

[J-49-2025] [MO: Mundy, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 818 CAP
	:	
Appellant	:	Appeal from the Order of the
	:	Court of Common Pleas of Berks
	:	County, Criminal Division, entered
v.	:	on July 9, 2024, at Docket No.
	:	CP-06-CR-0002456-2008.
	:	
ALBERT PEREZ,	:	SUBMITTED: April 2, 2025
	:	
Appellee	:	

CONCURRING AND DISSENTING OPINION

JUSTICE McCAFFERY

DECIDED: August 18, 2026

Today, the Majority vacates the grant of a new guilt-phase trial to Appellee, Albert Perez, under the Post-Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. To do so, the Majority jettisons the materiality standard set forth in *Napue v. Illinois*, 360 U.S. 264 (1959), and instead holds that, under the PCRA, a one-size-fits-all “prejudice” standard applies to **all** federal constitutional claims, no matter what kind. See Majority Opinion at 61-62. The Majority chose the “reasonable probability” test applicable to claims under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Strickland v. Washington*, 466 U.S. 668 (1984). But that is, beyond cavil, the wrong materiality standard for *Napue* errors, which occur when a conviction or sentence is “knowingly ‘obtained through the use of false evidence[.]’” *Glossip v. Oklahoma*, 604 U.S. 226, 246 (2025) (*citing Napue*, 360 U.S. at 269). Moreover, while I share my colleagues’ skepticism of Perez’s alternate account of the deaths of Duceliz Diaz-Santiago (Duceliz) and her five-year-old daughter (Kayla), the Majority does not seem to view “the findings of the PCRA court and the

evidence of record ... in the light most favorable to the prevailing party at the PCRA court level.” *Commonwealth v. Conforti*, 303 A.3d 715, 725 (Pa. 2023) (citation omitted).

Importantly, the PCRA court concluded Perez was entitled to a new trial under *Napue* because the false testimony came from prosecution witness Donald Sumner, a jailhouse informant who provided the only direct evidence that Perez killed Kayla. See PCRA Court Opinion, 7/9/2024, at 56 (finding that Sumner’s “false testimony uncorrected by the Commonwealth might well have been determinative of guilt and led to a tainted conviction”). I would remand for the PCRA court to reconsider this particular conclusion in light of the United States Supreme Court’s intervening decision in *Glossip*, which confirmed the *Napue* materiality standard is akin to the federal harmless-error standard set forth in *Chapman v. California*, 386 U.S. 18 (1967).¹ Although we have the authority to affirm based on a finding of harmless error, I believe it would be more prudent for the PCRA court to apply the correct legal standard in the first instance.² For these reasons, as elaborated below, I dissent in part. Since I agree that a remand is necessary, I concur in the result of the Majority’s decision.

I. THE NAPUE STANDARD

Napue requires the grant of a new trial if a defendant “show[s] that the prosecution knowingly solicited false testimony or knowingly allowed it ‘to go uncorrected when it appear[ed].’” *Glossip*, 604 U.S. at 246 (citing *Napue*, 360 U.S. at 269). This basic principle “does not cease to apply merely because the false testimony goes only to the credibility of the witness.” *Napue*, 360 U.S. at 269. On the contrary, “[t]he jury’s estimate

¹ “To remand in light of intervening case law is a relatively routine procedure.” *Commonwealth v. Smith*, 343 A.3d 1062, 1080 n.21 (Pa. 2025) (citations omitted).

² See *Pope v. Illinois*, 481 U.S. 497, 504 (1987) (“Although we plainly have the authority to decide whether, on the facts of a given case, a constitutional error was harmless under the standard of [*Chapman*], we do so sparingly.” (citation omitted)).

of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend." *Id.*

A *Napue* error consists of three elements: (1) a prosecution witness testified falsely³; (2) the prosecution either knew or should have known that the testimony was false⁴; and (3) the prosecutor failed to correct it.⁵ See *Glossip*, 604 U.S. at 246 (citing *Napue*, 360 U.S. at 269). The defendant bears the burden of proving these three elements. See *Commonwealth v. Lee*, 385 A.2d 1317, 1319 (Pa. 1978). Since a *Napue* error is a "trial error," not a "structural error,"⁶ a new trial is not automatically required

³ The Commonwealth suggests the uncorrected false testimony must amount to "perjury." Commonwealth Brief at 53. I disagree. A prosecutor's duty to correct false testimony is triggered regardless of whether the witness deliberately lied or gave false evidence for some other reason. See Stephan A. Saltzburg, *Perjury and False Testimony: Should the Difference Matter So Much?*, 68 Fordham L. Rev. 1537, 1556-1560 (2000); see also *Glossip*, 604 U.S. at 260 (Barrett, J., concurring in part and dissenting in part) ("[F]or purposes of *Napue*, the question is not whether a witness subjectively thought he was lying — it is whether the prosecution knowingly presented untrue testimony.").

