IN THE

Superior Court of Pennsylvania

1816 MDA 2007

COMMONWEALTH OF PENNSYLVANIA,
Appellee

V.

MATTHEW SOTO,
Appellant

Brief for Appellee

APPEAL FROM THE JUDGMENT OF SENTENCE, IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA, CRIMINAL DIVISION, AT DOCKET NUMBER CP-06-CR-0005306-2006.

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   Answered in the affirmative by the court below.

   Suggested Answer: Yes, the suppression court was correct.

2. WHETHER THE SUPPRESSION COURT WAS CORRECT IN DENYING SOTO'S MOTION TO SUPPRESS STATEMENTS WHERE SOTO WAS NOT SUBJECTED TO A CUSTODIAL INTERROGATION?

   Answered in the affirmative by the court below.

   Suggested Answer: Yes, the suppression court was correct.

II. SCOPE AND STANDARD OF REVIEW

The standard of review in suppression cases is well-settled.

> When we review the ruling of a suppression court we must determine whether the factual findings are supported by the record. When it is a defendant who has appealed, we must consider only the evidence of the prosecution and so much of the evidence for the defense as, fairly read in the context of the record as a whole, remains uncontradicted. Assuming that there is support in the record, we are bound by the facts as are found and may reverse the suppression court only if the legal conclusions drawn from those facts are in error.

See *Commonwealth v. Jackson*,698 A.2d 571, 572 (Pa. 1997) (*quoting Commonwealth v. Cortez,* 491 A. 2d 111, 112 (Pa. 1985), *cert.denied,* 474 U.S. 950; *Commonwealth v. Morris*, 644 A.2d 721, 723 (Pa. 1994).

III. COUNTER-STATEMENT OF THE CASE

PROCEDURAL HISTORY

On October 21, 2006, a police complaint was filed charging Matthew Soto (hereinafter "Soto") with Possession with Intent to Deliver Heroin[1], Possession of Drug Paraphernalia[2], and two (2) counts of Possession of a Controlled Substance[3]. On December 12, 2006 the District Attorney's Office subsequently filed a Bill of Information alleging Soto's involvement in the above referenced crimes.

On December 15, 2006, Soto, through former counsel, Peter David Maynard, Esquire, filed an omnibus motion for pretrial relief in which Soto sought the suppression of evidence. An omnibus pretrial hearing was held on February 12, 2007. On March 27, 2007, the trial court denied Soto's request for suppression of evidence.

On September 26, 2007, a non-jury trial was held. At the conclusion of the trial, Soto was convicted of all crimes charged against him. Defendant was sentenced on this same date to three (3) to six (6) years incarceration in a State Correctional Facility for Possession with Intent to Deliver (heroin) along with twelve months probation each for the crimes of Possession of a Controlled Substance (cocaine) and Possession of Drug Paraphernalia concurrent to the term of incarceration.

FACTUAL HISTORY

On October 21, 2006, Exeter Township Police Officer Joseph Ilg was in his patrol car sitting at a "T" intersection when he saw a maroon Toyota with tinted windows pass through the intersection in front of his patrol car. (Omnibus Pretrial Hearing (hereinafter

[1] 35 P.S. §780-113(a)(30).
[2] 35 P.S. §780-113(a)(32).
[3] 35 P.S. §780-113(a)(16). (One count for possession of heroin and one count for possession of cocaine)

"P.T."), February 12, 2007, p. 4-5, 8). According to Officer Ilg, the traffic stop was initially conducted due to what appeared to be excessively dark window tint. (P.T. p. 5). After the stop, the driver told Officer Ilg that he did not have his drivers license with him, but provided Officer Ilg with the name Luis Jiminez and the date of birth 7/14/1983. (P.T. p. 6). Upon attempting to verify the operator's alleged name and date of birth through the computer system, the inquiry showed no records found. (P.T. p. 6). To ensure that no error was made, Officer Ilg spoke with the operator again, asking that he provide a spelling of his name. (P.T. p. 6). The operator provided such a spelling and did also include a social security number. (P.T. p. 6). Once again Officer Ilg attempted to verify this information through the computer, but was unable to do so. (P.T. p. 6).

