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OPINIONS

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**Commonwealth of Pennsylvania v.
Hilaire Karangwa**

Criminal Appeal—DUI—Sufficiency—Clerical Error on Sentencing Order

In a DUI prosecution, the Commonwealth can prove driving on a public road and intoxication while driving by circumstantial evidence.

No. CC 201504420. In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division.
Borkowski, J.—September 6, 2017.

OPINION

PROCEDURAL HISTORY

Appellant, Hilaire Karangwa, was charged by criminal information (CC 201504420) with one count each of driving under the influence (0.16% or higher),¹ driving under the influence (accident resulting in injury),² driving under the influence (third offense),³ driving while operating privilege is suspended,⁴ and one summary count of public drunkenness.

On November 17, 2016, the Trial Court granted the Commonwealth's motion to withdraw count one and amend count four to driving while operating privilege is suspended as a summary offense.

On November 17, 2016, Appellant proceeded to a nonjury trial, at the conclusion of which the Trial Court took the matter under advisement.

On November 29, 2016, the Trial Court found Appellant guilty of driving under the influence (third offense), driving while operating privilege is suspended, and public drunkenness. The Trial Court found Appellant not guilty of driving under the influence (accident resulting in injury).

On March 9, 2017, Appellant was sentenced by the Trial Court as follows:

Count three: driving under the influence (third offense) – thirty days restrictive intermediate punishment and a concurrent period of probation of eighteen months;

Count four: driving while operating privilege is suspended – sixty days restrictive intermediate punishment to be served concurrent to the sentence imposed at count three.

On March 16, 2017, Appellant filed a post sentence motion, which was denied by the Trial Court on March 20, 2017.

This timely appeal follows.

STATEMENT OF ERRORS ON APPEAL

Appellant filed his Concise Statement of Errors on June 27, 2017. Appellant raises the following issues on appeal, and they are presented below exactly as Appellant stated them:

- a. Mr. Karangwa's conviction for Driving Under the Influence must be reversed and vacated because there was insufficient evidence to support the verdict of guilty. Mr. Karangwa intends to set forth the following arguments in support of this contention:
 - i. Even if it were conceded that Mr. Karangwa operated a motor vehicle on the day in question, and that Mr. Karangwa was intoxicated at the time that the police encountered him, the Commonwealth presented no evidence to prove, beyond a reasonable doubt, that he was intoxicated while operating the motor vehicle. Thus, the evidence was insufficient to prove, beyond a reasonable doubt, that Mr. Karangwa was guilty of Driving Under the Influence.
 - ii. Alternatively, even if it were conceded that Mr. Karangwa was, at some point, operating a motor vehicle while intoxicated, the Commonwealth presented no evidence to show that Mr. Karangwa was on a public trafficway while so operating the motor vehicle. Thus, the evidence was insufficient to prove, beyond a reasonable doubt, that Mr. Karangwa was guilty of Driving Under the Influence.
- b. Mr. Karangwa's sentencing order erroneously states that he was convicted of Driving while Operating Privilege is Suspended or Revoked under 75 Pa.C.S. § 1543(b)(1)(1.1)(ii). A conviction under that subsection requires that the actor drove with an amount of alcohol equal to or greater than .02% by weight or any amount of a Schedule I or nonprescribed Schedule II or III controlled substance in his blood. The Commonwealth never introduced evidence to meet either of these requirements at trial. Furthermore, the Commonwealth orally amended this charge to a charge of 75 Pa.C.S. § 1543(b)(1) just before trial. The charge as it is listed on Mr. Karangwa's order of sentence thus appears to be a scrivener's error and must be corrected.

FINDINGS OF FACT

On January 21, 2015, Appellant was residing on Decker Lane, Ross Township, Allegheny County. Shortly before 12:15 A.M. on that date, Appellant drove his vehicle into a neighbor's driveway (106 Decker Lane), striking a vehicle that was parked in the driveway of that home. Appellant's vehicle caught fire, Appellant exited his vehicle, and fled the immediate area, leaving the vehicle's engine running and the transmission in gear (reverse). Appellant, however, collapsed in the snow approximately thirty yards away from his vehicle. (T.T. 5-10, 12, 14).⁵

Ross Township Police Officer Dean Chiaramonte was called to 106 Decker Lane for a vehicle fire. (T.T. 5). Upon arrival, Officer Chiaramonte observed a damaged Subaru Forester parked in the driveway of 106 Decker Lane. The front bumper of Appellant's vehicle (a Kia Sedona) had impacted the Forester, and Appellant's vehicle had come to rest parallel to the Forester. Appellant's vehicle was on fire, the engine was running, the transmission was in reverse, and the driver's side door was ajar. Responding officers placed Appellant's vehicle in park, and shut off the engine. (T.T. 5-6, 14).

There were no occupants in Appellant's vehicle, and Officer Chiaramonte followed a fresh set of footprints in the snow from the driver's side open door to Appellant, who was lying in the snow approximately 30 yards away. (T.T. 6-7). It was quickly apparent to Officer Chiaramonte that Appellant was heavily intoxicated. Appellant: (1) had glassy eyes; (2) had a strong odor of alcoholic beverage on his breath; (3) was unable to stand; (4) was extremely difficult to communicate with; and (5) had urinated himself. (T.T. 8-9). Appellant denied that he had been driving, apologized, and stated that someone named James had been driving. However, further inspection of the vehicle and the driveway area revealed trash covering the passenger seat, and there was only the singular set of footprints from the driver's side of the vehicle leading directly to Appellant. (T.T. 6-10).

Based upon his training and experience, Officer Chiaramonte opined that Appellant was intoxicated to the point that he was incapable of safely operating a motor vehicle. (T.T. 10). At the time of the incident, Appellant's license was suspended for previously driving under the influence. (T.T. 11).

Appellant was charged as noted hereinabove.

DISCUSSION

I.

Appellant alleges in his first claim that the evidence was insufficient to sustain his conviction of driving under the influence. Appellant bifurcates this claim into two parts; neither has merit.

The standard of review for sufficiency of the evidence claims has been stated thusly:

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

Commonwealth v. Gray, 867 A.2d 560, 567 (Pa. Super. 2005). The subsection of the DUI statute under which Appellant was convicted provides that:

An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.

75 Pa. C.S. § 3802(a)(1).

A.

In the first part of his sufficiency claim, Appellant avers that the Commonwealth failed to prove beyond a reasonable doubt that Appellant was intoxicated while he was operating a motor vehicle. In this regard, the Superior Court has held as follows:

The term "operate" requires evidence of actual physical control of the vehicle to be determined based upon the totality of the circumstances. Our precedent indicates that a combination of the following factors is required in determining whether a person had "actual physical control" of an automobile: the motor running, the location of the vehicle, and additional evidence showing that the defendant had driven the vehicle. The Commonwealth can establish that a defendant had "actual physical control" of a vehicle through wholly circumstantial evidence. Furthermore, a police officer may utilize both his experience and personal observations to render an opinion as to whether a person is intoxicated.

Commonwealth v. Williams, 941 A.2d 14, 27 (Pa. Super. 2008) (citations and quotations omitted).

Contrary to Appellant's claim, the evidence presented at Appellant's trial clearly established beyond a reasonable doubt that Appellant was operating a motor vehicle while he was intoxicated to the degree that it rendered him incapable of safely driving. To-wit: (1) police were emergently summoned to the scene of a recently crashed and burning vehicle; (2) footprints from the driver's door of the burning vehicle led directly to Appellant, laying in the snow approximately 30 yards away; (3) the vehicle's front bumper had struck a vehicle parked in the driveway of 106 Decker Lane, coming to rest parallel to that parked vehicle; (4) Appellant's vehicle was on fire, the keys were in the ignition, the transmission was engaged, and the engine was still running; (5) Appellant had glassy eyes, incoherent speech, he was unable to stand, had urinated himself, and had a strong odor of alcoholic beverage on his breath; and (6) Appellant lived near the site of the accident. (T.T. 5-10, 12, 14). The only logical conclusion from this evidence is that Appellant was intoxicated while operating a motor vehicle, crashed that vehicle, attempted to flee the area but only managed to travel 30 yards before collapsing onto the snow-covered ground.

