IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 211 MAL 2019
Respondent	:	
	:	Petition for Allowance of Appeal from the Order of the Superior Court
v.	:	
PATRICK T. HUGHES,	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 10th day of September, 2019, the Petition for Allowance of Appeal is **DENIED**.

A True Copy Elizabeth E. Zisk
As Of 09/10/2019

Attest: _____
Chief Clerk
Supreme Court of Pennsylvania

COMMONWEALTH OF PENNSYLVANIA v. PATRICK T. HUGHES, Appellant
SUPERIOR COURT OF PENNSYLVANIA
2019 Pa. Super. Unpub. LEXIS 1229
No. 2853 EDA 2017
April 3, 2019, Decided
April 3, 2019, Filed

Notice:

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

Editorial Information: Prior History

Appeal from the Judgment of Sentence February 28, 2017. In the Court of Common Pleas of Northampton County, Criminal Division at No.: CP-48-CR-0001892-2015.Commonwealth v. Hughes, 2017 Pa. Dist. & Cnty. Dec. LEXIS 10871 (Oct. 30, 2017)
Judges: BEFORE: DUBOW, J., NICHOLS, J., and FORD ELLIOTT, P.J.E. MEMORANDUM BY DUBOW, J.

Opinion

Opinion by: DUBOW

Opinion

MEMORANDUM BY DUBOW, J.:

Appellant, **Patrick T. Hughes**, appeals from the Judgment of Sentence entered by the Northampton County Court of Common Pleas following his convictions after a jury trial of First-Degree Murder and Criminal Conspiracy.1 Appellant raises thirteen issues on appeal, challenging, *inter alia*, the sufficiency and weight of the evidence, the admission at trial of certain evidence, the trial court's denial of various pre-trial Motions, and the legality of his mandatory sentence of life imprisonment without parole. After thorough review, we affirm, adopting in part the trial court's August 15, 2016 and October 30, 2017 Opinions as our own.

On November 23, 2012, the narcotics division of the Easton Police Department was involved in an ongoing investigation targeting the home of Corey Reavis. That day, officers conducted a controlled purchase of heroin from Appellant using a confidential informant. Police officers observed Appellant leave Reavis's home, walk to the informant, engage in a brief hand-to-hand transaction, and return to Reavis's home. When Appellant returned to Reavis's home, police observed Appellant interact with individuals on the front porch, including Omar Robinson. Police took photographs of Appellant, Robinson, and the transaction. Police also observed Robinson's minivan parked outside the residence.

Later that day, Appellant and Robinson shot and killed Ervin Holton ("Victim") in Easton.2 A witness who was driving near the scene called 911 to report the shooting. She stated that, after hearing the gunshots, she saw two individuals in dark clothing running toward a nearby minivan. The Victim died

from multiple gunshot wounds; ballistics evidence confirmed that there were two shooters.

During the subsequent investigation, detectives from the Easton Police Department obtained consistent surveillance video that showed two individuals exit a minivan one block from the crime scene, walk towards the location of the shooting, and shortly thereafter, run back towards the minivan and drive away. Police officers also learned that Robinson's girlfriend, Lisa Doorley, owned the minivan.

When police officers located the minivan at Robinson's home, which he shared with Doorley, Robinson confirmed that only he and Doorley drive the minivan, and that he did not allow anyone else to drive the minivan. Upon confirming that he had been driving the minivan on the night of the murder, Robinson started crying. Police searched the minivan with Doorley's consent and found gunshot residue on the steering wheel and the driver's side interior door handle.

Homicide detectives also learned that Appellant and Robinson had spent much of the day together before the murder. Reavis confirmed that he had been hanging out with Appellant and Robinson that day. Reavis admitted that he had driven and dropped off the Victim at a store near the scene of the murder shortly before Appellant and Robinson murdered him.

Also, cell phone records from Appellant and Robinson confirmed their whereabouts in south Easton, where the shooting occurred, and their close proximity to the area and each other when they placed the calls. The eyewitness called 911 at 5:39 P.M., and the cell phone records showed that Appellant and Robinson made numerous calls to Reavis before and after the murder. All calls stopped at the precise time of the shooting, consistent with the surveillance video.

During the investigation, Appellant provided several different, inconsistent, and unsubstantiated alibis to police investigators. After his arrest, Appellant made several incriminating statements to fellow inmates (1) regarding his motive for the murder, and (2) claiming that he and his men were responsible for the murder. Relevant to this appeal, Appellant provided two recorded statements to police after reading and waiving his ***Miranda***3 rights: on December 5, 2012, and December 4, 2014.

Thereafter, the Commonwealth charged Appellant with Criminal Homicide and Criminal Conspiracy. In October 2015, the trial court granted the Commonwealth's Motion to try Appellant and Robinson jointly.

Appellant filed numerous pre-trial motions, including a Motion to Sever his trial from Robinson, a Motion to Suppress his statements to police, and a Motion for Change of Venue. The trial court denied each of these relevant motions.4

On August 16, 2016, the Commonwealth filed a Motion *in Limine* seeking to introduce "prior bad acts" evidence pursuant to Pennsylvania Rule of Evidence 404(b) of the drug transaction between the confidential informant and Appellant earlier on the day of the murder. On November 14, 2016, the trial court granted the Commonwealth's Motion, concluding that the evidence of the drug deal was relevant and admissible to show: (1) the motive of Appellant and Robinson for the shooting; and (2) the complete story of the case.5 The trial court also concluded that the probative value of the evidence outweighed its potential for prejudice, particularly with the provision of appropriate cautionary jury instructions. ***See*** Trial Court Opinion, 11/14/16, at 2-7.

In January 2017, Appellant and Robinson proceeded to an eight-day jury trial. The Commonwealth presented testimony from numerous witnesses, including Reavis, Greene, the Northampton County coroner, numerous detectives and police officers, and James Martin, Appellant's cellmate. Appellant and Robinson did not testify and presented no evidence.

On January 20, 2017, the jury convicted Appellant of First-Degree Murder and Criminal Conspiracy.6

On February 28, 2017, the trial court sentenced Appellant to the mandatory term of life imprisonment without parole.7 Appellant filed a timely Post-Sentence Motion, which the trial court denied on August 4, 2017.

