

[J-185-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

MICHAEL S. LEHMAN,	: No. 60 MAP 2002
	:
Appellant	:
	: Appeal from the Order of the
	: Commonwealth Court entered 8-17-2001
v.	: at No. 2446 CD 2000 affirming the Order
	: of the Office of Attorney General dated 10-
	: 2-2001
PENNSYLVANIA STATE POLICE,	:
	: ARGUED: DECEMBER 4, 2002
Appellee	

CONCURRING OPINION

MR. CHIEF JUSTICE CAPPY

DECIDED: DECEMBER 30, 2003

I join the majority opinion to the extent that it relies on federal law in conducting its ex post facto analysis. Appellant challenges the constitutionality of § 922(g) of the Federal Gun Control Act under the Ex Post Facto Clause. See Majority slip opinion at 4. We are constrained to consider only federal law in considering a challenge to a federal statute by the Supremacy Clause of the United States Constitution.¹ U.S. Const. art. VI, cl. 2. To the

¹ “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2.

extent that the majority opinion examines Appellant's ex post facto claim under Pennsylvania law, I do not join in that analysis.²

² Indeed, the majority opinion claims that it is “abandoning” the Artway/Verniero test, Artway v. Attorney General, 81 F.3d 1235 (3d Cir. 1996) and “adopting” the Smith v. Doe, 123 S. Ct. 1140 (2003) test to evaluate ex post facto claims. See Majority slip opinion at 6. This is not the appropriate case to “abandon” or “adopt” any federal test for purposes of Pennsylvania law. Instead, the Supremacy Clause requires that we merely apply federal law.