⁴ As long as a member of the prosecution team knew the witness's testimony was false, it does not matter whether the individual prosecutor who elicited the testimony personally knew it was false. See *Giglio v. United States*, 405 U.S. 150, 154 (1972). This includes information known only to police. See *Commonwealth v. Wallace*, 455 A.2d 1187, 1191 (Pa. 1983); cf. *Kyles v. Whitley*, 514 U.S. 419, 437-438 (1995) (holding a prosecutor may be held responsible under *Brady* for failing to disclose evidence known only to police).

⁵ "[T]he good faith, or lack thereof, by the prosecutor is not determinative because the concern is not punishment of society for misdeeds of the prosecutor, but avoidance of an unfair trial to the accused — it is the effect on the right to a fair trial, not the prosecutor's state of mind, that constitutes reversible error." *Wallace*, 455 A.2d at 1190 (citing *Commonwealth v. Hallowell*, 383 A.2d 909, 911-912 (Pa. 1978)).

⁶ Trial errors are mistakes that "occur[s] during the presentation of the case to the jury[.]" *Arizona v. Fulminante*, 499 U.S. 279, 307 (1991). They are "discrete defects in the criminal process" and "do not necessarily render a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence." *Greer v. United States*, 593 U.S. 503, 513 (2021) (emphasis, citation, and internal quotation marks omitted). A structural error, by contrast, is a defect that "affect[s] the framework within which the trial proceeds." *Fulminante*, 499 U.S. at 310.

whenever a *Napue* error occurs. See *Smith v. Phillips*, 455 U.S. 209, 220 n.10 (1982); accord *Rega v. Sec’y, Pa. Dep’t of Corr.*, 115 F.4th 235, 244 (3d Cir. 2024). However, false testimony “corrupt[s] ... the truth-seeking function of the trial process[.]” and therefore courts must “appl[y] a strict standard of materiality” to *Napue* errors. *United States v. Agurs*, 427 U.S. 97, 104 (1976); accord *Wallace*, 455 A.2d at 1190-1191.

As mentioned above, the *Napue* materiality (or “prejudice”⁷) standard “is equivalent to the *Chapman* harmless-error standard.” *United States v. Bagley*, 473 U.S. 667, 680 n.9 (1985) (plurality opinion); accord *Rega*, 115 F.4th at 244. “In effect, this materiality standard requires ‘the beneficiary of [the] constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.’” *Glossip*, 604 U.S. at 246 (citing *Bagley*, 473 U.S. at 680 n.9). If a defendant proves the prosecution knowingly obtained his conviction through the use of false testimony, “a new trial is warranted so long as the false testimony ‘may have had an effect on the outcome of the trial[.]’” *Id.* (citing *Napue*, 360 U.S. at 272). In other words, a defendant is entitled to a new trial if the false testimony “‘in any reasonable likelihood [could] have affected the judgment of the jury[.]’” *Id.* (first alteration in original) (citing *Giglio*, 405 at 154). Moreover, “if the defendant establishes that the prosecutor knowingly allowed false testimony to stand uncorrected, the burden rests with the Commonwealth to establish lack of prejudice.” *Johnson*, 353 A.3d at 642.

Critically, the *Napue* materiality standard is “more defense-friendly than” the one applicable to *Brady* (and *Strickland*) claims.⁸ Majority Opinion at 61 (footnote and

⁷ *Commonwealth v. Johnson*, 353 A.3d 609, 642 (Pa. 2026).