On August 31, 2017, Appellant filed a Notice of Appeal. Both Appellant and the trial court complied with Pa.R.A.P. 1925.

Appellant presents thirteen issues for our review:

1. Whether the evidence was sufficient to [sustain] a conviction of criminal homicide, criminal conspiracy to commit homicide where the Commonwealth failed to establish, beyond a reasonable doubt, the existence of a conspiratorial agreement, the specific intent of which was to commit criminal homicide, prior to the death of Ervin Holton?

2. Whether the evidence was sufficient to [sustain] a conviction of criminal homicide or criminal conspiracy to commit homicide where the Commonwealth conceded at trial that [Appellant] was not a shooter, and offered no evidence of his presence at the scene, when, a conviction of murder cannot stand without sufficient evidence of accomplice liability?

3. Whether the trial court erred in granting the Commonwealth's motion *in limine* to present evidence of [Appellant's] drug dealing and prior drug arrests under [Pa.R.E.] 404(b) by order and opinion on November 14, 2016?

4. Whether the trial court erred in admitting 911 tapes referencing a Honda Odyssey without affording the Appellant his right to cross-examination guaranteed and by the confrontation clause of the United States Constitution?

5. Whether this honorable court erred when it barred the defense from cross-examining James Martin on his status as a sex offender registrant?

6. Whether this honorable court erred when it failed to grant Appellant's request for a mistrial due to Nicole Green[e]'s testimony that Appellant was incarcerated during most of the time they dated?

7. Whether the verdict was against the weight of the evidence?

8. Whether the trial court erred over Appellant's objection in denying Appellant's motion for severance, failing to order separate trials, and determining that [] Appellant would not be prejudiced by being tried with his co-defendant Omar Robinson[?]

9. Whether the trial court erred in failing to grant Appellant's motion for change of venue/venire where the pretrial publicity was sustained, pervasive, inflammatory, and inculpatory and there was a presumption of prejudice in selecting a fair and impartial jury from Northampton County?

10. Whether the trial court erred in failing to grant Appellant['s] motion to suppress statements made to police on December 5, 2012 and December 4, 2014?

11. Whether the sentence of the court to a mandatory life sentence without the possibility of parole for First[-]Degree Murder is unlawful where the underlying statute is unconstitutional and the sentencing issue was not presented to the jury?

12. Whether the mandatory sentence of Appellant to life imprisonment without the possibility of parole for murder of the first degree violates the Eighth Amendment prohibition on cruel and unusual punishment?

13. Whether the court erred in denying Appellant's request to instruct the jury that in Pennsylvania

the mandatory sentence for First[-]Degree Murder is life imprisonment without the possibility of parole?Appellant's Brief at 3-5 (capitalization, suggested answers, and some citations omitted).

Issues 1-2: Sufficiency of the Evidence

Appellant first challenges the sufficiency of the evidence supporting his convictions for First-Degree Murder and Criminal Conspiracy. Appellant's Brief at 11-12. Appellant generally challenges the elements of identity and specific intent to kill. ***Id.***8

"A claim challenging the sufficiency of the evidence is a question of law." ***Commonwealth v. Widmer***, 560 Pa. 308, 744 A.2d 745, 751 (Pa. 2000). "We review claims regarding the sufficiency of the evidence by considering 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." ***Commonwealth v. Miller***, 2017 PA Super 330, 172 A.3d 632, 640 (Pa. Super. 2017) (internal quotation marks and citations omitted). "Further, a conviction may be sustained wholly on circumstantial evidence, and the trier of fact-while passing on the credibility of the witnesses and the weight of the evidence-is free to believe all, part, or none of the evidence." ***Id.*** "In conducting this review, the appellate court may not weigh the evidence and substitute its judgment for the fact-finder." ***Id.***

It is well-established that to sustain a First-Degree Murder conviction "the Commonwealth must prove that: (1) a human being was unlawfully killed; (2) the person accused is responsible for the killing; and (3) the accused acted with malice and specific intent to kill." ***Commonwealth v. Hitcho***, 633 Pa. 51, 123 A.3d 731, 746 (Pa. 2015); 18 Pa.C.S. § 2502(a). "Section 2502 of the Crimes Code defines murder of the first degree as an 'intentional killing,'" which, in turn, is defined as a "willful, deliberate and premeditated killing." ***Commonwealth v. Diamond***, 623 Pa. 475, 83 A.3d 119, 126 (Pa. 2013) (citing 18 Pa.C.S. § 2502(a), (d)). A jury may infer the intent to kill based upon the defendant's use of a deadly weapon on "a vital part of the victim's body." ***Commonwealth v. Sanchez***, 623 Pa. 253, 82 A.3d 943, 967 (Pa. 2013) (citation omitted).

Additionally, "[a] person is legally accountable for the conduct of another person when ... he is an accomplice of such other person in the commission of the offense." 18 Pa.C.S. § 306(b)(3). The statute sets forth that "[a] person is an accomplice of another person in the commission of an offense if ... with the intent of promoting or facilitating the commission of the offense, he ... aids or agrees or attempts to aid such other person in planning or committing it." 18 Pa.C.S. § 306(c)(1)(ii).

Moreover, "[a]ccomplice liability may be established wholly by circumstantial evidence. Only the least degree of concert or collusion in the commission of the offense is sufficient to sustain a finding of responsibility as an accomplice. No agreement is required, only aid." ***Commonwealth v. Mitchell***, 2016 PA Super 53, 135 A.3d 1097, 1102 (Pa. Super. 2016) (internal quotations marks and citation omitted).

To sustain the conviction for Criminal Conspiracy, there must be proof beyond a reasonable doubt that the defendant "(1) entered into an agreement to commit or aid in an unlawful act with another person or persons, (2) with a shared criminal intent[,] and (3) an overt act was done in furtherance of the conspiracy. This overt act need not be committed by the defendant; it need only be committed by a co-conspirator." ***Commonwealth v. McCall***, 2006 PA Super 329, 911 A.2d 992, 996 (Pa. Super. 2006) (citations and quotation marks omitted). ***See also*** 18 Pa.C.S. § 903 (defining Criminal Conspiracy).

