NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. REBECCA ANNE OLENCHOCK, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 3167 EDA 2011

Appeal from the Judgment of Sentence October 12, 2011
In the Court of Common Pleas of Bucks County
Criminal Division at No.: CP-09-CR-0007777-2010

BEFORE: MUNDY, J., OTT, J., and PLATT, J.*

MEMORANDUM BY PLATT, J. Filed: February 20, 2013

Appellant, Rebecca Anne Olenchock, appeals from the judgment of sentence after her bench trial conviction of murder of the first degree, arson, and related offenses. Specifically, Appellant challenges the denial of her motion to suppress, and contests the sufficiency and the weight of the evidence. We affirm.

The facts of the case are not in dispute. Appellant had been living voluntarily with her mother, Kimberly Venose, the victim, for two years in a makeshift shack at a homeless encampment behind a supermarket in Bristol,

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* Retired Senior Judge assigned to the Superior Court.

Pennsylvania. Mother had a history of drug addiction, did not work, had recently lost spousal support, and had an outstanding arrest warrant for retail theft, which may have been a reason she did not try to obtain public housing. Appellant supported both of them with a variety of restaurant jobs. Mother had resisted family efforts to arrange for her to move to an apartment in the Wilkes-Barre/Scranton area.

Meanwhile, Appellant had found a boyfriend in Tennessee through an online dating site, and was planning to move to Tennessee to be with him. The boyfriend offered Mother the second bedroom in his apartment, but she apparently declined.

On the morning of October 17, 2010, Appellant hit the victim, repeatedly, approximately ten to fifteen times, with a baseball bat, until she was unconscious. (***See*** Appellant's Brief, at 15). Appellant then took kerosene and set fire to the bed with Mother lying on it, locked the shack from the outside, gathered her identification and a few belongings, and burned the rest. (***See id.***). She then drove away.

Although left for dead, Mother in fact survived, and managed to escape from the shack despite the locked door. Responders to the fire found Mother lying in nearby bushes crying out for help. She told firefighter and emergency medical technician (EMT) Ryan Cummings that her daughter tried to kill her. While Mr. Cummings was monitoring her, the victim went into cardiac arrest caused by an arteriosclerotic condition aggravated by the

traumas of the beating and the burning. She was pronounced dead shortly after her arrival at the hospital.

Using Appellant's cell phone to determine her location, two detectives, Lieutenant David Kemmerer of the Bucks County District Attorney's Office, and Detective Jack Slattery of the Bristol Township Police Department, flew to Tennessee, rented a car, and caught up with her and the boyfriend in his car in the parking lot of a shopping center. The two detectives were dressed in casual civilian clothes. They identified themselves and displayed their badges. Although they were carrying concealed weapons, neither detective displayed a firearm.

When Appellant agreed to talk with them, Lieutenant Kemmerer called local Johnson City, Tennessee police. In a few minutes, a uniformed local police officer arrived in a marked police vehicle. The three cars proceeded to the Johnson City police station, with the police car in the lead, Appellant in the middle car driven by her boyfriend, and the two detectives following in the rental car.

The detectives later testified that they advised Appellant at least three times that she was not under arrest, and also told her she was free to go. At the police station Appellant was led to an interrogation room, which was not locked, but closed for privacy. Lieutenant Kemmerer testified that the door did not even have a lock on it. Appellant was never handcuffed and was permitted bathroom breaks and provided with water to drink. Under

local practice, Tennessee police videotaped the interrogation, although Appellant was not informed of this until later.

The entire interrogation lasted about three hours. Appellant gave three alternative versions of her story. First, she claimed her mother was killed in a robbery by an unknown black man, whom she described in general terms as tall with a shaved head, like Mr. Clean. When the detectives informed Appellant of her mother's incriminating statement to the EMT/firefighter, naming her as the assailant, she claimed the black man forced her to kill her mother. Finally, she admitted that there was no black man and told the detectives she had killed her mother herself, after the victim refused to go to Tennessee with her and threatened to have her and the boyfriend killed through friends in a motorcycle gang, if Appellant left her alone. Appellant wrote out one statement by herself and signed another statement written by Detective Slattery.

