No. 24-557

IN THE

Supreme Court of the United States

DAVID ASA VILLARREAL,

Petitioner,

v.

TEXAS,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

BRIEF OF THE NATIONAL COLLEGE FOR DUI DEFENSE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTERESTS OF *AMICUS CURIAE*[1]

Amicus curiae is the National College for DUI Defense ("NCDD"). NCDD is a nonprofit professional organization of lawyers, with over 1,500 members, focusing on issues related to the defense of persons charged with driving under the influence. Through its educational programs, its website, and its email list, the College trains lawyers to represent persons accused of impaired driving. NCDD's members have extensive experience litigating issues regarding breath, blood, and urine tests for alcohol and other drugs. NCDD has appeared as amicus curiae in several impaired driving cases before the Supreme Court of the United States.

SUMMARY OF ARGUMENT

This brief presents six main arguments in support of Petitioner:

First, while courts possess broad authority to manage trial proceedings, control calendars, and maintain courtroom order, that authority must not infringe upon the essential and protected communication between a defendant and their lawyer.

Second, the right to the assistance of counsel includes the ability of a defendant to consult with their attorney during trial recesses, especially overnight.

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1. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than Amicus and their counsel made a monetary contribution to the preparation or submission of this brief.

A restriction on communication during such a critical pause in the proceedings undermines the core function of legal representation and disrupts the defendant's ability to meaningfully participate in their own defense. The distinction between permissible and impermissible discussions during a recess is vague and unworkable, placing both attorney and client in a precarious and constitutionally uncertain position.

Third, a defendant has the right to direct his or her defense. Where certain strategic decisions are the purview of counsel, the accused retains the autonomy to control the defense, including whether to testify, plead guilty, and even represent oneself. It is fundamental that a criminally accused person must be permitted to choose the best way to ensure his or her success at trial, and an order forbidding any communication regarding testimony between client and counsel unconstitutionally limits a defendant's essential rights.

Fourth, such restrictions are particularly harmful when the defendant is the sole defense witness. During an overnight recess, a defendant may need guidance, reassurance, or clarification from counsel, especially after undergoing direct or cross-examination. Cutting off that connection isolates the defendant at a critical stage and creates a divide between attorney and client.

Fifth, this danger is heightened in DUI trials, where cases often turn on detailed scientific or forensic evidence and where the defendant is frequently the only source of critical facts. Trial strategy and expert preparation often require precise details, such as the timing of alcohol consumption or food intake, which only the defendant

can provide. That consultation must occur in real time to ensure an accurate and fair presentation of the defense.

Sixth, there is no evidence that this type of restriction is historically necessary or effective. Courts have always had tools to prevent misconduct without broadly suppressing constitutional rights. This case involved no allegation of improper behavior, only speculation. A rule based on hypotheticals, rather than actual need, cannot support the suspension of fundamental rights.

For these reasons, the judgment of the Texas Court of Criminal Appeals should be reversed.

ARGUMENT

I. The Trial Court's Restriction on Attorney-Client Consultation During a Trial Recess Violates the Sixth Amendment

Trial courts possess broad powers to control the conduct of proceedings, regulate their calendars, and manage the timing and scope of recesses. They also have the authority to direct general witness behavior, including limiting communication between attorneys and non-party witnesses during trial to prevent collusion or disruption. Nothing in this brief should be read to suggest that judicial oversight of courtroom procedure is subjugated to a client's desire to consult with his attorney, nor do we suggest that an attorney may interrupt trial proceedings to confer with a client. The issue here is far narrower and more constitutionally consequential: whether a court may prohibit a criminal defendant from consulting with counsel *during a recess* when the defendant remains under oath and no prior misconduct has occurred.

