

[J-116-1998]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 179 M.D. Appeal Docket 1997
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court dated June 18, 1997, at No. 2429
	:	Philadelphia 1996, affirming the Judgment
v.	:	of Sentence of the Court of Common
	:	Pleas of Lancaster County, Criminal
	:	Division, dated June 28, 1996, at No.
FREDERICK W. PETROLL,	:	2616-1995
	:	
Appellant	:	696 A.2d 817 (Pa. Super. 1997)
	:	
	:	
	:	ARGUED: April 30, 1998

DISSENTING OPINION

MR. JUSTICE ZAPPALA

DECIDED: JULY 22, 1999

Harmless error can only be found where the appellate court is convinced beyond a reasonable doubt that “the properly admitted and uncontradicted evidence of guilt was so overwhelming and the prejudicial effect of the error was so insignificant by comparison that the error could not have contributed to the guilty verdict.” Commonwealth v. Hawkins, 701 A.2d 492, 507 (Pa. 1997) (emphasis added). The majority misapplies this analysis. The majority concedes that “the Appellant rebutted the Commonwealth’s evidence,” slip opinion at 19, but fails to explain how its conclusion that the jury would have found the Appellant guilty even without the improperly admitted evidence is drawn from the “properly admitted and uncontradicted evidence of guilt.”

The Commonwealth made extensive use of the logbook and the contents of the bags, along with expert testimony interpreting the information contained therein. In closing, the prosecutor argued at length that the jury should infer from this evidence that the Appellant was fatigued from failing to rest for the required periods between trips. Based on my examination of the record, I cannot agree with the majority's conclusion that the error in admitting the improperly seized bags and logbook was harmless beyond a reasonable doubt. Accordingly, I would reverse the judgment of sentence and remand for a new trial.