

[J-179-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 396 CAP
	:	
Appellee	:	Appeal from Judgment of Sentence
	:	entered July 9, 1999 at No. 9807-0114 1/4
	:	& 0807-0114 4/4 in the Court of Common
v.	:	Pleas, Criminal Division of Philadelphia
	:	County. (Post-Sentence Motions denied
	:	on July 18, 2002.)
MIKAL MOORE,	:	
	:	
Appellant	:	ARGUED: April 11, 2005
	:	RE-SUBMITTED: November 21, 2006

CONCURRING OPINION

MADAME JUSTICE BALDWIN

DECIDED: December 28, 2007

I join the majority opinion in full. I write separately, however, to reiterate the position that I detailed in Commonwealth v. Carson, 590 Pa. 501, 615, 913 A2d 220, 287 (2006) (Baldwin, J. concurring), that an instruction pursuant to Simmons v. South Carolina, 512 U.S. 154, 114 S.Ct. 2187, 129 L.Ed.2d 133 (1994) (plurality) should be given in every capital case. However, as this is not the prevailing view, I am compelled to agree with the majority that the Simmons issue was waived.

Mr. Justice Fitzgerald joins this concurring opinion.