

[J-46-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 267 Capital Appeal Docket
	:	
Appellee	:	Appeal from the Judgment of Sentence
	:	entered on March 19, 1999, of the Court
	:	of Common Pleas of Philadelphia County
v.	:	
	:	
	:	
DERRICK HARVEY,	:	
	:	
Appellant	:	ARGUED: April 8, 2002

CONCURRING OPINION

MR. JUSTICE EAKIN

DECIDED: December 20, 2002

I join the affirmation of appellant's conviction. I agree that 42 Pa.C.S. § 9711(d)(14), as framed by the legislature, requires the killing be with the purpose of promoting the defendant's drug activity, and the record on this element is insufficient. The Commonwealth's brief does not argue otherwise, and remand is appropriate. However, I find sufficient evidence to allow a conclusion of robbery, despite the suggestion of my colleagues to the contrary, and thus offer this concurrence.

Justice Newman joins this concurring opinion.