NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. CHRISTOPHER ANTHONY BARRETT Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1201 MDA 2015

Appeal from the Judgment of Sentence February 18, 2015
In the Court of Common Pleas of Lebanon County
Criminal Division at No(s): CP-38-CR-0000762-2014

BEFORE: PANELLA, J., MUNDY, J., and STEVENS, P.J.E.*

MEMORANDUM BY MUNDY, J.: **FILED FEBRUARY 01, 2016**

Appellant, Christopher Anthony Barrett, appeals from the February 18, 2015 aggregate judgment of sentence of 14 to 48 months' imprisonment, imposed after he was found guilty of one count each of possession with intent to deliver (PWID), intentional possession of a controlled substance, possession of drug paraphernalia, and resisting arrest.[1] After careful review, we affirm.

The trial court summarized the relevant factual background of this case as follows.

> On March 11, 2014, Detective Ryan Michael Mong and Detective William Walton were working as part of a Drug Task Force Operation. During this

[1] 35 P.S. § 780-113(a)(30), (a)(16), (a)(32), and 18 Pa.C.S.A. § 5104, respectively.

*Former Justice specially assigned to the Superior Court.

operation, they arrested James Larnerd after he exited a residence located at 510 Guilford Street in the City of Lebanon. After the arrest of James Larnerd, both Detectives knocked on the door of the residence in order to secure the residence to obtain a search warrant. When Christopher Selbey … greeted them at the door, they asked if they could enter the residence. Selbey agreed to let them in.

Upon entry to the 510 Guilford Street residence, Detective Mong and Detective Walton heard a noise upstairs. They questioned Selbey as to whether anyone else was in the house. Selbey indicated that [Appellant], also known as "Dutch," was also in the house.

As both Detectives were exiting the kitchen area, they saw [Appellant] as he was coming down the stairs. [Appellant] asked the Detectives what was going on. The Detectives informed [Appellant] that they were conducting a drug investigation. [Appellant] proceeded to tell police that he just stopped at the residence to use the bathroom.

[Appellant] then asked the Detectives if he was allowed to leave. They explained to him that he was under investigative detention and that neither he nor anyone present in the residence would be permitted to leave the residence while a search warrant was being obtained. They explained to [Appellant] that the search warrant was needed in order to secure the residence and to prevent any evidence from leaving the residence by individuals who could have something concealed on their person. They further indicated to [Appellant] that if he consented to them searching him and if they located nothing, he would be permitted to leave.

During Det. Mong's conversation with [Appellant], Det. Walton performed a pat-down search on [Appellant] to ensure that he did not have any weapons on him. This pat-down search was conducted on the outside of [Appellant]'s clothing. Since they did not have a search warrant at this

point in time, Det. Walton was unable to do a full search of [Appellant]. Because [Appellant] was very fidgety during the pat-down, Det. Walton explained to [Appellant] that he needed to hold still so that he could conduct the pat-down search. Once the pat-down search was completed, Det. Walton went to speak with Selbey and gather information from him.

Selbey told Det. Walton that before police arrived, he saw [Appellant] with crack cocaine. He stated that [Appellant] knew that he was a user of crack cocaine. He further stated that [Appellant] waved the bag of crack cocaine in front of him to basically entice him. Selbey told Detectives that he was not using drugs as he had just awoken when they arrived.

While Det. Mong was attempting to obtain biographical information from [Appellant], [Appellant] stood up and proceeded to run up the stairs to the second floor area of the residence. Because [Appellant] was under investigative detention, and because his running up the stairs interfered with the Detectives' ability to secure the residence, Det. Mong followed [Appellant]. Det. Mong grabbed the back of [Appellant]'s shirt. [Appellant] dragged Det. Mong up three or four steps before Det. Mong could gain his footing. At the top of the stairs, Det. Mong wrapped his arms around [Appellant]'s torso area but could not gain control of him. A struggle ensued and eventually they ran into a wall, causing Det. Mong to fall to the ground. Det. Mong told [Appellant] to stop resisting. During this altercation, Det. Walton heard loud banging. Because he did not know where the noise was coming from, he went into the kitchen but found no one there. He then made his way to the stairs and proceeded up the steps where he saw Det. Mong and [Appellant] on the floor next to the wall. They were engaged in a struggle and he saw [Appellant] swinging his arms at Det. Mong. Det. Mong and Det. Walton subdued the physically larger [Appellant]. [Appellant] was then placed in handcuffs.

