NO. 20-7805

In the
Supreme Court of the United States

MELVIN KNIGHT
Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA,
Respondent

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

CERTIFICATE OF SERVICE

Undersigned counsel, a member of the bar of this Court, hereby states that as required by Supreme Court Rule 29, he has served the enclosed PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI on counsel for the opposing party, the Commonwealth of Pennsylvania, by first class mail and email on September 28, 2021. Delivery was made to:

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REPLY

I. Respondent Does Not Dispute That The State Courts' Repeatedly Cited Basis For Denying Knight An Intellectual Disability Instruction Was Contrary To This Court's Precedent

Respondent does not defend the requirement that a defendant seeking to demonstrate his intellectual disability must provide an IQ score 75 or lower "documented prior to age 18." Respondent instead denies the Pennsylvania Supreme Court applied this requirement, citing *Commonwealth v. Miller*, 888 A.2d 624 (Pa. 2005), for the assertion that the Pennsylvania Supreme Court's standards are consistent with both the scientific definitions of intellectual disability and this Court's precedent. Brief in Opposition (BIO) pp. 13-15. Respondent specifically cites *Miller*'s disownment of any "cutoff IQ score" as proof that Pennsylvania has no such documentation requirement. BIO at 11, 13 *citing Miller*, 888 A.2d at 631.

But the fact that the Pennsylvania Supreme Court applied correct standards in other cases doesn't mean they did so in this case. Here, both the Pennsylvania Supreme Court and the trial court explicitly invoked a pre-age-18 documentation requirement as the *ratio decidendi* for barring Knight's jury from considering an intellectual disability claim. See *Commonwealth v. Knight,* 241 A.3d 620, 632 (Pa. 2020) (concluding that "because Appellant failed to offer any evidence of an IQ score, documented prior to age 18 . . . the trial court was not required to provide an Atkins charge to the jury."); *id*. at 631 (acknowledging that Knight's 75 IQ score was "introduced into evidence," but was properly discounted as a "reliable result" because it "was not documented prior to age 18."); Petition, App. C (trial court, denying Knight's instruction because he had "failed to introduce any evidence of a documented IQ score of 75 or below prior to age 18). Respondent's argument ignores the plain text of the courts' decisions.

Respondent also insists the Pennsylvania Supreme Court did not create an "age-based score cut-off" because it "viewed all the evidence presented by defense experts" in making its decision. BIO pg. 15. But aside from a passing reference to appellate counsel's citation of "the expert testimony which, in his view, establishes [Knight's] adaptive deficits," *Knight*, 241 A.3d at 631, the court's analysis did not mention, much less analyze and weigh, the extensive evidence of deficits from both expert and lay witnesses. See Petition pp. 7-12. Rather than base its decision on the "interaction between limited intellectual functioning and deficiencies in adaptive skills," *Miller*, 888 A.2d at 631, the Pennsylvania Supreme Court ignored evidence of the latter and decided the former based on a plainly erroneous pre-age-18 documentation requirement.

Given the importance of this issue in capital cases, this Court has recognized that clear misapprehensions of its intellectual disability precedents have merited summary reversal and remand. Petition at 31 (citing cases). Knight respectfully suggests the same disposition would be appropriate here.

II. The Alternative Justification Offered By Respondent Is Not A Reason to Deny Knight's Petition

Respondents devote much of their Brief in Opposition to constructing an alternative justification for the lower court's decision: that the testimony of Knight's experts precluded any jury consideration of his intellectual disability claim. While the Pennsylvania Supreme Court noted the experts failed to render an ultimate opinion that Knight was intellectually disabled, this was not the basis of its decision. This Court need not and should not reach this issue in the first instance. Nonetheless, there are good reasons why the argument that Respondent now presses in these proceedings could not have justified the denial of an intellectual disability instruction.

First, Respondent's claim that both defense experts failed to diagnose Knight as intellectually disabled "under both the medical and legal standards" is inaccurate. BIO, pg i. Both Dr. Nezu and Dr. James were clear that Knight's extensive adaptive deficits were consistent with an intellectual disability. Petition, pg. 13. Dr. Nezu testified she could not diagnose Knight despite his "functional intellectual disability" because he could not "meet the math" of what she understood to be Pennsylvania's *legal* requirement that he have a documented IQ score of 75 or lower. TT 964-67; TT 966 ("while I cannot confirm a diagnosis of intellectual disability as *per required by the State of Pennsylvania and the criteria it uses*, I can say that *from a clinical perspective* because of his adaptive functioning he has a rather unique and idiosyncratic low functioning.") (emphasis added). Dr. James likewise assumed Knight's scores were too high to classify him as intellectually disabled, TT 813, but noted his scores were "surprising" and not reflective of his abilities given that he "has so much trouble . . . with day to day living." TT 786.

