**[J-170-2003]**
**IN THE SUPREME COURT OF PENNSYLVANIA**
**EASTERN DISTRICT**

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| COMMONWEALTH OF PENNSYLVANIA, | : | No. 402 CAP |
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| Appellee | : | Appeal from the Judgment of Sentence |
| | : | entered on January 27, 2003 in the Court |
| | : | of Common Pleas of Monroe County |
| V. | : | |
| | : | |
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| MANUEL SEPULVEDA, | : | ARGUED: December 4, 2003 |
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| Appellant | : | |
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## CONCURRING OPINION

**MR. CHIEF JUSTICE CAPPY** **DECIDED: August 19, 2004**

Appellant asserts that the statements elicited without benefit of his constitutional rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966) should have been suppressed. Insofar as the majority disposes of this claim under federal law, I am compelled to join as I recognize that New York v. Quarles, 467 U.S. 649 (1984), requires that result. Although Appellant makes a perfunctory statement that this claim is raised under the Pennsylvania Constitution, beyond that boilerplate assertion he offers no independent argument under our state constitution. Accordingly, the question of the viability of Quarles, and the public safety exception to the right against self-incrimination, under our state constitution is left for another day.

Additionally, I note my disagreement with the majority's depiction of this claim as one being considered under a prejudice analysis. (Majority slip opinion at p.8). As the assertion of error presents a claim of trial error, I believe that it is subject to a harmless error analysis. Commonwealth v. Howard, 645 A.2d 1300, 1307 (Pa. 1994) (discussing the difference between a harmless error analysis and a prejudice analysis); see also Commonwealth v. Baez, 720 A.2d 711, 720 (Pa. 1998) (denial of pre-trial motion to suppress subject to harmless error analysis). However, as I agree with the majority that there is no error, any discussion of the standard for assessing the consequences of that error is unnecessary.

In all other respects I join the lead opinion.