> As [Appellant] was subdued, Det. Mong described himself as surprised, out of breath, and feeling pain in both his hand and his ankle. He blurted out to [Appellant], "[w]hy did you do that?" Although he did not expect a response, [Appellant] replied, "[t]here is something in my pocket." Det. Mong then conducted a pat-down search of [Appellant]. [Appellant] was uncooperative and rolling back and forth. The Detectives asked [Appellant] for the contraband and he stated that he was only joking and that he did not have anything on him. The Detectives proceeded to stand [Appellant] up, at which time they conducted a search of his person. During the search, [in Appellant]'s right front pocket, they found a sandwich bag containing approximately 10 smaller bags of crack cocaine.

Trial Court Opinion, 6/15/15, at 2-5 (internal citations and capitalization omitted).

On May 19, 2014, the Commonwealth filed an information, charging Appellant with the above-mentioned offenses. Appellant proceeded to a jury trial, at the conclusion of which the jury found Appellant guilty of all charges. On February 18, 2015, the trial court imposed an aggregate sentence of 14 to 48 months' imprisonment.[2] Appellant filed a timely post-sentence motion

[2] Specifically, the trial court sentenced Appellant to 10 to 24 months' for PWID, 4 to 24 months' for resisting arrest, and 1 to 12 months' for possession of drug paraphernalia. The trial court imposed no penalty on the intentional possession charge. The PWID and resisting arrest sentences were to run consecutively to each other, but the drug paraphernalia sentence was to run concurrently to the PWID sentence.

on February 27, 2015, which the trial court denied on June 15, 2015. On July 6, 2015, Appellant filed a timely notice of appeal.[3]

On appeal, Appellant raises the following seven issues for our review.

> A. Did the trial court err by finding that the statements allegedly made by [Appellant], including that he had something in his pocket and that he was just joking and he didn't have anything, should not be suppressed pursuant to Article I, Section 9 of the Pennsylvania Constitution and the Fifth and Fourteenth Amendments of the United States Constitution due to the fact that [Appellant] was subjected to a custodial interrogation by the Detectives without being Mirandized?
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> B. Did the trial court err by finding that Mr. Barrett's alleged statements to the Detectives were in response to "rhetorical questions" made by the detectives?
>
> C. Did the trial court err by permitting the crack cocaine into evidence pursuant to Article I, Section 8 of the Pennsylvania Constitution and the Fourth and Fourteenth Amendments of the United States Constitution because the crack cocaine was fruit of the poisonous tree?
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> D. Did the trial court err by permitting the crack cocaine into evidence pursuant to Article I, Section 8 of the Pennsylvania Constitution and the Fourth and Fourteenth Amendments of the United States Constitution because [Appellant] was subjected to a warrantless search that lacked exigency?

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[3] Appellant and the trial court have complied with Pennsylvania Rule of Appellate Procedure 1925.

> E. Did the trial court err by finding that the inevitable discovery doctrine would permit the admission of the crack cocaine since the Detectives engaged in willful misconduct?
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> F. Did the trial court err by not finding that the jury's verdict on the possession with intent to deliver charge was against the weight of the evidence in that the jury improperly weighted the testimony of both Christopher Selby [sic] and the Detectives, thereby necessitating a new trial?
>
> G. Did the trial court err by finding that the Commonwealth presented sufficient evidence to sustain [Appellant]'s [PWID] charge … thereby necessitating a judgment of acquittal on said charge?

Appellant's Brief at 5-7.

We elect to address Appellant's issues in reverse order for ease of appellate review and analysis. ***See generally Commonwealth v. Stokes***, 38 A.3d 846, 853 (Pa. Super. 2011) (stating, "a successful sufficiency of the evidence claim warrants discharge on the pertinent crime, [therefore,] we address those claims first[]"). In his seventh issue, Appellant avers that the Commonwealth presented insufficient evidence for PWID insofar that the Commonwealth did not show that Appellant possessed the requisite intent to deliver. Appellant's Brief at 52-53. The Commonwealth counters that the evidence, primarily through Detective Mong's expert testimony at trial, rendered the evidence sufficient. Commonwealth's Brief at 22-23.

