DIVISION ONE
FILED: 7/30/2013
RUTH A. WILLINGHAM, CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	No. 1 CA-CR 11-0230
	)	
Appellee,	)	DEPARTMENT A
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
SHAWNTE SHUREE JONES,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2004-036702-001SE

The Honorable Joseph C. Welty, Judge

CONVICTIONS AFFIRMED; SENTENCES AFFIRMED AS MODIFIED

Thomas C. Horne, Arizona Attorney General — Phoenix
By Joseph T. Maziarz, Chief Counsel,
Criminal Appeals/Capital Litigation Division
And Jeffrey L. Sparks, Assistant Attorney General
Attorneys for Appellee

Theresa M. Armendarez — Manteo, NC
Attorney for Appellant

G E M M I L L, Judge

¶1 Defendant Shawnte Shuree Jones appeals her convictions and resulting sentences for two counts of child abuse and one count of felony murder arising from the death of her ten-month-

old child. She argues the trial court committed reversible error by admitting her involuntary statements to police, denying her motion for judgment of acquittal on two counts, and entering a judgment of conviction on a facially unconstitutional charge. For the reasons that follow, we affirm her convictions. We also affirm her sentences with the exception that we order the sentence for Count 2 child abuse modified so that her prison term shall be served concurrently with her sentence for felony murder (Count 3). Because only our resolution of this sentencing issue merits publication, we address all other issues in this memorandum decision. *See* Ariz. R. Sup. Ct. 111(h). In a separate, published opinion issued contemporaneously with this decision, we explain our resolution of the sentencing issue.

¶2 A grand jury indicted Jones in Count 1 for child abuse, a class two felony and dangerous crime against children, for failing to provide nourishment and/or medical attention to her infant; in Count 2, for child abuse, a class two felony and dangerous crime against children, for causing head injuries to the infant; and in Count 3, for first-degree murder, a class one felony and dangerous crime against children, for causing the death of the child in the course and in furtherance of the child abuse alleged in Count 2. Jones waived her right to a trial by jury. After a 20-day bench trial, the court found Jones guilty on Count 1 of the lesser-included offense of reckless child

abuse, a class three felony, and guilty of the charged offenses in Count 2 and Count 3. The court sentenced Jones to 3.5 years on Count 1, 17 years on Count 2, and life with possibility of release after 35 years on Count 3, with the sentences on Counts 1 and 3 to be served concurrently, and the sentence on Count 2 to be served consecutively to the other sentences. Jones timely appeals, and we have jurisdiction in this matter pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010).[1]

Voluntariness of Defendant's Statements

¶3 Jones argues that her statements to police were involuntary, based on her experts' testimony that Jones had low intellectual functioning and that the "motivational strategy" used by an interrogating officer was "psychologically coercive" and "was the reason why Appellant 'adopted' the story he set forth." Police questioned Jones on three occasions: twice on the date her infant was hospitalized; and then four days later, when Jones was arrested, and she admitted slamming the infant's head several times on the floor. Because this was a bench trial, the court did not hold a separate voluntariness hearing but determined that after hearing all the relevant evidence it

[1] We cite the current versions of statutes when no revisions material to this decision have occurred since the date of the alleged offenses.

would decide whether Jones' statements were admissible "for purposes of verdict determination."

¶4 The court subsequently found "that the Defendant voluntarily participated in the interview and that her statements were not the result of violence, coercion, threats or promises implied," and her statements were therefore voluntary and admissible. The court explained it had considered the opinion of the defense expert "with respect to an implied promise," and having reviewed the circumstances of this particular interrogation, it did not "find any implied promise existed, and [did] not believe that the defendant provided statements subject to any implied promise." In announcing the guilty verdict, the court noted it had found the statement made the day of Jones' arrest, in which she admitted assaulting the child because she was frustrated, not only voluntary, but credible and reliable, explaining in pertinent part:

> I went over that statement very carefully. I listened to it, I read it, I re-read it. I looked for leading, suggestive questions to suggest that the statements made by the defendant were not her own, but rather that of parroting what the officer was saying. I came to the conclusion that she was not parroting what the officer was saying.

¶5 In evaluating voluntariness, the court must "look to the totality of the circumstances surrounding the confession and decide whether the will of the defendant has been overborne."

State v. Lopez, 174 Ariz. 131, 137, 847 P.2d 1078, 1084 (1992). We will not find a statement involuntary unless there exists "both coercive police behavior and a causal relation between the coercive behavior and defendant's overborne will." *State v. Boggs*, 218 Ariz. 325, 336, ¶ 44, 185 P.3d 111, 122 (2008). We review the trial court's ruling admitting a defendant's statements for abuse of discretion, viewing the evidence in the light most favorable to upholding the ruling. *State v. Ellison*, 213 Ariz. 116, 126, ¶ 25, 140 P.3d 899, 909 (2006).

