OCTOBER TERM, 2025

No. 25-5851

IN THE SUPREME COURT OF THE UNITED STATES

CHRISTOPHER JOHNSON,
Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,
Respondent.

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

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

--- CAPITAL CASE ---

Peter Walker*
Andrew Childers
Assistant Federal Defenders
Federal Community Defender Office
for the Eastern District of Pennsylvania
601 Walnut Street, Suite 545 West
Philadelphia, PA 19106
(215) 928-0520
Peter_Walker@fd.org

* *Counsel of record for Petitioner, Christopher Johnson*
Member of the Bar of the Supreme Court

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

State Cases

REPLY ARGUMENT

A. This Court Can and Should Decide the Question Presented.

The question presented in Mr. Johnson's petition for a writ of certiorari is properly before the Court, and the Commonwealth is wrong to assert that this Court's review is precluded.

This case involves a claim for relief under *Strickland v. Washington*, 466 U.S. 668 (1984), and Mr. Johnson need only have presented a *Strickland* claim to the state court below to raise his question presented related to that claim before the Court now. This Court's recent decision in *Hemphill v. New York*, 595 U.S. 140 (2022) controls.

In *Hemphill*, as here, the State argued that the Petitioner failed to "present his claim adequately to the state courts." *Id.* at 148. The State had argued that the Petitioner had not "presented the broader constitutional claim he raises here" because it had not been preserved at trial. Brief for Respondent, *Hemphill v. New York*, 2021 WL 3601392, at *18. The State argued that this "failure is a jurisdictional defect that precludes this Court's review," and "principles of comity prohibit reversing a state court on an unpresented claim that the court lacked power to review." *Id.*

The Court disagreed, noting that the Petitioner had presented his Sixth Amendment right to confrontation claim "[a]t every level of his proceedings in state court," and reiterated that "'Once a federal claim is properly presented, a party can make any argument in support of that claim.'" *Hemphill*, 595 U.S. at 149 (quoting *Yee v. Escondido*, 503 U.S. 519, 534 (1992)). Here, Mr. Johnson also raised his Sixth Amendment right to the assistance of counsel at every level of the state court proceedings below. Thus, this Court may now "consider any argument [Mr. Johnson

raises in support of his [Sixth Amendment] claim." *Id.* Even the dissent in *Hemphill* recognized that new arguments in support of a federal constitutional claim can be raised for the first time before this Court. *See Hemphill*, 595 U.S. at 164 (Thomas, J., dissenting) ("*Yee* still requires a federal claim to be 'properly presented' to the state court, even if a new *argument* in support of that claim is raised for the first time here.") (citing *Yee*, 503 U.S. at 534) (emphasis in original).

The cases cited by the Commonwealth, *see* Brief in Opposition at 10-11 ("BIO"), are cases where an entire claim, rather than just arguments in support of a claim, were not presented to the state courts below. Here, Mr. Johnson's Sixth Amendment assistance of counsel claim was properly presented to the state courts below, and "[o]nce a federal claim is properly presented, a party can make *any* argument in support of that claim; parties are not limited to the precise arguments they made below." *Yee*, 503 U.S. at 534.

Moreover, Mr. Johnson had an obvious reason not to present his structural error argument in support of his *Strickland* claim below: the Supreme Court of Pennsylvania had very recently rejected this very argument. In *Commonwealth v. Gamble*, 258 A.3d 505, 2021 WL 2395949 (Pa. 2021) (unpublished), the Court considered the question presented here: whether structural error resulting from counsel's failure to object to an unconstitutional reasonable doubt instruction should be presumed prejudicial after this Court's decision in *Weaver v. Massachusetts*, 582 U.S. 286 (2017). Relying on *Smith v. Robbins*, 528 U.S. 259, 287 (2000), and its own earlier binding decision in *Commonwealth v. Lambert*, 797 A.2d 232, 245 (Pa. 2001),

the state court concluded that there are only three categories of cases where *Strickland* prejudice could be presumed: the actual denial of counsel, state interference with counsel's assistance, or an actual conflict of interest burdening counsel. *Gamble*, 2021 WL 2395949, at *10. The court thus held, "[b]ecause Appellant's claim of error concerning counsel's failure to object to the jury instruction does not fall into the categories enumerated in *Robbins*, prejudice is not presumed." *Id.* (citing *Lambert*, 797 A.2d at 245). Citing *Weaver*, the Court continued, "Rather, Appellant is required to establish prejudice." *Id.* (citing *Weaver*, 582 U.S. at 299). The Commonwealth is wrong to assert that "no Pennsylvania court has ever been asked the question, let alone decided the issue, that Johnson now attempts to present to this Court for certiorari review." BIO at 9.

