**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

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| COMMONWEALTH OF PENNSYLVANIA | : | IN THE SUPERIOR COURT OF PENNSYLVANIA |
| v. | : | |
| TROY BAILEY | : | |
| Appellant | : | No. 2045 EDA 2021 |

Appeal from the Judgment of Sentence Entered July 22, 2021
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0004027-2019

BEFORE: OLSON, J., DUBOW, J., and KING, J.

MEMORANDUM BY OLSON, J.: **FILED JUNE 16, 2022**

Appellant, Troy Bailey, appeals from the judgment of sentence entered on July 22, 2021, following his bench trial convictions for third-degree murder, persons not to possess a firearm, possession of a firearm with manufacturer number altered, carrying a firearm without a license, carrying a firearm in the public streets of Philadelphia, and possession of an instrument of crime.[1] We affirm.

The trial court summarized the facts of this case as follows:

> On May 19, 2019, at 5:00 a.m., Philadelphia Police Officer, Thomas Foy, responded to a radio call of shots fired on the highway [along] North 11th Street in Philadelphia[, Pennsylvania]. Upon arrival, he discovered a female suffering from a gunshot wound lying on the pavement, along with two cell[ular tele]phones, a pair of [eye]glasses and a set of keys. The female

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[1] 18 Pa.C.S.A. §§ 2502(c), 6105, 6110.2, 6106, 6108, and 907, respectively.

was deceased and had blood coming from the back of her head. The decedent was identified as Michele Washington.

Ayana Coulter testified that [Appellant] is the father of her children and was her boyfriend at the time of the incident. Ms. Coulter owned a lime green, 2006 Nissan Altima which [Appellant] was using on the night of the incident. [Appellant] sometimes stayed with Ms. Coulter at her apartment [along] North Broad Street and had a key to [her residence]. Ms. Coulter owned a 9 mm Taurus handgun which she purchased in February or March of 2019. [Appellant] was with her when she purchased the firearm. She kept the firearm in the dining room on top of the china closet and [Appellant] did not have permission to use it. Ms. Coulter had seen the gun a few weeks before the murder on the china closet.

On the night prior to the murder, [Appellant] dropped Ms. Coulter and their children [off] at her apartment between 6:00 p.m. and 8:00 p.m. and left with her car. He stated that he was going to a family event and would return later that night. At 4:00 a.m., [Appellant] called Ms. Coulter and said that he was on his way home. He arrived home after 5:00 a.m., and asked Ms. Coulter to get dressed and take a ride with him because he lost his cell[ular tele]phone. [Appellant] pulled over at a location where police were present and approached a police officer. After a conversation with the officer, [Appellant] returned to the car and said that he had to go to the police station to talk to the police. Ms. Coulter asked [Appellant] if he had done something wrong, but he did not respond.

Ms. Coulter drove [Appellant] to the police station. Before going into the station, [Appellant] changed his shirt with some clothing he had in the trunk of the car. After a while, a homicide detective came outside and told Ms. Coulter that [Appellant's] cell[ular tele]phone was found next to the decedent's body and requested that she come inside to be interviewed. In her first statement to detectives, Ms. Coulter stated that [Appellant] had been at his mother's house all night and that she picked him up there prior to driving him to the crime scene. She later admitted that she said this because she was afraid that [Appellant] had committed a crime with her car.

Ms. Coulter gave detectives permission to search her home. Detectives recovered Ms. Coulter's 9 mm Taurus handgun in the kitchen, above a cabinet, which is not where she usually kept the

gun. Also, the box that the gun came in when purchased was missing and the serial numbers were scratched off the gun. Ms. Coulter did not move the gun or scratch the numbers from the gun.

Ms. Coulter was shown a video of the area surrounding the crime scene just before the murder and identified her lime green car in the video.

