense counsel deposed a doctor, who stated that he had not formed an opinion regarding the manner by which the child had

been injured. *Id.* at 885. Following the defendant's introduction of the doctor's testimony in support of this position, the State introduced this doctor as a rebuttal witness. *Id.* at 894, 885. As a rebuttal witness, the doctor testified that, based upon evidence learned subsequent to the defendant's deposition, the child's injuries could not have been caused by a fall and were likely intentionally inflicted. *Id.* at 885. The State had listed this doctor as a potential witness but had provided defense counsel with no reports or summaries indicating that his expected testimony would differ from his deposition testimony. *Id.*

In reversing, the *Beauchamp* court concluded that the State's actions violated both the trial court's standing discovery order and Trial Rule 26(E)(1), which requires the parties to supplement the substance of their expert's testimony in a timely manner. *Id.* at 894. The *Beauchamp* court further concluded that, given the defendant's introduction of the doctor's evidence, a continuance would be futile. *Id.* Based upon the State's intentionally lying in wait to trap the defense and the highly prejudicial nature of this testimony, the *Beauchamp* court granted a new trial. *Id.*

Similarly, in the murder case of *Camm v. State*, 812 N.E.2d 1127, 1141 (Ind. Ct. App. 2004), *trans. denied*, this court found a Rule 26(E)(1) violation where the State failed to disclose that its microscopy expert had augmented his earlier opinion by concluding that a particle of biological tissue found on the defendant's shirt had been deposited there by flight. The State's report disclosed to defense counsel during discovery had indicated the expert's opinion describing how the particle rested on the shirt and the fact that it was biological in nature, but it had said nothing regarding the

means by which the particle had come to rest on the shirt. *Id.* In finding the existence of a discovery violation, the *Camm* court noted that the State had been fully aware of this augmented opinion and was prepared to examine the expert on this ground. *Id.* Nevertheless, because other grounds warranted reversal, the *Camm* court declined to determine whether the discovery violation, which the trial court had attempted to cure by permitting defense counsel to depose the expert over lunch, independently warranted reversal. *Id.*

In evaluating Gordon's claim that a discovery violation occurred here, we look to the plain language of Rule 26(E)(1), which requires a party to supplement his discovery response with respect to the subject matter and substance of expert witness testimony expected at trial. Here, the prosecutor informed the trial court that he believed the issue to be so obvious that his examination of Dr. Carter based upon the crime scene records did not require disclosure. Of course, Rule 26(E)(1) does not provide an exception for "obvious" issues. Further, the trial court appeared convinced by defense counsel's claim of surprise, and it implicitly concluded that the State's actions, while they did not "rise[] to the level of such a serious sort of violation [to put] the defendant in extreme prejudice warranting a mistrial," nevertheless constituted a violation. Tr. p. 604. Like the expert testimony in *Beauchamp* and *Camm*, Dr. Carter's testimony at trial differed from her deposition testimony, the prosecutor was aware that it would, and he did not make this known to defense counsel. We must conclude that the prosecutor's eliciting Dr. Carter's modified expert opinion constituted a discovery violation.

In determining whether this violation constituted reversible error, we consider whether the State's actions were deliberate and whether Gordon's right to a fair trial was prejudiced. The prosecutor emphasized that he believed his inquiry on that point would be obvious, and he had not intended to conceal Dr. Carter's modified opinion. Perhaps more significantly, the violation at issue cannot be said to have had a great prejudicial effect. Unlike in *Beauchamp* and *Camm*, defense counsel would not have been thoroughly unprepared to address this evidence. Crime scene specialist Dustin Crawford had already testified that a possible bullet hole was found in the wall beside the victim and that the bullet hole was at a height of four feet, seven inches. Dr. Carter's deposition testimony indicated her inability to ascertain whether Clark was standing or sitting at the time she was shot, so defense counsel would not have been wholly unprepared to defend against either scenario given the bullet hole evidence, which defense counsel was fully aware of. Additionally, while Clark's standing position, given the gunshot wound to her neck, perhaps served to undermine Gordon's accidental-shooting-from-his-pants-pocket theory, this was not the only evidence harmful to that defense. The State presented largely undisputed testimony that there were no gunshot holes in Gordon's pants, the three safeties on his gun were fully functional, the gun was fired from a distance of approximately two inches,[8] and Gordon had a history of physically abusing Clark. In light of this evidence more directly damaging to the defense's theory, the mere fact that the victim's likely position was inconsistent with this defense would have been minimally