This Court can and should consider the question now presented.

B. The Instructional Error Was Structural.

The Commonwealth acknowledges that an erroneous reasonable-doubt instruction is structural error. BIO at 12 (citing *Sullivan v. Louisiana*, 508 U.S. 275 (1993)). But the Commonwealth unpersuasively argues that the error here is not akin to such a *Sullivan* error.

First, the Commonwealth mischaracterizes the instruction in Mr. Johnson's case as "a near verbatim recitation of Pennsylvania's Suggested Standard Criminal Jury Instruction on Voluntary Intoxication," and claims the trial court merely "inadvertently misstated an aspect of an element concerning the effects of alcohol intoxication on one's ability to form the specific intent to kill." BIO at 13. The trial court did not merely "misstat[e] a small portion of the voluntary intoxication charge."

BIO at 14. As detailed in Mr. Johnson's Petition for a Writ of Certiorari at 7-9 ("Petition"), the trial court inserted a heightened mens rea requirement of a wholly inapplicable, more difficult to prove defense – that of involuntary intoxication and insanity. This is not the mere misstatement of a single element of an offense – this instruction severely altered the mens rea required for Mr. Johnson to establish his sole defense to first-degree murder, a defense that the Commonwealth was required to disprove beyond a reasonable doubt. *See* Petition at 14-16. This unconstitutionally lowered the Commonwealth's burden of proof for proving first-degree murder.

Second, Mr. Johnson has already distinguished the cases and reasoning relied upon by the State in its attempt to minimize the gravity of this error in its BIO at 12-13. *See* Petition at 14-15. Mr. Johnson only notes, again, that the instructions relieved the Commonwealth of disproving this defense beyond a reasonable doubt, and so there is no jury finding of Mr. Johnson's guilt of first-degree murder beyond a reasonable doubt. This error is much more akin to *Sullivan* than the cases cited by the Commonwealth involving the omission or misstatement of a single element of an offense or an improper instruction on an invalid, alternative theory of guilty. *Compare* Petition at 14-15 with BIO at 12-13.

The Commonwealth further argues that there was "abundant evidence" to establish that Mr. Johson "was guilty of first-degree murder beyond a reasonable doubt." BIO at 15. But *Sullivan* is clear that this kind of "pure speculation" of "what a reasonable jury would have done" is impermissible because "the wrong entity judges the defendant guilty," and "denial of the right to a jury verdict of guilty beyond a

reasonable doubt" with "consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as 'structural error' that is not subject to harmless error analysis. *Sullivan*, 508 U.S. at 281-82 (cleaned up). "The Sixth Amendment requires more than appellate speculation about a hypothetical jury's action, or else directed verdicts for the State would be sustainable on appeal; it requires an actual jury finding of guilty." *Id.* at 280.

Finally, the Commonwealth notes that *Sullivan* was decided on direct review and did not involve a claim of ineffectiveness of counsel. BIO at 15. This is the whole point of Petitioner's question presented – whether a *Sullivan* error requires an actual showing of prejudice when raised within *Strickland* claims on collateral review.

In the end, the Commonwealth's view that the error "did not undermine or deprive [Mr. Johnson] of the fundamental requirement that, for a jury to find him guilty, it must do so beyond a reasonable doubt," BIO at 14, fails to acknowledge that, because of the error, the Commonwealth never met its burden of proving that Mr. Johnson was guilty of first-degree murder. The erroneous instructions precluded the jury from ever finding that the Commonwealth had carried its burden of disproving that Mr. Johnson was voluntarily intoxicated beyond a reasonable doubt.

C. The Commonwealth's Claim that Ineffective Assistance of Counsel Claims Are Always Subject to *Strickland*'s Prejudice Requirement Misunderstands the Question Presented.