The Sixth Amendment guarantees the accused "the Assistance of Counsel for his defense." U.S. Const. amend. VI. While trial courts have the power and duty to control their own calendars, the Sixth Amendment right to counsel does not bend to the court's scheduling needs, recess lengths, or artificial distinctions between "substantive" and "non-substantive" communications. In order to be effective, the assistance of counsel must remain uninterrupted at all critical stages of a criminal trial, including during recesses in a defendant's testimony.

a. The right to counsel protects the relationship

At the core of the Sixth Amendment is the relationship between lawyer and client. That relationship has been zealously protected by courts across the country. A trial court runs afoul of the Sixth Amendment when it restricts communication between the accused and their counsel during an overnight recess. In *Geders v. United States*, 425 U.S. 80 (1976), this Court observed that overnight recesses are "often times of intensive work, with tactical decisions to be made and strategies to be reviewed." *Id.* at 88. The Court emphasized that "[t]he lawyer may need to obtain from his client information made relevant by the day's testimony," or "pursue inquiry along lines not fully explored earlier." *Id.* At a minimum, such a recess gives the accused "a chance to discuss with counsel the significance of the day's events." *Id.*

The trial court's concern in the present case was the potential for coaching the accused's testimony. The *Geders* Court rejected any suggestion that mere fear of improper coaching could justify erecting a barrier between attorney and client. *Id.* at 89-90. The adversarial system has

sufficient safeguards, including cross-examination and proper trial scheduling, to address such concerns without infringing on the constitutional right to consult with counsel. *See Id.* at 90-91.

In the present case, the trial court imposed a limited ban on attorney-client communications, specifically restricting any conversation about the defendant's testimony during a 24-hour overnight recess. But the Constitution permits no such ban, no matter how precise or finely crafted. As evidenced by this Court's prior decisions, duration increases the extent by which the Sixth Amendment is violated. An overnight break is not a momentary procedural pause; it is a critical intermission in which the defense must recalibrate, evaluate the day's damage or success, and prepare for the testimony that follows.

However, in *Perry v. Leeke,* 488 U.S. 272 (1989), this Court upheld a brief restriction on attorney-client consultation during a 15-minute recess while the defendant was in direct examination. This Court ruled the narrow limitation did not violate the Sixth Amendment, emphasizing that short, mid-testimony breaks differ from overnight recesses, where consultation is protected. The decision in *Perry* did not displace Geders. Rather, it reaffirmed that the Sixth Amendment protects consultation rights during overnight recesses and other substantial breaks in proceedings. *Id.* at 284.

While *Perry* is presently the law, it should be overruled as its underpinnings are unworkable for the policy reasons stated and the arguments made herein. While the decision there turned on the length of time of the restriction, there

is no logical way to enforce such a delineation. Indeed, fundamental rights such as those considered herein cannot be subjected to de minimis invasion. The length of time is irrelevant; a violation is a violation.

b. Any restriction on consultation during trial is a constitutional injury

The Court in *Geders* clarified that the right to assistance of counsel is not symbolic, it is functional. 425 U.S. at 88. A court order that bars discussion of a particular category of topics (such as "testimony") during a recess is not a minimal infringement. It effectively restricts the attorney's ability to advise, prepare, and protect the client. Forbidding discussion of testimony during an overnight recess "effectively eviscerated [the defendant's] ability to discuss and plan trial strategy." *United States v. Cobb*, 905 F.2d 784 (4th Cir. 1990. There, the court noted that such a restriction "would defy reason. How can competent counsel not take into consideration the testimony of his client in deciding how to try the rest of the case?" *Id.*; *see also United States v. Santos*, 201 F.3d 953 (7th Cir. 2000) (noting that such restriction "as a practical matter preclude[s] the assistance of counsel across a range of legitimate legal and tactical questions."). *Id.* at 965. The Sixth Amendment does not license such fragmented advocacy.

