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

COMMONWEALTH OF PENNYSLVANIA,	:	No. 402 CAP
	:	
Appellee	:	
	:	Appeal from the Judgment of Sentence
	:	entered on 11/25/02 in the Court of
v.	:	Common Pleas of Monroe County at No.
	:	1522 CR 2001
	:	
MANUEL MARCUS SEPULVEDA,	:	
	:	
Appellant	:	ARGUED: December 4, 2003

DISSENTING OPINION

MR. JUSTICE SAYLOR **DECIDED: August 19, 2004**

Recently, I supported the abandonment of the Court's former, prophylactic, bright-line six-hour rule constraining custodial, police interrogation in the absence of prompt arraignment, because I believed that the pattern of continually expanding and evolving exceptions engrafted onto the rule had left it in such an impaired condition that it had the potential to do more harm than good. See Commonwealth v. Perez, ___ Pa. ___, ___, 845 A.2d 779, 792-93 (2004) (Saylor, J., concurring and dissenting); accord Commonwealth v. Bridges, 563 Pa. 1, 47, 757 A.2d 859, 883 (2000) (Saylor, J., concurring) (expressing the view that "continuation of a rule so readily capable of avoidance as to function as no rule at all . . . carries with it the potential for diminishing respect for the courts' authority in the eyes of those subject to their lawful mandates"). I also took the position, however, that the change should be implemented prospectively, as this approach would best serve the orderly administration of justice and maintain

essential fairness. See Perez, ___ Pa. at ___, 845 A.2d at 792 (Saylor, J., concurring and dissenting).

A substantial disadvantage of the Perez Court's decision retroactively to replace the Davenport/Duncan six-hour rule with a totality-of-the-circumstances approach is made apparent by this case. The focus of the parties' efforts below was on developing a record concerning the six-hour rule that represented the prevailing law of the Commonwealth as of the time of the interrogation at issue.[1] Thus, there does not appear to have been a directed attempt to build a full and complete record regarding this issue of the knowing, voluntary, and intelligent character of Appellant's statements, which Perez has retrospectively converted into the exclusive inquiry of the case, or any decision on the part of the trial court pertaining to the now-central question. Furthermore, the majority's present effort to perform the necessary assessment for the first time on appellate review on the cold and at least potentially incomplete record before it is inconsistent with its own pronouncements concerning the character of its appellate function.[2]

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[1] Although Appellant could have presented a totality approach as an alternative basis for his claim, he certainly was entitled to style his claim according to other prevailing law as established by this Court, i.e., the Davenport/Duncan six-hour rule.

[2] See, e.g., Commonwealth v. Jackson, 464 Pa. 292, 297-98, 346 A.2d 746, 748 (1975) ("The record before us contains no findings of fact or conclusions of law, only a statement of the suppression court's conclusion that there was no coercion[;] . . . [t]his court does not in the first instance make findings of fact and conclusions of law."); accord Commonwealth v. Grundza, 819 A.2d 66, 68 (Pa.Super.), appeal denied, 574 Pa. 764, 832 A.2d 435 (2003) (same); cf. Thompson v. City of Philadelphia, 507 Pa. 592, 599, 493 A.2d 669, 672-73 (1985) ("An appellate court by its nature stands on a different plane than a trial court. Whereas a trial court's decision to grant or deny a new trial is aided by an on-the-scene evaluation of the evidence, an appellate court's review rests solely upon a cold record. Because of this disparity in vantage points an appellate court is not empowered to merely substitute its opinion concerning the weight of the evidence for that of the trial judge."). Notably, the Court has recently based substantial (continued . . .)

Although I recognize that I am bound by Perez in terms of the retroactive elimination of the Davenport/Duncan six-hour rule, I would defer the present matter, in the first instance, to the post-conviction setting. There, at least the parties may be afforded the opportunity to complete the record concerning the totality of the circumstances surrounding Appellant's interrogation, and the necessary fact finding can be accomplished in a more appropriate forum.

(...continued)
alterations to the review process on the distinction between the roles of appellate versus original jurisdiction courts in terms of their respective abilities relative to fact finding. See, e.g., Commonwealth v. Grant, 572 Pa. 48, 66, 813 A.2d 726, 737 (2002); see also Commonwealth v. Freeman, 573 Pa. 532, 543-44, 827 A.2d 385, 392 (2003)