It also developed that Appellant had told her boyfriend that her mother had died of heart failure, in a hospital, about two weeks before her actual death. (***See*** N.T. Trial, 6/07/11, at 261). After Appellant arrived in Tennessee, she asked the boyfriend if he knew where she could get a "hot tag" to replace the license plate on her car. (***See id.*** at 269). During the interrogation, the boyfriend was left to wait in the lobby, and eventually went home alone.

After Appellant gave her final written statement the detectives took her out to lunch. The Commonwealth notes that at lunch she was permitted

to go to the bathroom by herself. It is undisputed that Appellant never received ***Miranda***[1] warnings or signed a waiver.

Appellant filed a motion to suppress the written statements, which the court denied, although it granted suppression of the videotape made by the Tennessee police, as not in compliance with Pennsylvania law. The court denied suppression of Mother's statement to the EMT/firefighter, that her daughter tried to kill her, and denied the Commonwealth's motion *in limine*, which sought to exclude trial testimony about the heat of passion defense from the defense's psychologist, Dr. Allan Tepper, J.D., Psy. D., who had also prepared a written psychological evaluation.[2] (***See*** N.T. Motions, Waiver Colloquy, 6/02/11, at 66-84). At the same hearing, the court also accepted Appellant's waiver of her right to a jury trial as knowing, intelligent, and voluntary. (***See id.*** at 92).

After a bench trial, the court found Appellant guilty of murder of the first degree; arson, endangering the life of Kimberly Venose; possession of an instrument of crime (PIC) for the baseball bat, and another count of PIC for the kerosene.[3]

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[1] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

[2] In any event, Dr. Tepper did not testify at trial.

[3] The trial court found Appellant not guilty of arson, endangering the life of Ryan Cummings, the EMT/firefighter.

(Footnote Continued Next Page)

At the sentencing hearing, based on its review of Dr. Tepper's report, the trial court revised its verdict to guilty but mentally ill.[4] (***See*** Trial Court Opinion, 2/27/12, at 11-12, (citing N.T. [Sentencing], 10/12/11, at 14-15)). The court sentenced Appellant to a life term for the count of murder; not less than ten nor more than twenty years' incarceration for arson, concurrent with the life sentence; and not less than two-and-a-half nor more than five years' incarceration for PIC (baseball bat), concurrent to the life sentence but consecutive to the sentence for arson.[5] (***See id.*** at 11). This timely appeal followed the trial court's denial of Appellant's post-sentence motions.[6]

Appellant raises four questions for our review:

> A. Whether the trial court erred by not suppressing the Appellant's statements which the police elicited following an illegal investigative detention?
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> B. Whether the trial court erred by not suppressing the Appellant's statements which the police elicited from Appellant

(Footnote Continued) ––––––––––––––––––––

[4] The Commonwealth stipulated to the admission of Dr. Tepper's report. (***See*** Trial Ct. Op. at 11).

[5] The court did not impose a further penalty for the second PIC count (kerosene).

[6] Appellant also filed a timely statement of errors pursuant to Pennsylvania Rule of Appellate Procedure 1925. ***See*** Pa.R.A.P. 1925(b). The trial court filed a Rule 1925(a) opinion on February 27, 2012.

> while she was in police custody without advising Appellant of her ***Miranda*** rights?
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> C. Was the evidence insufficient to support the verdict of first-degree murder because the Commonwealth failed to establish that the Appellant had the specific intent to kill, that the killing was willful, deliberate, premeditated, and that the Appellant acted with malice?
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> D. Was the trial court's verdict finding Appellant guilty of first-degree murder against the weight of the evidence in that the Commonwealth failed to establish that the Appellant had the specific intent to kill, that the killing was willful, deliber[ate], premeditated, and that the Appellant acted with malice?

(Appellant's Brief, at 5).