II. The Attempt to Distinguish Between "Form" and "Substance" of Attorney-Client Communication Is Both Illusory and Unworkable

The distinction drawn in the matter below between the "form" and "substance" of communications between a

defendant and counsel during a recess is constitutionally suspect. Under this approach, a defendant might be permitted to receive moral support or general guidance, but not any advice that relates to the testimony already given or yet to come. This "testimony-only" limitation is both internally incoherent and externally unenforceable. It rests on a false assumption that legal advice can be cleanly compartmentalized in real time during a dynamic and unfolding criminal trial.

a. Encouragement, caution, and clarification cannot be neatly separated

What courts have called "coaching" is already regulated by rules of professional conduct. *See, e.g.*, Model Rules of Pro. Conduct r. 3.4(b) (Am. Bar Ass'n 2020) (prohibiting counsel from advising a witness to testify falsely). However, not every statement made by a defense lawyer mid-trial is an ethical hazard. Telling a client "you're doing well" or "take your time" is not a directive to alter testimony, but a recognition of the emotional gravity of the moment and the lawyer's role as an advocate and counselor.

As the District Court emphasized in *Mudd v. United States*, 798 F.2d 1509, 1512 (D.C. Cir. 1986), "[c]onsultation between lawyers and clients cannot be neatly divided into discussions about 'testimony' and those about 'other' matters." In that case, as here, the trial court imposed a "no-testimony discussion" rule during a weekend recess. The *Mudd* court rejected the notion that any line between content types could be consistently maintained or meaningfully enforced. *Id.* at 1512-13. This Court echoed this concern, recognizing that during substantial

recesses counsel must be able to speak freely with their clients, even if those discussions "will inevitably include some consideration of the defendant's ongoing testimony." *Perry v. Leeke*, 488 U.S. 272, 284 (1989).

Indeed, it would be practically difficult for trial counsel to walk such a thin, even imaginary, line. For example, even advising a client not to violate a motion *in limine* ruling may involve reference to the defendant's testimony. If the trial court has ruled that evidence of prior arrests is inadmissible, may counsel not say: "Don't bring that up again"? If the court has warned against discussing plea negotiations, and the client veers close, must counsel remain silent? *See, e.g., Santos, supra* (Even "warning the defendant not to mention excluded evidence" may be prohibited under a testimony-only ban.) 201 F.3d at 965. As Judge Yeary recognized below, lawyers cannot be asked to divine where the line is drawn: "[T]his is no way to navigate a right as important as the constitutional right to counsel." *Villarreal*, slip op. at 21 (Yeary, J., concurring).

This danger is not hypothetical. "The line between defense counsel conferring with his client about the content and direction of his ongoing testimony and conferring about the derivative effects of that ongoing testimony is a nebulous one at best." *Villarreal v. State*, slip op. at 19 (Tex. Crim. App. Oct. 9, 2024). Judge Yeary rightly worried that such a line would be "unworkable in practice" and would expose defense attorneys to contempt risk for performing their constitutional role. *Id.*

Indeed, such constraints would hinder the defense's strategic choices, sow confusion and increase fear of missteps, depriving defendants of what the Sixth

Amendment secures: candid substantive advice during trial. *See, e.g., Santos, supra* (noting, "while the judge may instruct the lawyer not to coach his client, he may not forbid all consideration of the defendant's ongoing testimony during a substantial recess, since that would as a practical matter preclude the assistance of counsel across a range of legitimate legal and tactical questions.") 201 F.3d at 965. Not only would an attorney be restricted in his or her strategic decisions, but such limitations on testimony would also unconstitutionally deprive a criminal defendant of his or her ability to direct her own defense. *McCoy v. Louisiana*, 584 U.S. ___ (2018) (The Sixth Amendment was violated when a previously pro se defendant wanted to offer a defense of actual innocence, but appointed counsel insisted on arguing for diminished capacity, restricting the defendant's right to direct his own defense).