The Commonwealth, relying on *Weaver*, prolixly argues that certiorari should not be granted because "This Court has never ruled that *Strickland*'s second prong, requiring a showing of prejudice, is inapplicable when the underlying constitutional error asserted in post-conviction collateral review litigation involves an allegation

that trial counsel failed to assert a purported structural error." BIO at 17. This is a reason to grant certiorari, as *Weaver* expressly reserved the question presented here. *See Weaver*, 582 U.S. at 301-02 ("Neither the reasoning nor the holding here calls into question the Court's precedents determining that certain errors are deemed structural and require reversal because they cause fundamental unfairness . . . The errors in those cases necessitated automatic reversal after they were preserved and then raised on direct appeal. And this opinion does not address whether the result should be any different if the errors were raised instead in an ineffective-assistance claim on collateral review."). The Commonwealth's argument that "Johnson fails to see the distinction" between "a direct appeal" and a "post-conviction collateral review appeal," BIO at 16, further illustrates that the Commonwealth fails to understand the question presented.

D. Harmless Error Review Is Inapplicable.

Throughout its Brief in Opposition, the Commonwealth relies on a view of the facts in the light most favorable to the prosecution to argue that the instructional error was harmless because the evidence proves that Mr. Johnson possessed the specific intent to kill. BIO at 2-6, 21-25. Thus, the Commonwealth asserts that "Johnson's actions prior to killing Officer Grove established his capability to form the specific intent to kill and his actual carrying out that intention" and "[t]he evidence proved that Johnson was not overwhelmed to the point of losing his faculties." BIO at 22 & 24. This aside is unpersuasive for three reasons.

First, *Sullivan* structural errors are not subject to harmless error review. *Sullivan*, 508 U.S. at 281-82. The Commonwealth could perhaps argue that the facts

presented at trial could establish that Mr. Johnson was not prejudiced by counsel's failure to object to these instructions, but that substantive question is incorporated in the question presented here, and is a reason for granting, rather than denying, certiorari.

Second, the Commonwealth should have raised any challenge to whether Mr. Johnson had presented sufficient evidence for the jury to consider his defense of involuntary intoxication at trial when the instruction was requested. A defense of voluntary intoxication is "justified *only* when the record contains evidence that the accused was intoxicated to the point of losing his or her faculties or sensibilities." *Commonwealth v. Padilla*, 80 A.3d 1238, 1263 (Pa. 2013) (emphasis in original); Petition at 6. Mr. Johnson conceded guilt to third-degree murder at trial and sought only to prove that he did not possess the specific intent to kill required of first-degree murder due to his voluntary intoxication. Mr. Johnson introduced substantial evidence in support of this defense, Petition at 4, and requested and received an instruction on the defense. The Commonwealth could have, but did not, object then and raise the evidentiary arguments it now makes.

Third, with Mr. Johnson having introduced sufficient evidence to support the defense, the question of whether the Commonwealth disproved Mr. Johnson's voluntary intoxication beyond a reasonable doubt was then solely a question for the jury: "Whether a defendant was overwhelmed to the point of losing his faculties is a question of fact solely within the province of the jury, which 'is free to believe any, all, or none of [the evidence] regarding intoxication.'" *Pruitt v. Harry*, No. 2:09-cv-01625,

2025 WL 2671547, at *41 (E.D. Pa. Sept. 17, 2025) (quoting *Commonwealth v. Stoyko*, 475 A.2d 714, 720 (Pa. 1984)).

The fact that this determination was never made by the jury was fundamentally unfair and relieved the Commonwealth of its burden of proving Mr. Johnson's guilt beyond a reasonable doubt. The unconstitutional instructions resulted in structural error not subject to harmless error review.

CONCLUSION

For the reasons set forth above and in Mr. Johnson's Petition for a Writ of Certiorari, this Court should grant the writ of certiorari.

Respectfully submitted,

/s/ Peter Walker
Peter Walker*
Andrew Childers
Assistant Federal Defenders
Federal Community Defender Office
for the Eastern District of Pennsylvania
601 Walnut Street, Suite 545 West
Philadelphia, PA 19106
(215) 928-0520
Peter_Walker@fd.org

**Counsel of record for Petitioner*
Member of the Bar of the Supreme Court