⁸ See *Commonwealth v. Lesko*, 15 A.3d 345, 417 (Pa. 2011) (“[T]he measure of *Brady* materiality and *Strickland* prejudice are the same: a grant of relief depends upon finding a reasonable probability that the result of the proceeding would have been different.” (citing *Strickler v. Greene*, 527 U.S. 263, 280 (1999); and *Strickland*, 466 U.S. at 694)).

citations omitted). This is not just because the Commonwealth must bear its burden to “establish lack of prejudice.” *Johnson*, 353 A.3d at 642; accord *Glossip*, 604 U.S. at 246. The *Napue* standard is also “considerably less demanding than other materiality standards on constitutional claims arising from criminal cases.” *Clements v. Madden*, 112 F.4th 792, 802 (9th Cir. 2024) (citation and internal quotation marks omitted). The *Napue* materiality “standard is ‘lower, more favorable to the defendant[] and hostile to the prosecution as compared to the standard of a general *Brady* withholding violation.’”⁹ *Rega*, 115 F.4th at 244 (citing *Haskell v. Superintendent Greene SCI*, 866 F.3d 139, 150 (3d Cir. 2017)).

In practice, unless the uncontradicted evidence of guilt is truly “overwhelming,”¹⁰ a *Napue* error serves as “a veritable hair trigger for setting aside the conviction[.]” *United States v. Butler*, 955 F.3d 1052, 1058 (D.C. Cir. 2020) (citation omitted); see also *Drake v. Portuondo*, 553 F.3d 230, 241 (2d Cir. 2009) (“[I]f it is established that the government

⁹ The differences between the *Brady* and *Napue* standards are facially obvious. Under *Brady*, the test for materiality is whether “there is a **reasonable probability** that, had the evidence been disclosed to the defense, the result of the proceeding **would have** been different.” *Kyles*, 514 U.S. at 433-434 (citations omitted; emphases added). That standard is more stringent than the *Chapman* harmless-error standard. See *id.* at 435-436. By contrast, *Napue* asks whether “there is **any reasonable likelihood** that the false testimony **could have** affected the judgment of the jury.” *Agurs*, 427 U.S. at 103 (emphases added; footnote omitted).

¹⁰ An error may be harmless if the evidence of guilt is “overwhelming,” but “overwhelming evidence of a defendant’s guilt is **never** harmless unless that evidence is uncontradicted.” *Commonwealth v. Fulton*, 179 A.3d 475, 494 (Pa. 2018) (emphasis in original) (citing *Commonwealth v. Story*, 383 A.2d 155, 166 (Pa. 1978)); cf. *Sullivan v. Louisiana*, 508 U.S. 275, 279 (1993) (Scalia, J.) (“Harmless-error review looks ... to the basis on which the jury **actually rested** its verdict. The inquiry, in other words, is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in **this** trial was surely unattributable to the error. That must be so, because to hypothesize a guilty verdict that was never in fact rendered — no matter how inescapable the findings to support that verdict might be — would violate the jury-trial guarantee.” (emphases in original; citations and internal quotation marks omitted)).

knowingly permitted the introduction of false testimony reversal is virtually automatic.” (citation omitted)). This is especially so when the false testimony comes from a witness who supplied “the only direct evidence” rebutting the defendant’s alternate version of events and establishing his “guilt of capital murder.” *Glossip*, 604 U.S. at 248; see also *Giglio*, 405 U.S. at 154-155; *Napue*, 360 U.S. at 269-271. For instance, an alleged jailhouse confession that directly rebuts the defendant’s alternate account of the criminal episode is extremely prejudicial due to the distinctive force of confessions generally. See *Fulminante*, 499 U.S. at 296 (“A confession is like no other evidence.”). A confession can move jurors from inference to certainty and cause them to view disputed circumstantial evidence through the lens of the defendant’s admission:

Indeed, the defendant’s own confession is probably the most probative and damaging evidence that can be admitted against him. ... [T]he admissions of a defendant come from the actor himself, the most knowledgeable and unimpeachable source of information about his past conduct. Certainly, confessions have profound impact on the jury, so much so that we may justifiably doubt its ability to put them out of mind even if told to do so.

Id. (citation and internal quotation marks omitted). “It is difficult to imagine any evidence more prejudicial to a defendant than that which identifies the defendant as a perpetrator of a capital crime.” *Commonwealth v. Young*, 748 A.2d 166, 193 (Pa. 1999).