We address Appellant's first two questions together. Appellant concedes that the detectives may have told her that she did not have to speak with them, but nevertheless maintains that their actions and words "demonstrated [she] was not free to leave[,]" and no reasonable person in her situation would have felt free to leave. (***Id.***, at 16). Therefore, she asserts, she was "the subject of a custodial interrogation where [she] should have been advised of her ***Miranda*** rights." (***Id.***). She also challenges the sufficiency and the weight of the evidence, arguing that the Commonwealth failed to prove malice. (***See id.***). Although Appellant concedes that she should have been convicted of voluntary manslaughter, (***see id.***), she maintains this Court should vacate the conviction of first degree murder, and remand for a new trial. (***See id.*** at 34). We disagree.

The essence of Appellant's suppression claims is that because she was subject to an illegal investigative detention and she believed that she was

not free to leave, she was in "custody" and ***Miranda*** warnings were required. (***See id.*** at 16, 17).

Our standard of review is well-settled:

> Our standard of review of a denial of suppression is whether the record supports the trial court's factual findings and whether the legal conclusions drawn therefrom are free from error. Our scope of review is limited; we may consider only the evidence of the prosecution and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the record supports the findings of the suppression court, we are bound by those facts and may reverse only if the court erred in reaching its legal conclusions based upon the facts.

Commonwealth v. Reppert, 814 A.2d 1196, 1200 (Pa. Super. 2002) (citations and internal quotation marks omitted).

"The law is clear that ***Miranda*** is not implicated unless the individual is in custody and subjected to interrogation." ***Commonwealth v. Snyder***, 2013 WL 204761, at *3 (Pa. Super. filed January 18, 2013) (citations and emphasis omitted).

> The test for custody is an objective one that focuses on the reasonable impression conveyed by the actions of the police to the person being questioned. [ ]
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> In determining whether an encounter with the police is custodial, [t]he standard . . . is an objective one, with due consideration given to the reasonable impression conveyed to the person interrogated rather than the strictly subjective view of the troopers or the person being seized . . . and must be determined with reference to the totality of the circumstances. ***Miranda*** warnings are required only when a suspect is in custody. As [the Pennsylvania Supreme] Court has noted:

> A person is in custody for ***Miranda*** purposes only when he is physically denied his freedom of action in any significant way or is placed in a situation in which he reasonably believes that his freedom of action or movement is restricted by the interrogation. The U.S. Supreme Court has elaborated that, in determining whether an individual was in custody, the ultimate inquiry is . . . whether there [was] a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.

Commonwealth v. Sherwood, 982 A.2d 483, 499 (Pa. 2009), *cert. denied*, 130 S. Ct. 2415 (2010) (citations and internal quotation marks omitted). Similarly, this Court has explained:

> The warnings articulated by ***Miranda v. Arizona***, 384 U.S. 436, [ ] (1966), become mandatory whenever one is subjected to custodial interrogation. The United States Supreme Court has defined custodial interrogation as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." ***Id.***
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> Police detentions only become custodial when, under the totality of the circumstances, the conditions and/or duration of the detention become so coercive as to constitute the functional equivalent of formal arrest.
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> Whether a person is in custody for ***Miranda*** purposes depends on whether the person is physically [deprived] of his freedom of action in any significant way or is placed in a situation in which he reasonably believes that his freedom of action or movement is restricted by the interrogation. Moreover, the test for custodial interrogation does not depend upon the subjective intent of the law enforcement officer interrogator. Rather, the test focuses on whether the individual being interrogated reasonably believes his freedom of action is being restricted.
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> The factors a court utilizes to determine, under the totality of the circumstances, whether a detention has become so coercive as to constitute the functional equivalent of arrest include: the basis for the detention; its length; its location;

> whether the suspect was transported against his or her will, how far, and why; whether restraints were used; whether the law enforcement officer showed, threatened or used force; and the investigative methods employed to confirm or dispel suspicions. The fact that a police investigation has focused on a particular individual does not automatically trigger "custody," thus requiring ***Miranda*** warnings.

Commonwealth v. Baker, 963 A.2d 495, 500-01 (Pa. Super. 2008), *appeal denied*, 992 A.2d 885 (Pa. 2010) (some citations and internal quotation marks omitted).