We begin by noting our well-settled standard of review. "In reviewing the sufficiency of the evidence, we consider whether the evidence presented

at trial, and all reasonable inferences drawn therefrom, viewed in a light most favorable to the Commonwealth as the verdict winner, support the [finder of fact] verdict beyond a reasonable doubt." ***Commonwealth v. Patterson***, 91 A.3d 55, 66 (Pa. 2014) (citation omitted), *cert. denied*, ***Patterson v. Pennsylvania***, 135 S. Ct. 1400 (2015). "The Commonwealth can meet its burden by wholly circumstantial evidence and any doubt about the defendant's guilt is to be resolved by the fact finder 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. Watley***, 81 A.3d 108, 113 (Pa. Super. 2013) (*en banc*) (internal quotation marks and citation omitted), *appeal denied*, 95 A.3d 277 (Pa. 2014). As an appellate court, we must review "the entire record … and all evidence actually received[.]" ***Id.*** (internal quotation marks and citation omitted). "[T]he 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." ***Id.*** (citation omitted). "Because evidentiary sufficiency is a question of law, our standard of review is *de novo* and our scope of review is plenary." ***Commonwealth v. Diamond***, 83 A.3d 119, 126 (Pa. 2013) (citation omitted), *cert. denied,* ***Diamond v. Pennsylvania***, 135 S. Ct. 145 (2014).

In this case, the offense at issue is PWID, the statute governing said offense provides in relevant part, as follows.

> **§ 780-113. Prohibited acts; penalties**
>
> (a) The following acts and the causing thereof within the Commonwealth are hereby prohibited:
>
> …
>
> (30) Except as authorized by this act, the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, or knowingly creating, delivering or possessing with intent to deliver, a counterfeit controlled substance.
>
> …

35 P.S. § 780-113(a)(30). Regarding the intent to deliver element, this Court has explained that the jury may infer said intent from the following circumstances.

> "To establish the offense of possession of a controlled substance with intent to deliver, the Commonwealth must prove beyond a reasonable doubt that the defendant possessed a controlled substance with the intent to deliver it." [***Commonwealth v. Kirkland***, 831 A.2d 607, 611 (Pa. Super. 2003), *appeal denied*, 847 A.2d 1280 (Pa. 2004)] (*citing* ***Commonwealth v. Conaway***, 791 A.2d 359 (Pa. Super. 2002); ***Commonwealth v. Aguado***, 760 A.2d 1181 (Pa. Super. 2000)).
>
> > The trier of fact may infer that the defendant intended to deliver a controlled substance from an examination of the facts and circumstances surrounding the case. Factors to consider in determining whether the drugs were possessed with the intent to deliver include the particular method of packaging, the form of the drug, and the behavior of the defendant.

> ***Kirkland**, **supra*** at 611. "Thus, possession with intent to deliver can be inferred from the quantity of the drugs possessed and other surrounding circumstances, such as lack of paraphernalia for consumption." ***Commonwealth v. Torres**,* 617 A.2d 812, 814 (Pa. Super. 1992), *appeal denied,* 629 A.2d 1379 (Pa. 1993).

Commonwealth v. Jones, 874 A.2d 108, 121 (Pa. Super. 2005) (parallel citations omitted).

In this case, the Commonwealth presented the testimony of Selbey who testified that he was a crack cocaine user. N.T., 2/6/15, at 15. Selbey also testified that Appellant waived a bag of crack cocaine near his face in an effort to taunt him. ***Id.*** at 16. In addition, Detective Mong was permitted without objection to testify as an expert witness "in the area of [] drugs possessed for personal use versus drugs possessed for the intent to deliver." ***Id.*** at 33. Detective Mong testified in his expert opinion that Appellant possessed the crack cocaine at issue in this case with the intent to deliver. When the Commonwealth asked Detective Mong to explain how he arrived at his opinion, he elaborated as follows.

> Q. Why is that?
>
> A. There are several factors: Specifically, how the drugs were packaged; they're packaged in a larger sandwich bag which contains 10 individual Ziploc baggies of crack cocaine. That is not common for a drug user to possess that amount. They would typically only possess one or two bags at a time because they don't have money to purchase large amounts of narcotics.

There was no ingestation paraphernalia located on [Appellant] at the time of the arrest.

