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IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT W. HASSETT, 3RD. — PETITIONER

VS.

STATE OF DELAWARE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

DELAWARE SUPREME COURT

PETITON FOR WRIT OF CERTIORARI

ROBERT W. HASSETT,3RD.

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QUESTIONS PRESENTED

1. Whether the Eighth and 14th Amendments to the United States Constitution are violated, and this Court's holdings are contradicted,[1] when a court has stated, on record, that they had sentenced a person under a capital sentencing statute for a non-capital offense, applying first-degree murder to a non-capital offense despite that state's supreme court holding a first-degree murder conviction automatically authorized a possible death sentence to be imposed, and upon a conviction for first-degree murder, that state's written legislation separates it from all other non-capital offenses and gives procedural requirements that a death penalty hearing be held?

2. Whether the Sixth, Eighth, and 14th Amendments to the United States Constitution are violated when a court applies a capital offense to a non-capital case, obtains a conviction on that purported capital offense by inaccurate and misleading instructions to the jury, imposes a sentence under a capital sentencing statute for a non-capital offense, and then subsequently justifies its rationale through reliance upon an *Ex Post Facto* principle despite that same state's supreme court previously holding the offense in fact of law authorized a possible death sentence and that state has enacted procedural law dictating that, upon a conviction, a death penalty hearing shall be performed?

3. If, under the Eighth and 14th Amendments to the United States Constitution, by legal definition a capital offense is one in which a possible sentence of death can be imposed and said

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[1] *See, e.g., Apprendi v. New Jersey,* 536 U.S. 466 (2000); *Ring v. Arizona,* 536 U.S. 545 (2002); *Erlinger v. United States,* 2024 U.S. LEXIS 2715 (2024).

offense has a separate corresponding capital sentencing statute, where a death penalty hearing procedurally must occur, then if a conviction of said offense automatically authorizes a possible death penalty sentence to be considered and under its corresponding capital sentencing statute required a death penalty hearing be held before the jury who convicted, may the court prior to trial instruct both counsel and the jury that the offense before them was a non-capital offense and the death penalty was not involved, or does this violate procedural law as well as constitutional law?

4. Whether the Sixth and 14th Amendments to the United States Constitution and this Court's holding in *Erlinger* are violated where a court applies an enhanced offense of a legally defined capital offense for a non-capital offense without a jury's decision for the sole purpose of enhancing the minimum possible sentence from ten years in prison to natural life in prison?

5. If a court, prior to trial, is presented with nine motions and letters to dismiss trial counsel by a person, yet the court does not hold a colloquy hearing and denies all motions and letters, denying the person the right to defend himself at all trial proceedings including sentencing, does this violate the Fifth, Sixth, Eighth and 14th Amendments to the United States Constitution and create an 'in the interest of justice' instance?

PARTIES TO THE PROCEEDING

Petitioner Robert W. Hassett, III, is an inmate incarcerated by the State of Delaware at the James T. Vaughn Correctional Center in Smyrna, Delaware. Hassett is serving a natural life plus 22-year sentence for murder and related offenses. Hassett is petitioning this Court for a writ of certiorari to review the judgments of the Delaware state courts in this case.

The State of Delaware is the Respondent.

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The June 24, 2025 opinion of the Delaware Supreme Court affirming the denial of Hassett's motion for correction of illegal sentence has gone unpublished, but appears at Appendix A to the petition. The January 23, 2025 Order of the Delaware Superior Court denying Hassett's motion for correction of illegal sentence has also gone unpublished, but appears at Appendix B to the petition.

JURISDICTION

The Delaware Supreme Court – the highest court of the State of Delaware – entered its judgment on June 24, 2025. Consequently, jurisdiction is invoked in this Court pursuant to 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves a state criminal defendant's constitutional rights under the Fifth, Sixth, Eighth, and 14th Amendments.

The **Fifth Amendment** provides, in relevant part:

> No person shall be ... deprived of life, liberty, or property, without due process of law.

The **Sixth Amendment** provides, in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right to ... have the assistance of counsel for his defense.

The **Eighth Amendment** provides, in relevant part:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The **14th Amendment** provides, in relevant part:

> ...Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case also involves Delaware Constitution Article I, §§ 7, 12.

Art. I, § 7 provides, in relevant part:

> In all criminal prosecutions, the accused has a right to be heard personally and by counsel... nor shall the accused be deprived of life, liberty, or property, unless by the judgment of the accused's peers or by the law of the land.