Here, our review of the record supports the trial court's finding that Appellant was not in custody and not under any duress when she made her statements. (***See*** Trial Ct. Op., at 11). We note that Appellant was not transported against her will, but agreed to speak with the detectives, and that the detectives specifically explained to her at least three times that she was free to leave and did not have to speak with them. Appellant was never handcuffed, shackled or otherwise restrained. She was not searched. She was permitted bathroom breaks and given water to drink. Appellant concedes she acknowledged she was not under arrest, albeit ambivalently. (***See*** Appellant's Brief, at 14 ("I know I'm not under arrest, but I'm being held.")). Accordingly, in the totality of circumstances, Appellant's interaction with the detectives was not and did not become the functional equivalent of an arrest. Because Appellant was not in custody, nor subject to conditions which would have conveyed to a reasonable person that she was not free to leave, ***Miranda*** warnings were not required. The trial court properly denied the motion to suppress her statements.

Furthermore, Appellant's companion claim, that she was subject to an illegal investigative detention, also fails. (***See*** Appellant's Brief, at 17-19). Her fundamental premise is that the detectives' knowledge of the victim's dying declaration that her daughter had tried to kill her "was not sufficient to establish reasonable suspicion" to detain her. (***Id.*** at 19). Appellant fails to develop an argument in support of this claim, and offers no authority whatsoever for this assertion. (***See id.*** at 19). Accordingly, this argument is waived. ***See*** Pa.R.A.P. 2119(a), (b). Moreover, it would not merit relief.

> [A] police officer may, short of an arrest, conduct an investigative detention if he has a **reasonable suspicion, based upon specific and articulable facts, that criminality is afoot.** The fundamental inquiry is an objective one, namely, whether the facts available to the officer at the moment of the [intrusion] warrant a man of reasonable caution in the belief that the action taken was appropriate. This assessment, like that applicable to the determination of probable cause, requires an evaluation of the totality of the circumstances, with a lesser showing needed to demonstrate reasonable suspicion in terms of both quantity or content and reliability.

Commonwealth v. Zhahir, 751 A.2d 1153, 1156-57 (Pa. 2000) (citations and internal quotation marks omitted; emphasis added).

> The police are permitted to stop and briefly detain citizens only when they have reasonable suspicion, based on specific and articulable facts, that criminal activity may be afoot. ***Commonwealth v. Zhahir,*** 561 Pa. 545, 552, 751 A.2d 1153, 1156 (2000) (citing ***Terry v. Ohio,*** 392 U.S. 1, 21, 30, 88 S.Ct. 1868, 1884, 20 L.Ed.2d 889 (1968)); ***Commonwealth v. Melendez,*** 544 Pa. 323, 328, 676 A.2d 226, 228 (1996); ***Commonwealth v. Hicks,*** 434 Pa. 153, 160, 253 A.2d 276, 280 (1969). In determining whether reasonable suspicion exists for an investigative detention, or as it is also known in the common legal vernacular, a " ***Terry*** stop," the inquiry is the same under both the Fourth Amendment of the United States

> Constitution and Article 1, § 8 of the Pennsylvania Constitution. ***Commonwealth v. Cook***, 558 Pa. 50, 57, 735 A.2d 673, 677 (1999); ***Commonwealth v. Jackson***, 548 Pa. 484, 488, 698 A.2d 571, 573 (1997). "The fundamental inquiry is an objective one, namely, whether 'the facts available to the officer at the moment of the intrusion warrant a man of reasonable caution in the belief that the action taken was appropriate.' " ***Zhahir***, ***supra***, at 552, 751 A.2d at 1156 (citing ***Terry***, ***supra***, 392 U.S. at 21–22, 88 S. Ct. at 1880). In order to determine whether the police had a reasonable suspicion to subject an individual to an investigative detention, the totality of the factual circumstances which existed at the time of the investigative detention must be considered. ***Id.*** (citing ***United States v. Cortez***, 449 U.S. 411, 417, 101 S. Ct. 690, 695, 66 L.Ed.2d 621 (1981)). "Among the factors to be considered in establishing a basis for reasonable suspicion are tips, the reliability of the informants, time, location, and suspicious activity, including flight." ***Commonwealth v. Gray***, 784 A.2d 137, 142 (Pa. Super. 2001).
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> This standard is very narrow, however, in that it requires a "particularized and objective basis for suspecting the **particular person stopped** of criminal activity." ***In re D.M.***, 566 Pa. 445, 781 A.2d 1161, 1163 (2001) (quoting ***Cortez***, ***supra***) (emphasis supplied).