At this time the operator was asked to exit the vehicle. (P.T. p. 6). As the operator exited the vehicle, Officer Ilg noticed a Pennsylvania Identification Card lying on the floor of the vehicle. (P.T. p. 6). Upon closer inspection of the Pennsylvania Identification Card, Officer Ilg noticed that the card identified the operator as Samuel Santiago with a date of birth of 7/30/1981. (P.T. p. 6). At this point, Santiago was placed under arrest for False Identification to Law Enforcement and a search incident to arrest was conducted by Officer Ilg. (P.T. p. 6-7). Finding no contraband, Officer Ilg placed Santiago into the rear of the police car. (P.T. p. 7). In plain view, Officer Ilg noticed a pair of brass knuckles sitting on the back seat of the vehicle. (P.T. 6).

Additional officers soon arrived on location, one of whom being Officer Darrin Gartner. (P.T. p. 6). Officer Gartner asked the passenger of the vehicle to exit and identify himself (P.T. p. 20). The passenger of the vehicle identified himself as Matthew Soto and provided a date of birth and a home address in the State of New York. (P.T. p.

20). Soto told Officer Gartner that he could not remember his phone number, a zip code for his address, or his social security number. (P.T. p. 20). When Officer Gartner attempted to verify Soto's identification through N.C.I.C. and PennDOT records both for Pennsylvania and New York, the inquiry resulted in no records found. (P.T. p. 20-21). Soto volunteered information to Officer Gartner that his fingerprints were on file in New York due to a prior arrest and that he could be identified in that manner. (P.T. p. 20-21).

At this point, Soto was transported to central processing in order to confirm his stated identity. (P.T. p. 21). Soto was patted down for weapons, handcuffed, and placed in the rear of the patrol car with Santiago. (P.T. p. 21). Soto was handcuffed because it was standard operating procedure to handcuff any person transported in a police vehicle for safety purposes. (P.T. p. 21). Soto was being transported for identification purposes and that Soto was not yet under arrest. (P.T. p. 21).

Once at central processing, Officer Gartner removed Soto from the patrol vehicle whereupon Officer Gartner noticed a baggy containing several bundles of heroin on the rear floor where Soto had been sitting. (P.T. p. 21). Officer Ilg testified that he had checked his police vehicle prior to his shift and that there was no contraband present in the vehicle prior to Santiago and Soto being taken into custody. (P.T. p. 7). Since Santiago was searched incident to arrest and prior to being placed in the police vehicle, Officer Gartner logically deduced that the contraband came from Soto. (P.T. p. 30). Soto was immediately placed under arrest for possession of the heroin and was searched incident to the arrest. (P.T. p. 22). Officer Gartner testified that in reference to the drugs he asked Soto, "How many bundles are in there so I don't have to count it?" and Soto

replied, “Seventeen (17).” (P.T. p. 22-23). Soto was then fingerprinted by the Berks County Sheriff’s Department. (P.T. p. 23).

IV. SUMMARY OF ARGUMENT

The suppression court was correct in denying Soto's request for suppression of evidence because Soto was not under arrest when he was being transported to central processing for identification purposes. Therefore no provisions of the Constitution were violated. Case law dictates that handcuffing a person and transporting them to another location does not necessarily constitute a custodial detention. Accordingly, Soto was subject to an investigative detention whereupon the only Constitutional requirement is only reasonable suspicion. Even if it is determined that the action by the police did amount to a custodial detention of Soto, probable cause for such detention did exist due to the surrounding circumstances, including the fact that Santiago provided the police with false identification, the Soto did not have any identification, and that neither of the occupants were the owner of the vehicle, which was registered out-of-state.

Additionally, the suppression court was correct when it denied Soto's request to suppress his statements. Soto was not subject to a custodial interrogation when he was brought into central processing and asked the quantity of heroin that was contained in the baggies found. Since the questioning did not rise to the level of a custodial interrogation, no *Miranda* warning was necessary and there was no violation of his Constitutional protection. Even if it would be determined that Soto was subject to a custodial detention, his statement would be classified as gratuitous and admissible. And finally, if such statement is determined to be the product of a custodial interrogation, its suppression would merely be a harmless error, as there is sufficient evidence to support the conviction without the statement. Accordingly, the judgment of the sentence should be affirmed.

V. ARGUMENT

A. THE SUPPRESSION COURT WAS CORRECT IN DENYING SOTO'S MOTION TO SUPPRESS PHYSICAL EVIDENCE WHERE THE POLICE OFFICERS' ACTIONS OF HANDCUFFING AND TRANSPORTING SOTO TO CENTRAL PROCESSING FOR FINGERPRINTING WERE SUPPORTED BY REASONABLE SUSPICION AND/OR PROBABLE CAUSE.