Art. I, § 12 provides, in relevant part:

> All prisoners shall be bailable by sufficient sureties, unless for capital offenses when the proof is positive or the presumption great; and when persons are confined on accusation for such offenses their friends and counsel may at proper seasons have access to them.

Finally, this case involves a number of statutes, including 28 U.S.C. § 1654, which provides, in relevant part:

> In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

STATEMENT OF THE CASE

This case stems from the death of Sherri L. Hassett. On May 14, 2000, Hassett was charged with non-capital first degree murder and Possession of a Deadly Weapon During the Commission of a Felony for the death of Sherri L. Hassett. In the course of pre-trial litigation, Hassett filed nine motions with the trial court to fire his attorney and appoint new counsel or proceed with representing himself for trial, but the trial court refused to grant those motions or hold a fact-finding hearing. Hassett then proceeded to trial in June of 2001, whereupon the trial judge instructed the jury that the case before them was a non-capital case and the death penalty was not involved. A verdict of guilty on both charges was rendered.

In August of 2001, the sentencing court held a sentencing hearing, whereupon Hassett was sentenced to a natural life sentence under Delaware's Capital Sentencing Statute for the non-capital first degree murder offense, 20 years mandatory for PDWDCF, and two years mandatory for a violation of probation. The trial court imposed these sentences without adhering to statutory procedures.

Hassett's attorney then filed an appeal to the Supreme Court of Delaware, which was subsequently denied. Hassett has since moved for a correction of illegal sentence to the Superior Court of Delaware. Upon denial, Hassett appealed to the Delaware Supreme Court. Hassett now subsequently appeals that court's denial to this Court for review.

REASONS FOR GRANTING THE PETITION

Hassett comes before this Court so that, in the interest of justice, the misapplication of law, illegal conviction, and subsequent illegal sentence that was a result of a decision that was contrary to and was an unreasonable application of clearly established Federal law determined by the Supreme Court of the United States can be correctly adjudicated.

The most important point of legal principle that seems to get lost by the State of Delaware is that Hassett's offense was a non-capital offense and the Court instructed both of the attorneys and the jury at trial as such – "This is not a capital murder case. The death penalty is not involved."[1]

If this Court were to look at Title 11 of the Delaware Code, Chapter 31, *Indictment and Information,* Section 3101 *(Degrees of Murder),* the State must determine and identify, pursuant to § 3101, "the different degrees of murder shall be distinguished in indictments." This means the State is obligated to put forth whether the offense is first-degree, second-degree, manslaughter, or a lesser degree of murder. The legal stance behind this mandatory law is to determine the exposure of punishment a defendant will be able to receive if convicted and to prevent a non-capital offense from being raised to a first-degree offense and subjected to the capital sentencing statute and a possible death penalty sentence.

This procedure of indictment is fundamental in upholding the Due Process of the 14th Amendment to the U.S. Constitution. As the difference between first-degree murder and all other lesser degrees of murder is that first-degree murder carries a maximum penalty of death and all

[1] *See* Trial Transcripts Vol. A pgs. 3-6; March 9, 2001 hearing in Judge's Chambers.

other lesser degrees of murder carry a maximum penalty of 20 years in prison or less as first-degree is a capital offense and all other degrees are non-capital.

However, the State charged, held a trial on, and sentenced Hassett on a capital offense and under Delaware's capital sentencing statute,[2] in complete contradiction of state and federal law.

When viewing this case, we have to look at several factors. One of those is what it is that distinguishes a capital offense from a non-capital offense. For this, we first look to their respective definitions. Under Ballentine's Law Dictionary, 3rd Edition, the term capital offense is defined as "an offense which may be punished capitally, that is, by execution of the death penalty. The test of a 'capital crime' is not the punishment which is imposed but that which *may* be imposed." 21 Am. J. 2d. Crim. L. § 18.

When posing the question of what is a non-capital offense to Ballentine's Law Dictionary, there is no definition given. Why? Because it is common sense and common knowledge that a capital offense is one in which can be punished capitally (*i.e.,* by execution of the death penalty), then a person convicted of a non-capital offense cannot be exposed to the same capital sentencing statute nor be punished capitally, making it illegal to receive any sentence whether natural life in prison or a death penalty sentence under the capital sentencing provisions of Delaware's capital sentencing statute.

