

[J-83-1999]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 154 M.D. Appeal Docket 1998
	:	
Appellant	:	Appeal from the order of Superior Court
	:	entered 05/07/97, which vacated judgment
	:	of sentence imposed 01/02/96 and
v.	:	remanded the matter for resentencing to
	:	the Court of Common Pleas of Bradford
	:	County, Criminal Division at No.
LAWRENCE L. SHAW,	:	95CR00324.
	:	
Appellee	:	
	:	
	:	SUBMITTED: April 29, 1999

CONCURRING OPINION

MR. JUSTICE CAPPY

DECIDED: January 20, 2000

I concur in the result reached by the majority. The majority opinion reflects the reasoning of the Opinion in Support of Reversal in Commonwealth v. Robertson, Jr., 722 A.2d 1047 (Pa. 1999) (plurality), wherein we indicated that the appropriate test for determining equivalency for purposes of 75 Pa.C.S. §3731 is a comparison of the essential elements of each offense, which necessitates an inquiry into the burden of proof required by each statute. We criticized the Opinion in Support of Affirmance for relying upon the proposition that a determination of equivalence can be based upon the similar policy objectives of each statute. In this case, the majority properly focuses on the fact that there is an appreciable difference in the elements of the New York offense and the Pennsylvania offense, and rejects the Commonwealth's policy argument that the offenses are equivalent merely because "impairment is the key" in both statutes.

However, I cannot endorse the majority opinion's enunciation of the standard because it does not properly focus the inquiry upon the essential elements of the offenses. Rather, the majority continues to promote the fiction that equivalency can also be determined by the mere fact that the underlying public policy of both statutes is similar. Accordingly, I concur in the result.

Messrs. Justice Zappala and Saylor join this concurring opinion.