Thus, there was compelling and overwhelming direct and circumstantial evidence that Appellant was intoxicated while operating a motor vehicle. See *Williams*, 941 A.2d at 28-30 (evidence sufficient to sustain conviction of driving under the influence where officer responded to 911 call for vehicle parked on railroad tracks and observed defendant laying in the ground nearby; a witness notified police that she had found defendant in the vehicle with the engine running, and had put the vehicle in park and pulled defendant out of the vehicle to safety; and that defendant, when awakened, was incoherent, confused, unsteady on her feet, and had a strong odor of alcohol on her breath); *Commonwealth v. Johnson*, 833 A.2d 260, 263-264 (Pa. Super. 2003) (evidence sufficient to sustain conviction of driving under the influence where defendant was leaning against driver's side door when officers responded to accident call, and defendant's vehicle was behind vehicle that it had rear-ended).

Appellant's claim is without merit.

B.

In the second part of his sufficiency claim, Appellant avers that the Commonwealth failed to prove beyond a reasonable doubt that Appellant operated the motor vehicle on a public trafficway. A trafficway is defined as "the entire width between property lines or other boundary lines of every way or place of which any part is open to the public for purposes of vehicular travel as a matter of right or custom." 75 Pa. C.S. § 102. Appellant's vehicle came to rest in the private driveway of 106 Decker Lane. While a private driveway is not a public trafficway, Decker Lane, the street adjacent to where Appellant's vehicle came to rest, is unquestionably a public trafficway. 75 Pa. C.S. § 102.

The only logical conclusion based on the evidence presented at Appellant's trial is that Appellant, while heavily intoxicated, traversed Decker Lane immediately before pulling into the private driveway of 106 Decker Lane, striking the vehicle parked there,

and attempted to flee on foot. Based on the evidence presented, a reasonable inference arose that Appellant's vehicle came to rest on the private property of 106 Decker Lane only after it had been on a roadway (Decker Lane), immediately prior to impacting the parked vehicle. This evidence was sufficient to sustain Appellant's conviction of driving under the influence.

Appellant's claim is without merit.

II.

Appellant alleges in his second claim that Appellant's sentencing order contains a clerical error as it erroneously lists his driving while operating privilege is suspended at 75 Pa. C.S. § 1543(b)(1.1)(ii), when the Commonwealth in fact had amended that charge to 75 Pa. C.S. § 1543(b)(1), pursuant to *Birchfield*.⁶ As to clerical errors, the Superior Court has held:

It is well-settled in Pennsylvania that a trial court has the inherent, common-law authority to correct "clear clerical errors" in its orders. A trial court maintains this authority even after the expiration of the 30 day time limitation set forth in 42 Pa.C.S.A. § 5505 for the modification of orders. [. . .] In discussing a trial court's authority to correct illegal sentences, our Supreme Court has stated that it is the obviousness of the illegality, rather than the illegality itself, that triggers the court's inherent power. The High Court has also cautioned that the inherent power to correct errors does not extend to reconsideration of a court's exercise of sentencing discretion. A court may not vacate a sentencing order merely because it later considers a sentence too harsh or too lenient. As a matter of general guidance, our Supreme Court has sanctioned the use of the inherent authority in cases that involve *clear errors* in the imposition of sentences that were incompatible with the record or black letter law.

Commonwealth v. Borrin, 12 A.3d 466, 471, 473 (Pa. Super. 2011) (citations and quotations omitted).

Here, the Commonwealth amended count four to a summary level driving while operating privilege is suspended (75 Pa. C.S. § 1543(b)(1)), which carries a mandatory sentence of imprisonment of not less than 60 days and not more than 90 days. (T.T. 3-4). Appellant was sentenced accordingly to 60 days intermediate punishment. However, the sentencing order incorrectly lists count four as the original charge of a misdemeanor of the third degree (75 Pa. C.S. § 1543(b)(1.1)(ii)). As such, the sentencing order contains a clear clerical error, and Appellant's case should be vacated and remanded to the trial court for the limited purpose of correcting the error on the sentencing order. See *Commonwealth v. Thompson*, 106 A.3d 742, 766 (Pa. Super. 2014) (judgment of sentence vacated and remanded for limited purpose of correcting clear clerical error on sentencing order where trial judge unambiguously stated on the record that the sentences were to run concurrently, but the judgment of sentence ran the imposed sentences consecutively).

CONCLUSION

Based upon the foregoing, the judgment of sentence imposed by this Court at count four should be vacated and remanded to the Trial Court for the limited purpose of correcting the clerical error on the sentencing order, and Appellant's judgment of sentence should be affirmed in all other respects.

BY THE COURT:
/s/Borkowski, J.

Date: September 6, 2017

¹ 75 Pa. C.S. § 3802(c).

² 75 Pa. C.S. § 3802(a)(1).

³ 75 Pa. C.S. § 3802(a)(1).

⁴ 75 Pa. C.S. § 1543(b)(1.1)(ii).

⁵ The designation "T.T." followed by numerals refers to Non-Jury Trial Transcript, November 17 and 29, 2016.

⁶ *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016).

**Commonwealth of Pennsylvania v.
Ernest Gregory Williams**

Criminal Appeal—Suppression—Homicide—Sufficiency—Waiver—Coordinate Jurisdiction—Traffic Stop

Multiple errors in homicide case asserted, including the failure to suppress evidence, recusal, and the coordinate jurisdiction rule.

No. CC 16085-2013. In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division.
Ignelzi, J. and Todd, J.—August 9, 2017.

OPINION

PROCEDURAL HISTORY

By Criminal Information filed at No. CC16085-2013 on November 4, 2013, Ernest Gregory Williams, “Defendant” was charged with Criminal Homicide- 18 Pa.C.S. §2501A; Persons not to Possess a Firearm-18 Pa.C.S. §6105A1; and Carrying a Firearm Without a License-18 Pa.C.S. §6106A1. On July 5, 2016, the Criminal Homicide charge was changed to Murder of the First Degree-18 Pa.C.S. §2502A. Thereafter, the charge of Persons not to Possess a Firearm was severed from this Jury Trial.

On April 4, 2014, the Defendant, through counsel Gary B. Zimmerman, Esquire, filed an Omnibus Pre-Trial Motion. On May 19, a Suppression Hearing was held before The Honorable Randal B. Todd. The Hearing was reconvened on July 9, 2014. Judge Todd set a briefing schedule, indicating he would rule on the Suppression Motion prior to setting a date for trial. On September 18, 2014, Judge Todd filed his Order of Court. After summarizing the testimony from the May 19 and July 9, 2014, Judge Todd concluded as follows:

- a. “Probable cause existed to arrest Defendant at the time his vehicle was stopped at approximately 7:00 a.m. based on the totality of the circumstances known to Detective Mayer. This includes information concerning the Defendant being the sole occupant of the vehicle stopped shortly after the call of shots fired in the area of 19th and McClure Avenue; the location where Defendant’s vehicle was stopped; and, the observations concerning the description of the vehicle which Defendant was driving at that time and observations of the vehicle in the surveillance video which showed the shooting.
- b. Defendant was not properly advised of his Miranda rights prior to being interrogated after his arrest and any statements made by Defendant are inadmissible.
- c. The derivative evidence obtained by Detectives as a result of the statement is admissible. (*See, Commonwealth v. Abbas*, 862 A.2d 606 (2004) and *United States v. Pantane*, 542 U.S. 630 (2004)).
- d. Defendant did not give a valid consent to search the vehicle after it was towed and evidence obtained is not admissible.
- e. Evidence obtained from the observations of the exterior of the vehicle is admissible as Defendant had no expectation of privacy related to the exterior of the vehicle.”

On November 19, 2014, Defendant filed a Motion for Reconsideration of the Defendant’s Motion to Suppress Physical Evidence. On November 21, 2014, Judge Todd issued an Order denying the Motion. On March 26, 2015, Defendant filed a Motion for an Evidentiary Hearing, which was also denied by Judge Todd on March 31, 2015. Thereafter, on April 10, 2015, Defendant filed a Motion for Recusal, which the judge granted on April 16, 2015. The case was then assigned to the Honorable Philip A. Ignelzi.