Following this, we must look at the Fifth, Sixth, Eighth and 14th Amendments to the United States Constitution with regards to capital offenses, non-capital offenses, and the sentencing thereof.

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[2] *State of Delaware v. Robert W. Hassett, III,* I.D. No. 0005011315, 2017 Del. Super. LEXIS 255.

The Fifth and Sixth Amendments to the United States Constitution prevent a state court from using "any fact" to increase a prescribed range of penalty a criminal defendant may be exposed to without being resolved by a unanimous jury beyond a reasonable doubt.

This Court stated, in *Erlinger v. United States,* 2024 U.S. LEXIS 2715 at *22 (2024):

> "As the government recognizes, there is no doubt what the Constitution requires in these circumstances: virtually 'any fact' that 'increase[s] the prescribed range of penalties to which a criminal defendant is exposed' must be resolved by a unanimous jury beyond a reasonable doubt ... Judges may not assume the jury's fact-finding function for themselves, let alone purport to perform it using a mere preponderance-of-the-evidence standard. To hold otherwise might not portend a revival of the vice-admiralty courts the Framers so feared ... but all the same it would intrude on a power the Fifth and Sixth Amendments reserve to the American people."

This Court went on to state that:

> "... a judge may not use information in *Shepard* documents to decide 'what the defendant ... actually di[d]' or the 'means' or 'manner' in which he committed his offense in order to increase the punishment to which he might be exposed."[3]

Even though Hassett was convicted of first-degree murder, the jury reached this verdict on illegal instructions by the court as to the classification of the offense,[4] and an incomplete

[3] *Erlinger,* 2024 U.S. LEXIS 2715 at * 28.

[4] *See* footnote 1 – Trial Transcript Vol. A pages 3-6.

knowledge of the law. As they questioned the court in regard to Hassett's 'intent' in the murder of the victim. It cannot be said that, had the jury been properly instructed, they would have reached the same verdict. Especially as by legal principal standards of the application of criminal offenses for a non-capital murder offense, Hassett was under Federal and State Constitutional law, as well as legislative law, to be charged, indicted, and tried on the offense of second-degree murder at most.

In *Harmelin v. Michigan,* 501 U.S. 957 (1991), this Court made it clear that a mandatory life sentence in itself does not constitute cruel and unusual punishment. However, when Due Process is violated in order to impose an enhanced penalty under a capital sentencing statute for a non-capital offense, then not only has the 14th Amendment to the United States Constitution been violated, but now the sentence becomes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution and in contradiction of this Court's rulings.

This Court has expounded on this reasoning in several cases, such as *Apprendi v. New Jersey,* 530 U.S. 466, 147 L. Ed. 2d 435, 446, where this Court stated:

> "... under the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt." Further, "this practice at common law held true when indictments were issued pursuant to statute. Just as circumstances of the crime and the intent of the defendant at the time of commission were often essential elements to be alleged in the indictment, so too were the circumstances mandating a particular punishment. Where a statute annexes a higher degree of punishment to a common-law felony, if committed

> under particular circumstances, an indictment for the offense, in order to bring the defendant within that higher degree of punishment must expressly charge it to have been committed under those circumstances and must state the circumstances with certainty and precision..."[5]

In Hassett's case, the State of Delaware used incomplete and inaccurate information to obtain an indictment of first-degree murder (which by Ballentine's Legal definition and by Delaware's own written law is a capital offense), for a non-capital offense. The State did not inform the Grand Jury that they were pursuing a charge of capital status for a non-capital offense.

Then, upon the issue of bail, the court denied bail (i.e., held without bail[6]) because the State had charged Hassett with first-degree murder (instead of second-degree murder for Hassett's non-capital offense). This reliance to deny bail contradicted clear constitutional law pertaining to Due Process of a non-capital offense:

> "All prisoners shall be bailable by sufficient sureties, unless for capital offenses when the proof is positive or the presumption great, and when persons are confined on accusation for such offenses, their friends and counsel may at proper seasons have access to them."[7]

In *Stack v. Boyle,* 342 U.S. 1 (1951), L. Ed. HN [2], it states: "First. From the passage of the Judiciary Act of 1789, 1 Stat. 73, 91, to the present Federal Rules of Criminal Procedure Rule 46(a)(1), federal law has unequivocally provided that a person arrested for a non-capital offense shall be admitted to bail. This traditional right to freedom before conviction permits the

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[5] *Apprendi,* 147 L. Ed. 2d at 449.

