[J-91-2018][M.O. - Baer, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 72 MAP 2017
	:	
Appellee	:	Appeal from the Order of the Superior Court at No. 241 EDA 2016 dated 10/18/16 affirming the judgment of sentence of Montgomery County Court of Common Pleas, Criminal Division, at No(s). CP-46-CR-0008440-2014 and CP-46-CR-0009241-2013 dated 12/3/15
v.	:	
TYRICE GRIFFIN,	:	
	:	
Appellant	:	ARGUED: December 4, 2018

DISSENTING OPINION

CHIEF JUSTICE SAYLOR **DECIDED: April 26, 2019**

I agree with Appellant's argument that "or" may reasonably be read in the disjunctive in the relevant regards within Section 9714(g)'s definition of the phrase "crime of violence." This can be apprehended most readily in Section 9714(g)'s apparently disjunctive references to equivalent crimes -- for example, under the statute, the denomination "crime of violence" applies to a series of completed substantive crimes such as murder of the third degree and voluntary manslaughter, ". . . *or* an equivalent crime in another jurisdiction." 42 Pa.C.S. §9714(g) (emphasis added). In this example, it seems likely that the Legislature contemplated equivalent crimes as an alternative to account for violent criminal conduct occurring extra-jurisdictionally. *Accord* Brief for *Amicus* Defender Ass'n of Phila. at 12 (characterizing equivalent offenses as "substitutes/replacements for an enumerated substantive offense").

As to inchoate crimes, these are listed in the same series with completed substantive offenses and equivalent crimes, with the categories being separated by the word "or." 42 Pa.C.S. §9714(g). Accordingly, a "crime of violence" is a completed, enumerated crime, "or" a related inchoate crime, "or" an equivalent offense. *Id.* Just as the Legislature may have contemplated equivalent crimes to account for violent conduct occurring in other jurisdictions, it may also have included inchoate crimes to recognize that not all offenses fall into the category of completed substantive crimes. *Accord* Brief for *Amicus* Defender Ass'n of Phila. at 12-13.

While I do not discount the majority's overarching approach as constituting a reasonable interpretation of the statute,[1] from my point of view, the context creates sufficient ambiguity to warrant application of the rule of lenity. *See*, *e.g.*, *Commonwealth v. Booth*, 564 Pa. 228, 234, 766 A.2d 843, 846 (2001) ("[W]here ambiguity exists in the language of a penal statute, such language should be interpreted in the light most favorable to the accused."). Accordingly, I respectfully dissent.

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[1] I respectfully differ with the majority's rationale, however, to the extent that it downplays the significance of Section 9714(g)'s definition of "crime of violence" to the operation of Section 9714(a)(1), *see* Majority opinion, *slip op.* at 10-11, in which the phrase "crime of violence" is integral. *See* 42 Pa.C.S. §9714(a)(1).