II. **NAPUE AND “PREJUDICE” UNDER THE PCRA**

The General Assembly “has clearly directed that the PCRA provide the sole means for obtaining collateral review and relief, encompassing all other common law rights and remedies, including habeas corpus.” *Commonwealth v. Chester*, 733 A.2d 1242, 1250-1251 (Pa. 1999) (citations omitted), *abrogated in part on other grounds by* *Commonwealth v. Grant*, 813 A.2d 726 (Pa. 2002); see also 42 Pa.C.S. § 9542 (“The action established in this subchapter shall be the **sole means** of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including habeas corpus and coram nobis.”

(emphasis added)). “The plain language of [Section 9542] demonstrates quite clearly that the General Assembly intended that claims that **could** be brought under the PCRA **must** be brought under that Act.” *Commonwealth v. Descardes*, 136 A.3d 493, 499 (Pa. 2016) (emphases in original; citation omitted).

Consequently, federal constitutional claims that are “cognizable on traditional habeas corpus review ... must be considered exclusively within the context of the PCRA” and cannot “be legislatively foreclosed, since the Pennsylvania Constitution provides, with limited exceptions not here applicable, that the privilege of the writ of habeas corpus shall not be suspended.” *Chester*, 733 A.2d at 1251 (citing Pa. Const. art. I, § 14).¹¹ For that reason, “this Court has reconciled the ‘sole means’ language and substantive limitations of the PCRA with the constitutional prohibition against suspension of the availability of habeas corpus review by channeling the widest category of matters possible into the statutory post-conviction procedure.” *Commonwealth v. Cruz*, 851 A.2d 870, 875 (Pa. 2004) (citations omitted).

A *Napue* claim fits most naturally under Section 9543(a)(2)(i), which provides an avenue for collateral relief if a petitioner “pleads and proves by a preponderance of the evidence,” *inter alia*, that his “conviction or sentence resulted from ... [a] violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.” 42 Pa.C.S.

¹¹ “[T]he privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.” Pa. Const. art. I, § 14; accord 42 Pa.C.S. § 6501; see also *Commonwealth v. West*, 938 A.2d 1034, 1043 (Pa. 2007) (“Despite our prior indications that all claims that can be channeled into the PCRA should be so channeled, the privilege of the writ of *habeas corpus* has not been suspended in this Commonwealth.” (citation omitted)). Accordingly, the writ of habeas corpus remains an available remedy in “the rare instance where the PCRA offers no remedy.” *West*, 938 A.2d at 1043 (citation omitted).

§ 9543(a)(2)(i). Identical language appears in the statutory provision governing review of ineffectiveness claims. See *id.* § 9543(a)(2)(ii) (“Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.”).

The Majority does not dispute that the *Napue* prejudice standard is “more defense-friendly than” the reasonable probability standard applicable to *Brady* and *Strickland* claims. Majority Opinion at 61. Yet the Majority apparently assumes the similar language found in these two statutory provisions — Subsections (a)(2)(i) and (ii) — means they both impose upon PCRA petitioners the same “burden to demonstrate a reasonable probability the outcome would have been different if not for the error.” *Id.* at 61-62 (*citing* 42 Pa.C.S. § 9543(a)(2)(i)). Without citing any legal authority or offering any statutory interpretation, the Majority holds this less-defense friendly “statutory burden subsists regardless of the standard for proving the underlying constitutional error.” *Id.* at 62.

The Majority’s interpretation is patently unreasonable and improperly conflates the *Napue* materiality standard with the reasonable probability standard applicable to *Brady* and *Strickland* claims. True, in all three contexts, the PCRA requires a showing that the alleged constitutional error resulted in “prejudice,” meaning it “so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.” *Johnson*, 353 A.3d at 627-628 (citations omitted). But that general statutory requirement is not a freestanding invitation to judicially impose the same prejudice standard on every claim. See *Commonwealth v. Dunn*, 300 A.3d 324, 359 (Pa. 2023) (*per curiam*) (Wecht, J., Opinion in Support of Reversal) (“The word ‘prejudice’ carries numerous meanings in the law.” (footnote omitted)). On the contrary, “this Court has broadly interpreted the PCRA eligibility requirements ... regardless of the ‘truth-

determining process’ language ... from Section 9543(a)(2)(i).” *Commonwealth v. Hackett*, 956 A.2d 978, 986 (Pa. 2008) (citations omitted).