[6] Docket Sheet page 1 – Event date 06/08/2000.

[7] Del. Const. Art. I, § 12 – Right to Bail, Access to Accused.

unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. *See: Hudson v. Parker,* 156 U.S. 277, 285 (1895). Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning."

The court, presuming facts not entered into the record, enhanced Hassett's non-capital offense to that of a capital offense at this point of the proceedings for the sole benefit that a capital offense allows the denial of bail.[8] However, after the denial of bail, the courts apply the classification of non-capital to all the proceedings except sentencing, in which the court again applies Delaware's capital sentencing.

Further into pre-trial proceedings, the court dismissed Hassett's attorney without cause or with Hassett's knowledge, then appointed another attorney against Hassett's wishes. Hassett's previous attorney requested to remain on Hassett's case, only to be dismissed by the court. The new attorney requested co-counsel of the previous attorney as Hassett was charged with first-degree murder (a capital offense), however the court denied this request as this was not the court's policy to appoint co-counsel in non-capital cases.[9]

During pre-trial proceedings, Hassett filed nine motions/letters to fire/disqualify his attorney.[10] The trial judge continuously denied Hassett's motions without making clear either the court's factual findings or the legal reasonings underlying the trial judge's denial. This was in clear violation of Hassett's Due Process rights, as articulated within the Delaware Constitution:

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[8] *See id.*

[9] Docket Sheet page 2 – Event date 07/28/2000, i.e. court response and attorney request.

[10] Docket Sheet pages 2-5.

> "The right to represent oneself in a criminal proceeding is fundamental but not unqualified. Before a trial court may permit a defendant to represent himself or herself the court must: (1) determine that the defendant has made a knowing and voluntary waiver of the constitutional right to counsel; and (2) inform the defendant of the risks inherent in going forward in a criminal trial without the assistance of counsel."[11]

In order for a court to follow these constitutionally afforded rights, the court must hold a colloquy hearing. As under provisions of counsel, for Del. Const. Art. I, § 7 states: "... defendant's request to proceed pro se was denied without a colloquy and the required legal analysis under U.S. Const. Amend. 6 and Del. Const. Art. I, § 7 *Williams v. State,* 56 A.3d 1053, 2012 Del. LEXIS 634 (Del. 2012)."

In Hassett's case, the court never once held a colloquy hearing. Instead, the court ignored, denied, and, in one instance, wrote back to Hassett, "... the court will not appoint new counsel. Defendant is free to obtain another attorney at his own expense."[12] The court made no mention of Hassett representing himself.

Hassett's case presents a situation akin to that in *Williams:*

> "The record in this case provides no basis for us to find a waiver of the right to self-representation. There is no colloquy at all with Williams. Instead, the trial judge responded to Williams' request by telling him flatly that he would not be allowed to represent himself because he started with counsel. Starting a trial with counsel,

[11] Del. Const. Art. I, § 7; *see also Stigars v. State,* 674 A.2d 477, 1996 Del. LEXIS 151 (Del. 1996).

[12] Docket Sheet page 4 – Event Date 04/11/2001.

> without more, is not a basis to deny a defendant's right to self-representation."[13]

However, unlike *Williams, supra,* Hassett did not start trial proceedings with the attorney Hassett was trying to fire. Hassett's original attorney was removed from his case by the court for no justifiable or recorded reason. The next attorney was forced upon Hassett.

Even after Hassett verbally informed his attorney that he was fired, Hassett's attorney informed Hassett that, unless Hassett hired another attorney, Hassett had no choice, as Hassett was charged with first-degree murder and the court would not allow Hassett to represent himself.

The actions of the court were in contradiction to the U.S. Constitution's Sixth Amendment right to forego counsel and represent oneself. This Court has held:

> "In the federal courts, the right of self-representation has been protected by statute since the beginnings of our Nation. Section 35 of the Judiciary Act of 1789, 1 Stat. 73, 92, enacted by the First Congress and signed by President Washington one day before the Sixth Amendment was proposed, provided that 'in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of ... counsel...' The right is currently codified in 28 U.S.C. § 1654. With few exceptions, each of the several states also accords a defendant the right to represent himself in any criminal case."[14]

In addition to these issues, once the trial began, the trial judge also failed to clarify to the trial jury that the offense of first-degree murder is a capital offense but prior to trial the judge had

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[13] *Williams,* 56 A.3d at 1056.