The Fourth Amendment of the United States Constitution[4] and Article 1, Section 8 of the Pennsylvania Constitution[5] provides that citizens are protected from "unreasonable search and seizure." *Commonwealth v. Cook*, 558 Pa. 50, 735 A.2d 673 (1999). Under these Constitutions, there are three recognized categories of interaction between police officers and citizens. The first of these interactions is a "mere encounter" which consists of a request for information by police officers. *Commonwealth v. Acosta*, 815 A.2d 1078, 1082 (Pa. Super. 2003)(citation omitted). *See also, Florida v. Bostick*, 501 U.S. 429, 111 SCt. 2382, 115 L.Ed.2d 389 (1991). A mere encounter need not be supported by any level of suspicion, but carries no official compulsion to stop or respond. *Id.* The second type of recognized interaction is an "investigative detention" which is accompanied by reasonable suspicion and subjects a suspect to a stop and a period of detention. *Berkemer v. McCarty*, 468 U.S. 420, 104 S.Ct 3138, 82 L.Ed.2d 317 (1984);

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[4] The Fourth Amendment of the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[5] The Pennsylvania Constitution, Article I, Section 8, provides:

> The people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

Terry v. Ohio,392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). An investigative detention does not rise to the level of coercive conditions which are present in a formal arrest. *Id.* The third recognized type of interaction between police and citizens is a "custodial detention" and such must be supported by probable cause. *Dunway v. New York*, 442 U.S. 200, 99 S.Ct 2248, 60 L.Ed.2d 824 (1974). A custodial detention is deemed to arise when the conditions and/or duration of an investigating detention become so coercive as to be the functional equivalent of an arrest. *Id.*

Reasonable suspicion, which is required for an investigative detention, must be based on specific and articulable facts that criminal activity is afoot. *Commonwealth v. Ayala*, 791 A.2d 1202, 1208 (Pa. Super. 2002). In deciding whether reasonable suspicion is present to justify an investigative detention, an objective standard is utilized. *Commonwealth v. Gray*, 784 A.2d 127, 141 (Pa. Super. 2001). Under this objective standard, the court must determine whether the facts present to the officer at the time of the detention would warrant a person of reasonable caution to believe that the action taken by the police officer was appropriate. *Id.*

Probable cause, the requirement for a custodial detention, is present where "the facts and circumstances within the officer's knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed." *Commonwealth v. Gibson*, 536 Pa. 123, 638 A.2d 203, 206 (1994). In reviewing the existence of probable cause, the Court must focus not on isolated factors, but rather must look to the totality of the circumstances surrounding the arrest and evaluate each case on its own unique facts. *Commonwealth. v. Ellis*, 354 Pa.Super. 11, 510 A.2d 1253 (1986); *Commonwealth v. Mack*, 313 Pa.Super. 372, 459 A.2d 1276

(1983). Further, in so doing, the test used is not one of certainties, but rather of probabilities. *Commonwealth v. Jenkins*, 282 Pa.Super. 232, 431 A.2d 1023 (1980).

In order to determine whether an investigative detention or a custodial detention took place, the court is to consider the following factors: the basis for the detention; the duration; the location; whether the suspect was transferred against his will; how far; and why; whether restraints were used; the show, threat, or use of force; and the methods of investigation used to confirm or dispel suspicions. *Commonwealth v. Douglass*, 372 Pa. Super. 227, 539 A.2d 412, 413 (1988). *See also Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The usual traffic stop constitutes an investigative rather than a custodial detention, unless, under the totality of the circumstances, the conditions and the duration of the detention become the functional equivalent of an arrest. *Commonwealth v. Haupt*, 389 Pa. Super. 614, 567 A.2d 1074, 1078 (1989).

In initiating a vehicle stop, a police officer need not establish that an actual violation of the Vehicle Code has occurred prior to stopping a vehicle; rather, the officer must provide a reasonable basis for his belief that the Vehicle Code was being violated to validate the stop. *Commonwealth v. Anderson*, 753 A.2d 1289, 1294 (Pa.Super. 2000). In addition, under Title 75 Pa.C.S.A. §6308(b), in order to effectuate a traffic stop, police are required to have reasonable suspicion that an offense was committed in violation of the Motor Vehicle Code.

