

**[J-111-2020][OAJC - Todd, J.]  
IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT**

|                               |   |   |
|-------------------------------|---|---|
| COMMONWEALTH OF PENNSYLVANIA, | : | No. 8 WAP 2020                          |
|                               | : |   |
| Appellee                      | : | Appeal from the Superior Court          |
|                               | : | entered on 11/19/19 at No. 1281 WDA     |
| v.                            | : | 2018 affirming in part and reversing in |
|                               | : | part the judgment of sentence of the    |
|                               | : | Court of Common Pleas of Allegheny      |
|                               | : | County entered on 8/1/18 at No. CP-     |
|                               | : | 02-CR-0008615-2017                      |
| WAYLYNN MARIE HOWARD,         | : |   |
|                               | : |   |
| Appellant                     | : | ARGUED: December 2, 2020                |

**CONCURRING OPINION**

**JUSTICE SAYLOR**

Initially, I agree that Mother’s conduct was not “expressly criminalized,” and that, generally, there are a “lack of clear laws [in this Commonwealth] pertaining to a parent’s duty regarding the use of a car seat” in ride-sharing services. Opinion Announcing the Judgment of the Court at 20, fn. 23. Particularly given this uncertainty, I would implement the rule of lenity to find the endangerment statute did not apply to the conduct here -- a rule which, by its plain text, applies to all “penal provisions,” including, as I continue to think, the endangerment statute. See 1 Pa.C.S. §1928(b)(1); accord *Commonwealth v. Lynn*, 631 Pa. 541 n.3, 114 A.3d 796, 829 n.3 (2015) (Saylor, J., dissenting) (“[A]ny suggestion that a particular criminal provision should be exempted from the general rule of strict construction is likely to lead to inconsistency and confusion.”). Thus, I agree that Mother’s conviction and judgment of sentence should be vacated, but I would arrive at

that result without recourse to the community-standards approach relied on in the lead opinion.