b. The testimony ban misunderstands the role of the defense lawyer

Under the logic of the opinion below, the moment the defendant becomes a witness during trial, he is stripped of full access to legal advice under the premise he is still "on the stand." *See Villarreal v. State*, No. PD-0048-20, slip op. at 3-4 (Tex. Crim. App. Oct. 9, 2024). This reframing is deeply flawed. First, it conflates the formal status of testifying as a witness with a suspension of constitutional rights that other witnesses in the case do not possess. Second, it ignores the emotional and psychological toll of testifying. An accused person, especially one who is the sole defense witness as Mr. Villarreal was, does not become less in need of guidance simply because he is mid-testimony. Indeed, that is precisely when the right to

counsel is at its peak. As the New Jersey Supreme Court aptly observed, "[t]o allow a defendant the opportunity to confer with counsel during an overnight recess about everything but his own testimony is to deny the defendant the right to discuss the very thing he wants most to discuss with counsel." *State v. Fusco*, 93 N.J. 578, 586, 461 A.2d 1169, 1174 (N.J. 1983).

c. Enforcement of such a rule would require invasive and constitutionally impermissible intrusion

The enforcement of a "no-testimony discussion" rule invites courts into privileged space. To know whether a defendant and attorney discussed "testimony," courts would be forced either to trust compliance or to interrogate attorney and client about the contents of their consultation, thus jeopardizing the confidentiality the Sixth Amendment protects (see Section IV). If improper coaching occurs, it can be exposed through cross-examination, impeachment, and closing argument—not by imposing a prior restraint on all communication. *See Geders, supra*, (noting "the opposing counsel in the adversary system is not without weapons to cope with 'coached' witnesses.") 425 U.S. at 89; *see also People v. Lathem, infra* (court stated that "defendant's right to unrestricted access must prevail over any fears of coaching," which can be addressed "through exposure on cross-examination or through scheduling; coaching is inevitable and does not justify imposing a limit during an overnight recess on defendant's access to counsel."). *Id.* at 11.

III. The Trial Court's Order Imposed Emotional Harm and Fostered an Unconstitutional Sense of Abandonment

Beyond its doctrinal and practical infirmities, the trial court's restriction inflicted a more subtle but equally corrosive harm: it severed the emotional bond between attorney and client at when the defendant was most vulnerable. The courtroom is not only a legal venue, but also a human one. When the defendant takes the stand, he or she is now in a crucible of pressure, fear, and personal exposure. To prohibit the attorney from speaking to the client, especially about the testimony on which the defense rests, is to unfairly create a perception by the client that he has been abandoned by his attorney.

a. Testifying defendants face psychological isolation and anxiety

Few moments in the trial process are as psychologically taxing as testifying. For many defendants, especially those without prior courtroom experience, taking the stand can feel like a final reckoning with the full weight of the State's power. They are questioned, scrutinized, and placed at the center of the jury's attention. They are alone, under oath, and vulnerable. This is especially true in cases like the matter below, where the entire defense turned on the defendant's testimony. *See* Pet. for Cert. at 57a-58a. If he faltered in tone, lost composure, or misunderstood a question, the State's case might go unanswered. During a recess, the need for guidance is not diminished, it is heightened. These are not moments for enforced silence. They are moments for reassurance, calibration, and solidarity between lawyer and client.

b. Emotional support is a constitutionally protected dimension of representation

The Sixth Amendment does not protect only legal reasoning and strategic advice. It protects the assistance of counsel in the full sense of the term. That assistance includes emotional presence, relational trust, and the ability to provide real-time, individualized support to the accused as they navigate the immense pressures of trial. In *Perry*, the Court emphasized that while courts may impose brief restrictions during a short recess to preserve witness integrity, they must permit consultation during substantial breaks, because those breaks implicate more than witness preparation. 488 U.S. at 284 (1989). Such consultation is essential to "the traditional activity of a lawyer," including trial planning and advice. *Id.* Moreover, emotional support is often indistinguishable from strategic consultation. A lawyer's observation that the client "came off as defensive," or "seemed confused under pressure," is both a comment on testimony and an effort to help the client maintain composure. If trial courts ban such conversation, counsel must choose between ethical silence and effective advocacy, an unacceptable dilemma.

