

[J-74-2000]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 271 Capital Appeal Docket
	:	
Appellee	:	Appeal from the Judgment of Sentence of
	:	Death Imposed by the Court of Common
	:	Pleas of Lancaster County dated March
v.	:	17, 1999, at No. 672 C.A. 1997
	:	
	:	
FRANCIS BAUER HARRIS,	:	
	:	ARGUED: May 2, 2000
Appellant	:	
	:	
	:	

CONCURRING OPINION

MR. JUSTICE NIGRO

DECIDED: November 20, 2002

I join the majority's opinion in its entirety with the exception of the statements contained in footnote 16. As the majority correctly concludes, the trial court's exclusion of "third party impact" evidence in the instant case did not run afoul of Skipper v. South Carolina, 476 U.S. 1 (1986), nor does this type of evidence fall within any of the eight specific mitigating circumstances outlined in 42 Pa.C.S. § 9711(e)(1)-(8). However, I cannot join the majority's *dicta* in footnote 16 because, in my estimation, it advances the proposition that "third party impact" evidence could actually be used as aggravating evidence to justify imposing the death penalty. It is clear to me, though, that such evidence has no place in our capital sentencing scheme as aggravating evidence, an observation affirmed by the fact that this evidence is not included within the statutory aggravating circumstances that permit the imposition of the death penalty in this Commonwealth. See 42 Pa.C.S. § 9711(d)(1)-(18). While I recognize that the thoughts expressed in footnote 16

are not part of the reasoning used in rejecting Appellant's substantive claim, for the foregoing reasons, I cannot join that portion of the majority opinion.

Mr. Justice Cappy joins in this concurring opinion.