Officer Alyssa Bradley testified that she was present at the crime scene on May 19, 2019, when she was approached by [Appellant] who stated that he was a witness to the incident. [Appellant] told Officer Bradley that he was walking [along] North 11th Street when he saw two people arguing, heard gunshots and ran. He described the purported shooter as a black male with a red Phillies cap, timberland boots, jeans and a tattoo on his right cheek. [Appellant] then said that he dropped his grey iPhone in the street when he was running away from the incident. Officer Bradley then asked [Appellant] to come to the Homicide Unit to make a statement. Officer Bradley was wearing her body camera during this interaction and the video was played for the court.

[Appellant's] pants and shoes were swabbed for gunshot residue. Gunshot residue was found on the front and back waistband area of [Appellant's] pants.

Officer Robert Flade of the Crime Scene Unit testified that four fired cartridge casings (FCCs) were recovered from the crime scene along with two cell[ular tele]phones, keys and a broken pair of eyeglasses. No weapons were recovered.

Detective John Bartol from the Homicide Unit testified that [Appellant] was interviewed as a witness to the homicide. [Appellant] recounted the same story that he told to Officer Bradley but stated that he was never on the pavement where the decedent was found. The detective became aware after the interview that [Appellant's] cell[ular tele]phone was found on the pavement within five feet of the decedent's body.

Dr. Victoria Sorokin from the Medical Examiner's Office testified that she performed the autopsy on the decedent. The decedent was a 40-year-old transgender female. She was shot in her head, back and buttocks. The gunshot wound to the head disrupted the brain severely. The decedent also suffered blunt impact trauma. She had two lacerations on her upper eyelid, abrasions on both

hands and an abrasion to the left knee. These injuries [were] consistent with either a scuffle or a terminal fall.

Detective John Harkins testified he obtained a search warrant for [a residence on] West Venango Street, the home of [Appellant's] mother where he sometimes stayed. This location was approximately one-and-a-half blocks from where the [the decedent was fatally shot]. Recovered from [Appellant's] bedroom was a Taurus 9 mm magazine. It had a [12] round capacity and was loaded with ten rounds of Hornady ammunition. Also recovered from [Appellant's] bedroom was a Taurus manufacturer box for a 9 mm handgun, a manufacturer's gun lock and an instruction manual. The box indicated that the weapon came from the manufacturer with two (2) magazines. There was a serial number on the box which proved the gun to be registered to Ayana Coulter. Ms. Coulter was then re-interviewed and told detectives that [Appellant] changed his shirt prior to walking into the Homicide Unit. Also, she gave detectives permission to search her home where they recovered a Taurus 9 mm handgun loaded with seven (7) live rounds and one (1) chambered round of Hornady ammunition. The magazine had a twelve-round capacity. The serial numbers were scratched off.

Detective Harkins took a formal interview of [Appellant]. [Appellant] stated that he went to 11th Street to sell the 9 mm Taurus gun to the decedent's boyfriend, Lou. The decedent wanted the gun for herself but did not have the money. The decedent told [Appellant], "suck my d**k." The two began to argue. The decedent pulled out a knife so [Appellant] pulled out the gun and shot her. [Appellant] identified the 9 mm Taurus [handgun], owned by Ms. Coulter and recovered from her home[,] as the gun he used to shoot the decedent.

Detective Thorston Lucke from the Homicide Unit testified that surveillance video was recovered from the area surrounding the crime scene from the date and time of the [fatal shooting]. A video compilation was played for the court. The compilation depicts a vehicle, which was identified by Ms. Coulter as her lime green Nissan, cross 11th Street and make a right-hand turn onto Goodman Street, at approximately 5:01 a.m. Cameras located at the opposite end of the block show that the vehicle does not exit the block. Within seconds, two individuals walk out of Goodman Street, onto Ontario Street, and turn left on 11th Street. The individuals are not identifiable because the camera angle is from a distance. There appears to be an interaction between the two