¶6 After reviewing the interrogations, we cannot say the trial court erred in its ruling. We find nothing coercive or impermissible in the detective's manner of questioning Jones. As an initial matter, the detective testified he made no threats or promises to Jones during questioning. *See Boggs*, 218 Ariz. at 335, ¶ 44, 185 P.3d at 121 (stating the state meets its burden of proving the confession voluntary when the detective testifies that it was obtained without threat, coercion, or promises). Our review of the record also confirms that, contrary to the opinion of Jones' expert on police interrogation, the detective made no threats or promises of leniency, explicit or implied, to induce Jones' confession. The detective's mode of questioning primarily consisted of trying to build rapport with Jones, telling her that the medical reports conflicted with her story, and suggesting she should tell the

truth so people would understand "why it happened the way that it did" and not unfairly judge her. As evidence of psychologically coercive tactics, Jones' expert pointed to the detective's statements pressuring Jones to tell the truth to avoid being unfairly judged or "locked in with a bunch of other people who were in the same situation as [her]," or to "head it off before it gets too big." Under Arizona law, however, "advice from the police that it would be better for the accused to tell the truth when unaccompanied by either a threat or a promise does not render a subsequent confession involuntary." *State v. Amaya-Ruiz*, 166 Ariz. 152, 165, 800 P.2d 1260, 1273 (1990). The detective's interrogation strategy did not impermissibly convey either threats or promises of leniency in exchange for information.

¶7 Jones' expert also singled out as coercive the detective's act of filling out a charging sheet during the final interrogation, after telling Jones she gave him little choice "because you're still not telling me the whole truth." At the time the detective started filling out the charging sheet, however, Jones had already confessed to slamming the infant's head on the floor. Moreover, although Jones may have felt pressured by this act, the detective never suggested he would consider a lesser charge if Jones would give him more detail. Under these circumstances, the record fails to support Jones'

claim that the detective used coercion as defined under Arizona law, and that such coercion caused her will to be overborne. *See Boggs*, 218 Ariz. at 335-36, ¶¶ 43-46, 185 P.3d at 121-222.

¶8 Nor does the expert's opinion that Jones was of low intellectual functioning persuade us her confession was involuntary. Characteristics such as a defendant's low intellectual functioning that would make her will easier to overcome, factor into a voluntariness determination only if the interrogating detective knew of them. *State v. Blakley*, 204 Ariz. 429, 437, ¶ 31, 65 P.3d 77 (2003); *see also State v. Carrillo*, 156 Ariz. 125, 137, 750 P.2d 883, 895 (1988) (holding evaluation of police conduct "must be made in light of what the police should perceive from the objective manifestations of the suspect's physical or mental condition"); *State v. Poyson*, 198 Ariz. 70, 75, ¶ 10, 7 P.3d 79, 84 (2000) ("Although personal circumstances, such as intelligence and mental or emotional status, may be considered in a voluntariness inquiry, the critical element is whether police conduct constituted overreaching.") (internal citation and punctuation omitted).

¶9 The detective testified Jones had no trouble understanding his questions or providing appropriate responses, and she told him she had completed a college program. Nothing in Jones' behavior during the interrogations suggested she had low mental functioning or was particularly susceptible to having

her will overborne. Nor are we persuaded that Jones adopted a story suggested by the detective, as Jones contends. Jones used her own words to describe what had happened in a way that the detective did not suggest. For instance, Jones admitted and was the first to suggest that she had "slammed" the infant's head on the floor. Jones then continued by claiming the infant "started looking . . . like . . . she couldn't breathe," and "I was like, what am I doing," and "I told her I was sorry that I didn't mean to slam her." Under these circumstances, we find no abuse of discretion in the determination that Jones' statements to the detective were voluntary.

Sufficiency of Evidence

¶10 Jones argues the evidence was insufficient to support her convictions in Counts 2 and 3, and that the court erred in denying her motion for new trial on this ground, because two of her experts "provided extensive testimony in support of their conclusions that Appellant's daughter did not die as a result of blunt force trauma," and that foul play did not cause her death. The court explained that it reached its guilty verdict on Count 2, knowing and intentional child abuse, for causing head injuries to the infant, after finding, first, "with evidence beyond a reasonable doubt that [the infant] died of blunt force trauma, relating to a rapid acceleration and deceleration of the child's head." It explained in part:

> I considered all of the medical testimony presented in coming to that conclusion, and I find that conclusion to be reached clearly with evidence beyond a reasonable doubt. I have considered the relative qualifications of the doctors involved, and their testimony as compared with the remainder of the evidence in the case.