Notably, the Fourth Amendment does not require a police officer who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. *Commonwealth v. Woodard*, 307 Pa.Super. 293, 453 A.2d 1358 (1982). On the contrary, the courts have followed that

it may be the essence of good police work to adopt an intermediate response: a brief stop of a suspicious individual in order to determine his identity or to maintain the status quo momentarily while obtaining more information. *Commonwealth v. Vinson*, 361 Pa.Super. 526, 522 A.2d 1155 (1987); *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1968, 20 L.Ed.2d 889 (1967). All that is necessary to uphold the propriety of such a stop is the ability of the investigating officer to point to specific and articulable facts in conjunction with the natural inferences deriving therefrom, which reasonably warrant the intrusion. *Id.*

Relevant to the instant case, our Supreme Court has ruled that an investigative detention does not rise to the level of a custodial detention merely because an individual is detained and transported. *Commonwealth v. Revere*, 585 Pa. 262, 888 A.2d 694, 696 (2005) (*citing Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968)). Rather, the court has recognized that exigent circumstances may justify police in transporting a suspect for a short distance in the absence of probable cause during the course of an investigative detention. *Id*. 585 Pa. at 262, 888 A.2d at 696.

Additionally, in *Commonwealth v. Douglass*, 372 Pa. Super. 227, 539 A.2d 412, 413 (1988), this Court held that detention and transportation of a defendant is certainly within the bounds of an investigative detention. The facts of that case are certainly similar to the case at bar. In *Douglass*, an automobile driver involved in a fatal crash was detained for 3 ½ hours, then transported to the police barracks for a voluntary breath test, and then drove to the hospital for a voluntary blood test. *Id.* at 415. The court ruled that this detention was not a custodial detention, but rather remained an investigative detention because the overall nature of the transportation was not custodial in nature, nor was any interrogation performed during at any time during the transport. *Id.*

Considering these principles, the suppression court correctly concluded that Soto was subjected to an investigative detention when, after a legitimate traffic stop, he was detained and transported to central processing in order to be identified. The basis for the original traffic stop was the belief by Officer Ilg that there was excessive window tint on the vehicle in direct violation of Title 75, Section 4524(e)(1) of the Pennsylvania Motor Vehicle Code. Officer Ilg stated that this belief was derived from his own perception of the driver's side window as the vehicle passed in front of him. (P.T. p. 5). Based on the Officer's Ilg's perception, reasonable suspicion clearly was present for the vehicle stop.

As previously noted in *Ayala*, reasonable suspicion exists when, based on the objective opinion of a police officer, specific and articulable facts are present which would lead an officer to reasonably believe criminal activity is afoot. The police officers had reasonable suspicion criminal activity was afoot involving Soto when brass knuckles were in plain view on the back seat of the vehicle, coupled with the fact that Santiago lied about his identity, and neither Santiago nor Soto were legal owners of the vehicle. Pursuant to the investigative detention, the police were well within their authority to pat-down Soto for weapons and question him for identification purposes. As previously observed by the courts in *Woodard,* it would be unreasonable for the police to shrug their shoulders and allow potential criminal activity to occur merely because they did not have the precise level of probable cause necessary to arrest Soto.

In applying these principles to the case at hand, it is apparent that the police did not act inappropriately. Similar to Santiago, Soto did not have any identification in his possession. Although Soto provided the police with a name and an address, he could not

recall either his zip code or his phone number and police were unable to identify him through the computer system. (P.T. p.20). In order to confirm his identity, Soto was transported to a processing station where he could be identified through fingerprinting. (P.T. p.21). Notably, the trial court found that Soto consented to this procedure by volunteering that his fingerprints were on file. (P.T. p.21). Pursuant to *Revere,* this transportation to central processing does not automatically convert the investigative detention to a custodial detention. Here, it was necessary for the police to detain and transport Soto in order to confirm his identity and to determine whether any criminal activity was at bay.

Nothing in the facts indicate that Soto was detained for an extensive period of time or transported for a long distance. Rather, he was detained and transported for the time necessary for the police to conclude their investigation. In examining the totality of the circumstances surrounding the detention, no factors are evident inferring that this detention was custodial. Although Soto was placed in handcuffs pursuant to department safety regulations of any individual transported in a police car, at no time was Soto told by the officers that he was under arrest, nor was Soto searched or placed under any threat or force. Also, Soto was not questioned or interrogated during the transportation. Soto understood that he was not under arrest and that he was being transported to central processing for identification purposes. (P.T. p.21). In addition to his comprehension, Officer Gartner testified that "[he] never objected to going." (P.T. p.22, 26). In fact, Soto himself told Officer Gartner that his fingerprints were on file in New York, indicating that his identity could be verified in such a manner. (P.T. p.21). This is what led the police officers to transport Soto to central processing. (P.T. p.21).