[8] Gordon challenges the admissibility of Cooper's range determination testimony but does not dispute Dr. Carter's testimony that the distance from the gunshot wound to the gun's muzzle was approximately two to four inches, more likely two.

prejudicial. We cannot say that Gordon's right to a fair trial was compromised or that the trial court abused its discretion in denying his motion for mistrial following the State's discovery violation. *See Berry v. State*, 715 N.E.2d at 866 (finding no prejudice caused by discovery violation that did not affect trial strategy or tactics); *Ware*, 859 N.E.2d at 724 (finding no prejudice with respect to alleged discovery rule violation which did not substantially affect defendant's defense and would not have assisted with any other line of defense).

III. Admissibility of Expert Opinion Testimony

Gordon's next challenge is to the trial court's permitting Cooper to testify, with respect to the topic of range determination, about the contact or near-contact nature of Clark's gunshot wound. According to Gordon, Cooper was not adequately qualified on the subject of range determination, and his testimony was not based upon reliable scientific principles. Gordon argues that Cooper's testimony was therefore inadmissible pursuant to Indiana Evidence Rule 702.

A trial court has broad discretion in ruling on the admissibility of evidence, and absent an abuse of discretion, we will not disturb the trial court's decision. *Burnett v. State*, 815 N.E.2d 201, 204 (Ind. Ct. App. 2004). An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.* Further, a claim of error in the admission or exclusion of evidence will not prevail on appeal unless a substantial right of the party is affected. *Id.*

A. Qualified Expert under Rule 702(a)

Indiana Evidence Rule 702(a) provides as follows: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." In interpreting this rule, the Indiana Supreme Court has held that only one of the above named characteristics—specifically, knowledge, skill, experience, training, or education—is necessary to qualify an individual as an expert. *See Kubsch v. State*, 784 N.E.2d 905, 921 (Ind. 2003). As such, a witness may qualify as an expert on the basis of practical experience alone. *Id.* It is within the trial court's sound discretion to decide whether a person qualifies as an expert witness. *Id.* On appeal, we will not substitute our judgment for that of the trial court. *See id*.

At trial, Cooper testified that during his eighteen-month firearms identification training, he received one week of training in the area of range determination. In addition, Cooper testified that he had education and experience in the area of range determination, having taken classes and read material on the subject including a book entitled *Gunshot Wounds* by one Vincent DiMaio. Cooper further testified that he had previously been qualified to testify as an expert on the topic of range determination in past trials for a variety of cases.

In admitting Cooper's testimony, the trial court concluded that Cooper was qualified based upon his training and knowledge. Given Cooper's training and education in the area of range determination, which the trial court deemed adequate, we will not

substitute our judgment for that of the trial court. Notably, Cooper was qualified according to more than one of the required characteristics, both of which the trial court credited, further reinforcing his qualifications as expert. To the extent Cooper's knowledge was based upon allegedly incomplete or outdated information, as Gordon argues in challenging the extent of Cooper's training and the edition of the DiMaio book Cooper consulted, that evidence goes to the weight of the expert testimony, not its admissibility. *See Burnett*, 815 N.E.2d at 206 (concluding that expert witness's failure to conduct particular tests goes to the weight of his testimony, not its admissibility). The trial court's admission into evidence of Cooper's expert testimony on the topic of range determination did not constitute an abuse of discretion.

B. Reliable Scientific Principles under Rule 702(b)

Gordon additionally challenges the reliability of the scientific principles upon which Cooper's range determination testimony was based. Indiana Evidence Rule 702(b) provides as follows: "Expert scientific testimony is admissible only if the court is satisfied that the scientific principles upon which the expert testimony rests are reliable." When determining whether scientific evidence is admissible under Rule 702(b), we consider the factors discussed in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993). *Burnett*, 815 N.E.2d at 206 (citing *Kubsch*, 784 N.E.2d at 921). In *Daubert*, the United States Supreme Court held that for scientific knowledge to be admissible under Rule 702, the trial court must determine that the evidence is based on, among other things, scientifically valid methodology. *Id.* (citing *Daubert*, 509 U.S. at 592-93); *see Kubsch*, 784 N.E.2d at 921. To assist the trial courts in making this determination, the

Court outlined a non-exclusive list of factors that may be considered including (1) whether the theory or technique can be and has been tested, (2) whether the theory has been subjected to peer review and publication, (3) whether there is a known or potential error rate, and (4) whether the theory has been generally accepted within the relevant field of study. *Id.* (citing *Daubert*, 509 U.S. at 593-94); *see Kubsch*, 784 N.E.2d at 921.