"In addition to proving the statutory elements of the crimes charged beyond a reasonable doubt, the Commonwealth must also establish the identity of the defendant as the perpetrator of the crimes." ***Commonwealth v. Brooks***, 2010 PA Super 185, 7 A.3d 852, 857 (Pa. Super. 2010). "Evidence of

identification need not be positive and certain to sustain a conviction." ***Commonwealth v. Orr***, 2011 PA Super 272, 38 A.3d 868, 874 (Pa. Super. 2011) (*en banc*) (citation omitted).

Our Supreme Court has stated that "any indefiniteness and uncertainty in the identification testimony goes to its weight. Direct evidence of identity is, of course, not necessary and a defendant may be convicted solely on circumstantial evidence." ***Commonwealth v. Hickman***, 453 Pa. 427, 309 A.2d 564, 566 (Pa. 1973) (citations omitted).

Our review of the record, in the light most favorable to the Commonwealth as the verdict winner, indicates that the evidence was sufficient to support every element of the offenses beyond a reasonable doubt. The Honorable Jennifer R. Sletvold, who presided at the trial, has authored a comprehensive, thorough, and well-reasoned Opinion, citing the record and relevant case law in addressing Appellant's sufficiency claims. ***See*** Trial Court Opinion, filed 10/30/17, at 4-11 (concluding that there is no merit to Appellant's sufficiency claims because: (1) the Victim died from multiple gunshot wounds; (2) ballistics evidence confirmed that there were two shooters; (3) the eyewitness who called 911 and the video surveillance showed that Appellant and Robinson used Doorley's minivan and drove to the area of the shooting, exited the minivan, walked in the direction of the shooting, and then fled back to the minivan and drove away; (4) cell phone records confirmed Appellant and Robinson were together at the time of the shooting and made numerous calls between themselves and Reavis both before and after the murder, but the calls abruptly stopped at the precise time of the murder while Appellant and Robinson were captured on video; (5) Appellant made incriminating statements taking responsibility for the Victim's murder; and (6) other evidence corroborated the motive that Appellant and Robinson killed the Victim because of a romantic rivalry between rival drug dealers). We, thus, affirm on the basis of the trial court's October 30, 2017 Opinion.

Issue 3: Pa.R.E. 404(b) - Prior Bad Acts

Appellant next challenges the admission of evidence that he sold drugs to a confidential informant the day of the murder. Appellant's Brief at 12-14. Appellant avers that the Commonwealth offered this evidence of Appellant's prior drug dealing "to arouse the jury to overmastering hostility." ***Id.*** at 14.

The "[a]dmission 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." ***Commonwealth v. Tyson***, 2015 PA Super 138, 119 A.3d 353, 357 (Pa. Super. 2015) (*en banc*) (citations and quotation marks omitted). "Accordingly, a ruling admitting evidence will not be disturbed on appeal unless that ruling reflects manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support to be clearly erroneous." ***Commonwealth v. Huggins***, 2013 PA Super 107, 68 A.3d 962, 966 (Pa. Super. 2013) (citations and internal quotations omitted).

Pennsylvania Rule of Evidence 404(b) prohibits evidence of a defendant's prior bad acts "to prove a person's character" or demonstrate "that on a particular occasion the person acted in accordance with the character." Pa.R.E. 404(b)(1). Nevertheless, the Rule also provides that prior bad acts evidence "may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Pa.R.E. 404(b)(2).

"In order for evidence of prior bad acts to be admissible as evidence of motive, the prior bad acts must give sufficient ground to believe that the crime currently being considered grew out of or was in any way caused by the prior set of facts and circumstances." ***Commonwealth v. Knox***, 2016 PA Super 131, 142 A.3d 863, 866-67 (Pa. Super. 2016) (citations and quotation marks omitted). Although consideration of these claims is often very fact dependent, this Court has previously admitted evidence of prior drug deals to establish motive for a subsequent crime. ***See, e.g., id.*** at 867

(concluding the trial court properly admitted evidence of a prior drug transaction between defendant and victim as relevant and probative of defendant-shooter's identity and motive of revenge); ***Commonwealth v. Collins***, 2013 PA Super 158, 70 A.3d 1245, 1252 (Pa. Super. 2013) (concluding trial court did not abuse its discretion in admitting evidence that co-defendants and victim were members of rival drug distribution organizations in order to link them and suggest a motive for the killing, particularly where the trial court issued a cautionary jury instruction).

In addition, Rule 404(b)(2) provides a *res gestae* exception to prior bad acts evidence that "permits the admission of evidence where it became part of the history of the case and formed part of the natural development of facts." ***Commonwealth v. Ivy***, 2016 PA Super 183, 146 A.3d 241, 251 (Pa. Super. 2016). "In a criminal case[,] this evidence is admissible only if the probative value of the evidence outweighs its potential for unfair prejudice." Pa.R.E. 404(b)(2). ***See also*** Daniel J. Anders, Ohlbaum on the Pennsylvania Rules of Evidence § 404.11 *et seq.* (2019 ed. LexisNexis Matthew Bender).

"Where evidence of prior bad acts is admitted, the defendant is entitled to a jury instruction that the evidence is admissible only for a limited purpose." ***Ivy***, 146 A.3d at 251 (citations omitted). "It is well settled that the jury is presumed to follow the trial court's instructions[.]" ***Commonwealth v. Cash***, 635 Pa. 451, 137 A.3d 1262, 1280 (Pa. 2016) (citation omitted).

In this case, the Commonwealth presented evidence that, on the same day of the murder, Appellant and Robinson were together for much of the day. The narcotics division police officers watched as Appellant left Reavis's home, walked to the informant, engaged in a brief hand-to-hand transaction, and returned to Reavis's home where police officers observed Hughes interact with individuals on the front porch, including Robinson. Police officers took photographs of Appellant, the transaction, Robinson, and Robinson's minivan parked outside Reavis's residence.

The trial court concluded that the evidence of the drug transaction was relevant and admissible to show the defendants' motive for the shooting and to complete the story of the case. ***See*** Trial Court Opinion, 11/14/16, at 2-7.