Moreover, the PCRA’s text is sufficiently flexible to take into account the different standards applicable to distinct constitutional claims. See *Cruz*, 851 A.2d at 875 (stating that the PCRA must be read as “channeling the widest category of matters possible into the statutory post-conviction procedure” (citations omitted)); cf. *Descardes*, 136 A.3d at 501 (“[T]he language of the PCRA clearly requires that an individual seeking relief from the judgment of sentence itself ... pursue his request for relief through the PCRA.” (citing 42 Pa.C.S. § 9542)). The text indicates that the reliability inquiry varies based on “the circumstances of the particular case,” meaning courts must apply the prejudice standard applicable to the specific constitutional claim under PCRA review; it does not collapse distinct constitutional doctrines into one indistinguishable test. 42 Pa.C.S. § 9543(a)(2)(i), (ii). Thus, our precedent and the plain text of the PCRA both indicate that the general “truth-determining” language must be read within the context of the specific constitutional claim under review.

For instance, Section 9543(a)(2)(ii) covers ordinary ineffectiveness claims under *Strickland* and *per se* ineffectiveness claims under *United States v. Cronin*, 466 U.S. 648 (1984).¹² In the *Strickland* context, the petitioner’s burden under the PCRA is coextensive with the reasonable probability standard, but only because that standard supplies the

¹² See *Wright v. Van Patten*, 552 U.S. 120, 124 (2008) (*per curiam*) (holding that “*Cronin*, not *Strickland*, applies ‘when ... the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial’” (citing *Cronin*, 466 U.S. at 659-660)); see also *Commonwealth v. Drayton*, 313 A.3d 954, 967 (Pa. 2024) (observing that this Court “ha[s] employed the *per se* ineffectiveness standard **only** in circumstances in which counsel’s actions or omissions resulted in the constructive denial of counsel, either at trial or on appeal” (emphasis in original; citations omitted)).

governing constitutional prejudice test for ordinary ineffectiveness claims.¹³ However, that does not mean the reasonable probability standard applies to *Cronic per se* ineffectiveness claims under the PCRA. See, e.g., *Commonwealth v. Diaz*, 226 A.3d 995, 1011 (Pa. 2020) (holding defense counsel’s unreasonable failure to obtain an interpreter for his Spanish-speaking client who required one at trial “constitute[d] a violation of [the PCRA petitioner’s] right to the effective assistance of counsel under *Cronic*, requiring no inquiry into whether [the petitioner] suffered prejudice because of this violation”).

III. IMPLICATIONS OF A “ONE-SIZE-FITS-ALL” PREJUDICE STANDARD

The Majority fails to recognize it has opened a Pandora’s box. Its adoption of a one-size-fits-all prejudice standard for all federal constitutional claims brought under the PCRA will have far-reaching repercussions beyond this case.

Let’s start with *Napue*. The Majority’s new rule essentially renders *Napue* a dead letter in Pennsylvania state courts because “it is possible, even likely, that petitioners will not know of the prosecution’s use of perjured testimony until after the opportunity for direct review has passed.” *Haskell*, 866 F.3d at 151. Since the Majority concludes the reasonable probability standard supersedes the *Napue* standard, PCRA petitioners will be forced to litigate false-testimony claims under the *Brady* materiality standard.¹⁴ They

¹³ See, e.g., *Commonwealth v. Jones*, 210 A.3d 1014, 1018-1019 (Pa. 2019) (“**In the context of a post-conviction challenge to counsel’s stewardship**, prejudice is established where the truth-determining process was so undermined that ‘no reliable adjudication of guilt or innocence could have taken place,’ *i.e.*, there is a reasonable probability that, but for counsel’s error, the outcome of the trial would have been different.” (emphasis added) (citing 42 Pa.C.S. § 9543(a)(2)(ii))).

