

[J-150-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CAPPY, C.J., CASTILLE, SAYLOR, EAKIN, BAER, BALDWIN, JJ.

COMMONWEALTH OF PENNSYLVANIA,	:	No. 66 MAP 2006
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court at No. 584 MDA 2004 entered on
	:	February 22, 2005, reargument denied
	:	May 6, 2005, vacating in part, remanding
v.	:	in part and affirming in part the Order of
	:	the Court of Common Pleas of
	:	Lackawanna County, Criminal Division,
	:	entered October 24, 2003 at No. 02-CR-
MAURICE BARNES,	:	1414.
	:	
Appellee	:	ARGUED: December 4, 2006

OPINION

PER CURIAM

DECIDED: June 25, 2007

Appeal was allowed in this case to address the Commonwealth's initial challenge to the Superior Court's decision to vacate the most serious of three distinct conspiracy convictions (i.e., conspiracy to commit third-degree murder) based upon the statutory directive that, "[i]f a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship," 18 Pa.C.S. §903(c). See Commonwealth v. Barnes, 871 A.2d 812, 821 (Pa. Super. 2005). In particular, in its petition for allowance of appeal, the Commonwealth controverted the Superior Court's reasoning that the object of the least serious conspiracy conviction (conspiracy to deliver a controlled

substance) must control, as it was an overarching one. Significantly, throughout its petition for allowance of appeal, the Commonwealth conceded that the circumstances involved reflected a single conspiracy, albeit with multiple objectives. See, e.g., Petition for Allowance of Appeal at 9 (“The evidence clearly illustrates the violent intentions of this group and demonstrates aptly that this single conspiracy involved, among its objectives, the intention to utilize gun violence, and death was a natural and probable consequence of this intention.” (emphasis added)).

In its briefing to this Court, however, the Commonwealth does not develop the above issue and therefore, has abandoned it. See, e.g., Commonwealth v. LaCava, 666 A.2d 221, 228 n.9 (Pa. 1995). Rather, the Commonwealth argues at length that the evidence adduced at trial was sufficient to support the existence of three separate and distinct conspiracies, and its prayer for relief seeks reinstatement of all of those convictions. Since, however, this issue was not raised in the petition for allowance of appeal and, indeed, is contradicted by that submission, it is not properly before this Court. See Pa.R.A.P. 1115(a)(3); Lewis v. United Hosps., Inc., 692 A.2d 1055, 1058 n. 5 (Pa. 1997).

As no dispositive argument is presented by the Commonwealth that is available for this Court’s present consideration,¹ we will affirm the order of the Superior Court. We emphasize, however, that our decision should not be read as an approval of the Superior Court’s approach of selecting an overarching conspiratorial object to define the extant conspiracy conviction in the circumstances presented, since this approach

¹ The Commonwealth also asks that this Court consider the viability of a charge of conspiracy to commit third-degree murder in light of the rationale applied in Commonwealth v. Clinger, 833 A.2d 792 (Pa. Super. 2003). We decline this invitation, however, since such resolution of the issue could not alter the outcome of the appeal, in light of the Commonwealth’s failure to preserve a viable challenge to the Superior Court’s decision to vacate the conviction for conspiracy to commit third-degree murder on other grounds.

appears to be in tension with the Legislature's directive that a conspiracy with multiple objects is to be of the same grade and degree as the most serious offense which is an object. See 18 Pa.C.S. §905.

The order of the Superior Court is affirmed.

Madame Justice Newman did not participate in the consideration or decision of this matter.