Q. Now the Baggies -- the 10 Baggies that were recovered, how much would each of those sell for on the street?

A. $20 to $40, sometimes more depending on what I observed from the narcotics recovered from [Appellant].

Q. Would it be fair to say the price would vary?

A. Yes.

…

Q. Now what would be the cost if [Appellant] had purchased those bags off the street the way they are packaged for any person?

A. Anywhere from 200 to 400 dollars.

Q. What about if the drugs were packaged in bulk?

A. He would have paid about 160 to 180, if it was in bulk.

Q. When someone is trafficking in drugs, do they typically purchase their substances in bulk?

A. They will purchase it in bulk and break it down for street delivery.

Q. Why?

A. Because they're going to make more money when they do that.

Q. Does purchasing it in bulk get them a better deal?

> A. They will get a better deal and then they will break it down and sell it for more money.
>
> Q. Are those the reasons why you are testifying these 10 bags were with the intent to deliver them?
>
> A. Absolutely they were possessed by [Appellant] with intent to deliver them.
>
> Absolutely.

Id. at 34-36.

In light of the above evidence, we conclude Appellant is not entitled to relief. The Commonwealth's evidence showed that Appellant possessed one larger plastic baggie containing ten smaller individual plastic baggies of crack cocaine. As Detective Mong explained, this is consistent with an intent to deliver. Furthermore, it is undisputed that Appellant did not possess any drug paraphernalia on his person which would indicate that the drugs were for personal consumption. Based on these considerations, we conclude the Commonwealth produced sufficient evidence of intent to sustain the PWID conviction. ***See Diamond***, ***supra***; ***Jones***, ***supra***.

In his sixth issue, Appellant avers that the jury's verdict for PWID was against the weight of the evidence. Appellant's Brief at 47. Specifically, Appellant argues the Commonwealth presented contradictions in its case in chief regarding Appellant's alleged intent to deliver. ***Id.*** at 49-51. The Commonwealth counters the jury weighed the evidence properly and Appellant's claim is meritless. Commonwealth's Brief at 24.

We begin by noting our standard of review regarding weight of the evidence issues. "A claim alleging the verdict was against the weight of the evidence is addressed to the discretion of the trial court." ***Commonwealth v. Landis***, 89 A.3d 694, 699 (Pa. Super. 2014) (citation omitted). An argument that the jury's verdict was against the weight of the evidence concedes that the evidence was sufficient to sustain the convictions. ***Commonwealth v. Lyons***, 79 A.3d 1053, 1067 (Pa. 2013), *cert. denied*, ***Lyons v. Pennsylvania***, 134 S. Ct. 1792 (2014). Our Supreme Court has admonished that "[a] new trial should not be granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion." ***Commonwealth v. Clay***, 64 A.3d 1049, 1055 (Pa. 2013) (citation omitted). Instead, "the trial judge is to determine that notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice." ***Id.*** (internal quotation marks and citation omitted). "[A] new trial should be awarded when the jury's verdict is so contrary to the evidence as to shock one's sense of justice …." ***Id.***

As an appellate court, it "is not [our role] to consider the underlying question of whether the verdict is against the weight of the evidence." ***Commonwealth v. Morales***, 91 A.3d 80, 91 (Pa. 2014) (citation omitted). An argument that the jury's verdict was against the weight of the evidence remains "[o]ne of the least assailable reasons for granting … a new trial …."

Id. (citation omitted). "Thus, only where the facts and inferences disclose a *palpable abuse of discretion* will the denial of a motion for a new trial based on the weight of the evidence be upset on appeal." ***Id.*** (citation omitted; emphasis in original).

In this case, Appellant highlights certain factors that weigh against the conclusion that he possessed the instant crack cocaine with an intent to deliver. Appellant notes that the total amount of crack cocaine was 1.6 grams and our cases have held that even 6.876 grams are considered a "relatively small amount" of crack cocaine. Appellant's Brief at 48, *quoting* ***Kirkland***, ***supra*** at 612; ***see also*** N.T., 2/6/15, at 37 (Detective Mong acknowledging that the weight of the crack cocaine found on Appellant was 1.6 grams). In addition, Appellant observes that Detective Mong acknowledged that it was possible that although Appellant did not possess drug paraphernalia for personal consumption when he was arrested, he may have said paraphernalia at home, as he lived at a different address. N.T., 2/6/15, at 36-37. Detective Mong also noted that Appellant did not have any currency on his person at the time of arrest. ***Id.*** at 40. Further, Detective Mong also testified that he had encountered users with 1.6 grams of crack cocaine for personal use, but not packaged in the manner Appellant's crack cocaine was in this case. ***Id.*** at 37-38. We also note that Appellant testified in his own defense that he was not aware that he was in possession of any drugs on March 11, 2014. ***Id.*** at 81, 85.