> individuals on the sidewalk of 11th Street. One individual walks into the street, comes back onto to the sidewalk and the other individual collapses. The individual who had walked into the street runs back toward Goodman Street at approximately 5:03 a.m. Within seconds, the lime green Nissan is seen driving out of Goodman Street.
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> Evidence was presented by way of stipulation that Police Officer Kelly from the Firearms Identification Unit would testify that the four (4) FCCs recovered from the crime scene were fired from Ms. Coulter's 9 mm firearm.
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> Evidence was also presented by way of stipulation regarding the DNA results of the items recovered at the crime scene. In summary: the source of the major component of the DNA detected on the swab from the [eye]glasses recovered at the crime scene was the decedent; the source of the DNA detected on the Apple iPhone 8 was [Appellant]; the source of the major component of the DNA detected on the keys was the decedent; the source of the major component of the DNA detected on the Galaxy S 10 cell[ular tele]phone [was] the decedent.

Trial Court Opinion, 11/29/2021, at 2-6 (record citations omitted).

Following a bench trial on May 3, 2021, the trial court found Appellant guilty of all of the aforementioned crimes. On July 22, 2021, the trial court sentenced Appellant to 20 to 40 years of incarceration for third-degree murder. The trial court also imposed two-and-a-half to five-year sentences for both persons not to possess a firearm and possession of a firearm with manufacturer number altered. Those sentences were imposed consecutively to the sentence for third-degree murder and to each other. The trial court did not impose further penalties for the remaining convictions. In total, the trial court imposed an aggregate sentence of 25 to 50 years of imprisonment. On

July 27, 2021, Appellant filed a post-sentence motion. The trial court denied relief by order entered on August 31, 2021. This timely appeal resulted.[2]

On appeal, Appellant presents the following issues[3] for our review:

1. Did the trial court [violate Pa.R.E. 106 and] err as a matter of law when it allowed the Commonwealth [] to play [Appellant's] interrogation interview to the court [showing] only parts [] favorable to [the prosecution's] case and not the entire video which would have assisted the defense[?]

2. Did the trial court err as a matter of law when it failed to consider a self-defense argument when it found [Appellant] guilty of third-degree murder?

3. Did the Commonwealth present sufficient evidence to disprove self-defense beyond a doubt regarding the third-degree murder charge?

4. Was the [guilty verdict on] all charges against the weight and sufficiency of the evidence presented?

Appellant's Brief at 7.

In the first appellate issue addressed, Appellant contends that the trial court "erred as a matter of law and basic evidentiary principles when it allowed the Commonwealth to show portions of the [police] interrogation interview to the court in only parts that were favorable to its case and not play the entire video as the Rule of Completeness, Pa.R.E. [] 106, instructs." ***Id.*** at 20.

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[2] On September 29, 2021, Appellant filed a notice of appeal. On October 19, 2021, the trial court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant complied timely on November 8, 2021. On November 29, 2021, the trial court issued an opinion pursuant to Pa.R.A.P. 1925(a).

[3] We have reordered the issues presented for ease of discussion.

Appellant claims that he "express[ed] disdain" that the entire criminal interview was not shown to the trial court, but the trial court "instructed defense counsel that [Appellant] could use [the video when presenting his case]." ***Id.*** Citing Pa.R.E. 106, Appellant maintains that "when the Commonwealth introduced favorable clips of the interview[,] all of the interview should have been played so the evidence could be fairly viewed in its entirety" because "the entire video would have assisted the defense." ***Id.***

We have previously determined:

> Admission of evidence is within the sound discretion of the trial court and will be reversed only upon a showing that the trial court clearly abused its discretion. Admissibility depends on relevance and probative value. Evidence is relevant if it logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable or supports a reasonable inference or presumption regarding a material fact.
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> In addition, for a ruling on evidence to constitute reversible error, it must have been harmful or prejudicial to the complaining party. A party suffers prejudice when the trial court's error could have affected the verdict.

