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NO. 54 MAP 2019

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

V.

TRISTAN STAHLEY,

Appellant.

REPLY BRIEF

Appeal From The December 19, 2018 Judgment Of The Superior Court Of Pennsylvania (No. 3109 EDA 2017) Affirming The August 28, 2017, PCRA Order of the Court of Common Pleas of Montgomery County Criminal Division, No. CP-46-CR-0005026-2013.

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I. THE RESENTENCING COURT'S FAILURE TO RETROACTIVELY APPLY *BATTS II* IS A STRUCTURAL ERROR

In its brief, the Commonwealth concluded that the resentencing court's failure to apply this Court's rule in *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017) (*Batts II*), retroactively is "harmless beyond a reasonable doubt." (Br. for Appellee at 21.) The resentencing court's failure to apply the new procedural rule of *Batts II* was not a harmless error. This Court's ruling in *Batts II* was intended to implement the United States Supreme Court's rulings in *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). Not giving retroactive effect to this ruling constitutes a structural error.

The United States Supreme Court has reasoned that it is the duty of the reviewing court to consider the trial record as a whole, ignoring any errors that are harmless. *See United States v. Hasting*, 461 U.S. 499, 509 (1983). The United States Supreme Court has previously held that even some constitutional errors can be deemed harmless. *Id.* at 508-09; *see also Chapman v. California*, 386 U.S. 18, 22 (1967). "[T]o conserve judicial resources by enabling appellate courts to cleanse the judicial process of prejudicial error without becoming mired in harmless error." *Hasting*, 461 U.S. at 509 (citing R. TRAYNOR, THE RIDDLE OF HARMLESS ERROR 81 (1970)). Furthermore, the harmless-error doctrine "promotes public respect for the

criminal process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error." *Arizona v. Fulminante*, 499 U.S. 279, 308 (1991) (Rehnquist, J., dissenting in part; concurring in part) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 681 (1986)).

However, some constitutional errors are so offensive to our judicial system they may "be quantitatively assessed in the context of other evidence presented in order to determine whether its admission was harmless beyond a reasonable doubt" and deserves automatic reversal. *Id*. An error is harmless if it "does not have a substantial influence on the outcome of the trial; nor does it leave one in grave doubt as to whether it had such effect." *United States v. Collins,* 575 F.3d 1069, 1073 (10th Cir. 2009) (quoting *United States v. Jones*, 44 F.3d 860, 873 (10th Cir. 1995)). This Court has explained that harmless error exists when:

> (1) the error did not prejudice the defendant or the prejudice was de minimis; (2) the erroneously admitted evidence was merely cumulative of other untainted evidence which was substantially similar to the erroneously admitted evidence; or (3) the properly admitted and uncontradicted evidence of guilt was so overwhelming and the prejudicial effect of the error was so insignificant by comparison that the error could not have contributed to the verdict.

Commonwealth v. Hutchinson, 811 A.2d 556, 561 (Pa. 2002) (quoting *Commonwealth v. Robinson*, 721 A.2d 344, 350 (1999)). To determine whether an error involving state law is harmless, the appellate court must be "convinced beyond a reasonable doubt that the error is harmless." *Commonwealth v. Story*, 383 A.2d

155, 162 (Pa. 1978); *see also Commonwealth v. Rush*, 605 A.2d 792, 794 (Pa. 1992). Sentencing Mr. Stahley without consideration of *Batts II* disrespects "the criminal process," *Fulminante*, 499 U.S. at 308, set forth by this Court in *Batts II*. In *Batts II*, this Court set forth procedural safeguards to ensure that sentences of life without parole are meted out to only the rare and uncommon juvenile offender for whom rehabilitation is impossible. *Batts II*, 163 A.3d at 459. Without following such a process, the resentencing court was unable to implement the substantive and procedural guarantees required by *Montgomery* and *Batts II*. As such, the error was not harmless.