These facts reveal that Soto was not detained for a long period of time such as in *Douglass*, nor was Soto questioned in any way. In addition to this, Soto initially lead the officers to verify his identity through fingerprints, therefore he was not being transported "against his will." (P.T. p. 21). Further, the facts do not indicate that Soto was told he was under arrest, placed under any threat of force, or transported for a long distance. Thus *Revere* and *Douglass* dictate that the encounter constituted an investigative detention.

Even if the court finds that Soto was subject to a custodial detention rather than an investigative detention, probable cause for such detention did exist based on the court's decision. *Commonwealth v. Bridgeman,* 310 Pa.Super. 441, 456 A.2d 1017 (1983). In *Bridgeman,* this Court held that where there is a lack of identification and a conflict of names provided to police officers, suspicion is justified and each in combination with the other builds probable cause. *Id.* Under this principle, the facts in the case *sub judice* reveal the presence of probable cause.

In the case at hand, Santiago provided the police officers with false identification and was arrested. (P.T. p. 6). When Soto was questioned about his identity, he provided Officer Gartner with a name, address, date of birth. (P.T. p. 20). Soto told officers that he could not remember his zip code, could not remember his phone number, and could not remember his social security number. Based on the information Soto provided, Officer Gartner testified that he was unable to verify Soto's identity through the computer system. (P.T. p. 21). Due to Santiago's false identification and Soto's lack of proper identification, it was reasonable for a law enforcement officer to believe that these two individuals were attempting to conceal their identity for a purpose.

According to *Bridgeman*, probable case for such a detention would clearly exist. It would have been highly unreasonable for the police to release Soto after they were unable to properly identify him and until the police completed an investigation into the suspicious activity of the individuals. In viewing the totality of the circumstances, it is apparent that probable cause was present for Officer Gartner to reasonably believe that criminal activity was committed by Soto prior to or at the time of the stop.

For all of the reasons set forth, Soto was detained by police in compliance with the constitutional protections against unreasonable searches and seizure under both the United States Constitution and the Constitution of the Commonwealth of Pennsylvania. Thus, the suppression court was correct in denying suppression of the physical evidence obtained against Soto in the present case. Accordingly, this Court should find that the sentence imposed be affirmed.

B. THE SUPPRESSION COURT WAS CORRECT IN DENYING SOTO'S MOTION TO SUPPRESS STATEMENTS WHERE SOTO WAS NOT SUBJECTED TO A CUSTODIAL INTERROGATION.

Under *Miranda*, a custodial interrogation is defined as "questioning by law enforcement officers after a person has been taken into custody or otherwise deprived of his [or her] freedom of action in any significant way." *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 1612 L.Ed.2d 694, 706 (1966). An interrogation is police conduct "calculated to, expected to, or likely to evoke admission." *Id.* (*quoting Commonwealth v. Simala*, 434 Pa. 219, 226, 252 A.2d 575, 578 (1969)). Prior to any custodial interrogation, a law enforcement officer must administer *Miranda* warnings. *Commonwealth v. Johnson*, 373 Pa. Super. 312, 541 A.2d 332, 336 (1988). As noted in

Douglass, an investigative detention becomes a custodial detention when admissions are made or evidence is discovered which establishes probable cause and renders formal arrest both imminent and inevitable. See *Douglass supra*, 372 Pa. Super. At 227, 539 A.2d at 413 (1988).

As previously argued, it is clear that by viewing the facts in light of *Revere* and *Douglass*, Soto was subjected to an investigative detention and not a custodial detention when he was transported for identification purposes. When Soto was taken out of the vehicle at central processing, Officer Gartner found a bag of heroin on the rear floor of Officer Ilg's patrol car. (P.T. p. 22). It should be noted that the exact point of arrest is unclear, even though Officer Gartner testified that Soto was "placed under arrest as soon as we found heroin." (P.T. p.23). The discovery of this heroin was enough to establish probable cause of criminal activity and thus a formal arrest was imminent and inevitable. However, it is possible that the mere existence of the heroin alone at that exact moment was not enough for a formal arrest of Soto considering the Santiago had been in the back seat of the vehicle as well. In addition, the facts do not indicate that Officer Gartner talked with Officer Ilg during the period of time after Soto was taken out of the car until the time he made the inculpatory statement, therefore, Officer Gartner was unsure whether the vehicle had been clean prior to the occupants' transport. Finally, although not required for a formal arrest, Officer Gartner did not inform Soto that he was under arrest once he removed Soto from the police vehicle. Thus the record is unclear as to whether Soto was subject to a custodial arrest at the time he answered the officer's question.

