**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

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| COMMONWEALTH OF PENNSYLVANIA,<br><br>Appellee<br><br>v.<br><br>BRANDON JEFFREY JOHNSON,<br><br>Appellant | IN THE SUPERIOR COURT OF PENNSYLVANIA<br><br><br><br><br><br><br>No. 927 WDA 2011 |

Appeal from the Judgment of Sentence May 9, 2011
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0016536-2009

BEFORE: STEVENS, P.J., MUNDY, J., and FITZGERALD, J.*

MEMORANDUM BY STEVENS, P.J. Filed: February 22, 2013

Appellant, Brandon Johnson, files this appeal from the judgment of sentence entered in the Allegheny County Court of Common Pleas on May 9, 2011, following his convictions of second-degree murder, two counts of robbery, firearms not to be carried without a license, and recklessly endangering another person. Appellant argues that the trial court should have suppressed an incriminating statement he made to police, and that the evidence was insufficient to support his convictions of robbery and homicide. We affirm.

On October 25, 2009, police arrested Appellant on charges related to the robbery of a restaurant and the murder of Brian Keith Lee, who was shot

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* Former Justice specially assigned to the Superior Court.

and killed during the course of the robbery. Police obtained the arrest warrant following statements made by Appellant's ex-girlfriend and mother of his child, implicating Appellant's involvement in the crimes. At the Allegheny County Homicide Unit, Appellant admitted to the shooting in a recorded statement.

Appellant subsequently filed a motion to suppress the statement, arguing that, *inter alia*, during the course of the interview he requested an attorney, he was under the influence of several drugs, and the police manipulated him into confessing to the crimes. Following a hearing, the suppression court denied Appellant's motion. Appellant waived a jury trial, and the case proceeded to a bench trial, after which the trial court convicted Appellant of the above charges. The court sentenced Appellant to a term of life imprisonment without parole. This timely appeal followed, Appellant filed a timely, court-ordered, Pa.R.A.P. 1925(b) statement, and the court filed a responsive opinion.

Appellant presents the following arguments on appeal:

> I. Did the trial court err in failing to grant the motion to suppress [Appellant]'s statement, for various reasons?
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> II. Is the evidence sufficient to support [Appellant]'s convictions for robbery and homicide?

Appellant's Brief, at 6.

Appellant's first argument is that the trial court should have suppressed his statement to police. He insists that he requested counsel,

but the detectives ignored his request. He further asserts that he was not cognizant of his rights during the interview because he was under the influence of several drugs. Appellant also claims the police coerced his confession by indicating he could lose custody of his daughter. Finally, Appellant avers that he was afraid of the repercussions he faced if he implicated the real killer. Appellant thus concludes the totality of the circumstances necessitated the granting of his motion to suppress the confession. We disagree.

In reviewing a ruling on a motion to suppress, this Court's role is to determine whether the record supports the suppression court's factual findings and whether the legal conclusions drawn from those findings are free from error. ***Commonwealth v. Baker***, 963 A.2d 495, 499-500 (Pa. Super. 2008) (quoting ***Commonwealth v. Mayhue***, 536 Pa. 271, 300, 639 A.2d 421, 435 (1994)). When the defendant appeals a suppression order, we may consider only the evidence of the prosecution and so much of the evidence for the defense that remains uncontradicted when read in the context of the record as a whole. ***Id.*** If the record supports the court's findings, we are bound by them and may reverse only if the legal conclusions drawn therefrom are in error. ***Id.*** "The suppression court has sole authority to assess the credibility of the witnesses and is entitled to believe all, part or none of the evidence presented." ***Commonwealth v. Reese***, 31 A.3d 708, 721 (Pa. Super. 2011).

In regard to confessions, our Supreme Court has stated:

> When deciding a motion to suppress a confession, the touchstone inquiry is whether the confession was voluntary. Voluntariness is determined from the totality of the circumstances surrounding the confession. The question of voluntariness is not whether the defendant would have confessed without interrogation, but whether the interrogation was so manipulative or coercive that it deprived the defendant of his ability to make a free and unconstrained decision to confess. The Commonwealth has the burden of proving by a preponderance of the evidence that the defendant confessed voluntarily.
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> When assessing voluntariness pursuant to the totality of the circumstances, a court should look at the following factors: the duration and means of the interrogation; the physical and psychological state of the accused; the conditions attendant to the detention; the attitude of the interrogator; and any and all other factors that could drain a person's ability to withstand suggestion and coercion.

***Commonwealth v. Nester***, 551 Pa. 157, 162-64, 709 A.2d 879, 882 (1998) (citations omitted). "Although intoxication is a factor to be considered, the test is whether there was sufficient mental capacity for the defendant to know what he was saying and to have voluntarily intended to say it." ***Commonwealth v. Dewitt***, 412 A.2d 623, 624 (Pa. Super. 1979).