Second -- as the Brief in Opposition itself acknowledges -- these legal assumptions were incorrect. Pennsylvania law, at the time of Knight's trial, did not impose any "cutoff score" for the intellectual capacity prong of the disability analysis, but instead required consideration of the "interaction between limited intellectual functioning deficiencies in adaptive skills." BIO pg. 13, *citing Miller*, 888 A.2d at 631; *see also Hall v. Florida*, 572 U.S. 701, 723 (2014) ("It is not sound to view a single factor as dispositive of a conjunctive and interrelated assessment"). Neither expert's conclusion was based on such an interrelated assessment, but instead on Knight's purported failure to meet a score cutoff in his testing.

Third, both experts were unaware at the time of their assessments that Knight did in fact have a documented IQ score of 75, within the range they understood to qualify for the intellectual capacity prong under the Pennsylvania standard. The jury, however, knew about the

score from other evidence at trial. Petition 13, 22-23 Even if the jury did accept the defense experts' erroneously narrow framing of the legal standard for intellectual functioning, the record contained sufficient evidence to meet it.

Although this Court's *Atkins* jurisprudence is "informed by the medical community's diagnostic framework," *Hall*, 572 U.S. at 721-22, intellectual disability determinations in capital cases must ultimately be made by the factfinder, not by expert witnesses. See *Commonwealth v. Dejesus*, 58 A.2d 62, 85 (Pa. 2012) (proof of intellectual disability "is often highly subjective, whether provided by mental health experts or lay persons"). Where, as in Pennsylvania, a jury is the fact-finder entrusted with that determination, the defendant is entitled to an instruction on a defense so long as "there exists evidence sufficient for a reasonable jury to find in his or her favor," notwithstanding a judge's view on the credibility of that evidence. *Commonwealth v. Weiskerger*, 554 A.2d 10, 14 (Pa. 1989), citing *Matthews v. United States*, 485 U.S. 58 (1988). Knight's jury could have reasonably rejected the experts' ultimate opinions on intellectual disability, particularly when those opinions were based on legal and factual misapprehensions that were evident from record in front of them, and when the expert and lay testimony in that record otherwise demonstrated he met all three prongs of the standard.

Respondents do not cite anything in state or federal law requiring an expert opinion on the ultimate issue of intellectual disability as a *prima facie* requirement for a jury to consider the issue. Recognizing both the distinction between medical diagnoses and legal determinations and the fallibility of expert opinions, at least two other states have held the absence of an affirmative expert opinion does not necessarily preclude consideration of an intellectual disability claim. See

Petition at 31-32.[1] While Pennsylvania has yet to specifically rule upon this question, it has endorsed the underlying principle that the fact-finder should have wide discretion to assess the underlying facts and the credibility of expert witnesses in making an intellectual disability determination, particularly when the expert opinions were "inadequate or reliant on faulty sources and procedures." *Commonwealth v. Flor*, ___ A.3d ___, 2021 WL 4303484 at *20 (Pa., decided Sep. 22, 2021); see also *id*. *13-15 (emphasizing the centrality of the fact-finder's assessment).

"The death penalty is the gravest sentence our society may impose. Persons facing that most severe sanction must have a fair opportunity to show that the Constitution prohibits their execution." *Hall v. Florida*, 572 U.S. at 724. Knight presented evidence of multiple IQ scores at or near a range suggesting intellectual disability, alongside lay and expert witness testimony demonstrating extensive adaptive deficits that manifested well before he turned 18. His jury should have been allowed to decide whether he was intellectually disabled and was denied that opportunity because of a documentation requirement plainly contrary to this Court's precedent. This error should be corrected and remanded for further proceedings.

[1] Notably, Respondent claims the victim in this case was "intellectually disabled," BIO pg. 3, despite a lack of test score evidence, medical testimony, or this diagnosis ever affirmatively being attributed to her at trial. The prosecution's evidence of the victim's intellectual functioning was no more extensive than what Mr. Knight presented: she received SSI benefits, was in special education, and had a number of adaptive deficits noted by her family. See e.g. TT pp. 822, 843-848. While they attribute the diagnosis to the victim, Respondent claims the same evidence is insufficient to support *even the consideration* of an intellectual disability determination for Mr. Knight.

CONCLUSION

Knight respectfully asks this Court to grant the writ of certiorari and vacate the decision below.

Respectfully submitted,

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