Defendant, through attorney Zimmerman, requested that Judge Ignelzi reconsider the Defendant’s Motion to Suppress that was denied, in part, by Judge Todd. The Court asked the parties to file briefs on the issue, which they did. On September 2, 2015, this Court conducted an extensive Hearing on the Motion to Reconsider. At the conclusion of the Hearing and counsels’ arguments, Judge Ignelzi DENIED the defense’s Motion and indicated it would not overrule the ruling made by Judge Todd. Motion Transcript, “MT”, dated September 2, 2015, p. 23.

On October 7, 2015 an Order withdrawing Gary B. Zimmerman, Esquire as counsel due to health reasons and appointing Ralph D. Karsh, Esquire was filed. Defendant, through new counsel, filed a Motion for Court Order to Allow Defense Counsel to bring Electronic Equipment into the Allegheny County Jail was filed January 5, 2016. Said Motion was granted on January 7, 2016.

The case proceeded to a jury trial commencing on March 28 and ending on April 6, 2016. Attorney Chris Avetta and Attorney Alicia Werner represented the Commonwealth and Mr. Karsh represented the Defendant. At the conclusion of the jury trial, Defendant was found guilty of Murder of the First Degree and Firearm Not to be Carried Without a License. The Defendant was sentenced on July 7, 2016 to be confined for life for Murder of the First Degree. As to the charge of Firearm Not To Be Carried Without License, this Court instituted no further penalty.

On July 14, 2016, the Allegheny County Public Defender’s Office filed, on behalf of Defendant, a Preliminary Post-Sentence Motion with Motion for Leave to file a Supplemental Post-Sentence Motion. On July 15, 2016, this court filed an Order Permitting the filing of a Supplemental Post-Sentence Motion. On August 30, 2016, this court entered an Order of Court directing a briefing schedule on the Post-Sentence Motions. On September 15, 2016, Defendant filed a Motion to Withdraw the Post-Sentence Motion and the Order granting said Motion was filed the very next day.

On October 14, 2016, Defendant filed a timely Notice of Appeal in the Superior Court of Pennsylvania. By Order dated October 17, 2016, this Court ordered Defendant to file a Statement of Errors Complained of on Appeal pursuant to Pa. R.A.P. 1925(b).

On November 7, 2016, Robert Joseph Perkins, Esquire entered his appearance on behalf of the Defendant and also filed a Motion for Extension of Time to file the Concise Statement, which was granted on the same date. Defendant eventually filed a Concise Statement of Matters Complained of on Appeal on April 7, 2017.

STATEMENT OF ERRORS ON APPEAL

Defendant’s Concise Statement lists the following issues (abbreviated herein) for appellate review:

1. The Honorable Randal B. Todd (hereafter “Suppression Court”) erred when it denied Mr. Williams’ Motion to Suppress all evidence obtained as a result of the 7:00 a.m., November 4, 2013 traffic stop because, among other

reasons, that stop constituted an unlawful seizure unsupported by reasonable suspicion.

2. The Suppression Court likewise erred when it denied Mr. Williams' Motion to Suppress all evidence because the traffic stop constituted an unlawful arrest unsupported by probable cause.
3. While the Suppression Court properly found that evidence obtained during the search of Mr. William's car must be suppressed because Mr. Williams did not give a valid consent to search, it nevertheless erred when it made the contradictory finding that evidence obtained as a result of observations of the car's exterior was admissible.
4. While the Suppression Court properly suppressed all of Mr. Williams' statements to the police on November 4, 2013, it again erred when it found all derivative evidence obtained from those statements was admissible (and to the extent that case law holds otherwise, that precedent should be overruled on state constitutional grounds).
5. The Suppression Court further erred when it failed to grant Mr. Williams' Motion to Reconsider the Court's finding that probable cause supported Mr. William's arrest.
6. The Suppression Court likewise erred when it failed to grant Mr. Williams' request to reopen the record and admit the shooting video in connection with his Motion to Reconsider. According to Mr. Williams the video's poor quality prevented a viewer from being able to identify most of the car's features.
7. The Honorable Philip A. Ignelzi (hereinafter "Trial Court") erred when it failed to review and/or reconsider the Suppression Court's rulings on the Motion to Suppress Evidence and the Motion to Re-Open the Record to introduce the shooting video into evidence.
8. The trial Court erred in failing to *sua sponte* grant a mistrial when both defense counsel and counsel for the Commonwealth, through their respective witnesses, violated the Court Order suppressing items found inside Mr. Williams' car. Jury Trial Transcript ("TT") dated March 28-April 6, 2016, pp. 506-532.
9. The Trial Court erred in failing to grant Mr. Williams' request to strike juror #3, after that juror observed Mr. Williams walking down the courthouse hallway surrounded by seven or eight people, including a uniformed sheriff's deputy. The inflammatory visual undermined Mr. Williams' presumption of innocence. TT, pp. 649-673.
10. The trial Court erred in failing to *sua sponte* strike all members of the jury selected on March 30, 2016. During jury selection that day, a potential juror disclosed that she and other females on the jury pool noticed defense counsel rolling his eyes at a female Assistant District Attorney. This potential juror stated she did not believe she could sit impartially as a juror because her observations triggered a personal dislike of defense counsel. TT, pp. 35-40.
11. The Trial Court likewise erred in failing to take corrective measures to ensure the jury pool wasn't tainted once it learned of the potential juror's disclosure of her negative view of defense counsel on March 30, 2016. *Id.*
12. The evidence was insufficient as a matter of law to establish, beyond a reasonable doubt, Mr. Williams' identity as the perpetrator of the crimes for which he was convicted.

FINDINGS OF FACT

On May 19, 2014, the Suppression Court heard testimony from Commonwealth witnesses regarding the Defendant's Omnibus Pretrial Motions, specifically, the Motion to Suppress Physical Evidence and Statements. The Suppression Hearing was continued on July 9, 2014.

At the May 19, 2014 hearing, Officer James Caterino testified he was working as a patrolman for West Homestead on November 4, 2013. He has been employed as a detective for the Borough of Munhall for eight years and a patrolman for the Borough of West Homestead for two and a half years. On November 4, 2013, at approximately 3:30 a.m., Homestead dispatch put out a call for shots fired in the area of 19th and McClure Street, which Officer Caterino categorized as a high crime area. Suppression Hearing Transcript ("ST"), dated May 19, 2014, pp. 5-6.

Officer Caterino and Lt. Steele responded to the area and, as they were proceeding southbound on McClure coming off the 11th Avenue extension, they encountered a dark colored vehicle driving westbound on 11th Avenue. Since it was obvious to Officer Caterino that this vehicle was travelling at a high rate of speed, he performed a U-turn at the intersection of McClure and 12th to get behind the vehicle. The vehicle further failed to stop at a stop sign at McClure and 11th Avenue. ST, pp 8-10. Officer Caterino initiated a traffic stop, the vehicle continued to make a right turn onto Ann Street, where it was ultimately stopped. The vehicle was a black Ford Five Hundred and Defendant was the sole occupant. When Officer Caterino approached the Defendant, he was sweating profusely, fidgeting in his seat and wearing a red sweatshirt and gray pants. ST, pp. 11-12.

The Defendant was asked to step out of the vehicle, he gave consent to search his person and vehicle, and no evidence was recovered. He was not in custody at this time and freely answered any questions posed to him. Lt. Steele asked the Defendant where he was coming from and he indicated the Trapper's Club in Homewood. ST, pp. 13-14. Officer Caterino became suspicious when he heard Defendant tell Lt. Steele he was coming home from the Trapper's Club to his place on 13th Street. According to Officer Caterino, the East 11th Avenue Extension is not accessible if the Defendant was traveling across the Rankin Bridge to his home on 13th Street. ST, pp. 35-36.

