

[J-126-2001]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 276 Capital Appeal Docket
	:	
Appellee	:	Direct Appeal from the Judgment of
	:	Sentence of the Court of Common Pleas
v.	:	of Delaware County, Criminal Division,
	:	No. 5045-97.
	:	
	:	
ARTHUR BOMAR,	:	
	:	ARGUED: October 16, 2001
Appellant	:	

CONCURRING OPINION

MR. JUSTICE NIGRO

DECIDED: May 30, 2003

I join the majority opinion with the limited exception of its discussion regarding the "bring-down" order used to transfer Appellant from the prison to the CID offices for questioning regarding the Willard murder case.

Although I fully agree with the majority that the "bring-down" order was undoubtedly erroneous, I cannot agree with the majority's seemingly dismissive approach to the misuse of that erroneous order. To that end, the majority notes that Appellant does not cite to any evidence of record establishing that the error in the order was anything other than a mere "mistake" or "oversight." While that may be true, it still remains that the order only authorized the transfer of Appellant for a hearing and not for what it was ultimately used for - the questioning of Appellant regarding the Willard case. In my view, the Commonwealth should simply not be allowed to use a court order for one purpose when that order explicitly authorizes its use only for a different purpose. See Commonwealth v. Karash, 518 A.2d

537, 542 (Pa. 1986) ("The misuse of a court order is an affront to the court issuing that order.") Nonetheless, I ultimately agree with the majority that Appellant is not entitled to relief on this claim because the transfer did not, under the circumstances here, implicate Appellant's Fourth Amendment rights.