

[J-11-2007]
**IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA, : No. 44 WAP 2006

:
Appellant : Appeal from the Order of the Superior
: Court entered December 30, 2005, at No.
: 169 WDA 2004, reversing the Order of the
v. : Court of Common Pleas of Allegheny
: County entered January 5, 2004, at Nos.
: CP-02-CR-0016578-2000 and CP-02-CR-
: 0017056-2000.
:
LAWRENCE STATES, : 2005 PA Super 434, 891 A.2d 737 (2005)
:
Appellee : ARGUED: March 6, 2007
: RESUBMITTED: April 2, 2007

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: DECEMBER 27, 2007

I join the majority opinion, except for its footnote 8, which addresses the argument that Appellee waived his constitutional double jeopardy protections by pursuing severance, a position ably developed by Mr. Justice Castille in his dissent. See Dissenting Opinion, slip op. at 6-9 (Castille, J.). On the one hand, the reasoning from United States v. Blyden, 930 F.2d 323 (3rd Cir. 1991), cited by Justice Castille, strongly supports the Commonwealth's position. On the other hand, however, the Court of Appeals of Maryland has developed a contrary rationale, which focuses on the substantial difference between the preclusive effect of a guilty plea or conviction, at

issue in the seminal line of United States Supreme Court decisions,¹ and that of an acquittal, such as is at issue here. See Wright v. State, 515 A.2d 1157, 1162-63, 1170 n.5 (Md. 1986).

Ultimately, I agree with the Maryland court that the critical questions are whether the trial court's determination represented a resolution (correct or not) of some or all of the factual elements of the offenses subject to a potential retrial, and if so, whether such resolution would be inconsistent with a finding of guilt on the offenses subject to retrial. If, as here, both questions are answered in the affirmative, I also agree that the federal high Court's decisions should not be extended to convert a defendant's pursuit of severance into a blanket waiver encompassing the relevant dynamic of the constitutional interest in freedom from being placed twice in jeopardy.

¹ See Ohio v. Johnson, 467 U.S. 493, 104 S. Ct. 2536 (1984) (holding that a guilty plea to certain charges did not bar trial as to related offenses, as the plea effectuated a waiver of double jeopardy interests); Jeffers v. United States, 432 U.S. 137, 97 S. Ct. 2207 (1977) (plurality) (holding that a conviction for a lesser included offense did not bar prosecution for the greater offense, where severance of the charges occurred upon the defendant's motion).