Officer Caterino is familiar with the East 11th Avenue Extension, noted that the area the Defendant had just past was known as Cow's Hill, and, based on his experience as a police officer, Cow's Hill is an area known for discarding guns. ST, pp. 15-18. The Defendant was released and the officers proceeded to 19th and McClure Street, where the call said shots were fired. Upon arriving, Officer Caterino observed that there were video cameras at the business of Hruska's Plumbing, located at the very intersection of the shooting. Officer Caterino and County Detectives viewed the surveillance video at Hruska Plumbing and, Officer Caterino indicated to county detectives that he and Lt. Steele had just stopped the Defendant in a vehicle that looked exactly like the vehicle in the video. ST, pp. 19-20. Officer Caterino recalled the vehicle had a grayish stripe or molding going across horizontally and a ragtop roof. ST., pp. 20-21.

Further, the video depicted the actual shooting and showed the passenger (victim) get out and proceed to the rear of the car,

then stop and go back to the passenger side, opening the door as if looking for something on the side of the seat, then got out again. The victim again walks to the rear of the vehicle, at which time the driver got out of the car and fires multiple shots at him. When the victim attempts to run, the driver fires more shots at the victim. ST, pp. 21-22.

The second angle of the video was a side view of the business and showed the vehicle making a right hand turn and heading in the direction of the 11th Avenue Extension and Cow's Hill. ST, pp. 22 & 31.

The Commonwealth next called Detective Mayer to testify. Detective Mayer has been a detective with the Allegheny County Police for twelve years. ST, p. 40. Detective Mayer was called out to investigate the shooting of Jeremy Fields on November 4, 2013. Upon arriving at the intersection of 19th and McClure Street, Detective Caterino was already on the scene. ST, pp. 40-41. Shortly after his arrival, Detective Caterino indicated there were several video cameras on the exterior of the building. The owner of the building was there to take the detectives to an office where there was a small television for the surveillance system. ST, pp. 41-42.

After viewing the video and Officer Catrino's observations, a Be On the Lookout, or "BOLO", was issued for the vehicle the Defendant was driving. Later that morning Detective Mayer, who had just recently viewed the video, encountered a black Ford 500 sedan with a landau cloth roof traveling across the Rankin Bridge. The car was being driven by a black male, the sole occupant. The Detective got behind the vehicle and determined it was the same vehicle stopped earlier that morning by Officer Caterino. ST, pp. 42-44.

Once marked cars arrived, a traffic stop was initiated and the Defendant stopped his car in the middle of the street; Defendant was removed from the vehicle and placed in handcuffs; and was then transported to the County Headquarters and placed in a locked interview room. ST, pp. 45-49.

According to Detective Mayer, several hours later, he and Detective Dolfi entered the interview room and obtained verbal consent from the Defendant to search and process his vehicle. ST, p. 49. Shortly thereafter, Detective Mayer asked the Defendant what he did yesterday, and he responded he was at a couple of different bars with his buddy, Crime, which was later determined to be a nickname for the victim, Jeremy Fields. ST, pp. 50-51. The Defendant then indicated he and Fields had gone to a private party at Pearl's Bar; they then went to King's Club in Braddock at about 2 a.m.; then onto the Trapper's Club until about 3 a.m.; and finally drove back over the Rankin Bridge where Defendant dropped Fields off at 19th and McClure Street. ST, pp. 51-52.

Immediately thereafter, Detective Mayer provided the Defendant with a written copy and oral presentation of his Miranda rights. ST, p. 52. The Defendant indicated he understood his rights and did not wish to speak to the detectives anymore. ST, pp. 52-53. Detective Mayer informed the Defendant that they obtained video footage from Hruska Plumbing and, in response, Defendant put his head down on the table. ST, p. 53.

The final witness at the Suppression Hearing was Detective Todd Dolfi. Detective Dolfi remained on the scene with Defendant's vehicle awaiting a tow truck and, while there, he walked around the vehicle and observed some red droplets on the rear bumper and driver's side quarter panel. ST, p. 80. Detective Dolfi had also viewed the video earlier that morning from Hruska Plumbing and believed the location of these droplets were consistent with where the victim was observed to have fallen behind the video. ST, pp.80-81.

As stated earlier under the Procedural History of this Opinion, Judge Todd filed his Order of Court on the Suppression Motions on September 18, 2014. In sum, the Suppression Court concluded probable cause existed to arrest the Defendant; Defendant was not properly advised of his Miranda rights prior to being interrogated and any statements made by the Defendant are inadmissible; the derivative evidence obtained by the detectives as a result of the statement is admissible under *Commonwealth v. Abbas*, 862 A.2d 606 (Pa. 2004) and *United States v. Patane*, 542 U.S. 630 (2004); Defendant did not give a valid consent to search the vehicle after it was towed and any evidence obtained inside the vehicle is, therefore, inadmissible. Evidence obtained from the observations of the exterior of the vehicle is admissible as Defendant had no expectation of privacy related to the exterior of the vehicle.

Defendant thereafter filed a Motion for Recusal, which Judge Todd granted. The case was assigned to Judge Ignelzi. Prior to the trial, upon Defendant's request, Judge Ignelzi held a hearing on the Motion to Reconsider the Motion to Suppress. Judge Ignelzi indicated on the record he thoroughly reviewed the video surveillance of the shooting and the Suppression Hearing Transcript. MT, p.8. Relying upon Judge Ignelzi's review of the video with the distinctive metal stripe on the side of the vehicle, as well as the testimony of Officer Caterino and Detective Maher regarding the description of the vehicle, Judge Ignelzi concluded that probable cause existed and Judge Todd's ruling would not be overturned. MT, pp. 10, 21 & 23.

A jury trial commenced on March 28, 2016. The Commonwealth called Detective Daniel M. Mayer as its first witness. Detective Mayer has been with the Allegheny County Police since July of 1992. TT, p. 68. At the time of this incident, on November 4, 2013, Detective Mayer was assigned to the Homicide Unit. Id. On that night, Detective Mayer, his partner Detective Dolfi, Detectives Langan and McKeel, were informed that there had been a shooting, a homicide, at the intersection of 19th and McClure in Homestead. TT, p. 69. At the scene, he met with Officer Caterino, who indicated there is a plumbing business nearby with video cameras mounted outside. TT, p. 71. Officer Caterino had already contacted the owner to obtain and view the video. Id. The owner arrived, opened the building and was able to cue the video system up to the timeframe of the shooting. TT, p. 84.

Detective Mayer explained in the video, he was able to view the persons exiting the vehicle. Although you cannot make a facial identification of the persons, you are able to see the vehicle and the shooting that transpired. TT, p. 85. Detective Mayer described the vehicle as a dark-colored, four door sedan that is two-toned, had a landau roof and a chrome molding down the side of the car. TT, p. 90. Detective Mayer and Officer Caterino, while viewing the video of the vehicle, would back up the video, pause it and replay it numerous times. TT, p. 181. As they were observing the vehicle, Officer Caterino rather excitedly indicated he knows that car. Id.

Detective Mayer was asked if he investigated anyone else for this murder. He answered no. He felt based on the information they collected, the video they were able to view, Detective Caterino's initial traffic stop, the gunshot residue on Defendant's hand, the test for blood on the bumper, the videos from the clubs and their observations of the vehicle, Mr. Williams was the shooter in this case. TT, p. 199.

Finally, Detective Mayer viewed the video from Pearl's Bar. He identified the victim, Mr. Fields, wearing a sleeveless blue jean sweater and baseball cap. Defendant was wearing a red sweater with an emblem on it. TT, p.281.

The Commonwealth's next witness was Charles Thomas, the owner of Pearl's Café. Mr. Thomas recalls the police coming to his

establishment the morning after the shooting wanting to look at the video from the night before to see if the ones involved in the shooting were there. TT, p. 211. Viewing the video, Mr. Thomas observed both the Defendant and the victim, Jeremy Fields, at his bar. TT, p. 212. He further noted the Defendant was wearing a red shirt with an emblem on it and the victim wore a baseball cap and a coat. TT, p. 215.