Even if it is determined that Soto was indeed under arrest at the time he made the statement, Soto's statement is a gratuitous statement, not the response to a custodial interrogation. It is well-settled that a statement which is not made in response to a custodial interrogation is classified as a gratuitous statement and cannot be suppressed for mere lack of *Miranda* warnings. *Commonwealth v. Hughes*, 536 Pa. 355, 639 A.2d 763 (1994). In *Hughes,* the court found that a conversation between a police officer and a defendant did not constitute a custodial interrogation, as statements of the officer prior to the defendant's statement were simply a spoken reflection of the police officer's newly acquired information regarding events which led to the arrest of the defendant and thus the defendant's statement was an unsolicited, gratuitous statement. *Id.* at 370. This rule is applicable to the instant case.

Once Soto was brought into central processing, after which time Officer Gartner found the heroin in the police vehicle, Soto did not say anything to Officer Gartner. Officer Gartner testified that he then asked Soto "how many bundles are in there so I don't have to count it, and he told me seventeen (17)." (P.T. p. 22-23). When Officer Gartner asked this question to Soto, he was referring to the amount of small bundles which were present within the larger bag of heroin. Officer Gartner did not ask any questions in which were reasonably calculated or expected to elicit incriminating statements because at no time did Officer Gartner ask Soto whether the drugs were in his possession or whether they belonged to him. The mere question as to the amount of bundles does not directly incriminate Soto.

Instead, Officer Gartner's question to Soto concerning the quantity of bundles in the bag of heroin was a reflection of Officer Gartner's newly acquired information

because Officer Gartner had just found the bag of drugs and his questions were being aimed at the evidence, not at Soto's connection with such evidence. The mere fact that Soto knew exactly how many bundles were in the bag of heroin does not directly mean that the drugs belonged to him, although the inference may exist. Officer Gartner did not ask any other questions of Soto, but rather proceeded to fingerprint Soto, further evidencing that this was not a custodial interrogation.

Ultimately, even if *Miranda* did apply at the time Soto made the statement, the statement was not necessary for Soto's conviction and the suppression of such statement is merely harmless error. In *Commonwealth v. Watson,* 945 A.2d 174 (Pa. Super 2008), this Court determined that "not all errors entitle an appellant to a new trial [rather] the harmless error doctrine, as adopted in Pennsylvania, reflects the reality that the accused is entitled to a fair trial, not a perfect trial...." *Id.* at 177 (*quoting Commonwealth v. West*, 834 A.2d 625, 634 (Pa.Super. 2003), *appeal denied,* 586 Pa. 712, 889 A.2d 1216 (2005)). Harmless error exists when:

> 1) the error did not prejudice the defendant or the prejudice was de minimis; or (2) the erroneously admitted evidence was merely cumulative of other untainted evidence which was substantially similar to the erroneously admitted evidence; or (3) the properly admitted and uncontradicted evidence of guilt was so overwhelming and the prejudicial effect of the error so insignificant by comparison that the error could not have contributed to the verdict.

Commonwealth v. Passmore, 857 A.2d 697, 711 (Pa.Super. 2004), *appeal denied,* 582 Pa. 673, 868 A.2d 1199 (2005).

In the case at hand, Officer Ilg testified that there were no drugs in his vehicle prior to the transport of Soto and Santiago. (P.T. p. 30). Although Santiago was fully

searched at the scene and with no contraband found, Soto was never searched, but merely patted down for weapons. After Santiago and Soto were transported to central processing, the heroin was found on Soto's side of the vehicle. (P.T. p. 30-31). Officer Ilg also confirmed that his vehicle was clean prior to the transport of Santiago and Soto. (P.T. p. 29). Even absent Soto's statement concerning the quantity of heroin bundles present in the bag of drugs, circumstantial evidence would still support the conviction of Soto. Thus, a new trial would not be appropriate for the Soto because the suppression of such evidence will have no bearing on his conviction. Accordingly, the admission of this statement constitutes harmless error, and this Court should affirm the judgment of sentence.

VI. CONCLUSION

For the foregoing reasons, Appellee, the Commonwealth of Pennsylvania, respectfully requests this Honorable Court affirm the orders of suppression and the judgment of sentence.

Respectfully Submitted,

David J. DelCollo
Assistant District Attorney