Our cases are emphatically clear that as "an appellate court [we] will not make [our] own assessment of the credibility of the evidence." ***Commonwealth v. Olsen***, 82 A.3d 1041, 1049 (Pa. Super. 2013) (citation omitted). "The jury sat as the finder of facts in this case[, and it] was in the best position to view the demeanor of the Commonwealth's witnesses and to assess each witness' credibility." ***Id.*** In this case, the jury was free to find the Commonwealth's witnesses' testimony credible, find Appellant's testimony not credible, and resolve any inconsistencies in the Commonwealth's favor. ***See generally Commonwealth v. Horne***, 89 A.3d 277, 286 (Pa. Super. 2014) (concluding the weight of the evidence claim could not prevail as "the jury resolved the inconsistencies among the testimonies as it saw fit and reached a verdict[]"), *appeal denied*, 102 A.3d 984 (Pa. 2014). The jury was presented with Detective Mong's and Selbey's testimony as well as Appellant's own testimony. The jury weighed all of the testimony and ultimately concluded that Detective Mong and Selbey were credible and Appellant was not credible. As an appellate court, we will not reweigh the evidence and substitute our judgment for that of the fact-finder. ***Olsen***, ***supra***; ***Commonwealth v. Serrano***, 61 A.3d 279, 289 (Pa. Super. 2013) (citation omitted). Based on these considerations, Appellant's weight claim does not warrant relief. ***See Morales***, ***supra***.

We elect to address Appellant's remaining five issues together, as they are interconnected. Appellant avers that the trial court erred in denying his

pre-trial motion to suppress the crack cocaine as well as his statements to police at the time of arrest. Specifically, Appellant avers that he was subjected to an illegal search of his person in violation of the Fourth Amendment, as well as a custodial interrogation without being given his ***Miranda***[4] warnings, in violation of his Fifth Amendment rights. Appellant's Brief at 18-35. Appellant further argues that the trial court erred in concluding that even if Appellant's constitutional rights were violated, the inevitable discovery doctrine applied and suppression would have been unwarranted in any event. ***Id.*** at 36-47. The Commonwealth counters that Appellant was subjected to a constitutional search incident to arrest, he was not subject to an interrogation by Detective Mong, and the trial court's application of the inevitable discovery doctrine was proper. Commonwealth's Brief at 10, 15, 17-18.

We begin by noting our well-settled standard of review.

> In addressing a challenge to a trial court's denial of a suppression motion, we are limited to determining whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Since the Commonwealth prevailed in the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as it remains uncontradicted when read in the context of the record as a whole. Where the record supports the factual findings of the trial court, we are bound by

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[4] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

> those facts and may reverse only if the legal conclusions drawn therefrom are in error.

Commonwealth v. Scarborough, 89 A.3d 679, 683 (Pa. Super. 2014) (citation omitted), *appeal denied*, 102 A.3d 985 (Pa. 2014).[5] Appellant first challenges the trial court's conclusion that his Fifth Amendment rights under ***Miranda*** were not violated. Specifically, Appellant challenges the trial court's conclusion that he was not interrogated when Detective Mong asked "why would you do that?" Appellant's Brief at 18, 23. Important to our disposition in the remainder of this appeal, Appellant does not challenge the custody prong of the ***Miranda*** analysis. Therefore, for the purposes of this case, we assume that Appellant was subject to a valid arrest at the time this occurred. ***See generally*** Appellant's Brief at 31.

The United States Supreme Court has explained the definition of interrogation.

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[5] Our Supreme Court has recently clarified our scope of review when considering a challenge to a trial court's suppression ruling as it relates to "the extent of the record that the appellate court consults when conducting that review." ***In re L.J.***, 79 A.3d 1073, 1080, (Pa. 2013). The Supreme Court held that such review is limited to the suppression hearing record, and "it is inappropriate to consider trial evidence as a matter of course, because it is simply not part of the suppression record, absent a finding that such evidence was unavailable during the suppression hearing." ***Id.*** at 1085. Because prior cases held that a reviewing court could consider the trial record in addition to the suppression record, our Supreme Court determined that the more limited scope announced in ***In re L.J.*** would apply prospectively to cases where the suppression hearing occurred after October 30, 2013. ***Id.*** at 1088-1089. Instantly, the subject suppression hearing was held on August 13, 2014. Accordingly, our scope of review is confined to the suppression hearing record.

