No. 25-5325

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT W. HASSETT 3RD,

Petitioner,

v.

STATE OF DELAWARE,

Respondent.

PETITION FOR REHEARING

Robert W. Hassett 3rd
SBI # 337363
JTVCC
1181 Paddock Road
Smyrna, DE 19977

Dated: 11/10/2025

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PETITION FOR RE-HEARING

COMES NOW, Petitioner Robert Hassett, *pro se,* petitioning this Court for **rehearing** due to substantial grounds not previously presented pursuant to Rule 44(2) and thereafter grant Hassett a writ of certiorari to review the opinion of the Delaware Supreme Court. In support thereof, Hassett states the following:

Statement of Facts

Hassett was charged with first-degree murder, a capital offense, and possession of a deadly weapon during the commission of a felony ("PDWDCF"). Prior to trial, the trial court determined the murder offense did not rise to a capital offense. Neither the government nor the trial court corrected the indictment or gave bail to reflect the non-capital status of the offense. Upon commencement of trial for first-degree murder (a capital offense under federal and state law) and PDWDCF, the trial judge contradicted this Court's holding in *Erlinger v. United States,* 2024 U.S. LEXIS 2715 by providing improper instructions to the jury directing that they were presiding over a non-capital offense. By instructing the jury that the first-degree murder offense in which they were presiding over was a non-capital offense, the judge lied to the jury and denied the jury critical factual information. Under *Erlinger,* this Court has said that every fact of an accusation must be proven by the government. However, in Hassett's case, the judge took away the most crucial evidence of the accusation – that the offense was capital.

Reasons for Granting Re-Hearing

Re-hearing is necessary because this Court's dismissal of Hassett's writ fails to account for other substantial grounds not previously presented, as required by Rule 44(2). Specifically, denial of Hassett's petition for writ of certiorari will result not only in a continuing violation of Hassett's constitutional rights, but also in a continuing misapplication of this Court's own precedent in

Apprendi[1] and *Erlinger*.[2] Permitting the Delaware Supreme Court's decision to stand will allow the Delaware Supreme Court to continuously deny petitioners their constitutional Fifth, Sixth, and Fourteenth Amendment rights under the guise of wrongly-applied precedent from this Court. Thus, rehearing is necessary in light of the newly presented ground that Delaware state courts are misinterpreting this Court's guidance in *Apprendi* and *Erlinger*.

The Delaware Supreme Court's interpretation of Hassett's claims, which they will continue to apply to other petitioners, contradicts this Court's recent holding that "[t]he Fifth and Sixth Amendments' jury trial rights provide a defendant with entirely complementary protections at a different stage of the proceedings by ensuring that, once a jury is lawfully empaneled, the government must prove beyond a reasonable doubt to a unanimous jury the facts necessary to sustain the punishment it seeks."[3] The decision also warrants re-hearing as it fails to account for its own prior determination that "[t]he Fifth Amendment further promises that the government may not deprive individuals of their liberty without 'due process of law.' It safeguards a criminal defendant's well-established common-law protections, including the 'ancient rule' that the government prove to a jury every one of its charges beyond a reasonable doubt. Together, these Amendments place the jury at the heart of our criminal justice system and ensure a judge's power to punish is derived wholly from, and remains always controlled by, the jury and its verdict."[4]

If, as this Court states, Hassett is promised "due process of law" and the government must prove to a jury all offenses beyond a reasonable doubt, then it would stand that the jury must be correctly informed of the offense they are presiding over. Just because the State says they are not

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[1] *Apprendi v. New Jersey,* 530 U.S. 466 (2000).

[2] *Erlinger v. United States,* 2024 U.S. LEXIS 2715.

[3] *Id.* at *34.

[4] *Id.*

pursuing a death sentence at the outset of trial, does not mean that, as the trial proceeds, evidence may be presented causing the State to change their stance and later seek a death sentence.