The defining feature of structural errors, on the other hand, is that they defy analysis by 'harmless-error' standards because they "affect[ ] the framework within which the trial proceeds," and are not "simply an error in the trial process itself." *In re Adoption of L.B.M.*, 161 A.3d 172, 183 (Pa. 2017) (quoting *Commonwealth v. Baroni*, 827 A.2d 419, 420 (Pa. 2003)); *see also Weaver v. Massachusetts*, 137 S. Ct. 1899, 1907 (2017). Such errors "infect the entire trial process." *Brecht v. Abrahamson*, 507 U.S. 619, 629-30 (1993). In criminal cases, "critical rights are at stake." *In re Adoption of L.B.M.*, 161 A.3d at 183. The typical determination of a structural error is obtained through the examination of whether the "resulting unfairness or prejudice is necessarily unquantifiable and indeterminate, such that any

inquiry into its effect on the outcome of the case would be purely speculative." *United States v. Solon*, 596 F.3d 1206, 1211 (10th Cir. 2010).

This Court's ruling in *Batts II* required sentencing courts to adopt an entirely new framework for sentencing juveniles to life without parole. As this Court held, the substantive guarantees set forth in *Montgomery* could only be fully implemented by a presumption against life without parole sentences and a requirement that the burden of proof shifts to the Commonwealth to prove beyond a reasonable doubt that the individual is beyond rehabilitation or is permanent incorrigible. *Batts II*, 163 A.3d at 451, 452, 459. This was not mere "trial process." *See In re Adoption of L.B.M.*, 161 A.3d at 183. Rather, the framework of the entire hearing changed to ensure that only the rare or uncommon juvenile offender was sentenced to life without parole. Here, the court neither presumed Mr. Stahley was eligible for parole, nor did it require the Commonwealth to prove that he was permanently incorrigible beyond a reasonable doubt.

Absent these substantive changes to the resentencing hearing framework, any inquiry into the effect on the outcome of Mr. Stahley's resentencing hearing would be "purely speculative." *Solon*, 596 F.3d at 1211. To meet its burden of proof beyond a reasonable doubt that Mr. Stahley was beyond rehabilitation, the Commonwealth would have needed to affirmatively present evidence of his permanent incorrigibility—which it clearly did not do at his resentencing hearing. If the

Commonwealth did not meet its burden, Mr. Stahley's sentence would have been reduced from life without parole because absent a finding of permanent incorrigibility that was proven beyond a reasonable doubt, he could not receive such a life sentence. Indeed, there is no way to know whether the Commonwealth would have met its burden. The possibility of a lesser sentence than life without parole is not a *de minimis* error.

Furthermore, the error undoubtedly contributed to the imposition of a life without parole sentence. *Batts II* applies retroactively to Mr. Stahley because this Court's ruling forbade a life without parole sentence for a defined class of individuals. Mr. Stahley has never been determined to be in the class of individuals eligible to receive a life without parole sentence.

When the resentencing court failed to apply *Batts II*, it effectively deprived Mr. Stahley of the constitutionally mandated sentencing required by *Montgomery*. This error affected the entire framework of the proceeding and was so offensive to the judicial system that it requires automatic reversal.

CONCLUSION

For the foregoing reasons, Mr. Stahley's life without parole sentence should be vacated and the case remanded for a resentencing consistent with *Batts II*.

Respectfully submitted,

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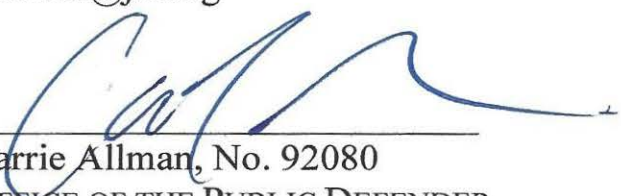

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DATED: May 26, 2020

CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the word count limitation of Rule 2135 of the Pennsylvania Rules of Appellate Procedure. This brief contains 1,187 words. In preparing this certificate, I relied on the word count feature of Microsoft Word. I further certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that requires filing confidential information and documents differently than non-confidential information and documents.

/s/ Marsha L. Levick
Marsha L. Levick

DATED: May 26, 2020