We agree with the trial court's analysis and conclude that this evidence was admissible under Pa.R.E. 404(b)(2) as both motive for the shooting and as *res gestae* evidence. The drug transaction evidence, combined with the cell phone records, showed that Appellant and Robinson were together on the date of the murder with the minivan at a location targeted by the narcotics division for suspected drug activity. Evidence of their coordinated movements throughout the day supported the Commonwealth's conspiracy allegations against Appellant. Appellant's relationship with Robinson was consistent with the Commonwealth's theory that Appellant enlisted Robinson to help him kill the Victim. Moreover, the evidence was relevant to the circumstances leading up to and including the shooting, *i.e.*, the *res gestae*.

The trial court properly weighed the probative value of the evidence in light of the potential for unfair prejudice in accordance with Pa.R.E. 404(b)(2). Moreover, the trial court provided a cautionary jury instruction explaining the limited purpose of this evidence. ***See*** N.T. Trial, 1/10/17, at 87-88. We, thus, discern no abuse of the trial court's discretion in admitting this evidence. Appellant is not entitled to relief.

Issue 4: Admission of 911 Tapes

Appellant challenges the trial court's admission of 911 tapes containing statements made by eyewitness Christine Sandt and her husband that the shooters fled the scene in a Honda Odyssey. Appellant's Brief at 15-18. Appellant argues that the admission of Mr. Sandt's hearsay statements violated his confrontation right because Mr. Sandt did not testify at trial. ***Id.***, citing **Crawford v.**

Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), and ***Davis v. Washington***, 547 U.S. 813, 126 S. Ct. 2266, 165 L. Ed. 2d 224 (2006).

The "[a]dmission 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." ***Tyson***, 119 A.3d at 357 (citations and quotation marks omitted). "Accordingly, a ruling admitting evidence will not be disturbed on appeal unless that ruling reflects manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support to be clearly erroneous." ***Huggins***, 68 A.3d at 966 (citations and internal quotations omitted).

The Sixth Amendment to the United States Constitution, made applicable to the States via the Fourteenth Amendment, mandates that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. The Supreme Court of the United States has interpreted the Confrontation Clause to prohibit the admission of "testimonial" statements of a witness who did not appear at trial unless the witness was unavailable and the defendant had a prior opportunity to cross-examine the witness. ***Crawford***, 541 U.S. at 68. In contrast, regardless of whether the witness is available or was subjected to cross-examination, non-testimonial statements are admissible. ***See Davis***, 547 U.S. at 827-29.

In 2006, the United States Supreme Court in ***Davis*** provided guidance on the distinction between testimonial and non-testimonial statements in the Confrontation Clause context. The ***Davis*** Court explained that "[s]tatements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency." ***Davis***, 547 U.S. at 822.

In contrast, statements are testimonial "when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." ***Id.*** The U.S. Supreme Court in ***Davis*** addressed several factors a court should consider when determining whether a statement a person made is testimonial or non-testimonial.

Relevant here, courts have frequently concluded that statements made to 911 operators are non-testimonial under the Confrontation Clause when the primary purpose of the statement is "to describe current circumstances requiring police assistance." ***Davis***, 547 U.S. at 827. ***See also, e.g., Commonwealth v. Williams***, 2014 PA Super 249, 103 A.3d 354, 363-64 (Pa. Super. 2014).

After a thorough review of the certified record, the applicable law, and the comprehensive and well-reasoned Opinion of the trial court, we conclude that there is no merit to Appellant's claim. Accordingly, we affirm on the basis of the trial court's October 30, 2017 Opinion. ***See*** Trial Court Opinion, 10/30/17, at 12-15 (concluding that it properly admitted the statements by the eyewitnesses on the 911 call because the statements were "made for the primary purpose of responding to an ongoing emergency" and were, thus, non-testimonial; the statements were otherwise admissible under the hearsay exceptions as excited utterances and present sense impressions pursuant to the Pennsylvania Rules of Evidence).

Issue 5: Limitation on Cross-Examination of James Martin

Appellant claims that the trial court erroneously barred him from questioning James Martin about his status as a "sex offender registrant." Appellant's Brief at 18-20 (citing Pa.R.E. 607). Specifically, Appellant "desired to establish that [Martin] was a Megan's Law tier three sexual offender, that he was in prison for 22 years beginning at the age of 18, that his sentence was 10-20 years for rape, and that subsequently he was sentenced for additional time for escape - attempted escape from a State Correctional Institution." ***Id.*** at 18. Likening Martin's status to probation or parole, Appellant argues

that "such an individual witness may wish to testify favorably for the Commonwealth in order to avoid" a violation and this information was relevant to Martin's credibility. ***Id.*** at 18-20.

"[A] ruling admitting evidence will not be disturbed on appeal unless that ruling reflects manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support to be clearly erroneous." ***Huggins***, 68 A.3d at 966 (citation and internal quotation marks omitted).

Relevance is the threshold for admissibility of evidence. ***Commonwealth v. Cook***, 597 Pa. 572, 952 A.2d 594, 612 (Pa. 2008). "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Pa.R.E. 401. "Evidence that is not relevant is not admissible." Pa.R.E. 402. In addition, "[t]he court may exclude relevant evidence if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Pa.R.E. 403.

Under our Rules of Evidence, "[t]he credibility of a witness may be impeached by any evidence relevant to that issue, except as otherwise provided by statute or these Rules." Pa.R.E. 607(b). As the Comment to Rule 607 indicates, "Pa.R.E. 607(b) applies the test for relevant evidence of Pa.R.E. 401 to evidence offered to impeach the credibility of a witness." Comment to Pa.R.E. 607.