Commonwealth v. Ayala, 791 A.2d 1202, 1208-09 (Pa. Super. 2002) (emphasis in original).

"Merely because a suspect's activity may be consistent with innocent behavior does not alone make detention and limited investigation illegal. A combination of circumstances, none of which taken alone would justify a stop, may be sufficient to achieve a reasonable suspicion." ***In re C.C.J.***, 799 A.2d 116, 121 (Pa. Super. 2002) (citations omitted).

Here, leaving aside the issue of Appellant's consent to talk with the detectives, already addressed, the record confirms that in addition to the

victim's dying declaration accusing her daughter, the detectives also knew that Appellant had fled. Officer Kemmerer testified he knew that eyewitnesses had seen Appellant leaving the scene of the fire. (***See*** Trial Ct. Op., at 19, (citing N.T. Suppression [Hearing], 4/08/11, at 54)).

"Generally when a person commits a crime and flees or conceals himself such conduct is evidence of a consciousness of guilt and may form the basis from which guilt may be inferred." ***Commonwealth v. Smith***, 378 A.2d 1239, 1243 (Pa. Super. 1977). "Evidence of flight or concealment can be established through eyewitness testimony." ***Commonwealth v. Hudson***, 955 A.2d 1031, 1036 (Pa. Super. 2008), *appeal denied*, 964 A.2d 1 (Pa. 2009). Accordingly, we conclude that in the totality of the circumstances, the detectives had at least a reasonable suspicion of criminal activity and a particularized and objective basis for suspecting the Appellant was involved. Appellant was not the subject of an illegal detention, and, because she was not in custody, and was repeatedly advised she was free to go, she was not in custodial detention. ***See Sherwood***, ***supra***; ***Zhahir***, ***supra***; ***Ayala***, ***supra***; ***In re C.C.J.***, ***supra***. ***Miranda*** warnings were not required. ***See Snyder***, ***supra***; ***Baker***, ***supra***. The court properly denied suppression. Appellant's first two claims fail.

Next, in her third and fourth issues, Appellant challenges the sufficiency and the weight of the evidence. (***See*** Appellant's Brief, at 29-32, 33).

When examining a challenge to the sufficiency of evidence, our standard of review is as follows:

> The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the [finder] of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

The following principles apply to our review of a weight of the evidence claim:

> The weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses. An appellate court cannot substitute its judgment for that of the finder of fact. Thus, we may only reverse the . . . verdict if it is so contrary to the evidence as to shock one's sense of justice.

Moreover, where the trial court has ruled on the weight claim below, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence. Rather, appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim.

Commonwealth v. Devine, 26 A.3d 1139, 1145-46 (Pa. Super. 2011) *appeal denied*, 42 A.3d 1059 (Pa. 2012) (citations omitted).

> The elements of first-degree murder are as follows: (1) a human being was unlawfully killed; (2) the defendant was responsible for the killing; and (3) the defendant acted with malice and a specific intent to kill. 18 Pa.C.S. § 2502(a); ***Commonwealth v. Houser***, 610 Pa. 264, 18 A.3d 1128, 1133 (2011). First-degree murder is an intentional killing, *i.e.*, a "willful, deliberate and premeditated killing." 18 Pa.C.S. § 2502(a) and (d). Specific intent to kill as well as malice can be inferred from the use of a deadly weapon upon a vital part of the victim's body. ***Houser***, ***supra*** at 1133–34[.]

Commonwealth v. Thomas, 54 A.3d 332, 335-36 (Pa. 2012) (some citations omitted).

Our courts have long recognized that a baseball bat can be used as a deadly weapon. ***See Commonwealth v. Prenni***, 55 A.2d 532, 533 (Pa. 1947); ***Commonwealth v. Johnson***, 719 A.2d 778, 785 (Pa. Super. 1998), *appeal denied*, 739 A.2d 1056 (Pa. 1999). Appellant admits she beat her Mother ten to fifteen times. (***See*** Appellant's Brief, at 15, (citing N.T. Trial, 6/06/11, at 144-47)).

