

**[J-256-98]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	98 M.D. Appeal Dkt. 1998
	:	
Appellee	:	Appeal from the Order of Superior Court
	:	entered December 31, 1997, at No. 248
	:	HBG 1997, affirming the judgment of
v.	:	sentence imposed February 13, 1997, in
	:	the Court of Common Pleas of Dauphin
	:	County, Criminal Division, at Nos. 3055,
GREGORY SPENCER COOK,	:	3055-A CD 1995
	:	
Appellant	:	ARGUED: November 19, 1998

**CONCURRING OPINION**

**MR. JUSTICE SAYLOR**

**DECIDED: JULY 23, 1999**

I agree with the majority that the contraband abandoned by Appellant during his flight from police was properly recovered and admitted into evidence at trial. I write only to note my agreement with the logic of the United States Supreme Court's decision in California v. Hodari D., 499 U.S. 621, 625-26, 111 S. Ct. 1547, 1550 (1991)(holding that a seizure did not occur until the police physically restrained a fleeing suspect), and of Mr. Justice Castille's dissenting opinion in Commonwealth v. Matos, 543 Pa. 449, 473, 672 A.2d 769, 781 (1996)(Castille, J., dissenting)(stating that "[t]hat a person voluntarily chooses to flee from the 'mere presence' of a police officer should not immunize that person when he abandons contraband, weapons, or other evidence during the course of his flight and a police officer's pursuit"). Thus, I believe that, in the absence of unlawful conduct on the part of the police, and even under the paradigm of a mere encounter, abandoned property, as such, should be subject to lawful recovery by the authorities.