

**[J-110-1997]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA	:	No. 18 Western District
Appellee	:	Appeal Docket 1997
	:	
v.	:	Appeal from the Order of the Superior
	:	Court entered on May 2, 1995, at No.
PHILLIP J. PERSICHINI, JR.	:	938PGH94, affirming the Order of the
Appellant	:	Court of Common Pleas of McKean
	:	County, Criminal Division, entered April
	:	25, 1994, at No. 124 Criminal 1992.
	:	
	:	444 Pa. Super. 110, 663 A.2d 699
	:	
	:	SUBMITTED: May 22, 1997
	:	

**OPINION IN SUPPORT OF REVERSAL**

**MR. CHIEF JUSTICE FLAHERTY**

**DECIDED: SEPTEMBER 30, 1999**

I dissent. The majority, without sufficient reason, would overrule well established precedent in Pennsylvania that before a jury may consider the extra-judicial statement of a defendant, the corpus dilecti of crime must be established beyond a reasonable doubt. Commonwealth v. Reyes, 681 A.2d 724 (Pa. 1996). This rule is as viable today as it ever was, and the policy underpinning the rule is sound, i.e., to guard against the “hasty and unguarded character which is often attached to confessions and admissions and the consequent danger of a conviction where no crime has in fact been committed.” Commonwealth v. Turza, 16 A.2d 401, 404 (Pa., 1940). The Reyes rule should not be abandoned.

Apart from the issue of whether Reyes should be abandoned in future cases, the majority is correct that Reyes applies to this case, but is plainly wrong in its application of Reyes to the facts of this case. The majority sets out what the Commonwealth was required to prove beyond a reasonable doubt, under Reyes, before the jury could consider the defendant's extra-judicial statements. It must have proven:

(1) that a person knew that a fire was endangering the life or property of another, (2) that the person failed to take reasonable measures to put out or control the fire, when he could have done so without substantial risk to himself, or to give a prompt fire alarm, and (3) *that the fire was started by the person or with his assent or on property in his custody or control rather than by non-criminal activity (e.g., an accidental cause)*. 18 Pa.C.S. § 3301(e) (Failure to control or report dangerous fires.

Slip Op. at 9 (Emphasis added). Since the majority itself states that “because of the extensive damage which extended to an adjacent property, [firefighters] were not able to determine the fire’s cause,” Slip Op at 2, it is difficult to see how the Commonwealth could be said to have proved beyond a reasonable doubt that the fire was started by the defendant or with his assent rather than by non-criminal activity. And absent proof of this element beyond a reasonable doubt, the extra-judicial statement was not to be considered by the jury. Since the jury apparently considered the extra-judicial statement, I would reverse the conviction.<sup>1</sup>

Messrs. Justice Zappala and Cappy join this opinion.

---

<sup>1</sup> I note that Reyes was decided by a unanimous court, including Mr. Justice Castille.