c. A trial court cannot compel counsel to emotionally withdraw from a client mid-testimony

The right to counsel is not just the right to a technically proficient legal representative, it is the right to an advocate. As the Court explained in *Strickland v. Washington*, "[t]he benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial

process that the trial cannot be relied on as having produced a just result." 466 U.S. 668, 686 (1984). Forced emotional withdrawal is a functional breakdown of the adversarial process. Defense lawyers are not robots. They are counselors in the truest sense, and to bar them from communicating with their client about testimony, especially in the name of preventing a hypothetical coaching concern that could be addressed in far less intrusive ways, is to compromise the trust that makes the attorney-client relationship effective. The lower court would create a rule where the lawyer is a potential threat rather than a guide, transforming the defense role from advocate to bystander.

The Illinois Supreme Court addressed this in the pre-*Geders* case of *People v. Noble*, 42 Ill. 2d 425, 430-31, 248 N.E.2d 96, 99-100 (1969), where it held:

> "'[t]he issue, then, is whether a trial court may properly enjoin consultation between a defendant and his lawyer during an overnight recess in a jury trial solely because defendant had not completed his testimony when the recess was declared. We believe it clear that such action constitutes a denial of the effective representation of counsel guaranteed by the Sixth Amendment to the Federal Constitution.

IV. The Trial Court's Rule Is Unworkable and Threatens the Ethical Integrity of the Defense Function

Even setting aside its constitutional flaws, the trial court's restriction is unworkable in practice and invites unnecessary intrusion into the attorney-client relationship.

As noted above, a rule that prohibits discussion of "testimony" but allows other conversations during a recess places counsel in an ethically precarious position: forced to parse conversations in real time, fearful of contempt on one side and ineffectiveness on the other. This is not a sustainable model for adversarial justice. Courts cannot demand that counsel walk a constitutional tightrope during the most crucial moments of a defendant's trial.

a. There is no principled way to separate "testimony" from "strategy"

Trial strategy is not developed in the abstract. It evolves in response to testimony, what the defendant has said, how it has been received, and how it may be challenged on cross-examination. If counsel realizes during testimony that a new witness is needed, or that a line of questioning should be avoided, or that a motion to suppress is implicated, these require reference to what has been said on the stand.

As the D.C. Circuit explained in *Mudd v. United States*, 798 F.2d 1509, 1512 (D.C. Cir. 1986) "even though [the defendant] was free to discuss strategy and tactics, there are obvious, legitimate reasons he may have needed to consult with counsel about his upcoming cross-examination." The court warned that such orders can "have a chilling effect on cautious attorneys, who might avoid giving advice on non-testimonial matters for fear of violating the court's directive." *Id.* The same risk is present here.

b. The rule undermines the attorney's ethical duties to provide competent and zealous representation

Attorneys are bound by ethical obligations that require them to provide competent and zealous advocacy. *See* Model Rules of Pro. Conduct R. 1.1, 1.3 (Am. Bar Ass'n 2020). But those duties cannot be meaningfully fulfilled if counsel is barred from advising the client on the most critical subject in trial: the defendant's own testimony.

The rule adopted by the trial court forces counsel into a constitutionally intolerable position. If the lawyer speaks freely, she risks violating a court order. If she remains silent, she may fail to advise her client effectively, especially when testimony raises new strategic or evidentiary issues. Not only does this cause concern for the attorney, who now may take steps during representation that are contrary to the client's interests in order to protect her own, but will also raise questions from the accused, who is now forced to wonder if their attorney has abandoned their cause in order to remain in favor with the Court.

c. The rule is difficult to enforce without violating confidentiality

Perhaps most troubling, enforcement of a testimony-specific ban may require courts to intrude upon privileged conversations. How else could a judge determine whether "testimony" was discussed, unless the court interrogated counsel or the defendant about their private exchanges?