The forensic pathologist who performed the autopsy, Dr. Ian Hood, testified that the victim had clear evidence of blunt trauma around the back of her head and the left side of her upper and middle back extending over the top of the left shoulder. (***See*** N.T. Trial, 6/07/11, at 310). Dr. Hood determined the cause of death to be blunt trauma, with thermal burns and arteriosclerotic cardiovascular disease as contributing causes. (***See id.***, at 342). The trial court could properly infer malice from Appellant's use of the

baseball bat as a deadly weapon on a vital part of the victim's body. (***See*** Trial Ct. Op., at 20-21.).

Further, the trial court found that Appellant's locking of the shack after setting fire to it was evidence of intent to take her mother's life. (***See id.*** (citing N.T. Trial, 6/08/11, at 506)). Finally, the court noted that Appellant burned her personal effects, including her blood stained clothing, except for the personal identification and the items she took with her, inferring her intent to prevent their use as evidence. (***See id.*** at 23).

Nevertheless, Appellant argues that she killed her mother in an act of sudden and intense passion, "negating the element of malice required for a finding of first degree murder." (Appellant's Brief, at 30). Appellant reviews in some detail the very difficult conditions she endured, her mother's sabotage of efforts to remedy their situation, and Mother's threats; she argues that she killed her mother out of "extreme anger and resentment that resulted from being homeless and her mother's threats to kill Appellant if she left the homeless encampment." (***Id.*** at 32).

Appellant argues that she should have been convicted of the lesser offense of voluntary manslaughter. (***See id.*** at 16, 30). "A person who kills an individual without lawful justification commits voluntary manslaughter if at the time of the killing he is acting under a sudden and intense passion resulting from serious provocation[.]" 18 Pa.C.S.A. § 2503(a)

However, Appellant misapprehends our standard of review. We do not re-weigh the evidence presented to the trier of fact. Rather we:

> [V]iew[ ] all the evidence admitted at trial in the light most favorable to the verdict winner, [to determine if] there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, we may not weigh the evidence and substitute our judgment for the fact-finder.

Devine, ***supra*** at 1145.

Here, the trial court could properly infer malice from Appellant's use of a baseball bat to bludgeon her Mother ten to fifteen times. Additionally, Appellant's pre-announcement of her Mother's death two weeks before the fact, her setting fire to the shack after she believed her Mother to be dead, her locking of the shack on the way out, her flight to Tennessee, her request to her boyfriend to help her get a "hot tag" for her car, and her false stories about a black male perpetrator all support the trial court's finding that Appellant's acts were willful, deliberate and premeditated, and not the result of a sudden intense passion. (***See*** Trial Ct. Op., at 19-25). Appellant's insufficiency argument does not merit relief.

Finally, Appellant challenges the weight of the evidence. (***See*** Appellant's Brief, at 33). However, Appellant does not develop an independent argument challenging the weight of the evidence, but merely incorporates her insufficiency argument by reference. (***See id.***). Accordingly, Appellant has abandoned her weight claim. ***See*** ***Commonwealth v. Bullock***, 948 A.2d 818, 823 (Pa. Super. 2008), *appeal denied*, 968 A.2d 1280 (Pa. 2009) (holding appellant abandoned weight

claim by presenting argument to support only sufficiency claim and not developing weight of evidence claim); ***Commonwealth v. Birdseye***, 637 A.2d 1036, 1039-40 (Pa. Super. 1994), *affirmed*, 670 A.2d 1124 (Pa. 1996), *cert. denied*, 518 U.S. 1019 (1996) (holding weight of evidence issue waived for failure to provide separate argument in support of weight issue, failure to distinguish between sufficiency and weight of evidence claims, and failure to present argument regarding weight of evidence).

Moreover, the claim would not merit relief. There is no support in the record for a challenge to the credibility of the witnesses presented by the Commonwealth. The verdict is not so contrary to the evidence as to shock one's sense of justice. On review, we discern no basis to find that the trial court palpably abused its discretion in ruling on the weight claim.

Judgment of sentence affirmed.