

**[J-1-2013][M.O. – Castille, C.J.]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**EASTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 636 CAP
	:	
Appellee	:	Appeal from the Judgment of Sentence
	:	entered on 6/9/11 in the Court of
v.	:	Common Pleas of Northampton County
	:	at No. CP-48-CR-0003058-2010
	:	
	:	
MICHAEL ERIC BALLARD,	:	
	:	
Appellant	:	SUBMITTED: February 22, 2013

**CONCURRING OPINION**

**MR. JUSTICE SAYLOR**

**DECIDED: November 21, 2013**

I join the majority opinion, subject to the reservation that I have some difficulty with our continuing refusal to entertain an essential weight-of-the-evidence challenge relative to the imposition of a death sentence. See Majority Opinion, slip op. at 47-48 (relying upon Commonwealth v. Reyes, 600 Pa. 45, 53-54, 963 A.2d 436, 441-42 (2009)). Although the majority explains that we are not well suited to the task of weighing evidence, see id., I note that we do so regularly in terms of the application of the harmless error doctrine. See, e.g., id. at 21 n.19, 23, 25. We also “reweigh” in applying the prejudice component of claims of ineffective assistance of counsel. Commonwealth v. Malloy, 579 Pa. 425, 461, 856 A.2d 767, 789 (2004).

On review of Appellant’s argument, I believe we may also assess the evidence -- albeit in a manner which is highly deferential to findings by juries and trial courts – with the sole aim of screening against the possibility of a death verdict which would shock

the conscience. In this regard, I would credit Appellant's position that such an inquiry is entirely consonant with our statutory obligation to review a death verdict for passion, prejudice, or any other arbitrary factor. See 42 Pa.C.S. §9711(h)(3). Accordingly, while I previously joined the majority opinion in Reyes, I have come to believe that the decision is overstated, in the relevant regard.

Here, however, nothing in Appellant's presentation persuades me that his death sentences were not the product of a conscientious weighing process, undertaken by a jury of his peers, and justly impacted by the force of the aggravating circumstances.