After a thorough review of the certified record, the applicable law, and the comprehensive and well-reasoned Opinion of the trial court, we conclude that there is no merit to Appellant's claim. Accordingly, we affirm on the basis of the trial court's October 30, 2017 Opinion. ***See*** Trial Court Opinion, 10/30/17, at 16-18 (concluding that it properly limited Appellant's cross-examination of Martin because: (1) the Commonwealth's direct examination did not elicit any facts "that would have opened the door for this testimony[;]" (2) Martin's status as a sex offender registrant "would have been entirely irrelevant[;]" (3) Appellant "had no case law which indicated that a status as a sex offender registrant was equivalent to that of being on probation[;]" (4) Appellant had "sufficient opportunity" to question Martin about "any potential motivation he may have had for testifying favorably for the Commonwealth[;]" and (5) Appellant cross-examined Martin about "bias and why he might have cooperated with the Commonwealth[,]" as well as "the charges he believed he was facing in terms of jail time at the time he cooperated with the Commonwealth, the minimum and maximum sentences possible for those crimes, as well as the ultimate sentence that he received.").

Issue 6: Greene's Testimony about Appellant's Incarceration

Appellant asserts that the trial court erred when it failed to grant his request for a mistrial after Commonwealth witness Nicole Greene blurted out, in response to a question about whether her relationship with Appellant was intense, that Appellant "was in jail most of the time that we were together." Appellant's Brief at 20-21. ***See also*** N.T. Trial, 1/13/17, at 207. Appellant states that "it must be presumed that an individual who was in jail from 2005 through 2012 must have a substantial criminal record history and the reference was not simply to a single reference to the fact that he was incarcerated." Appellant's Brief at 21. As a result, Appellant claims that he "was deprived of a fair [t]rial and no curative instruction by the [c]ourt could cure it. In fact, the curative instruction was a reminder for the [j]ury to embellish." ***Id.***

This Court reviews the denial of a motion for a mistrial based on a reference to the defendant's past incarceration for an abuse of discretion. ***Commonwealth v. Kerrigan***, 2007 PA Super 63, 920 A.2d 190, 199 (Pa. Super. 2007) (citation and quotation omitted). "[G]enerally no reference may be made at trial in a criminal case to a defendant's arrest or incarceration for a previous crime[.]" ***Commonwealth v. Johnson***, 576 Pa. 23, 838 A.2d 663, 680 (Pa. 2003) (citation omitted).

Relevant considerations for determining whether to grant a mistrial include "the nature of the

reference and whether the remark was intentionally elicited by the Commonwealth[.]" ***Kerrigan***, 920 A.2d at 199. A "passing reference" to a prior conviction or incarceration is insufficient to require a mistrial. ***Id.*** at 200; ***see also Commonwealth v. Guilford***, 2004 PA Super 419, 861 A.2d 365, 370 (Pa. Super. 2004) (holding that two passing references to prior criminal activity did not require a mistrial).

"[T]he possible prejudicial effect of a witness's reference to the prior criminal conduct of a defendant may, under certain circumstances, be removed by an immediate cautionary instruction to the jury." ***Commonwealth v. Pursell***, 508 Pa. 212, 495 A.2d 183, 192 (Pa. 1985).

We have reviewed the record, the applicable law, and the trial court's Opinion, and we conclude that there is no merit to Appellant's claim. Accordingly, we affirm on the basis of the trial court's October 30, 2017 Opinion. ***See*** Trial Court Opinion, 10/30/17, at 18-20 (concluding that it properly denied Appellant's mistrial motion because: (1) Greene's statement was a single passing reference to Appellant's incarceration; (2) Greene did not state when or why Appellant had been incarcerated; (3) Appellant immediately objected and cut off her testimony; (4) the prosecutor "did not intentionally elicit the information" because Greene's answer was not responsive to the question and the Commonwealth "unequivocally stated several times on the record that the subject remark regarding Appellant's jail time was something Ms. Greene blurted out after being advised and warned about[;]" (5) the Commonwealth cautioned Greene again to refrain from mentioning Appellant's prior incarceration or convictions before she resumed her testimony; (6) the reference "was not so prejudicial as to warrant a mistrial[;]" and (7) the jury followed the trial court's prompt curative instruction).

Issue 7: Weight of the Evidence

In his next issue, Appellant challenges the weight of the evidence because the "[t]he evidence and testimony of Nicole Green[e] and James Martin shocked the sense of fairness and conscious of justice. The testimony of a snitch, James Martin, and Appellant's girlfriend for many years while in jail was relied on by the [j]ury in a verdict that is devoid of justice." Appellant's Brief at 22.9

When considering challenges to the weight of the evidence, we apply the following precepts. "The weight of the evidence is exclusively for the finder of fact, who is free to believe all, none[,] or some of the evidence and to determine the credibility of the witnesses." ***Commonwealth v. Talbert***, 2015 PA Super 269, 129 A.3d 536, 545 (Pa. Super. 2015) (quotation marks and citation omitted). Resolving questions of credibility and contradictory testimony are matters for the finder of fact. ***Commonwealth v. Hopkins***, 2000 PA Super 47, 747 A.2d 910, 917 (Pa. Super. 2000). It is well settled that we cannot substitute our judgment for that of the trier of fact. ***Talbert***, 129 A.3d at 546.

Moreover, appellate review of a weight claim is a review of the trial court's exercise of discretion in denying the weight challenge raised in the post-sentence motion; this court does not review the underlying question of whether the verdict is against the weight of the evidence. ***See id.*** at 545-46. "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 [or is not] against the weight of the evidence." ***Id.*** at 546. "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." ***Id.***

Furthermore, "[i]n order for a defendant to prevail on a challenge to the weight of the evidence, the evidence must be so tenuous, vague and uncertain that the verdict shocks the conscience of the court." ***Id.*** (citation and internal quotation marks omitted). As our Supreme Court has made clear,

reversal is only appropriate "where the facts and inferences disclose a **palpable abuse of discretion**[.]" ***Commonwealth v. Morales***, 625 Pa. 146, 91 A.3d 80, 91 (Pa. 2014) (citations omitted, emphasis in original).

A defendant concedes that sufficient evidence supports the verdict in a true challenge to the weight of the evidence and instead questions which evidence the fact-finder should have believed. ***Commonwealth v. Thompson***, 2014 PA Super 273, 106 A.3d 742, 758 (Pa. Super. 2014). For that reason, the trial court need not view the evidence in the light most favorable to the verdict winner, and may instead use its discretion in concluding whether the verdict was against the weight of the evidence. ***Commonwealth v. Widmer***, 560 Pa. 308, 744 A.2d 745, 751 n.3 (Pa. 2000).

