

**[J-113-98]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 186 Capital Appeal Docket
	:	
Appellee	:	
	:	Appeal from the Judgement of Sentence
	:	entered on April 17, 1996, in the Court of
v.	:	Common Pleas of Lehigh County
	:	
	:	
EDWIN RIOS ROMERO,	:	
	:	ARGUED: April 29, 1998
Appellant	:	
	:	
	:	

**CONCURRING OPINION**

**MR. JUSTICE SAYLOR**

**DECIDED: JANUARY 5, 1999**

I respectfully disagree with the majority's conclusion that prosecution witness George Barbosa was not available for cross-examination by Romero's counsel. In this regard, I note that Barbosa's refusals to answer questions occurred during his direct examination by the Commonwealth. On cross-examination, however, Barbosa provided answers which, although punctuated by equivocations and memory lapses, were generally responsive to the questions posed by defense counsel. Indeed, Romero's counsel was able to elicit helpful testimony from Barbosa that suggested a motive for fabricating his prior inculpatory statement (Barbosa testified that police had told him that Romero had implicated him in the murder). Accordingly, I would hold that Romero's rights under the confrontation clause were not violated, and that the admission of Barbosa's prior extrajudicial statement did not violate the evidentiary rule of Commonwealth v. Brady. See

generally United States v. Owens, 484 U.S. 552, 559, 108 S.Ct. 838, 842 (1988)(stating that the confrontation clause “guarantees only ‘an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense may wish” (citations omitted)).

Thus, I would not reach the difficult question of whether, for purposes of a harmless error analysis, evidence of an inculpatory eyewitness statement is merely cumulative of the testimony of others, none of whom was an eyewitness to the crime, particularly where such testimony is that of a co-conspirator and a jailhouse informant.

Mr. Chief Justice Flaherty joins this Concurring Opinion.