***Commonwealth v. Thomas***, 194 A.3d 159, 164 (Pa. Super. 2018) (internal citations and quotations omitted).

Pennsylvania Rule of Evidence 106 provides as follows:

> If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part--or any other writing or recorded statement--that in fairness ought to be considered at the same time.
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> Comment: This rule is identical to F.R.E. 106. A similar principle is expressed in Pa.R.C.P. No. 4020(a)(4), which states: "If only part of a deposition is offered in evidence by a party, any other party may require the offering party

> to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts."
>
> The purpose of Pa.R.E. 106 is to give the adverse party an opportunity to correct a misleading impression that may be created by the use of a part of a writing or recorded statement that may be taken out of context. This rule gives the adverse party the opportunity to correct the misleading impression at the time that the evidence is introduced. The trial court has discretion to decide whether other parts, or other writings or recorded statements, ought in fairness to be considered contemporaneously with the proffered part.

Pa.R.E. 106. "Thus, where a party introduces a portion of a writing or recorded statement, Rule 106 permits the adverse party to introduce the remainder so that the fact finder can consider the evidence in context." ***Commonwealth v. Bond***, 190 A.3d 664, 673–674 (Pa. Super. 2018) (citations omitted). "The burden is on the adverse party to explain the relevance of the remainder of the recording." ***Id.***

Additionally, we recognize:

> In order to preserve an evidentiary objection for purposes of appellate review, a party must interpose a timely and specific objection in the trial court. The rule is well settled that a party complaining, on appeal, of the admission of evidence in the court below will be confined to the specific objection there made.

***Thomas***, 194 A.3d at 166 (internal citations, quotations, and brackets omitted).

The trial court determined that this issue was "specious." Trial Court Opinion, 11/29/2021, at 8. More specifically, the trial court stated:

> Defense counsel had the entire video statement in discovery and was also provided with a verbatim transcript. Counsel was aware that the tape[d interview] was lengthy since there were long

> periods of time where [Appellant] was left alone while detectives were investigating. Furthermore, defense counsel knew that he could play any portion of the video that he chose. In fact, the following exchange occurred amongst the court, defense counsel and the [Commonwealth] on the record:
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> > [Defense counsel]: Just for the record, [the Commonwealth] is not playing anything – [is] not referring to anything in the transcript before page 24.
> >
> > [The Commonwealth]: That's correct. This is a complete transcript that [was] presented to the [c]ourt which contains everything on the video. [The Commonwealth is] only playing the relevant portions[.]
> >
> > The Court: Defense Counsel, you know if you want something else that is not played, you will just use it –
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> > [Defense counsel]: Yes, Your Honor.
> >
> > [The Commonwealth]: [The Commonwealth is] only playing the relevant portions, Your Honor.
> >
> > The Court: All right. Let's go.

***Id.***, *citing* N.T., 5/7/2021, at 54-55.

Upon review, we conclude that Appellant waived appellate review of this claim and, alternatively, we discern no abuse of discretion regarding the introduction of portions of the recorded police interview with Appellant. Initially, while counsel for Appellant noted for the record that the beginning portion of the interview would not be shown to the trial court, counsel did not object to the procedure and, when the trial court ruled that defense counsel could also use additional portions of the recording when presenting his case, counsel simply acknowledged the court's pronouncement. Appellant never requested that the entire video be played in fairness. Thereafter, Appellant did not seek to use the video recording at all even though "Rule 106 permits

the adverse party to introduce the remainder so that the fact finder can consider the evidence in context." ***Bond***, **supra**. Moreover, while Appellant baldly claims that the entire video would have assisted with his defense, he does not explain how the portions of the interview entered into evidence were somehow misleading or taken out of context. At trial, Appellant did not identify additional portions of the recorded interview, allegedly favorable to him, which were not introduced into evidence. On appeal, Appellant still does not identify evidence from the interview that would have assisted his defense. While Pa.R.E. 106 gives an adverse party the chance to correct misleading impressions created by the use of a part of a recorded statement, Appellant did not avail himself of that opportunity at any time. Appellant simply has not met his burden of explaining the relevance of the remainder of the recording or shown how the trial court's ruling was harmful, prejudicial, or affected the verdict. Accordingly, for all the foregoing reasons, we discern no abuse of discretion with regard to the introduction of Appellant's recorded police interview at trial.