After a thorough review of the certified record, the briefs of the parties, the applicable law, and the comprehensive and well-reasoned trial court Opinion, we conclude that there is no merit to Appellant's challenge to the weight of the evidence. The trial court carefully evaluated the record and the evidence in denying Appellant's weight claim. ***See*** Trial Court Opinion, 10/30/17, at 20-22.

Appellant essentially asks us to reassess the credibility of the two witnesses and reweigh the testimony and evidence presented at trial. We cannot and will not do so. Our review of the record shows that the evidence is not tenuous, vague, or uncertain, and the verdict was not so contrary to the evidence as to shock the court's conscience.

We discern no abuse of discretion in the trial court's denial of Appellant's weight claim. Accordingly, Appellant is not entitled to relief.

Issue 8: Denial of Motion to Sever

Appellant avers that the trial court erred in denying his motion to sever his case from co-defendant Robinson's case. Appellant's Brief at 22-23. Appellant claims he and Robinson "may have had antagonistic defenses where the jury, in order to believe the testimony offered on behalf of one defendant, must disbelieve the testimony offered by each co-defendant." ***Id.*** at 23 (citation omitted). Appellant baldly claims that "a joint trial prohibited [him] from introducing evidence to the allegations against him and to demonstrate his innocence to these allegations." ***Id.***

A trial court's denial of a motion for severance rests within the sound discretion of the trial court, and we will not disturb its decision on appeal "absent a manifest abuse of discretion." ***Commonwealth v. Mollett***, 2010 PA Super 153, 5 A.3d 291, 305 (Pa. Super. 2010) (quotation and citation omitted).

Rule of Criminal Procedure 583 provides that "[t]he court may order separate trials of offenses or defendants, or provide other appropriate relief, if it appears that any party may be prejudiced by offenses or defendants being tried together." Pa.R.Crim.P. 583. When considering a motion to sever, a trial court must determine: (1) "whether the evidence of each of the offenses would be admissible in a separate trial for the other;" (2) "whether such evidence is capable of separation by the jury so as to avoid danger of confusion;" and (3) "if the answers to these inquiries are in the affirmative, whether the defendant will be unduly prejudiced by the consolidation of offenses." ***Commonwealth v. Kunkle***, 2013 PA Super 287, 79 A.3d 1173, 1190 (Pa. Super. 2013) (quotation and citations omitted).

"The critical consideration is whether the appellant was prejudiced by the trial court's decision not to sever. The appellant bears the burden of establishing such prejudice." ***Mollett***, 5 A.3d at 305 (quotation and citation omitted). Prejudice in this context is "that which would occur if the evidence tended to convict appellant only by showing his propensity to commit crimes, or because the jury was incapable of separating the evidence or could not avoid cumulating the evidence." ***Commonwealth v. Boyle***, 1999 PA Super 142, 733 A.2d 633, 637 (Pa. Super. 1999) (quotation and citation omitted).

After carefully reviewing of the record, the applicable law, and the trial court's Opinion, we find that

Appellant is not entitled to relief on this meritless claim. Accordingly, we affirm on the basis of the trial court's August 15, 2016 Opinion. ***See*** Trial Court Opinion, 8/15/16, at 17-21 (concluding that it properly denied Appellant's motion for severance because: (1) Appellant "does not elaborate" or explain how specific defenses are antagonistic and irreconcilable and the request "is predicated upon an undefined theory of possibilities[;]" (2) Appellant failed to "specify why a joint trial would be prejudicial[;]" and (3) the prosecutor "indicated that there is 'but one possible statement' that may implicate the [d]efendants together which statement may be redacted[.]").

Issue 9: Denial of Motion for Change of Venue

Appellant claims that the trial court erred in denying his motion for change of venue or venire. Appellant's Brief at 24-25. Relying on thirty-five local newspapers articles about the murder published over four years, Appellant argues that the "pretrial publicity was sustained, pervasive, inflammatory, and culpatory and there is a presumption of prejudice in selecting a fair and impartial jury in Northampton County." ***Id.*** at 25.

Pennsylvania Rule of Criminal Procedure 584 governs requests for changes of venue and provides that a trial court "may" grant a motion for change of venue or venire "when it is determined after hearing that a fair and impartial trial cannot otherwise be had in the county where the case is currently pending." Pa.R.Crim.P. 584(A).

A trial court's denial of a motion for change of venue or venire rests within the sound discretion of the trial judge, and we will not disturb its ruling on appeal absent an abuse of that discretion. ***Commonwealth v. Brookins***, 2010 PA Super 206, 10 A.3d 1251, 1258 (Pa. Super. 2010). "In reviewing the trial court's decision, our inquiry must focus upon whether any juror formed a fixed opinion of the defendant's guilt or innocence as a result of the pre-trial publicity." ***Commonwealth v. Drumheller***, 570 Pa. 117, 808 A.2d 893, 902 (Pa. 2002).

"Normally, one who claims that he has been denied a fair trial because of pretrial publicity must show actual prejudice in the empanelling of the jury." ***Id.*** We will presume prejudice in certain extreme cases where such pretrial publicity is pervasive or inflammatory. ***Id.*** Our Supreme Court has held that courts will presume prejudice if: "(1) the publicity is sensational, inflammatory, and slanted toward conviction rather than factual and objective; (2) the publicity reveals the defendant's prior criminal record, or if it refers to confessions, admissions or reenactments of the crime by the accused; and (3) the publicity is derived from police and prosecuting officer reports." ***Id.***

Even presuming such prejudice exists, a defendant must "also show[] that the pre-trial publicity was so extensive, sustained, and pervasive that the community must be deemed to have been saturated with it, and that there was insufficient time between the publicity and the trial for any prejudice to have dissipated." ***Id.*** In examining whether there has been a sufficient cooling period, courts must examine "what a panel of prospective jurors has said about its exposure to the publicity in question." ***Id.*** at 902-03.