The Commonwealth called Officer James Caterino to testify. As he and his partner were responding to a call for shots fired at 19th and McClure, he observed a vehicle at 11th Avenue, almost near McClure, traveling at a high rate of speed. TT, p. 314. Officer Caterino testified that he did not go straight to the area where shots were fired, but rather, felt it was important to stop Defendant's vehicle because he was speeding and it was the only one in the area. TT, pp. 319-320. He again described the vehicle as a black Ford 500, with a silvery molding on the side and a distinctive rag top roof. TT, p. 321. At this initial stop, Mr. Williams was very nervous, sweating profusely and fidgeting in his seat. TT, p.323. He informed the officers he was coming from the Trapper's Club, which seemed odd to Officer Caterino since the area he was coming from off 11th Avenue Extension, you can't get to 11th from 8th Avenue (the route you would take from the Trapper's Club). TT, p. 325. After a search of his person revealed no evidence, the Defendant was released to go, and the officers headed to the scene of the crime. Id.

At the scene, Officer Caterino observed surveillance cameras at Hruska Plumbing, and eventually obtained the videos to review them. When he initially viewed the video, Lt. Steele was with him. TT, p. 327. Officer Caterino observed the actual shooting take place on the video and further observed that the vehicle in the video matched the description of the vehicle he just previously stopped. Id. He watched the video a second time that morning after the County Detectives Mayer and Dolfi arrived. TT, p. 328. Officer Caterino informed the County Detectives that the vehicle in the video is the same car he stopped earlier with Mr. Williams driving it. Id. As a final matter, he stated that from his initial view of the video, he had no doubt that was the same vehicle he just pulled over. TT, p.360.

Detective Todd Dolfi, employed with the Allegheny County Police Department's Homicide Unit, was called to testify for the Commonwealth. At trial, Detective Dolfi, stated he was present, with Detective Mayer, Officer Caterino, and Lt. Steele, to view the Hruska Plumbing video. TT, p. 365. While observing the video, Officer Caterino expressed a belief that Ernest Williams was driving the vehicle. Id. He also viewed the actual shooting, and saw two people and one vehicle, and the shooting took place at the rear quarter panel of the driver's side. TT, pp. 365-356.

After he finished viewing the video, he left the scene by himself, but was driving behind Detective Mayer, when Mayer observed a black Ford 500 coming across the Rankin Bridge. TT, p. 366. Detective Mayer turned around to follow the vehicle, as a BOLO was out for that vehicle, and Detective Dolfi followed him. Id. A traffic stop was conducted and the driver (who was identified as Ernest Williams) was detained and transported to Allegheny County Police headquarters. TT, p. 367. Detective Dolfi stayed with the vehicle to wait for the tow truck to arrive. As Detective Dolfi walked around the vehicle to look at the driver's side rear quarter panel he observed what appeared to be red-brown droplets dried on the paint of the vehicle. TT, pp. 367-368.

After the car was towed away, Detective Mayer returned to headquarters performing a GSR, gunshot residue, test on the Defendant. TT, p. 370. He also obtained Defendant's clothing, which included a red sweatshirt that the detective remembered Defendant was wearing at the time of the traffic stop. TT, pp. 372-373. Finally, Detective Dolfi requested information from the State Police as to whether the Defendant was licensed to carry a firearm, and the form indicated he was not. TT, pp. 373-374.

The Commonwealth next called Daniel Wolfe to testify. He has been employed at the Allegheny County Medical Examiner's Office Forensic Laboratory for the past twelve years. TT, p. 414. Mr. Wolfe works in the Trace Evidence Section, the Controlled Substance Department and is a member of the Mobile Crime Unit. Id. Working in the Trace Evidence Section, his main task is to analyze evidence for gunshot residue. Id. Mr. Wolfe explained that when the firing pin springs forward on a gun, it makes contact with a small primer cap and you get a small controllable explosion that ignites the gunpowder which is the propellant that sends the projectile downrange. TT, p. 415. During that event, the vapors inside the gun evacuate through any available port and land on the area around the weapon and follow the projectile. Id. He is looking for those particles that landed on a surface near the weapon, specifically the elements lead, barium and antimony. Id.

For it to be considered gunshot residue, all three of the elements need to be present. TT, p. 419. There are three classes of particles in gunshot residue: (1) single components of just lead, just barium, or just antimony; (2) consistent particles are some combination of the two (lead and barium, barium and antimony or lead and antimony); (3) one characteristic particle that has all three elements. Id. If all three elements are there, it is a characteristic particle, and those are reproduced from discharging a firearm. Id.

Mr. Wolfe examined the GSR kit in the case against Ernest Williams. He found one characteristic particle on the left palm, along with two single component particles. TT, p. 420. Since the characteristic is comprised of all three elements, it is gunshot residue. TT, p. 421. Mr. Wolfe also performed an examination of the red shirt. Id. He described it as a sweatshirt, which in his experience, is more likely to retain gunshot residue. TT, p. 423. On the right cuff and sleeve, Mr. Wolfe found two characteristic particles, two consistent particles, and greater than or equal to five single components. Id. He stated that two of them are definitely gunshot residue. Id.

Anita (Kozy) Lorenz, a scientist in the Allegheny County Office of the Medical Examiner, testified for the Commonwealth. She has been employed there for approximately sixteen years, and her areas of expertise include forensic biology, serology and DNA. TT, p.496. The Commonwealth and Defense counsel stipulated to Ms. Lorenz as an expert in the field of forensic biology, specifically DNA and latent prints. Id.

With regard to the case of Ernest Williams, Ms. Lorenz analyzed the following items for DNA; a possible saliva stain from a Pall Mall cigarette butt; a possible bloodstain from the rear bumper of the Ford 500; wet/dry swabs from the front passenger controls; wet/dry swabs from rear passenger controls; swab of the mouth of a Niagra water bottle and inside threads of the cap; swab of the mouth of a Nestle water bottle; a whole blood patch of Mr. Fields; and a buccal sample from Ernest Williams. TT, pp. 497-498. She used the whole blood sample from the victim and the buccal swab from the Defendant as reference samples in her DNA analysis. TT, p. 498.

Ms. Lorenz did an analysis of a possible stain from the rear bumper of the Ford 500. TT, p. 534. A single source DNA profile was obtained from that sample and it matched the DNA profile that was obtained from the whole blood patch of Mr. Fields. TT, p. 535. She also analyzed a possible bloodstain from the driver's side rear fender. TT, p. 536. A single source DNA profile was also obtained from that source and again it matched the DNA profile that came from the whole blood patch of Mr. Fields. Id.

Dr. Todd Luckasevic next testified for the Commonwealth. He is a Forensic pathologist, Associate Medical Examiner at the

Allegheny County Medical Examiner's Office. TT, p. 579. Dr. Luckasevic performed the autopsy on Mr. Fields and observed he had a total of six gunshot wounds to the head, upper extremities and trunk. TT, p. 588. To a reasonable degree of medical certainty, Dr. Luckasevic opined that the cause and manner of death was homicide. Id.

Thomas Morgan, an expert in ballistics, firearms and tool marks, testified for the Commonwealth. TT, p. 607-608. He examined evidence that was recovered at the autopsy and the scene of the shooting of Mr. Fields. TT, p.608. He examined cartridges (a single unit of ammunition that consists of four components). TT, p. 611. A cartridge is known as a live round or live bullet, and is made up of the bullet, the cartridge case, the gunpowder and a primer, a compound that ignites the gunpowder which causes the bullet to be discharged from the firearm. Id. Out of the five items he had to examine, four of them were classified as having the same lands, grooves and caliber. TT, p. 614. All four of them were either a .38 or .357 caliber. Id. To further explain, Mr. Morgan stated that a .357 Magnum can fire a .38 Special cartridge, but a .38 Special can't always fire a .357 cartridge. TT, p. 616. Mr. Morgan also performed a microscopic examination on the four items and they all matched each other and were discharged from the same firearm. TT, p. 614.

DISCUSSION

In light of Judge Randal Todd presiding over the suppression motion and hearing, Judge Todd addresses the suppression issues herein. Judge Philip Ignelzi addresses all other issues.

I

The Defendant's first six matters complained of on appeal all relate to errors by the Court (Judge Todd) on the Suppression Motion.