Next, Appellant asserts that the trial court erred as a matter of law when it failed to consider his claim of self-defense and, instead, found him guilty of third-degree murder rather than not guilty or guilty of manslaughter. Appellant's Brief at 16-19. More specifically, Appellant posits that the trial court "failed to consider that [Appellant] was clearly intoxicated by Percocet during the incident[.]" ***Id.*** at 16. Finally, Appellant argues that his "belief of imminent harm was actual [but] this belief was unreasonable because

[Appellant's] use of a firearm outmatched the decedent's threat with a knife [and,] therefore, imperfect self-defense[.]" ***Id.*** at 18-19.

On this issue, the trial court recognized that "[t]here was evidence presented by [Appellant] in his third statement to police that the decedent pulled a knife on him following a verbal dispute causing him to defend himself by shooting her." Trial Court Opinion, 11/29/2021, at 7. The trial court, therefore, considered "possible self-defense." ***Id.*** The trial court, however, "found this self-serving claim by [Appellant] to be unsupported by the evidence and wholly incredible" for the following reasons:

> Firstly, the decedent was shot from behind three times and died immediately. Secondly, there was no knife recovered from the scene. Third, [a surveillance] video, although dark, does not show another individual on scene who would have taken the knife. Fourth, [Appellant] gave conflicting stories to police throughout his interaction with them, at first claiming to be an eyewitness who was just passing through, to finally admitting to the shooting after being confronted with overwhelming physical evidence. It [was] only then that he mentioned the knife for the first time. For [these] reasons, the court found any claim of imperfect self-defense incredible.

***Id.*** at 7-8.

This Court has stated:

> Self-defense is a complete defense to a homicide charge if 1) the defendant reasonably believed that he was in imminent danger of death or serious bodily injury and that it was necessary to use deadly force to prevent such harm; 2) the defendant did not provoke the threat that resulted in the slaying; and 3) the defendant did not violate a duty to retreat.
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> Where the defendant has introduced evidence of self-defense, the burden is on the Commonwealth to disprove the self-defense

> claim beyond a reasonable doubt by proving that at least one of those three elements is absent.[4]

***Commonwealth v. Green***, 2022 WL 791883, at *3 (Pa. Super. filed March 16, 2022) (internal citations and quotations omitted).

Moreover,

> unreasonable belief voluntary manslaughter, sometimes loosely referred to as imperfect self-defense, will only justify a voluntary manslaughter instruction in limited circumstances: where a defendant held an unreasonable rather than a reasonable belief that deadly force was required to save his or her life, and all other principles of justification under 18 Pa.C.S.A. § 505 have been met. Generally, the use of deadly force is not justifiable unless the actor believes that such force is necessary to protect himself against death, serious bodily injury, kidnapping or sexual intercourse compelled by force or threat. Although a defendant has no burden to prove a claim of self-defense before such a defense is properly in issue, there must be some evidence, from whatever source, to justify such a finding.
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> [O]ur Supreme Court [has] reiterated:
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> > The dividing line between self-defense and this character of manslaughter (voluntary, brought about through the influence of a passion or fear) seems to be the existence, as the moving force, of a reasonably founded belief of either imminent peril to life or great bodily harm, as distinguished from the influence of an uncontrollable fear or terror,

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[4] "When the defendant's own testimony is the only evidence of self-defense, the Commonwealth must still disprove the asserted justification and cannot simply rely on the jury's disbelief of the defendant's testimony[.]" ***Commonwealth v. Smith***, 97 A.3d 782, 788 (Pa. Super. 2014). "Although the Commonwealth is required to disprove a claim of self-defense arising from any source beyond a reasonable doubt, a [fact-finder] is not required to believe the testimony of the defendant who raises the claim." ***Id.*** (citation omitted; brackets in original). "Disbelief of the defendant's testimony, however, is not sufficient to satisfy the Commonwealth's burden to disprove self-defense absent some evidence negating self-defense." ***Commonwealth v. Jones***, 271 A.3d 452, 459 (Pa. Super. 2021) (citation omitted).