¹⁴ Compare *Descardes*, 136 A.3d at 503 (“The fact [that a] claim likely would have been rejected on its merits does not change the fact that it could have been raised under the PCRA.”), and *Engle v. Isaac*, 456 U.S. 107, 130 (1982) (“If a defendant perceives a constitutional claim and believes it may find favor in the federal courts, he may not bypass the state courts simply because he thinks they will be unsympathetic to the claim. Even a state court that has previously rejected a constitutional argument may decide, upon reflection, that the contention is valid.” (footnote omitted)).

also will need to shoulder the burden of proof, as the Commonwealth will no longer need to prove that the false testimony was harmless beyond a reasonable doubt. This result conflicts with clearly established precedents of both this Court and the United States Supreme Court, which hold that the two standards are not coextensive. See *Glossip*, 604 U.S. at 246 (citing *Bagley*, 473 U.S. at 680 n.9); accord *Wallace*, 455 A.2d at 1190. In my view, the Majority's imposition of a higher bar for collateral relief than the federal constitution in cases of *Napue* errors violates the plain language of the PCRA and possibly even the Pennsylvania Constitution's ban on the suspension of habeas corpus.¹⁵

I recognize that "[t]he states have no obligation to provide collateral relief to convicted criminals at all, and the relief they elect to provide need not be coextensive with that provided by federal statutory or constitutional law." *Villot v. Varner*, 373 F.3d 327, 334 (3d Cir. 2004) (citing *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987)). However, that general background principle does not affirmatively support the Majority's decision. It just means the Majority "has forfeited [the] opportunity to consider the [*Napue*] claims of the class of petitioners who cannot satisfy the additional state-created substantive requirement." *Id.*

Consequently, as a result of today's decision, unless a PCRA petitioner proves the *Napue* error was material under the reasonable probability standard, judicial review of such errors under the correct constitutional standard will be unavailable to PCRA petitioners unless and until they raise their claims in federal habeas corpus proceedings. See *Haskell*, 866 F.3d at 152 ("A reasonable likelihood that the perjured testimony affected the judgment of the jury is all that is required."); see also *Dow v. Virga*, 729 F.3d

¹⁵ See *Commonwealth ex rel. Greevy v. Reifsteck*, 115 A. 130, 132 (Pa. 1921) (stating that, while the General Assembly may enact legislation affecting the availability of habeas corpus relief, the "right to a habeas corpus is recognized in [A]rticle 1, [Section] 14, of the [Pennsylvania] Constitution ... , and hence [a detainee] cannot be wholly deprived thereof, or the right be so hampered as to amount to a practical deprivation").

1041, 1049 (9th Cir. 2013) (holding that a state court’s rejection of *Napue* claim was not entitled to deference because the court “applied a state law standard for harmless error review that is more difficult for the defendant to meet than the standard prescribed by the Supreme Court”). Assuming they overcome any other applicable habeas hurdles, state prisoners with *Napue* claims will have a far better chance of success in federal court because, under federal law, deference to a state court’s denial of a properly preserved constitutional claim is warranted only if there was an adjudication on the “merits.” 28 U.S.C. § 2254(d)(1). There is “no merits adjudication of the federal claim entitled to [Section] 2254(d) deferential review” if the state court “applies a state standard that is not comparable to the federal standard in all respects[.]” Brian R. Means, *Postconviction Remedies* § 29:34 (June 2026 update) (footnote omitted). The reasoning behind that notion is simple:

[S]tate courts should not be deprived of an opportunity to correct their own errors by the habeas petitioner’s failure to abide by the state’s reasonable procedural rules[.] However, when a state tacks on substantive additions to federal claims, it is the state itself that has forfeited its opportunity to consider the federal claims of the class of petitioners who cannot satisfy the additional state-created substantive requirement. The considerations of comity and federalism underlying the procedural default rule have no application in such cases.

Villot, 373 F.3d at 334 (citations omitted). An adjudication of a *Napue* claim using the Majority’s one-size-fits-all prejudice standard therefore will not receive the level of deference that our state-court decisions generally receive on federal habeas review. *Cf. id.* at 334-335 (holding the “innocence requirement” set forth in Section 9543(a)(2)(iii) of the PCRA “cannot foreclose federal habeas review of [] ineffective assistance claims”).

Indeed, the Majority’s decision on Perez’s *Napue* claim is a prime candidate for federal habeas review. That is because the Majority’s reasoning takes a page out of the *Glossip* **dissent**, which complained that certain state procedural rules, including an actual-innocence requirement, posed a bar to the Supreme Court’s *certiorari* review of

the state court's judgment. See *Glossip*, 604 U.S. at 278-283, 294-301 (Thomas, J., dissenting). But the *Glossip* majority dismissed those concerns as misplaced, reasoning that "where a state court relies on a procedural rule whose application turns on whether federal constitutional error has been committed, this Court may remand for a new trial if it has confidence that no other state ground could support the decision below." *Id.* at 257 (citations, brackets, and internal quotation marks omitted). This is yet another reason why today's holding is specious.