An offense of first-degree murder is always a capital offense. This is not because of the sentence that is imposed, but because of the sentence that could be imposed: death. Therefore, when the trial judge instructed the jury that the offense that they were presiding over was a non-capital offense, the trial court lied to the jury. As such, the jury were not aware that they were deliberating on a verdict for a capital offense and that, if they found Hassett guilty, Hassett would receive an enhanced sentence under Delaware's capital sentencing statute for what the jury thought was a non-capital offense. When the trial judge gave the jury this false statement, it demonstrated the judge's desire to seek a sentence that exceeded the maximum penalty for a non-capital offense.[5]

This Court further stated that "...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..."[6] In order for a jury to do this, they must be properly instructed on the criminal offense that they are deliberating. A trial judge can say, at the outset of trial, that they are not pursuing a death sentence. But doing so implies that they have a knowledge of the case not already present or being made present to the jury. This contradicts the notion that until the facts of the case are presented, a judge cannot know or presume to know the sentence they will impose. Nor can a jury make a reasonable verdict if they have been misled on the offense they are deliberating.

When the trial court instructed the jury that they were presiding over a non-capital case, the judge implied he personally had facts not entered into court pertaining to the case. The jurors, as normal, everyday citizens, do not know the law as it pertains to the different degrees of murder

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

[6] *Id.* at *4.

and their subsequent sentencing statutes. They were reliant on the judge being truthful with them regarding these issues. Courts rely on the stance that ignorance of the law is not an excuse. Yet no body of educators teaches jurors or potential jurors of the law or how the law is applied. The only body of peers that is taught the law are those who specifically go to a college of law. The truth of the matter is that a majority of jurors are ignorant of the law and, as such, rely on the judge to be truthful in their instructions regarding the law and how it will pertain to their verdict.

This Court has stated "the Fifth and Sixth Amendments placed the jury at the heart of our criminal justice system. From the start, those provisions were understood to require the government to include in its criminal charges 'all the facts and circumstances which constitute the offense.'"[7] That means when a court is presenting a case to a jury, the government is required to properly inform the jury of the offense in which they are deliberating on. For the trial judge in Hassett's case to instruct the jury numerous times that the offense before them was a non-capital offense ***was not*** factual or accurate circumstances of the offense before the jury.

The facts and circumstances of the offense before the jury were that it was capital and punishable only by Delaware's capital sentencing statute. Regardless the sentence that the State and/or the judge pursues under Delaware's capital sentencing statute, the jury was not made aware of the offense they were presiding over or made aware that, if they convicted Hassett of first-degree murder instead of a lesser-included offense, then their decision would result in an enhanced sentence being applied under Delaware's capital sentencing statute for a non-capital offense.

In order for a judge to impose a sentence under a capital sentencing statute, the defendant must first be convicted of a capital crime by a jury who are made aware that they are presiding over a capital crime and then knowingly convict on that crime. However, if that same jury is

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[7] *Id.* at *16 (quoting *Apprendi v. New Jersey,* 530 U.S. 466, 478 (2000)).

misinformed as to the offense they are presiding over by the trial judge and do not know they are deliberating on a capital charge, then Hassett's Fifth and Sixth Amendment rights are violated, as Hassett's convictions and subsequent sentences are based on improper information and lack the truth of the accusation being levied against him.[8]

In *Apprendi,* this Court reviewed a New Jersey offense that ordinarily carried a maximum sentence of ten years in prison, but allowed for a 'sentencing enhancement' permitting the judge to impose a longer term of imprisonment after finding, by a preponderance of evidence, that the offender's crime was motivated by a racial bias. This Court found that such a sentence was unconstitutional as "only a jury may find 'facts that increase the prescribed range of penalties to which a criminal defendant is exposed.'"[9] This Court reaffirmed that principle last year in *Erlinger,* when this Court reminded that, "[a]s 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."[10] "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 ... it would intrude on a power the Fifth and Sixth Amendments reserve to the American people."[11]

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[8] *See id.* at *17 ("Should an 'indictment or accusation ... lack any particular fact which laws ma[d]e essential to the punishment,' it was treated as 'no accusation' at all."); *see also id.* at *18 ("By requiring the Executive Branch to prove its charges to a unanimous jury beyond a reasonable doubt, the Fifth and Sixth Amendments seek to mitigate the risk of prosecutorial overreach and misconduct, including the pursuit of 'pretended offenses' and 'arbitrary convictions.'").