> conceivable as existing but not reasonably justified by the circumstances.

***Id.*** at *4 (citations and quotations omitted).

Here, the trial court was not required to believe Appellant's testimony that the victim threatened him with a knife. The trial court determined that, aside from Appellant's own statements, there was no corroborating evidence that Appellant was, in fact, confronted with deadly force. Upon review, we conclude that the record supports the trial court's finding that, because the victim did not confront Appellant with a knife, Appellant possessed neither a reasonable nor an unreasonable belief that deadly force was required to protect his life. Appellant admitted that he shot the victim, who sustained three gunshot wounds from behind. Moreover, there was no evidence she ever had a weapon. Video surveillance showed that there were only two people present at the time of the incident. Once the trial court determined that the victim did not pose an imminent threat of death or serious bodily injury, the court implicitly rejected Appellant's claim that he harbored any belief (reasonable, unreasonable, or otherwise) that deadly force was needed for self-preservation. Based on all of the foregoing, we conclude that the Commonwealth sufficiently disproved Appellant's claim of self-defense and discern no trial court error.

Moreover, while Appellant currently claims that he was under the influence of Percocet at the time of the shooting, he did not properly preserve this aspect of his claim. In his concise statement of errors complained of on

appeal, Appellant merely asserted that "[t]he trial court erred as a matter of law by failing to consider a self-defense argument when it found the defendant guilty of 3rd degree murder." Rule 1925(b) Statement, 11/8/2021, at 1. "A defense of diminished capacity is 'an extremely limited' defense where a defendant admits criminal liability generally but seeks to mitigate a first-degree murder charge to third-degree murder." ***Commonwealth v. Gilbert***, 269 A.3d 601, 608 (Pa. Super. 2022), *citing* ***Commonwealth v. Hutchinson***, 25 A.3d 277, 312 (Pa. 2011). "To establish a diminished capacity defense, a defendant must prove that his cognitive abilities of deliberation and premeditation were so compromised, by mental defect or voluntary intoxication, that he was unable to formulate the specific intent to kill." ***Id.*** A voluntary intoxication defense is legally distinct from a theory of self-defense. Appellant failed to raise a claim pertaining to voluntary intoxication in his statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b) and, therefore, we find this portion of Appellant's claim waived. ***See Commonwealth v. Jackson***, 215 A.3d 972, 978 (Pa. Super. 2019) (citation omitted) ("Issues not raised in a Rule 1925(b) statement will be deemed waived for review."); ***see also Commonwealth v. Golson***, 189 A.3d 994, 1000 (Pa. Super. 2018) ("Generally, an appellant cannot raise new legal theories for the first time on appeal."); ***see also*** Pa.R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal."). Finally, as set forth above, a voluntary intoxication defense seeks "to mitigate a first-degree murder charge to third-degree

murder." ***Gilbert***, **supra**. Appellant was convicted of third-degree murder, so it is unclear how Appellant would be entitled to further relief under a theory of voluntary intoxication. For all of the foregoing reasons, Appellant's appellate issue pertaining to self-defense fails.

Next, Appellant claims "the Commonwealth did not present sufficient evidence to convict [Appellant] of third-degree murder because the trial court did not consider the incident in the totality of all the circumstances and the Commonwealth did not disprove [Appellant's] self-defense claim beyond a reasonable doubt." Appellant's Brief at 21 (complete capitalization omitted).