First, the Defendant argues that all the evidence obtained as a result of the 7:00 am traffic stop on November 4, 2013 should have been suppressed by The Honorable Randal B. Todd, because the stop constituted an unlawful seizure unsupported by reasonable suspicion. Second, Defendant argues the November 4, 2013 arrest lacked probable cause. These allegations lack credence.

The reasonable suspicion standard is "less stringent" than the probable cause standard. *Commonwealth v. Cook*, 735 A.2d 673, 676 (Pa. 1999). In order to demonstrate reasonable suspicion, the police officer must be able to point to specific and articulable facts and reasonable inferences drawn from those facts in light of the officer's experience. *Id.* at 677.

Likewise, probable cause exists if the facts and circumstances within the knowledge of the police officer at the time of the arrest are sufficient to justify a person of reasonable caution in believing the suspect has committed or is committing a crime. *Commonwealth v. Rodrigez*, 666 A.2d 292,295 (Pa. Super. 1995). The Superior Court also noted that, "[we] focus on the circumstances as seen through the eye of a trained police officer, taking into consideration that probable cause does not involve certainties, but rather the factual and practical considerations of everyday life on which reasonable and prudent men act." *Commonwealth v. Santiago*, 736 A.2d 624 (Pa. Super. 1999), citing *Commonwealth v. Romero*, 673 A.2d 374, 376 (Pa. Super. 1996).

Finally, a suppression court's factual findings are binding and may only be reversed "if the legal conclusions drawn therefrom are erroneous." *Commonwealth v. Rosas*, 875 A.2d 341, 346 (Pa. Super. 2005).

In this case, the determination of whether reasonable suspicion and/or probable cause to arrest exists would be based upon the totality of the circumstances as known by Detective Mayer at the time the Defendant was taken into custody. This includes the information provided to Detective Mayer by Officer Caterino and Lt. Steele.

Officer Caterino and Lt. Steele received a call for shots fired at approximately 3:30 am on November 4, 2013, in a primarily residential and high crime area. ST, pp. 5-6. They responded to the area and observed Defendant's dark colored vehicle going westbound on 11th Avenue at a high rate of speed, then failing to stop at a stop sign at McClure and 11th Avenues. ST, pp. 8-10.

Thereafter, Officer Caterino initiated a traffic stop and when he approached the Defendant, he observed him to be sweating profusely and squirming in his seat. Officer Caterino further observed Defendant to be wearing a red sweatshirt and gray sweat-pants. ST, pp. 11-12. Upon questioning from the officer, Defendant indicated he was coming from the Trapper's Club in Homewood and proceeding to his home on 13th Street. ST, pp. 13-14. Officer Caterino became suspicious due to the fact that the East 11th Avenue Extension is not accessible if the Defendant was truly traveling across the Rankin Bridge to 13th Street; the most direct route. ST, pp. 35-36. In addition, Officer Caterino, who is familiar with the East 11th Avenue Extension, was aware based upon his experience as a police officer, that the area is called "Cow's Hill" and is known as a place for discarding firearms. ST, pp. 15-18.

After Defendant consented to a search of his person and vehicle, which yielded no evidence, he was released. Officer Caterino and Lt. Steele continued onto the area where shots were fired; 19th and McClure Street. Video surveillance of the shooting was obtained from Hruska Plumbing, near the crime scene and Officer Caterino and Detective Mayer watched it. Officer Caterino immediately told Detective Mayer that he and Lt. Steele had just recently stopped the Defendant in a vehicle that looked just like the car in the video and he described what took place at the initial traffic stop. ST, pp.19-20.

Officer Caterino further informed the detective that the vehicle had a distinctive grayish stripe going horizontally across the car and it had a ragtop roof. ST, pp. 20-21. Additionally, he noted that when the vehicle in the video left the scene, it made a right and headed in the direction of Cow's Hill and the 11th Avenue Extension. ST, pp. 22 & 31.

Using the totality of the circumstances test, Detective Mayer, as a twelve year police veteran, had more than ample reasonable suspicion as well as probable cause to arrest the Defendant during a BOLO traffic stop later the morning of November 4, 2013. As such, the Suppression Court correctly found probable cause existed for the Defendant's arrest. The Suppression Court's ruling on this matter should be affirmed.

The third alleged error is that while the Suppression Court properly found that the evidence obtained during the search of the interior of Defendant's car must be suppressed because Defendant did not give a valid consent to search, it nevertheless erred when it made the contradictory finding that evidence obtained as a result of observations of the car's exterior following Defendant's arrest was admissible. This alleged error has no merit.

Because the Suppression Court found the detective had probable cause to arrest the Defendant, a valid traffic stop was conducted and Defendant was lawfully taken into custody.

However, because the Defendant has parked his car illegally in the middle of the street, it had to be towed after Defendant was removed from the scene. ST, p. 47. Detective Dolfi, a County Detective, remained at the scene with the vehicle awaiting the tow

truck's arrival. As he walked around the vehicle, and observed some red droplets that appeared to be blood on the driver's side rear quarter panel and bumper. ST, pp.80-81.

The Suppression Court properly ordered that the evidence obtained from the observations of the exterior of the vehicle was admissible as Defendant had no expectation of privacy related to the exterior of the vehicle. *See, Commonwealth v. Grabowski*, 306 Pa. Super. 483, 452 A.2d 827 (1982).

Fourth, Defendant alleges that while the Suppression Court properly suppressed all of Defendant's statements to the police on November 4, 2013, after his arrest, it erred when it found that all the evidence derived from those statements was admissible. This allegation has no credibility.

The leading case in the area of derivative evidence is *United States v. Patane*, 542 U.S. 630, 124 S. Ct. 2620 (2004), wherein the United States Supreme Court ruled that the failure to give Miranda warnings does not necessitate the suppression of physical evidence obtained as a result of Defendant's statement.

In *Patane*, the defendant was unlawfully interrogated when the detective asked him about a gun. At first, defendant expressed an unwillingness to discuss the gun, but later told the police the gun was hidden in his bedroom. The Court ruled that despite the illegality of the statement, the physical evidence obtained (the gun) was admissible because the admission did not implicate the Self-Incrimination Clause. The Court went on to explain as follows:

Thus, the police do not violate a suspect's constitutional rights (or even the *Miranda* rule) by negligent or even deliberate failures to provide full *Miranda* warnings. Potential violations occur, if at all, only upon the admission of unwarned statements into evidence. And, at that point, the exclusion of such statements is a complete and sufficient remedy for any perceived *Miranda* violation. Unlike actual violations of the Self-Incrimination Clause, there is, with respect to mere failures to warn, nothing to deter and therefore no reason to apply *Wong Sun's* "fruit of the poisonous tree" doctrine.

Patane, *Id.* at 2626.

The holding in *Patane* was adopted by the Pennsylvania Superior Court in *Commonwealth v. Abbas*, with the Superior Court holding that the "fruit of the poisonous tree" doctrine does not apply to non-testimonial or derivative physical evidence absent an actual coerced statement. *Commonwealth v. Abbas*, 862 A.2d 606, 611 (Pa. Super. 2004). In *Abbas*, the Court found that suppressing only the defendant's statement was a "complete and sufficient remedy" for the *Miranda* rights violation. *Id.*

In the case at hand, it is quite apparent the Defendant was in custody at the time he gave his statement. The Suppression Court found, as well as the Commonwealth conceded that prior to Detective Mayer asking the Defendant "What did you do yesterday?", he should have given the Defendant his *Miranda* warnings. ST, pp. 49-50. However, Defendant gave a detailed account of his activities the prior evening, including trips to Pearl's Bar and the Trapper's Club with the victim, Mr. Fields. ST, pp. 51-52. Thereafter, the detectives obtained surveillance videos from Pearl's Bar and the Trapper's Club, as well as a statement from the owner of Pearl's Bar, Charles Thomas.

At that point in time, Detective Mayer read and provided Defendant with a copy of his *Miranda* rights. Defendant then responded he understood his rights and did not wish to speak anymore. Detective Mayer then informed Defendant they obtained video from Hruska Plumbing and, in response, Defendant put his head down on the table. ST, pp. 52-53.