> We conclude that the ***Miranda*** safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term "interrogation" under ***Miranda*** refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police. This focus reflects the fact that the ***Miranda*** safeguards were designed to vest a suspect in custody with an added measure of protection against coercive police practices, without regard to objective proof of the underlying intent of the police. A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation. But, since the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they *should have known* were reasonably likely to elicit an incriminating response.

Rhode Island v. Innis, 446 U.S. 291, 301-302 (1980) (footnotes omitted).

In this case, considering the totality of the circumstances, we conclude Appellant was not subject to an interrogation within the meaning of ***Miranda*** and ***Innis***. Here, it is uncontested that Detective Mong asked his question at the end of a scuffle, created by Appellant's run up the stairs, that caused Detective Mong to feel exasperated, tired, and out of breath after exerting much physical energy to gain control over Appellant. N.T., 8/13/14, at 26. When read in context, we agree with the trial court that Detective Mong's question is best read as sarcastic and rhetorical. Detective Mong testified

that he intended his question this way and expected no response from Appellant, much less an incriminating one. ***Id.*** at 19; ***see also, e.g.***, ***Commonwealth v. Jones***, 471 A.2d 879, 881 (Pa. Super. 1984) (concluding an officer's rhetorical question "why do you care" in response to Appellant's question of how the officer was feeling "cannot be characterized as custodial police interrogation by any stretch of the imagination[]"), *affirmed*, 493 A.2d 662 (Pa. 1985). This is consistent with the facts as the suppression record contains no evidence that the police had any reason to directly suspect Appellant of any criminal activity, especially since they did not expect him to be in the residence in the first place. N.T., 8/13/14, at 10. Based on these considerations, we agree with the trial court that Appellant was not subject to an interrogation and his Fifth Amendment rights were not violated.

Appellant next challenges the search of his person as a warrantless search conducted without exigent circumstances. Appellant's Brief at 32. However, as noted above, Appellant concedes that he was under arrest at the time, and he does not challenge the arrest as being unsupported by probable cause. ***Id.*** at 31. The Supreme Court has consistently held, as a bright-line rule, that a search of a suspect's person incident to arrest is *per se* reasonable under the Fourth Amendment. ***See Riley v. California***, 134 S. Ct. 2473, 2483-2484 (2014) (discussing that, pursuant to ***United States v. Robinson***, 414 U.S. 218 (1973), the police may search a defendant's

pockets incident to a lawful arrest because "a custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification[]") (citation omitted). As Appellant does not contest the validity of the arrest, the police were permitted to search Appellant's pocket and recover the drugs in question. ***See id.*** Therefore, Appellant's Fourth Amendment rights were not violated. As a result, the trial court correctly denied Appellant's motion to suppress.[6]

Based on the foregoing, we conclude all of Appellant's issues on appeal are devoid of merit. Accordingly, the trial court's February 18, 2015 judgment of sentence is affirmed.

Judgment of sentence affirmed.

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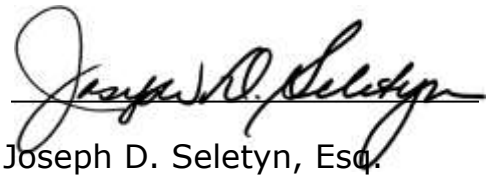
[6] In light of our disposition, we need not address the Commonwealth's circular argument that the search was valid because "[a]t the time [Appellant] was arrested, he was a prisoner under arrest for the offense of [r]esisting [a]rrest." Commonwealth's Brief at 10. We also express no opinion as to whether the inevitable discovery doctrine applies in this case. Additionally, to the extent our reasoning differs from that of the trial court, we note "[t]his [C]ourt may affirm [the lower court] for any reason, including such reasons not considered by the lower court." ***Commonwealth v. Clemens***, 66 A.3d 373, 381 n.6 (Pa. Super. 2013) (citation omitted).

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/1/2016