[14] *Faretta v. California,* 422 U.S. 806, 812-13 (1975).

determined facts not entered into court that the actual offense was non-capital, but in the State's effort to obtain an enhanced punishment of natural life instead of the maximum of 20 years for non-capital murder,[15] the court instructed the jury improperly on the offense of first-degree murder.

Furthermore, in the midst of trial the prosecution argued to the jury that ***"the defendant had had enough and snapped."*** This is not an element of first-degree murder; rather, it is a completely different state of mind from intentionality and amounts to an element of a lesser degree of murder. However, when the judge gave instructions on lesser-included offenses, the judge did not correct his errors on the classification of offenses (*i.e.* first-degree murder by legal principle has to be sentenced under the capital sentencing statute).

This Court has held, in cases such as *Beck v. Alabama*[16] and *Hopper v. Evans,*[17] that a state cannot uphold a capital guilty verdict if the state court did not instruct the jury on the availability of lesser included offenses – especially when there is reasonable evidence to support a lesser-included offense conviction.

Delaware, in understanding this Court's reasoning and holding to the plain logic of facts entered in Hassett's trial, reasoned that there were enough facts and evidence to support a conviction of a lesser-included non-capital offense and thus gave instruction on second degree murder and manslaughter.

However, when the trial court gave the jury the improper instructions that first degree murder was a non-capital offense and the death penalty was not involved, the court was creating a

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[15] *See* sentencing guidelines for second-degree murder.

[16] 447 U.S. 625 (1980).

[17] 456 U.S. 605 (1982).

disparity in the jury's ability to reason on the verdict of guilt and Hassett's culpability in the offense being charged.

As this Court has explained and reasoned before, our history has shown that when a jury did not believe a person deserved a capital punishment, they at times would not convict a person. Hence why states created second degree and lesser offenses, affording juries the ability to truly weigh the facts and culpability of a defendant in order to reach a just decision on their guilt verdict as pertaining to each offense put forth to them.

However, when a court 'improperly' instructs a jury as to a 'capital' criminal offense giving the jury inaccurate information that the 'capital offense' is ***not*** a 'capital offense,' the court deprives the jury of the truth of the offenses in which they are presiding over and amounts to perjury. The court used the improper instruction to beguile the jury for the sole purpose of making the jury believe that, if they convicted on first degree murder, Hassett would not be sentenced as a capital offender under Delaware's capital sentencing statute, but instead as a non-capital offender under a non-capital statute (which does not exist).

More importantly though is that the trial court made the jury believe that first degree murder, a capital offense, was the equal to all other non-capital offenses and was not by law separate from all other criminal offenses in so much so that it literally has its own statutory and procedural required practices under Delaware and federal constitutional laws in which a conviction is to be governed and procedurally sentenced under.

When looking at Delaware's law and previous rulings on first-degree murder, along with its corresponding capital sentencing statute,[18] 11 Del.C. § 4205 should also be consulted. In 2000,

[18] 11 Del.C. § 4209.

the year of Hassett's offense, 11 Del.C. § 4205(b)(1) 'Classification of Offenses' and 'Sentencing for Felonies' states: "For class A felony not less than 15 years up to life imprisonment to be served at Level V except for conviction of first-degree murder, in which event § 4209 of This Title shall apply."[19]

Section 4209 states that, if a person is convicted of first-degree murder, that person is to be sentenced to natural life in prison or to be sentenced to death, in accordance with the procedures set forth in that statute. Importantly, Section 4209(a) further states: "... said penalty to be determined in accordance with this section."

This means that Section 4209 procedurally requires that a penalty hearing be held in front of the jury who convicted the defendant of the offense of first-degree murder to determine whether a life sentence or a death sentence shall be imposed, as dictated by the 'Separate Hearing on Issue of Punishment for First-Degree Murder' in Section 4209(b):

> "(1) Upon a conviction of guilt of a defendant of first-degree murder, the Superior Court shall conduct a separate hearing to determine whether the defendant should be sentenced to death or to life imprisonment without benefit of probation or parole as authorized by subsection (a) of this section."