For example, consider the situation where a client emails his or her attorney a question regarding testimony

after the court has imposed the restriction. Must the attorney inform the Court of the communication or is it sufficient to avoid a violation if the attorney simply fails to answer? Or the situation where the client and an expert witness are discussing the facts of the case—would that be a violation of the rule if it involves a discussion of testimony, even though the attorney is not involved?

Consider also the situation in *McCoy, supra*, where the defendant has a clear idea of how the defense should proceed, while the attorney has another. While these "disputes" are often able to be managed prior to the defendant's testimony, trials are fluid, and banning substantive discussion between attorney and client can lead to circumstances where the jury is left wondering who to believe—the attorney who conceded guilt in the opening statement, or the defendant, who testified to actual innocence.

These questions not only present considerable logistic difficulties for defendants and their counsel, but will create a divide between them, with a defendant wondering if perhaps something more could have been done if he or she had only been able to ask the one person in the courtroom who is constitutionally obligated to assist.

The Supreme Court has long recognized the sanctity of the attorney-client relationship. *Geders*, at 91. To place a barrier between client and counsel for any period is intolerable in a criminal trial. The only alternatives, blind trust in attorney restraint or compelled disclosures of privileged material, are equally unacceptable.

V. DUI Trials Are Uniquely Dependent on Real-Time Attorney-Client Consultation

According to the National Conference of State Legislators, there are over 1.5 million criminal cases per year that involve drinking and driving.[2] These cases are commonly referred to as DUI, DWI or impaired driving cases, making them one of the most common crimes committed. These cases, which often proceed rapidly in high-volume dockets, involve complex and evolving scientific and legal issues that make uninterrupted access to counsel essential.

a. DUI trials involve scientifically technical and procedurally complex evidence

DUI trials are fact-intensive proceedings that rely heavily on officer testimony and contested interpretations of technical and scientific evidence. Experts may be employed on both sides of the matter. Unlike other criminal trials that may involve multiple eyewitnesses or surveillance footage, DUI prosecutions often center on field sobriety tests, breath or blood alcohol measurements, and police observations of driving behavior. These cases frequently present real-time legal and scientific issues, such as calibration error, retrograde extrapolation, medical conditions mimicking impairment, or the significance of divided attention tasks under stress. Effective cross-examination, legal clarification, and

2. National Conference of State Legislators, Summary: Drunk Driving, updated October 11, 2023. *See* https://www.ncsl.org/transportation/drunken-driving (last accessed November 6, 2023)

strategic continuity are essential. Defense counsel must be able to ensure the client understands the evidentiary landscape, procedural developments, and how to navigate the next day's proceedings.

Frequently, such trials involve whether there is sufficient proof that blood alcohol concentrations were 'over the limit' at a particular point in time, even though the breath or blood tests were performed hours later. This science governing this area of the law is referred to as "retrograde extrapolation;" a method used to estimate a defendant's blood alcohol concentration (BAC) at a previous time, based on a test result obtained later. Retrograde extrapolation is a mathematical estimation that requires detailed and individualized information as to a multitude of factors. An expert's ability to make a reliable estimate depends on knowing the defendant's weight, the amount and timing of alcohol consumption, the time of the last drink, whether the defendant had eaten, and the defendant's alcohol metabolism rate. *Mata v. Texas*, 46 S.W.3d 902, 905 (Tex. Crim. App. 2001).