Finally, Defendant's alleged error has no merit. The Suppression Court correctly found that: (1) all of Defendant's statements should be suppressed; and (2) all of the evidence derived from those statements should be admitted pursuant to *Patane and Abbas*, *supra*.

Items five and six address actions by the Suppression Court. The fifth allegation is the Suppression Court erred when it failed to grant Defendant's Motion to Reconsider its position on probable cause. This issue is without merit. The existence of probable cause to arrest the Defendant is addressed by the Suppression Court fully responding to Defendant's second error complained of on appeal and need not be addressed any further.

The sixth contention is that the Suppression Court erred when it failed to grant Mr. William's request to reopen the record to admit and have the Suppression Court view the shooting video. While the Suppression Court erred in not reopening the record, admitting and reviewing the shooting video, the error was remedied. The Trial Court, Judge Ignelzi, admitted and viewed the video in ruling upon Defendant's Motion to Review and/or Reconsider the Suppression Court's ruling. MT, pp. 7-8.

The seventh statement of error alleges the Trial Court erred when it failed to Review and/or Reconsider the Suppression Court's rulings. First and foremost, as was previously stated, the Superior Court has held that a Suppression Court's factual findings are binding and may only be reversed "if the legal conclusions drawn therefrom are erroneous." *Rosas, supra* at 346.

Second, the leading case on the Doctrine of Coordinate Jurisdiction is *Commonwealth v. Starr*, 664 A.2d 1326 (Pa. 1995), where in the Pennsylvania Supreme Court stated, in pertinent part:

Among the related but distinct rules which make up the law of the case doctrine are that:(3) upon transfer of a matter between trial judges of coordinate jurisdiction, the transferee trial court may not alter the resolution of a legal question previously decided by the transferor trial court.

Departure from the law of the case doctrine or the coordinate jurisdiction rule is allowed only under exceptional circumstances, such as where there has been a change in the controlling law, a *substantial* change in the facts or evidence, or where the prior holding was clearly erroneous and would create a manifest injustice if followed. *Starr, supra*.

None of the above-referenced exceptions apply to the present case and Defendant's allegation of error is without credence. The Suppression Court's ruling was consistent with and supported by the law regarding probable cause. Judge Ignelzi properly concluded the Suppression Court's ruling could not be altered under the doctrine of coordinate jurisdiction. Judge Ignelzi did not err in failing to reverse the Suppression Court's rulings. Judge Ignelzi reached this conclusion after a full-blown hearing on September 2, 2015 to address the issue. This allegation has no merit.

Judge Ignelzi stated at the September 2, 2015 hearing that its understanding of the issue before it is as follows: "Can the Court reconsider the Defendant's Motion to Suppress in light of the law of the case doctrine?" MT, p.3. Judge Ignelzi further explained he understands that "departure from the rules of the law of the case is only allowed in exceptional circumstances such as where there has been a change in the controlling law, a substantial change in the facts or evidence giving rise to the dispute in the matter, or where the holding was clearly erroneous and would create a manifest injustice if followed." MT, pp. 3-4.

Thereafter, Judge Ignelzi informed all parties that it thoroughly reviewed the Suppression Transcript and the DVD (video of the shooting). MT, p. 9. Judge Ignelzi also offered to play the video during the Hearing. MT, p. 8. Both counsel for the Commonwealth as well as Defendant's counsel stated it was not necessary to replay the video in the Hearing. MT, pp. 8-9. Upon its review, this Court found certain critical facts: (1) there is no question the shooting occurred at the rear of the vehicle; (2) there is no question that the vehicle had a metal strip on the side that was shiny and quite distinctive in the video; (3) Officer Caterino's testimony at the Suppression Hearing shows he relied upon that unique metal strip in the video and, because of that he was able to say it appears to be the same vehicle he stopped within minutes of the shooting and within the locale of the crime; (4) Detective Maher, when questioned by Mr. Avetta, as to whether Officer Caterino provided him with any information as they were viewing the video, responded that yes, as we viewed the video, Officer Caterino immediately responded that was the vehicle he stopped with the Defendant, Mr. Williams, a little while ago. This Court found that Officer Caterino did not have a hint of doubt. MT, pp. 9-11 & 17.

Finally, Judge Ignelzi found there was sufficient probable cause to arrest Mr. Williams, MT, p. 21, and DENIED defense's Motion, MT, p. 23. Judge Todd's ruling will remain the law of the case. No error of law was committed by Judge Ignelzi as Defendant received a fair and impartial hearing.

II

The eighth alleged error is that the Trial Court erred in failing to *sua sponte* grant a mistrial when both Defense Counsel and Counsel for the Commonwealth, through witness examinations, violated the Suppression Court's Order suppressing items found inside Defendant's car.

The Trial Court underwent a thorough discussion, on the record, with Mr. Avetta and Mr. Karsh regarding the suppressed evidence from the interior of the vehicle. *See*, TT, pp.503-533. Of utmost importance is the fact that near the end of the discussion Mr. Karsh stated that he needed to discuss the situation with the Defendant to decide how they want to proceed. TT, p. 523. Mr. Karsh returned to the bench and informed the judge the Defendant preferred to proceed without a cautionary instruction to the jury or striking the evidence. TT, p.525. Counsel for the Defendant "opened the door by asking questions about those water bottles" found inside the vehicle, he cannot now complain the trial court erred in not granting a mistrial. Additionally, none of the experts called to testify made any findings with regard to those water bottles. Any mention of them was, therefore, harmless.

Assuming *arguendo* the evidence should have been stricken, this Court avers it was harmless error. The properly admitted evidence of Defendant's guilt was so overwhelming and the prejudicial effect of the error was so insignificant that it could not have contributed to the error. *See, Commonwealth v. Story*, 383 A.2d 155, 166 (Pa. 1978).

III

Issues 9-11 are all jury-related and will be analyzed by the Trial Court.

Issue nine is whether the trial court erred in failing to grant Defendant's request to strike juror #3 when that juror observed Defendant walking down a courthouse hallway surrounded by seven or eight people, including a uniformed sheriff. This issue lacks merit.

The Pennsylvania Supreme Court has held that "mere accidental observation of a defendant in handcuffs outside a courtroom by a juror does not, without more, require the granting of a mistrial." *Commonwealth v. Evans*, 348 A.2d 92, 94 (Pa. 1975). However, the Court has also held that a cautionary instruction by the trial court in certain situations is appropriate. *Id.*

The *voir dire* conducted by this Trial Court of juror #3 was sufficient to satisfy the standard set forth by the Pennsylvania Supreme Court. Juror #3 was brought into the courtroom and stated when he saw the defendant in the hallway, he noticed his yellow shirt because it was kind of distinctive. TT, p. 657. He further indicated he did not look at the Defendant very carefully and he had a crowd around him of 7-8 people. *Id.* The juror said "in fact, it didn't register that it was the Defendant until I was partway down...I did turn around and look, said, is that the guy, and I shouldn't get near him, so I just kept going." TT, p. 658. The Court asked him if he discussed this viewing of the Defendant with any other jurors, which he did not. *Id.* The juror remembered there was someone in a uniform with the Defendant but that did not cause him any concern. TT, pp. 662-663.

After further discussions with counsel, the Court called back juror #3 and cautioned him that if he remembers anything else concerning the Defendant from that day, he is to immediately notify the court staff and not to discuss it with the other jurors. TT, p. 672.

The Pennsylvania Supreme Court has held that "the scope of *voir dire* is in the discretion of the trial court", *Commonwealth v. Ellison*, 902 A.2d 419, 424 (Pa. 2006), and the judgment of the trial court regarding the impartiality of jurors "is necessarily accorded great weight." *Commonwealth v. Bachert*, 453 A.2d 931, 937 (Pa. 1982). This Court is satisfied that its cautionary instruction was sufficient and no error of law was committed by letting juror #3 remain on the panel.

Issue ten is whether the Trial Court erred in failing to *sua sponte* strike all members of the jury selected on March 30, 2016, since a potential juror disclosed that she and other female members of the jury pool noticed Defense Counsel rolling his eyes at a female ADA.