In Hassett's case, the trial court ignored the law, as they had already determined before trial what they were going to punish the defendant with (as trial counsel stated as his mitigating argument during sentencing: "Yes, just briefly. I stand here in a position, basically, of having my hands tied by the statute. The court is required by law to pass a sentence of life without parole on

[19] *See* in Appendix D § 4205, § 4209, and SENTAC Sentencing Guidelines.

the murder charge").[20] This was a direct violation of the constitutional law of what separates a non-capital offense from a capital offense. The State of Delaware has, throughout the years, continued to deny Hassett his constitutionally-afforded rights by stating, in part:

> "... Hassett's motion must be denied on its merits because his arguments are contrary to the language of § 4209 and well-settled case law. 11 Del.C. § 636(b)(1) states that first-degree murder shall be punished pursuant to § 4209. At the time of Hassett's conviction, the only two possible punishments under § 4209 were the death penalty or life without parole."[21]

The Delaware Supreme Court affirmed this decision and stance. And yet, the Delaware state courts do not address that Hassett had a non-capital offense or that, in order for the State to impose a sentence under Section 4209, they must first hold a penalty hearing and expose Hassett to a possible death penalty for that non-capital offense.[22] Nor does Delaware reveal that, in all of its settled case law, they are addressing capital offenders or offenders charged with first-degree murder after the death penalty was abolished. However, Hassett is neither of those two classes of offenders and therefore cannot be held within the same rationales.

Delaware's decision in Hassett's case presents a clear contradiction to their own case law. As in *Capano v. State of Delaware,*[23] it is not Section 4209 that made first-degree murder a capital offense in all instances; it was the conviction of the offense of first-degree murder under 11 Del.C.

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[20] *See* Sentencing Transcripts at page 2.

[21] *See* in Appendix B, *State of Delaware v. Robert W. Hassett, III,* I.D. Nos. 0005011315 / 9902011557, Decided Jan. 23, 2025, Order at *4, ¶ 9.

[22] *See* 11 Del.C. § 4209(b)(1).

[23] 78 A.2d 556, 670-73 (Del. 2000).

§ 636 itself. As a conviction of first-degree murder "automatically authorized" a possible death penalty.

The Delaware Supreme Court furthers their reasoning of *Capano* and first-degree murder being a capital offense by quoting this U.S. Supreme Court in *Capano* itself:

> "The aggravating factors described in Delaware's Section 4209 do not constitute additional elements needed to establish guilt of a 'capital murder' offense that a jury must find beyond a reasonable doubt. These aggravating factors relate only to the penalty phase where the jury acts as an advisory body to the sentencing judge. The *Apprendi* Court distinguished an 'element' of a crime from a 'sentencing factor' according to whether 'the required finding expose[s] the defendant to a greater punishment than that authorized by a jury's guilty verdict.' As we noted earlier, a conviction at the guilt stage by a unanimous jury under the first-degree murder statute constitutes the authorization for the later imposition of the death penalty. Because the findings of an aggravating factor do not 'expose the defendant to a greater punishment than that authorized' by a first-degree murder conviction, the aggravating factor is not an additional element of the first-degree murder offense."[24]

In later years (i.e., 2016), the Delaware Supreme Court abolished Delaware's capital sentencing statute as unconstitutional and so infirm that it could not be severed to save.[25] The Delaware Supreme Court later ruled that, for the purposes of resentencing capital offenders, the

[24] *Id.* at 672-73.

[25] *Rauf v. State of Delaware,* 145 A.3d 430 (Del. 2016).

Court could save the portion that read a natural life sentence could be imposed as it was the minimum sentence for capital offenders.[26]

The Delaware Supreme Court found this reasoning by the decisions reached by the United States Supreme Court and its numerous cases.[27] In *Rauf,* the Delaware Supreme Court further expounds its reasoning by explaining how Delaware's law came about pertaining to the issue of murder and its lesser degrees: "our own General Assembly divided murder into two degrees in 1852, with first-degree murder carrying a mandatory death sentence and second-degree murder carrying various harsh, non-capital sentences."[28]

The Delaware Supreme Court goes on to say that "... capital sentencing requires special consideration and rules that are not applicable in non-capital sentencing..."[29] However, with the record reflecting that Hassett had a non-capital crime and in so much so that the judge was compelled throughout the case to continuously instruct the State and the jury that the crime before them was non-capital. Yet, the Delaware Supreme Court refuses to acknowledge the errors of their decisions in charging Hassett with a capital crime and illegally sentencing Hassett under Delaware's capital sentencing statute.[30]

After the Delaware Supreme Court ruled in *Rauf,* they made their decision retroactive, overturning all capital sentencing and resentencing all capital offenders to a natural life sentence, as this was the minimum sentence for capital offenders. When it comes to Hassett's case, the State

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[26] *Powell v. State of Delaware,* 153 A.3d 69 (Del. 2016); *Taylor v. State of Delaware,* 180 A.3d 41 (Del. 2018); *Zebroski v. State of Delaware,* 179 A.3d 855 (Del. 2018).