After a thorough review of the certified record, the applicable law, and the comprehensive and well-reasoned Opinion of the trial court, we hold that Appellant is not entitled to any relief on this claim. Accordingly, we affirm on the basis of the trial court's August 15, 2016 Opinion. ***See*** Trial Court Opinion, 8/15/16, at 14-17 (concluding that it properly denied Appellant's motion because: (1) the thirty-five articles over four years referenced police reports and statements by law enforcement personnel about the incident; (2) Appellant failed to meet "his burden in demonstrating that the pretrial publicity regarding this case has been so prejudicial as to preclude the empaneling of a fair and impartial jury[;]" (3) any biased or prejudiced jurors based on the pretrial publicity would be (and were) questioned during *voir dire*; and (4) Appellant was free to renew his motion during *voir dire* if such bias

or prejudice became apparent.10).

Issue 10: Denial of Motion to Suppress Appellant's Statements

Appellant argues that the court erred in denying his Motion to Suppress. Appellant's Brief at 25-26. Appellant claims that "based on the totality of the circumstances, his [December 5, 2012 and December 4, 2014] statement[s] could not be knowing, intelligent, and voluntary." ***Id.*** at 26.

In reviewing the denial of a motion to suppress, we are limited to considering only the Commonwealth's evidence and "so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole." ***Commonwealth v. McCoy***, 2017 PA Super 20, 154 A.3d 813, 815-16 (Pa. Super. 2017) (citations omitted). Where the testimony and other evidence supports the court's findings of fact, we are bound by them and "may reverse only if the court erred in reaching its legal conclusions based upon the facts." ***Id.*** at 816 (citations omitted). It is within the exclusive province of the suppression court to "pass on the credibility of witnesses and determine the weight to be given to their testimony." ***Id.*** (citations omitted). This Court will not disturb a suppression court's credibility determination absent a clear and manifest error. ***Commonwealth v. Camacho***, 425 Pa. Super. 567, 625 A.2d 1242, 1245 (Pa. Super. 1993).

"The scope of review from a suppression ruling is limited to the evidentiary record created at the suppression hearing." ***Commonwealth v. Neal***, 2016 PA Super 270, 151 A.3d 1068, 1071 (Pa. Super. 2016), *citing* ***In re L.J.***, 622 Pa. 126, 79 A.3d 1073, 1087 (Pa. 2013).

Importantly, "[o]nce a motion to suppress evidence has been filed, it is the Commonwealth's burden to prove, by a preponderance of the evidence, that the challenged evidence was not obtained in violation of the defendant's rights." ***Commonwealth v. Wallace***, 615 Pa. 395, 42 A.3d 1040, 1047-48 (Pa. 2012) (citations omitted); ***see also*** Pa.R.Crim.P. 581(H).

It is the Commonwealth's burden to establish that a defendant "knowingly and voluntarily waived his ***Miranda*** rights." ***Commonwealth v. Johnson***, 615 Pa. 354, 42 A.3d 1017, 1029 (Pa. 2012). A defendant must explicitly waive his ***Miranda*** rights by making an "outward manifestation" of that waiver. ***Commonwealth v. Cohen***, 2012 PA Super 192, 53 A.3d 882, 886 (Pa. Super. 2012). A suppression court may properly find that ***Miranda*** rights have been waived where the totality of the circumstances shows "an uncoerced choice and the requisite level of comprehension[.]" ***In re T.B.***, 2010 PA Super 197, 11 A.3d 500, 505-06 (Pa. Super. 2010) (citation omitted).

After a thorough review of the certified record, the applicable law, and the comprehensive and well-reasoned Opinion of the trial court, we conclude that there is no merit to Appellant's suppression claim. Accordingly, we affirm on the basis of the trial court's August 15, 2016 Opinion. ***See*** Trial Court Opinion, 8/15/16, at 21-25, 27-29 (concluding that there is no merit to Appellant's suppression claims because, *inter alia*, Appellant "was properly advised of his ***Miranda*** rights, including the right to have counsel present, and that he waived same prior to these interviews.").

Issues 11-12: Legality of Sentence

In his eleventh and twelfth issues, Appellant challenges the legality of his sentence and presents several consolidated arguments. Appellant argues that: (1) his sentence constitutes cruel and unusual punishment; (2) he is entitled to relief pursuant to ***Miller v. Alabama***, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012); and (3) "mandatory sentencing is unlawful" because "the [j]ury never determined the mandatory sentence pursuant to" ***Alleyne v. United States***, 570 U.S. 99, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2013). Appellant's Brief at 26-29. We address these claims *seriatim*.

First, our statutes provide that "a person who has been convicted of a murder of the first degree . . . shall be sentenced to death or to a term of life imprisonment[.]" 18 Pa.C.S. § 1102(a)(1). This Court

has previously held that "[a] mandatory life sentence, as established by the legislature, is clearly not cruel and unusual punishment for the crime of first-degree murder." ***Commonwealth v. Waters***, 334 Pa. Super. 513, 483 A.2d 855, 861 (Pa. Super. 1984).

Second, ***Miller*** does not entitle Appellant to any relief. In ***Miller***, the U.S. Supreme Court held that it is unconstitutional for state courts to impose an automatic life sentence without possibility of parole upon a homicide defendant for a murder committed while the defendant was under 18 years of age.

As Appellant recognizes, this Court has previously ruled that ***Miller*** does not apply to individuals who were 18 or older at the time they committed murder. ***See Commonwealth v. Cintora***, 2013 PA Super 160, 69 A.3d 759, 764 (Pa. Super. 2013) (holding that petitioners who were eighteen or older at the time they committed murder are not within the ambit of the ***Miller*** decision), *abrogated in part by* ***Montgomery v. Louisiana***, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016);11 ***see also Commonwealth v. Furgess***, 2016 PA Super 219, 149 A.3d 90 (Pa. Super. 2016) (holding that ***Miller*** did not apply to a 19-year-old appellant convicted of homicide, even though that appellant claimed he was a "technical juvenile" and relied on neuroscientific theories regarding immature brain development to support his claim; acknowledging that additional holding in ***Cintora***, that ***Miller*** had not been applied retroactively, was "no longer good law" after ***Montgomery***).

Appellant, born August 4, 1978, was 34 years old on November 23, 2012, when he and Robinson murdered Holton. Thus, ***Miller*** is inapplicable to Appellant.