In *Mata*, the expert witness failed to obtain any of this critical information from the defendant. Instead, he based his estimate on general assumptions about a "normal drinking pattern" and used hypothetical extrapolations. *Id.* at 922-923. The Court found this approach scientifically unreliable and held "the scientists who find retrograde extrapolations reliable would require more known quantities than what [the expert] had in this case." *Id.* at 917. This example underscores why real-time communication between attorney and client during trial recesses is constitutionally vital in DUI trials. During trial but prior to testifying, the expert may want additional

information or clarification as to the defendant's activities during the drinking episode. Did he have a full or empty stomach? What type of food did he eat? Did he also drink water? Was he dieting? Was the alcohol served with a mixer or straight up? If this occurs during the recess, does the defense attorney risk seeking an update from the client, or risk a lack of foundation, or risk being ineffective by failing to obtain the information? Without access to the defendant's firsthand account, details about food, drinking habits, timing, and physical characteristics, defense counsel cannot ensure that scientific testimony is valid, relevant, or admissible. These are not academic concerns; they are decisive trial issues. A misstep in one of these areas can render a defense expert's opinion inadmissible, or worse, mislead the jury. *See Mata,* at 906.

b. The defendant in a DUI case is often the only witness for the defense

Many DUI cases, including the misdemeanor and felony cases litigated daily in state courts, feature no defense witnesses other than the defendant. That is often because the only real dispute is whether the defendant was impaired at the time of driving; law enforcement officers are the only prosecution witnesses; and the defense theory often rests on rebutting officer observations and test results through the defendant's own account of events.

That was precisely the posture below. Though not a DUI, the petitioner was the sole defense witness. In such cases, where the defense rests on the defendant's testimony, denying consultation with counsel undermines the fairness and balance of the adversarial process. This reality is common in impaired driving prosecutions.

Restrictions on attorney-client communication during recesses, even those labeled "limited," "risk depriving the defendant of clarification, reassurance, and preparation essential to continuing testimony. An overnight recess is not merely a procedural pause," it is a critical moment to preserve continuity of representation and ensure the integrity of the trial.

c. Real-time legal strategy cannot be deferred, especially given court scheduling realities.

The suggestion that the defendant and counsel can "wait until testimony is over" to resume communication ignores how court scheduling can exacerbate the harm. In New Jersey, for example, DUI trials are heard in the Municipal Courts, where proceedings are often scheduled around limited judicial calendars. While courts sit daily, many meet only weekly or even monthly. That means that an "overnight" recess is often a misnomer: a communication blackout could last not just a day, but several weeks or more, depending on docket rotation and judicial availability. In similar settings, a rule barring attorney-client consultation during breaks in testimony would prevent timely strategy shifts, suppress clarification of scientific points, and, worst of all, leave the defendant legally isolated while still under oath. The right to counsel must be constant; it cannot be subject to the municipal court calendar.

CONCLUSION

The right to counsel under the Sixth Amendment is not a matter of convenience. It is not conditional on docket constraints, judicial preferences, or prosecutorial fears about coaching. It is a constant, unbroken constitutional guarantee, one that extends through every phase of trial, including overnight or other recesses during testimony. The Court should adopt a clear, bright-line rule: any impediment to attorney-client communication during a trial recess, whether called overnight, for lunch, or otherwise, is a per se violation of the Sixth Amendment right to counsel.

The trial court's order below impermissibly restricted that right by forbidding the defendant from conferring with his attorneys about his own testimony during an overnight recess. That order cannot be reconciled with this Court's decisions in *Geders* and *Perry*, and it defies both the practical demands of criminal defense and the emotional realities of trial advocacy.

The Sixth Amendment does not yield to scheduling, judicial discretion, or theoretical concerns about coaching. Where there is tension between trial management and constitutional protection, that tension must be resolved for the accused. In complex, high-volume cases like DUI prosecutions, the right to consult counsel during an overnight recess is essential, not optional.

History and precedent make clear: defendants must have access to counsel at all critical trial stages. Courts need not ban all restrictions, but absent a compelling,

fact-specific risk, they cannot impose speculative policies that infringe on constitutional rights.

For the foregoing reasons the decision below should be reversed.

Respectfully submitted,

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