The court further found that the evidence demonstrated beyond a reasonable doubt "that this child's injury was caused immediately prior to the child's hospitalization," during which time "the defendant had sole care and custody of the child," and Jones had admitted assaulting the infant out of frustration and then leaving her unmonitored. The court finally found that Jones had caused the death of the infant in the course of committing the child abuse in Count 2, and accordingly was guilty of the felony murder alleged in Count 3.

¶11 We review *de novo* the sufficiency of the evidence to support a conviction. *State v. West*, 226 Ariz. 559, 562, ¶ 15, 250 P.3d 1188, 1191 (2011). To set aside a verdict for insufficient evidence, "it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion" reached by the factfinder. *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987). Because a motion for new trial based on the claim that the verdict is against the weight of the evidence requires the trial court to weigh evidence and determine the credibility of witnesses, we will

reverse a denial of such motion "only when there is an affirmative showing that the trial court abused its discretion and acted arbitrarily." *State v. Mincey*, 141 Ariz. 425, 432, 687 P.2d 1180, 1187 (1984).

¶12 The evidence was sufficient to establish that Jones knowingly or intentionally slammed her infant's head on the floor several times, causing her death, and accordingly we find no error in the trial court's verdicts on the child abuse alleged in Count 2 and the felony murder alleged in Count 3, or its denial of the motion for new trial on grounds the evidence was insufficient. A person commits child abuse under A.R.S. § 13-3623(A)(1) (2010) if, acting knowingly or intentionally, the person, "[u]nder circumstances likely to produce death or serious physical injury . . . causes a child . . . to suffer physical injury." A person commits felony murder if he commits child abuse under this subsection and "in the course of and in furtherance of the offense" causes death. A.R.S. § 13-1105(A)(2) (2012).

¶13 Jones argues that because her experts concluded that there was no indication of any foul play on the day the infant came to the hospital, and that the infant died from other pre-existing conditions, insufficient evidence supported the conviction for felony murder, and the conviction for the

predicate offense of child abuse for slamming the infant's head on the floor.

¶14 In reviewing the sufficiency of the evidence, however, we view the facts in the light most favorable to upholding the verdict, and resolve all conflicts in the evidence against the defendant. *State v. Girdler*, 138 Ariz. 482, 488, 675 P.2d 1301, 1307 (1983). "No rule is better established than that the credibility of the witnesses and the weight and value to be given to their testimony are questions exclusively for the jury[,]" or in this case, because it was a bench trial, the trial judge. *State v. Cox*, 217 Ariz. 353, 357, ¶ 27, 174 P.3d 265, 269 (2007) (internal quotations and citation omitted). Jones asks us to ignore, or at the very least, discount, not only Jones' confession to police that she slammed the infant's head on the floor several times out of frustration (and shortly afterward the infant stopped breathing), but also the medical evidence showing very recent severe head trauma, and the testimony of the State's experts, who concluded that the cause of death was blunt force trauma. The court expressly stated, however, that it considered Jones' confession voluntary and reliable, that it had weighed the conflicting testimony of the different experts and their qualifications, and that it had concluded that the infant's death resulted from blunt force trauma inflicted by Jones. On this record, because the State

presented more than sufficient evidence from which the factfinder could find beyond a reasonable doubt that the infant died from blunt force trauma caused by intentional or knowing child abuse by Jones, we find no error in either the convictions or in the denial of the motion for new trial.

Constitutionality of Felony Murder

¶15 Jones finally argues that the felony-murder statute is unconstitutional because it permits the State to obtain a conviction and punishment for first-degree murder without proving intent to kill. Our supreme court has consistently rejected such arguments, and has held repeatedly that the felony-murder rule is constitutionally permissible. *State v. West*, 176 Ariz. 432, 445, 862 P.2d 192, 205 (1993), *overruled in other part by State v. Rodriguez*, 192 Ariz. 58, 64 n.7, ¶ 30, 961 P.2d 1006, 1012 n.7 (1998); *State v. Herrera*, 176 Ariz. 21, 30, 859 P.2d 131, 140 (1993); *State v. McLoughlin*, 139 Ariz. 481, 486, 679 P.2d 504, 509 (1984). We are bound by the decisions of our supreme court. *State v. Stanley*, 217 Ariz. 253, 259, ¶ 28, 172 P.3d 848, 854 (App. 2007). We accordingly reject this argument as contrary to the governing law. *See id.*

CONCLUSION

¶16 For the foregoing reasons, we affirm Jones' convictions. We also affirm her sentences with the exception that we order her sentence for child abuse (Count 2) modified to

be served concurrently with her other sentences, rather than consecutively, in accordance with the separate, published opinion issued contemporaneously with this decision.

/s/
_____
JOHN C. GEMMILL, Presiding Judge

CONCURRING:

/s/
_____
MARGARET H. DOWNIE, Judge

/s/
_____
JON W. THOMPSON, Judge