Third, ***Alleyne*** does not warrant any relief. The U.S. Supreme Court held in ***Alleyne*** that, other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory minimum must be submitted to a jury and proved beyond a reasonable doubt. ***Alleyne***, 570 U.S. at 114-15.

Alleyne is not applicable to the instant case. Appellant received a mandatory sentence pursuant to 18 Pa.C.S. § 1102(a). Thus, the only "fact" that led to Appellant's life sentence was his jury conviction of First-Degree Murder; the trial court engaged in no fact-finding at sentencing. Because Appellant's mandatory sentence of life imprisonment was based on his conviction, and not on any aggravating fact, his sentence is not unconstitutional under ***Alleyne***. ***See Commonwealth v. Resto***, 179 A.3d 18, 20-21 (Pa. 2018) (OAJC) (upholding judgment of sentence where mandatory minimum was based on conviction and explaining that "a conviction returned by a jury to which a mandatory minimum sentence directly attaches is not the same as an aggravating fact that increases a mandatory minimum sentence.").

Based on the foregoing, we conclude that Appellant is not serving an illegal sentence and he is not entitled to relief.

Issue 13: Jury Instruction about Mandatory Sentence

In his thirteenth and final issue, Appellant claims that the trial court erred when it denied his request "to instruct the [j]ury that the mandatory sentence in Pennsylvania for a conviction of [First-]Degree Murder is life imprisonment without the possibility of parole." Appellant's Brief at 29.

We review a trial court's refusal to give a requested jury instruction to "determine whether the record supports the trial court's decision." ***Commonwealth v. Sandusky***, 2013 PA Super 264, 77 A.3d 663, 667 (Pa. Super. 2013) (quotation omitted). We must determine "whether the trial court committed a clear abuse of discretion or an error of law which controlled the outcome of the case." ***Id.*** (quotation omitted).

It is well settled that a "trial court has wide discretion in fashioning jury instructions." ***Id.*** (quotation omitted). The trial court need not provide every instruction requested by a party, and this Court will not

reverse the refusal to provide a requested instruction unless the refusal prejudiced Appellant. ***Id.***

This Court will conclude that a jury charge was "erroneous only if the charge as a whole is inadequate, not clear[,] or has a tendency to mislead or confuse, rather than clarify, a material issue." ***Id.*** (quotation omitted). We will hold that a charge was inadequate only where the court "palpably misled" the jury "or there is an omission which is tantamount to fundamental error." ***Id.*** (quotation omitted).

Regarding jury instructions about mandatory sentences, this Court has recognized that "punishment is a matter solely for the court and not for the jury to know or [to] consider during its deliberations." ***Commonwealth v. White***, 350 Pa. Super. 457, 504 A.2d 930 (Pa. Super. 1986) (citing ***Commonwealth v. Lucier***, 424 Pa. 47, 225 A.2d 890, 891 (Pa. 1967)). "[T]he jury has nothing to do with the punishment of an offense[.]" ***White***, 504 A.2d at 930.

After reviewing the certified record, the applicable law, and the trial court's Opinion, we reject Appellant's claim as meritless. We affirm on the basis of the trial court's October 30, 2017 Opinion. ***See*** Trial Court Opinion, 10/30/17, at 25-26 (concluding that there is no merit to Appellant's claim because, *inter alia*, the "[c]ourt clearly and accurately instructed the jury that the verdict should be based on evidence and not on what the penalty might be in the event of a conviction.").

The parties are instructed to attach a copy of the trial court's August 15, 2016 and October 30, 2017 Opinions to all future filings.

Judgment of Sentence affirmed.

Judgment Entered.

Date: 4/3/19

Footnotes

1

18 Pa.C.S. § 2502(a) and 18 Pa.C.S. § 903, respectively.

2

The Victim and Appellant were rival drug dealers and may have been in a dispute about Nicole Greene, a woman they both dated. N.T. Trial, 1/10/17, at 31-32.

3

Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

4

The trial court did, however, grant Appellant's Motion to Suppress a December 11, 2012 statement to police because there was no evidence the officers gave ***Miranda*** warnings to Appellant prior to questioning.

5

At trial, the Commonwealth also argued that the motive for the shooting was a romantic rivalry between the Victim and Appellant. N.T. Trial, 1/10/17, at 31-32.

6

The jury also convicted Robinson of First-Degree Murder and Criminal Conspiracy, and the trial court sentenced him to life imprisonment without parole. Robinson also filed a direct appeal to this Court, which remains pending at docket No. 2790 EDA 2017.

7

18 Pa.C.S. § 1102(a). The trial court imposed a concurrent term of 20 to 40 years' incarceration for the Criminal Conspiracy conviction.

8

In his Brief, Appellant "hereby incorporates the entire record as it relates to the within issues as though said portion was set forth herein at length." Appellant's Brief at 11. Our Supreme Court has categorically rejected incorporation by reference as a means of presenting an issue. ***See Commonwealth v. Briggs***, 608 Pa. 430, 12 A.3d 291, 342-43 (Pa. 2011) (stating that, where an appellant incorporates prior arguments by reference in contravention of Pa.R.A.P. 2119(a) and (b), he or she waives such claims on appeal). In light of the trial court's thorough review of the issues with reference to the record and relevant case law, we decline to find waiver in this case, and will consider the two-paragraph argument presented in his Brief.

9

In his Brief, Appellant again "incorporates the record made before the [t]rial [c]ourt to support his claim." Appellant's Brief at 22. As previously stated, Pennsylvania appellate courts categorically reject incorporation by reference as a means of presenting an issue and we will consider only the argument presented to this Court in Appellant's Brief. ***See Briggs***, 12 A.3d at 342-43.

10

Moreover, the trial court investigated whether there had been a sufficient cooling off period during *voir dire* and confirmed that the pretrial publicity read by just four members of the jury panel "would not affect their ability to be fair and impartial jurors in this case." ***See*** Trial Court Opinion, 10/30/17, at 22-23.

11

The United States Supreme Court held in ***Montgomery*** that its decision in ***Miller*** applies retroactively.