In the case *sub judice*, Appellant claims that the suppression court made an erroneous interpretation of Appellant's statements regarding his waiver of counsel. In advancing this argument, Appellant correctly cites ***Commonwealth v. Zook***, 520 Pa. 210, 553 A.2d 920 (1989), for the proposition that this Court may review whether the trial court properly

interpreted a defendant's statement as invoking or failing to invoke his right to counsel. ***See id.*** at 216-17, 553 A.2d at 923 (finding that defendant's request to call his mother to see if she can obtain the services of an attorney was a clear invocation of his right to secure counsel). Appellant fails, however, to cite exactly what the trial court misinterpreted. Neither his argument section nor his factual recitation quotes or refers to a particular statement that may have been ambiguous or misunderstood. Instead, Appellant appears to rely on his own testimony that he requested an attorney. This claim does not involve ambiguity or misunderstanding, but rather a credibility determination, of which the suppression court has sole authority. ***See Reese***, 31 A.3d at 721.

Appellant's remaining complaints regarding his confession are also without merit. Appellant essentially claims that the trial court considered each of his arguments only in isolation, rather than together in a totality-of-the-circumstances analysis. The trial court's opinion, however, evidences its careful consideration of Appellant's claims and its complete rejection of them. The court believed the detective's testimony that Appellant did not appear under the influence and appeared to understand each question fully, and the court listened to the recording of Appellant's statement, after which the court agreed with the detective's assessment. The court also observed that Appellant never stated he was unable to understand anything about the process.

Further, there is no merit to Appellant's claim that he felt coerced to confess because of consequences that would occur if he did not. His first averment, that he was concerned about the welfare of his daughter if he did not confess, makes little sense, as his confession to the crime and implication of his daughter's mother would worsen his daughter's status. Combined with the trial court's finding that Appellant does not have custody of his daughter and spends little time with her, we find no error in the court's rejection of this claim. Given the trial court's complete rejection of these claims, the totality of the circumstances weighed substantially in favor of the court's finding that Appellant's confession was voluntary. ***See Nester***, 551 Pa. at 162-64, 709 A.2d at 882.[1] Accordingly, we see no reason to disturb the trial court's determination that the confession was voluntary.

Appellant's next argument is that the evidence was insufficient to sustain his robbery and murder convictions. Appellant claims no physical evidence linked him to the robbery, the Commonwealth could not definitively link the bullets from the crime scene to a firearm that was in his possession,

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[1] We find it of no moment that the trial court did not refer to Appellant's claim regarding his fear of retribution by the "real killer." Appellant cites no authority for his proposition that such a fear, even if the court were to find it credible, constitutes evidence of coercion sufficient to warrant suppression, even as a mere factor in the totality-of-circumstances analysis. Accordingly, we find this claim waived and meritless. ***See*** Pa.R.A.P. 2119(a)-(b) (requiring citation of authorities in support of argument).

the victim did not identify him as the attacker, and the former girlfriend who identified him had an ulterior motive to incriminate him. He thus concludes there was no sufficient evidence to convict him of these crimes. We disagree.

Our standard of review for sufficiency claims is well-settled. In reviewing the sufficiency of the evidence, we must determine whether the evidence admitted at trial and all reasonable inferences drawn therefrom, viewed in the light most favorable to the Commonwealth as verdict winner, is sufficient to prove every element of the offense beyond a reasonable doubt. ***Commonwealth v. Jones***, 954 A.2d 1194, 1196 (Pa. Super. 2008) (quoting ***Commonwealth v. Vetrini***, 734 A.2d 404, 406 (Pa. Super. 1999)). This Court may not reweigh the evidence and substitute our judgment for that of the fact-finder. ***Id.*** (quoting ***Vetrini***, 734 A.2d at 407). The Commonwealth may rely on wholly circumstantial evidence in proving every element of the crime beyond a reasonable doubt. ***Id.*** at 1197. Any question of doubt is for the fact-finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances. ***Commonwealth v. Perez***, 931 A.2d 703, 707 (Pa. Super. 2007). The entire record must be evaluated, all evidence actually received must be considered, and the trier of fact is free to believe all, part, or none of the evidence. ***Jones***, 954 A.2d at 1197.

In the case *sub judice*, Appellant gave a detailed, voluntary confession that was substantially consistent with the testimony of his former girlfriend, JaNee Krista. The trial court considered Krista's status as a witness who testified pursuant to an agreement with the Commonwealth, but properly placed greater weight on the similarities between her testimony and Appellant's confession. The other factors argued by Appellant do not diminish the sufficiency of the evidence. Although the Commonwealth's expert did not specifically identify Appellant's gun as having fired the bullets recovered from the crime scene, the expert testified that they were consistent with bullets that would be fired from that type of gun. There was, therefore, no testimony that Appellant's gun could not have fired the bullets. In regard to the victim's failure to identify him, the victim noted that the perpetrator was wearing a black mask that covered most of his face. Finally, it is within the trial court's province to determine whether Krista was a credible witness, and the court's credibility findings are amply supported by the record, so we will not reweigh the evidence and substitute our judgment for the court's. ***See Jones***, 954 A.2d at 1196-97.

In light of Appellant's detailed confession, its consistency with Krista's testimony, and the lack of evidence exculpating Appellant, we find the evidence was not weak or inconclusive. Thus, Appellant's arguments do not warrant our disturbing the verdict. ***See Perez***, 931 A.2d at 707. Accordingly, we affirm the judgment of sentence.

Judgment of sentence affirmed.