[27] *See, inter alia, Apprendi v. New Jersey,* 536 U.S. 466 (2000); *Furman v. Georgia,* 408 U.S. 238 (1972); *Hurst v. Florida,* 136 S. Ct. 616 (2016); *Ring v. Arizona,* 536 U.S. 545 (2002).

[28] *Rauf,* 145 A.3d at 439.

[29] *Id.*

[30] *See* footnotes 1 and 2 within Trial Transcript Vol. A and Superior Court Judge's Order.

of Delaware argues that, because Hassett received the minimum sentence of natural life in prison under Delaware's capital sentencing statute, the sentence is justified and legal, as they had charged Hassett with first-degree murder and as they ruled that first-degree murder is a capital offense and a person must receive a minimum sentence of natural life in prison.

This argument by the State of Delaware, as adopted by the Delaware courts, fails. Had the State wanted to impose a sentence under Delaware's capital sentencing statute in Hassett's case, then they were required to inform the Grand Jury that they sought this form of sentencing when initially seeking their indictment. Then, when trial began, the judge was required to inform the jury that they were sitting in on a trial where, if they chose to convict Hassett, he would be sentenced under Delaware's capital sentencing statute. Finally, upon a conviction of first-degree murder, the judge was to hold a hearing before that same jury where evidence would be presented for a death penalty and evidence against a death penalty in favor of a natural life sentence. None of these factual and procedural requirements occurred in Hassett's case. In place of these legal requirements, Delaware prosecutors and trial judges decided to lie to the jury and then to disregard the mandatory, plain language of the rights afforded by the United States Constitution, as well as Delaware's laws concerning capital and non-capital offenses.

The State of Delaware, as adopted by the Delaware courts, in one step further argues because there is no longer a capital offense of first-degree murder and thus all first-degree murder convictions receive a natural life sentence then they are justified in Hassett's case. Quoting Deputy Attorney General David Hume, IV: "Indeed, since the 2016 decision in *Rauf,* Delaware defendants convicted of non-capital first-degree murder, as Hassett was in 2001, have been sentenced to

mandatory life imprisonment pursuant to 11 Del.C. § 4209(a).[31]

The State of Delaware cannot use an *Ex Post Facto* stance that, because first-degree murder in Delaware is no longer a capital offense and that its corresponding sentencing statute is no longer Delaware's capital sentencing statute, they are correct in charging and sentencing Hassett as a capital offender under the then-Delaware capital sentencing statute for a non-capital offense.

More importantly, Delaware's courts are trying to create a stance that the penalty phase and the guilt phase of trial proceedings are as one and interchangeable. As they believe that they can put the possible sentencing from the penalty phase ahead of the facts, and evidence of the guilt phase by changing the classification of the offense of first-degree murder and instructing a "lie" to the jury that they will not consider the death penalty even though the law reads that the court shall put forth a hearing in front of that same jury where evidence will be put forward for a death sentence.

We know from Delaware's decision in *Capano*[32] that they know and understand this is against constitutional law as set down by this U.S. Supreme Court in cases such as *Ring*[33] and *Apprendi*[34] where the difference was established between the guilt phase and penalty phase of trial as well as the difference between 'elements' of a crime and 'sentencing factors' for a penalty upon conviction.

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[31] State's Response to Defendant's Motion to Correct an Illegal Sentence, *State of Delaware v. Robert W. Hassett, III,* I.D. Nos. 0005011315 / 9902011557 (Super. Ct. Aug. 27, 2024).

[32] *Capano,* 78 A.2d at 672-73.

[33] 536 U.S. 545.

[34] 536 U.S. 466.