"Whether the evidence was sufficient to support the conviction presents a matter of law; our standard of review is *de novo* and our scope of review is plenary." ***Commonwealth v. Biesecker***, 161 A.3d 321, 326 (Pa. Super. 2017) (citation omitted). We "examine whether the evidence admitted at trial, and all reasonable inferences drawn therefrom, viewed in the light most favorable to the Commonwealth as verdict winner, support the [fact-finder's] finding of all the elements of the offense beyond a reasonable doubt." ***Id.*** (citation omitted). "The Commonwealth may sustain its burden by means of wholly circumstantial evidence." ***Id.*** (citation omitted). "To establish the offense of third-degree murder, the Commonwealth must prove the killing of an individual with malice." ***Jones***, 271 A.3d at 458 (citations omitted). "Malice includes not only particular ill will toward the victim, but also wickedness of disposition, hardness of heart, wantonness, and cruelty, recklessness of consequences, and conscious disregard by the defendant of

an unjustified and extremely high risk that his actions may cause serious bodily harm." ***Id.*** As set forth at length above, self-defense is a complete defense to homicide and the burden is on the Commonwealth to disprove a claim of self-defense beyond a reasonable doubt.

Here, we agree with the trial court's assessment that there was sufficient evidence to convict Appellant of third-degree murder. Again, there is no dispute that Appellant shot the victim multiple times in the back and rear of the skull. Such actions showed malice. ***See Commonwealth v. Lee***, 626 A.2d 1238, 1241 (Pa. Super. 1993) (evidence that defendant used deadly weapon upon vital part of victim's body is alone sufficient to establish malice as an element of third-degree murder). Moreover, as previously explained in great detail, the Commonwealth disproved Appellant's theory of self-defense. As such, there was sufficient evidence to support Appellant's conviction for third-degree murder. Accordingly, Appellant's third issue on appeal is without merit.

Finally, Appellant contends that the verdict was against the weight of the evidence presented at trial. Appellant's Brief at 24-25.

We adhere to the following standards:

> Appellate review of a weight claim *is a review of the exercise of discretion, not of the underlying question of whether the verdict is against the weight of the evidence*. Because the trial judge has had the opportunity to hear and see the evidence presented, an appellate court will give the gravest consideration to the findings and reasons advanced by the trial judge when reviewing a trial court's determination that the verdict is against the weight of the evidence. One of the least assailable reasons for granting or denying a new trial is the lower court's conviction that the verdict

> was or was not against the weight of the evidence and that a new trial should be granted in the interest of justice.

***Commonwealth v. Clay***, 64 A.3d 1049, 1055 (Pa. 2013) (internal citations omitted; emphasis in original).

In this case, the trial court determined:

> This verdict certainly is not contrary to the evidence. [Appellant] admitted to shooting the decedent three times. Although, [Appellant] claimed that the decedent wielded a knife and that he shot her in self-defense, this contention was disproven. The Commonwealth proved beyond a reasonable doubt that [Appellant] was not in fear of [an] imminent [threat] of serious bodily injury or death from the decedent at the time he shot her because she was unarmed. No knife was recovered from the scene, and the only two people that appear on [surveillance] video at the time of the murder [were] the decedent and [Appellant]. Furthermore, [Appellant] dropped his cell[ular tele]phone within five feet of the decedent's body. [Appellant] initially told police that he was a witness but changed his story to self-defense when he was confronted with the video, the recovery of ballistic evidence, and the gun used in the incident.
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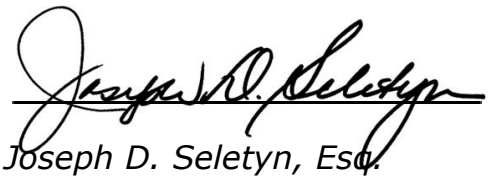
> Therefore, the verdict was not against the weight of the evidence.

Trial Court Opinion, 11/29/2021, at 13.

Based upon our standard of review, we discern no abuse of discretion in ruling on Appellant's weight of the evidence claim. As such, Appellant is not entitled to relief on his final appellate issue.

Judgment of sentence affirmed.

*Judgment Entered.*



*Joseph D. Seletyn, Esq.*
*Prothonotary*

*Date: 6/16/2022*