

[J-131-1999]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 25 W.D. Appeal Docket 1999
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court entered on July 7, 1998 at No.
	:	1600PGH97, affirming the Judgment of
v.	:	Sentence of the Court of Common Pleas
	:	of Cambria County entered on March 21,
	:	1994 at Criminal Division Nos. 1391, 1392
FRANK COSTA,	:	& 1393-1993.
	:	
Appellant	:	724 A.2d 953 (Pa. Super. 1998)
	:	
	:	SUBMITTED: September 14, 1999
	:	
	:	

CONCURRING OPINION

MR. JUSTICE NIGRO

DECIDED: DECEMBER 20, 1999

I agree with the majority that the prosecutor in the instant case violated Appellant's constitutional rights when he elicited testimony regarding Appellant's post-arrest silence. I write separately, however, to note my view that there should be an immediate mistrial whenever the prosecution, which should be acutely aware of the case law which supports a defendant's constitutional right to remain silent, solicits a response from its witness at trial which refers to the defendant's post-arrest silence.