We find it unnecessary to address this claim on its merits because Gordon failed to preserve it for appellate review by establishing that he objected on Rule 702(b) grounds at trial. *See Burnett*, 815 N.E.2d at 207 ("[A] defendant may not argue one ground for objection at trial and then raise new grounds on appeal.") Prior to trial, defense counsel filed a motion in limine, apparently seeking to exclude Cooper's range determination testimony.[9] The State responded by highlighting Cooper's training and experience in the area of range determination, essentially a Rule 702(a) analysis. The trial court preliminarily granted the motion. At trial, when Cooper sought to testify about range determination, defense counsel again objected, citing Rule 702 and arguing that the State was unable to qualify Cooper as a range determination expert. In the discussion that followed, defense counsel mentioned *Daubert*, at which point the trial court indicated that it believed defense counsel's objection was only to Cooper's qualifications to offer an expert opinion, essentially a Rule 702(a) ground only. Defense counsel did not re-object or seek to clarify his intention that the trial court consider his objection on Rule 702(b) grounds as well. Thereafter, when defense counsel asked a question pertaining to

[9] The motion in limine was not included in Appellant's Appendix, and the details of it are not available from the CCS.

Daubert, the trial court sustained the prosecutor's objection. In ultimately admitting Cooper's range determination testimony, the trial court relied upon Cooper's training and knowledge and made no reference to *Daubert* or a Rule 702(b) analysis. In the trial court's view, therefore, the *Daubert* analysis was specifically *not* at issue. In appealing, Gordon challenges the trial court's admission of Cooper's testimony, not its consideration of his objection on Rule 702(a) grounds alone. Accordingly, we deem Gordon's Rule 702(b) challenge to Cooper's testimony waived. *See id.* at 208 (concluding that while defense counsel discussed certain aspects of *Daubert*, focus of counsel's objections and arguments was on expert's lack of knowledge and/or experience, waiving Rule 702(b) challenge).

IV. Sufficiency of the Evidence

Gordon's last challenge is to the sufficiency of the evidence to support his murder conviction. Gordon does not challenge the evidence that he shot Clark. He claims that the evidence does not show that he did so knowingly or intentionally.

Indiana Code section 35-42-1-1 provides that a person who knowingly or intentionally kills another human being commits murder. Intent to kill may be inferred from the deliberate use of a deadly weapon in a manner likely to cause death or serious injury. *Henley v. State*, 881 N.E.2d 639, 652 (Ind. 2008). Firing a gun in the direction of an individual is substantial evidence from which a jury may infer intent to kill. *Id.*

Our review of the record reveals sufficient evidence to support Gordon's conviction for knowingly or intentionally killing Clark. Clark was shot square in the neck from a distance of approximately two inches, with a gun equipped with three

functional safeties, by an abusive boyfriend who attempted to flee the scene. Although Gordon claimed that the gun in his pants accidentally fired, there was no gunshot hole in his pants or other evidence tending to support this story. To the extent Gordon tried to assist Clark after she was shot, he did so only momentarily, he fled afterward, and the jury was entitled to consider his remedial efforts more demonstrative of regret than of pre-shooting intent. The intent to commit murder may be inferred from the nature of the attack and the circumstances surrounding the crime. *Whatley v. State*, 908 N.E.2d 276, 284 (Ind. Ct. App. 2009), *trans. denied*. Gordon's alternative version of the events in question is simply an invitation to reweigh the evidence, which we decline to do. We conclude that there was sufficient evidence to support Gordon's conviction for murder.

V. Conclusion

The trial court did not abuse its discretion in admitting Gordon's statements to Detective Lehn and Cooper's expert range determination testimony, and in denying Gordon's motion for a mistrial. In addition, there was sufficient evidence to support Gordon's conviction for murder. Accordingly, we reject Gordon's challenge to his convictions, habitual offender finding, and sentence.

The judgment of the trial court is affirmed.

RILEY, J., and MATHIAS, J., concur.