Delaware has long acted in violation of the Fifth and Sixth Amendments to the United States Constitution given the direction of this very Court: "The Fifth Amendment further promises that the government may not deprive individuals of their liberty without 'Due Process of Law' ... this Court has repeatedly cautioned that trial and sentencing practices must remain within the guardrails provided by these two Amendments."[35] Furthering this line of thought, the Court goes on to say:

> "With the passage of time, and accelerating in earnest in the 20th Century, various governments in this country sought to experiment with new trial and sentencing practices ... But in case after case, this Court has cautioned that, while some experiments may be tolerable, all must remain within the Fifth and Sixth Amendments' guardrails."[36]

Delaware's application of first-degree murder offenses to non-capital offenses is one of these such experiments that does not remain within the Fifth and Sixth Amendments to the U.S. Constitution. Delaware performs this act for the sole purpose of raising the minimum sentence of 10 years under second-degree murder to a minimum sentence of natural life under first-degree murder. For Delaware to assert that the mandatory minimum sentence for a capital offense is the exact same as the mandatory minimum for a non-capital offense creates a scale of justice that is neither equal nor just in its existence as it rejects the notion that one criminal offense is different in nature and severity than from all other offenses.

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[35] *Erlinger,* 2024 U.S. LEXIS 2715 at *3.

[36] *Id.* at *19.

When Delaware's Supreme Court ruled in *Rauf,* abolishing Delaware's capital sentencing statute, they went through great lengths to establish that § 4209 was Delaware's capital sentencing statute. The Delaware Supreme Court cites over 45 instances as § 4209 was Delaware's capital sentencing statute and that capital sentencing required special consideration and rules that were not applicable in non-capital sentencing. So, by Delaware Supreme Court logic, Hassett has a non-capital offense, and therefore Hassett cannot receive a sentence under Delaware capital sentencing. But, if first-degree automatically authorized that the Court had to hold a death penalty hearing, then at what point does Delaware's violations of Hassett's constitutional rights become so gross that justice can be brought to bear on the State of Delaware?

No matter how the issues are viewed, Hassett's case demands justice. This remains true even in the event that the Court must assess Hassett's issues for plain error.

> "Under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process. Furthermore, the doctrine of plain error is limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice."[37]

How much more clear injustice does Hassett need to show, when, *inter alia,* (i) Hassett was denied the right to represent himself; (ii) Hassett was charged with a classification of offense that did not exist under Delaware law at the time of the offense; and (iii) the judge gave an improper jury instruction twice. Under these circumstances, the errors complained of are clearly plain and warranted a grant of relief by the Delaware Superior and Supreme Courts.

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[37] *Dawson v. State of Delaware,* 637 A.2d 57, 62-63 (Del. 1994).

CONCLUSION

Hassett requests a grant of his petition and a determination that: (i) the Delaware Superior Court's refusal to allow Hassett to represent himself constituted plain error and a violation of Hassett's Sixth Amendment right; (ii) the Delaware Superior Court used facts not presented to a grand jury or trial jury to apply first degree murder in an illegal manner for the sole purpose of exposing Hassett to an enhanced illegal manner and method of sentencing in violation of the Fifth and Sixth Amendment; (iii) this illegal sentencing caused a violation of Due Process under the 14th Amendment; (iv) the resultant enhanced sentence amounts to both cruel and unusual punishment in violation of the Eighth Amendment; (v) the Delaware Superior Court's illegal application of first degree murder and subsequent sentencing under the then-Delaware death penalty / capital sentencing statute was so fundamentally committed in error that there is no plausible way for the court to correct the illegal manner in which the trial court used to achieve Hassett's sentence; and (vi) the Delaware Supreme Court's refusal to acknowledge and correct the lower court's errors amounts to a violation so grave to Hassett's Fifth, Sixth, Eighth, and 14th Amendment rights and so prejudicial that this court must reverse all of Hassett's convictions, with prejudice, as all of the offenses charged to Hassett were reliant upon the illegal application of non-capital first degree murder. The petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert W. Hassett III

Dated: August 4, 2025

Robert W. Hassett, III

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT W. HASSETT, 3RD — PETITIONER

VS.

STATE OF DELAWARE — RESPONDENT(S)

PROOF OF SERVICE

I, Robert W. Hassett, 3rd, do swear or declare that on this date, August , 2025, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:
Department of Justice, State of Delaware
13 The Circle
Georgetown, Delaware 19947

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 4, 2025

Robert W. Hassett, 3rd