[9] *Id.* at *19-20 (citing *Apprendi,* 530 U.S. 466).

[10] *Id.* at *22.

[11] *Apprendi,* 530 U.S. at 490.

Here, Hassett was indicted on capital first-degree murder. Accordingly, the State denied Hassett bail. Delaware can only deny bail if a person is charged with a capital offense.[12] The State and the trial court then put on record that the offense was actually non-capital at the March 9, 2001 hearing in the judge's chambers. However, this was never corrected in the indictment to reflect this offense, nor did the judge grant bail, as is required by law for a non-capital offense.

At the onset of trial, the judge gave an instruction to the jury that was deceptive, improper, and an outright lie pertaining to the presented offense. The trial judge instructed that the offense, capital first-degree murder, was not capital and the death penalty was not involved. The law clearly indicates that these instructions were improper. First-degree murder is always a capital offense when the death penalty is a possibility. Under Delaware law, if a person is convicted of first-degree murder, that person will be punished under Delaware's capital sentencing statute, 11 Del. 4209. If a jury convicts a person of first-degree murder in Delaware, Title 11, Section 4209 demands that the court hold a death penalty hearing.

This procedure was not optional. It was required. Trial records and transcripts prove that the trial judge did not follow the law prior to trial, at the onset of trial, or at sentencing, as the trial judge, without a jury, gave Hassett a sentence using a capital sentencing statute but refused to follow the demands of the law by holding a death penalty hearing in front of a jury. Regardless the sentence to be imposed, the law required this hearing be held for capital first-degree murder. As no criminal offense of non-capital first-degree murder existed at the time of Hassett's offense, the trial judge's instructions to the jury that they were presiding over a non-capital offense of first-degree murder was a direct contradiction of law, as well as this Court's holdings in *Erlinger* and *Apprendi,* where this Court determined that a jury must know the truth of the offense in which they

[12] *See* Del. Const. Art. I, § 12; *see also Stack v. Boyle,* 342 U.S. 1 (1951).

are deliberating. Furthermore, if the offense of non-capital first-degree murder did not exist under Delaware law and the judge did not put forth facts before the jury to elevate the offense to capital, then the judge cannot impose a sentence under Delaware's capital sentencing. To do so violates Hassett's rights under the Fifth, Sixth, and Fourteenth Amendments and demands re-hearing.

Conclusion

For the reasons stated, this Court must **GRANT** re-hearing of its judgment, entered on October 14, 2025, and issue a writ of certiorari to hold the Delaware Supreme Court accountable for failing to properly apply the law of this Court and grant Petitioner Robert W. Hassett 3rd relief.

Date:
11/10/25

Respectfully submitted,

Robert W. Hassett 3rd

Robert W. Hassett 3rd
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JTVCC
1181 Paddock Road
Smyrna, DE 19977

Certificate of Service

The undersigned, Robert W. Hassett 3rd, hereby certifies that a copy of the foregoing Petition for Re-Hearing was mailed using the U.S. Postal Service at James T. Vaughn Correctional Center, 1181 Paddock Road, Smyrna, DE 19977 on this 10th day of November, 2025, to the following:

Department of Justice

State of Delaware

13 The Circle

Georgetown, DE 19947

Robert W. Hassett 3rd

Robert W. Hassett 3rd
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JTVCC
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Certificate of Good Faith

COMES NOW Petitioner, Robert W. Hassett 3rd, and makes certification that his petition for rehearing is presented to this Court in good faith and is limited to other substantial grounds not previously raised pursuant to Rule 44. Mr. Hassett further states the following:

1. This Court entered its judgment denying Petitioner a Writ of Certiorari on October 14, 2025. Petitioner avers the request for rehearing is brought in good faith, not for delay, and is limited to a substantial, previously unraised ground that, if the Delaware Supreme Court is continuously allowed to apply the *Erlinger* and *Apprendi* standards improperly, not only will Hassett be harmed, but also a number of others in the future.

I, Robert W. Hassett 3rd, declare under the penalty of perjury, that the foregoing is true and correct.

Executed on this 10th day of November, 2025.

Robert W. Hassett 3rd

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Robert W. Hassett III

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