As a general rule, the test for determining whether a prospective juror is disqualified is "whether he or she is willing and able to eliminate the influence of any scruples and render a verdict according to the evidence, and this is to be determined on the basis of answers to questions and demeanor." *Commonwealth v. Colson*, 490 A.2d 811, 818 (Pa. 1985). Further, "[t]he decision on whether to disqualify is within the discretion of the trial court and will not be reversed in the absence of a palpable abuse of discretion." *Commonwealth v. Koehler*, 737 A.2d 225, 238 (Pa. 1999).

The prospective juror in question was dismissed after she informed counsel that what she viewed would be detrimental to the Defendant. TT, p. 38. Additionally, no other potential juror that day stated in their *voir dire* that they felt any animosity toward Defendant and his counsel. All potential jurors that day stated they could be fair and impartial. TT, p. 40. As the potential juror in conflict was dismissed, she did not contaminate the jury in any way with potential bias. This alleged error lacks credibility and this Court's ruling to not strike any juror selected on March 30, 2016 should be upheld.

Issue 11 is whether the trial court erred in failing to take corrective measures to ensure that the jury pool was not tainted due to the potential juror's disclosure of her negative view of Defense Counsel.

"It is axiomatic in this [state] since *Dilliplaine v. Lehigh Valley Trust Co.*, 322 A.2d 114 (Pa. 1974) and its progeny that one must object to errors, improprieties or irregularities at the earliest stage of the criminal or civil adjudicatory process, to afford the jurist

hearing the case the first occasion to remedy the wrong and possibly avoid an unnecessary appeal to complain of the matter.” *Commonwealth v. English*, 667 A.2d 1123, 1126 (Pa. Super. 1995), *aff’d*, 699 A.2d 710 (Pa. 1997).

Finally, in *English, supra*, as in the case at hand, the Court found that the defendant had made the choice to forego inquiry into jury taint and thus could not resurrect the issue in either post-sentence or appellate format. *Id.* Since Defense Counsel did not press the issue of jury taint in any significant way, he should not be allowed to bring up the issue on appeal and this Court’s ruling not to strike any jurors should be upheld.

IV

The twelfth and final issue is whether the evidence was sufficient as a matter of law to establish beyond a reasonable doubt, the Defendant’s identity as the perpetrator of the crimes of First Degree Murder and Carrying a Firearm without a License. This issue is without merit as this Court finds the evidence against the Defendant to be overwhelming.

The well-settled test for determining whether evidence is sufficient to sustain a criminal conviction is:

whether accepting as true all of the evidence of the Commonwealth, be it direct or circumstantial, and all reasonable inferences arising therefrom upon which, if believed, the trier of fact could properly have based the verdict, it is sufficient in law to prove beyond a reasonable doubt that the defendant is guilty of the crime or crimes of which he has been convicted.

Commonwealth v. Enders, 595 A.2d 600, 603 (Pa. Super. 1991).

The facts and circumstances established by the Commonwealth “need not be absolutely incompatible with [the] defendant’s innocence, but the question of any doubt is for the jury 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. Sullivan*, 371 A.2d 468, 478 (Pa. 1977).

There is no requirement that a homicide, including First Degree Murder, be proven by positive eyewitness testimony. *See, Commonwealth v. Crowson*, 412 A.2d 1363, 1365 (Pa. 1979)(circumstantial evidence may be sufficient to prove any element, or all elements of a crime). This case encompassed compelling circumstantial evidence.

First, on November 4, 2013, while Officer Caterino and Lt. Steele were responding to a call for shots fired, they observed a dark colored vehicle traveling at a high rate of speed and then failing to stop at a stop sign at McClure and 11th Avenue. ST, pp. 8-10. The officers initiated a traffic stop and, Defendant, who was known to Officer Caterino, was the sole occupant of the black Ford 500. Although it was a cold night, Defendant was sweating profusely and was “fidgety” in his seat. He was wearing a red sweatshirt and and gray pants. ST, pp. 11-12. Lt. Steele asked the Defendant where he was coming from and he responded the Trapper’s Club. ST, p. 13. After Defendant was searched, he was released and the officers proceeded to the site of the shooting.

Officer Caterino indicated he was familiar with the East 11th Avenue Extension and noted the area in which Defendant had just passed was known as Cow’s Hill: an area known, through Officer Caterino’s experience, for discarding guns. ST, pp. 15-18. Officer Caterino was also suspicious of Defendant’s statement that he was at the Trapper’s Club and heading to his home on 13th Street due to the fact the Eat 11th Avenue Extension is not accessible if the Defendant traveled across the Rankin Bridge to his home, which is the quickest route. ST, pp. 35-36.

Second, at the scene of the shooting, video surveillance was obtained from a local business. The vehicle in the video from which the actor and victim exited immediately before the shooting was a black sedan with a distinguishing stripe on the side and a landau roof. This vehicle matched the appearance of the vehicle Defendant was driving earlier when stopped by the officers at 3:30 am. Upon viewing the vehicle in the video, Officer Caterino immediately informed Detective Mayer that he stopped Defendant in a vehicle shortly after the call for shots fired, near the scene of the shooting, and Defendant was driving a vehicle that looked identical to that shown in the video. ST, pp.19-20.

Third, based upon this information, a BOLO was issued for the Defendant. At approximately 7:00 am, upon leaving the scene, Detective Mayer encountered Defendant’s vehicle, he was stopped, removed from the vehicle and placed under arrest. ST, pp. 42-44. Defendant was then transported to the Allegheny County Police Headquarters where he was placed in a locked interview room. ST, pp. 47-49. Detective Dolfi of the Allegheny County Police, secured Defendant’s vehicle at the scene and waited for it to be towed away. While there, Detective Dolfi observed on the exterior of the vehicle red droplets on the rear bumper and driver’s side quarter panel. Detective Dolfi, who had viewed the video of the shooting, noted the droplets were in an area where the victim fell behind the car. ST, pp. 80-81.

Fourth, the Defendant informed the detectives that the prior evening, he and the victim had gone to a private party at Pearl’s Bar; the King’s Club in Braddock; and the Trapper’s Club. ST, pp .51-52. Charles Thomas, the owner of Pearl’s, viewed the video from his establishment on the night in question and observed the Defendant and victim at his bar. TT, p. 212. He noted the Defendant was wearing a red shirt with an emblem on it and the victim wore a baseball cap and coat. TT, p.215.

Fifth, Detective Mayer performed a GSR kit on the Defendant. TT, p.370. He also obtained his clothing, which included a red sweatshirt. TT, pp. 372-373. Detective Dolfi requested information from the State Police and was informed that Defendant did not possess a license to carry a firearm. TT, pp. 373-374.

Sixth, Daniel Wolfe of the Allegheny County Medical Examiner’s analyzed The GSR kit obtained from the Defendant as well as the red sweatshirt. He found gunshot residue on Defendant’s left palm and on the right cuff and sleeve of the sweatshirt. TT, pp. 420-423.

Seventh, Anita Lorenz, an expert in the field of forensic biology, specifically DNA latent prints, testified for the Commonwealth. She performed an analysis of a possible stain from the rear bumper of the Ford 500 and it matched the DNA profile obtained from the whole blood patch of the victim, Mr. Fields. She also analyzed a possible bloodstain from the driver’s side rear fender and it likewise matched the DNA profile of Mr. Fields.

The overwhelming evidence in support of Defendant’s conviction for First Degree Murder, as stated above, include: the video of the shooting; the video of the black Ford 500; Detective Caterino’s traffic stop and subsequent suspicions; the gunshot residue on the Defendant’s hand and sweatshirt; the blood stains on the rear portions of the vehicle that matched the DNA of Mr. Fields; and the videos from the clubs that put Defendant with the victim that night.

The only evidence needed on the firearms charge was that Defendant did not possess a license to carry a firearm. He has no

such license, and the video showed Defendant shooting the gun at Mr. Fields.

Thus, the Commonwealth presented sufficient evidence as a matter of law identifying Defendant as the person who committed the crimes charged.

CONCLUSION

Based on the foregoing, the judgment of sentence imposed by this Court should be affirmed.

BY THE COURT:
/s/Ignelzi, J. and Todd, J.

Dated: August 9, 2017