I also cannot ignore that the Majority's opinion breeds a stalking horse for other types of constitutional claims. It appears the Majority has *sub silentio* disapproved of our precedent refusing to apply the reasonable probability standard to a *Cronic* claim. See *Diaz*, 226 A.3d at 1011. And since the Majority's opinion leaves no room for exceptions, the result is all constitutional claims brought under the PCRA are now subject to the same one-size-fits-all prejudice standard.

IV. REMAND IS PROPER

As for Perez's case, the only remaining question is prejudice, which, as confirmed in *Glossip*, is the same as the *Chapman* harmless-error standard. It is not whether the evidence, without Sumner's testimony, was sufficient to sustain Perez's first-degree murder convictions for the homicides of Duceliz and Kayla. See *United States v. Lane*, 474 U.S. 438, 450 n.13 (1986) ("[T]he harmless-error inquiry is entirely distinct from a sufficiency-of-the-evidence inquiry." (citation omitted)). There is no dispute Sumner's testimony supplied the only **direct** evidence that Perez was the proximate cause of Kayla's death. See Majority Opinion at 44. Nor is there any doubt Sumner lied under oath to the jury by "downplay[ing] his *crimen falsi* history and his history of cooperating with the police." *Id.* at 64. "A lie is a lie, no matter what its subject." *Glossip*, 604 U.S. at 249 (citing *Napue*, 360 U.S. at 269). Resultingly, the Commonwealth is required to show

“beyond a reasonable doubt that the [*Napue* error] did not contribute to the verdict obtained.” *Id.* at 246 (citation omitted); *accord Chapman*, 386 U.S. at 24.

That is a tall order. “To say that an error did not contribute to the verdict is ... to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record.” *Yates v. Evatt*, 500 U.S. 391, 403 (1991) *disapproved of in part on other grounds by Estelle v. McGuire*, 502 U.S. 62 (1991). The jury obviously considered Sumner’s testimony concerning Perez’s supposed confession. *See Fulminate*, 499 U.S. at 296 (“[C]onfessions have profound impact on the jury, so much so that we may justifiably doubt its ability to put them out of mind even if told to do so.” (citation omitted)). His false credibility testimony is especially troubling because it concerned matters central to evaluating a jailhouse witness: his criminal history, his self-interest, and his incentives to curry favor with the prosecution.¹⁶ *Napue* recognizes such testimony may be material because the jury’s estimate of a witness’s truthfulness may determine the defendant’s guilt or innocence. *See Napue*, 360 U.S. at 269-270; *accord Giglio*, 405 U.S. at 154-155. Hence, this Court previously held “that where the prosecution fails to correct a witness’s testimony at trial denying offers of leniency, when in fact such offers had been made, rudimentary demands of justice dictate that a defendant’s conviction be reversed and a new trial granted, whether or not the trial prosecutor was actually aware of those offers.” *Hallowell*, 383 A.2d at 911; *accord Wallace*, 455 A.2d at 1190-1191; *Commonwealth v. Moehring*, 285 A.2d 487, 489 (Pa. 1971).

¹⁶ *See Commonwealth v. Dowling*, 316 A.3d 32, 49 (Pa. 2024) (conceding “that there is a reasonable debate to be had concerning the reliability of jailhouse informant testimony” (footnote omitted)); *Commonwealth v. Crispell*, 193 A.3d 919, 956 n.2 (Pa. 2018) (Saylor, C.J., concurring and dissenting) (agreeing with jurisdictions that treat jailhouse informant as “inherently suspect” (citations omitted)); *see also* Jessica A. Roth, *Informant Witnesses and the Risk of Wrongful Convictions*, 53 Am. Crim. L. Rev. 737, 797 (2016) (concluding that “[j]ailhouse informants may well be the most unreliable type of informant”).

In granting Perez relief on his *Napue* claim, the PCRA court relied primarily on our decision in *Moehring* and reasoned that, since Sumner provided the only direct evidence that Perez killed Kayla, “his false testimony uncorrected by the Commonwealth might well have been determinative of guilt and led to a tainted conviction.” PCRA Court Opinion at 56; *see also id.* at 43 (“Donald Sumner was a crucial Commonwealth witness since his testimony of [Perez’s] admission that he had ‘killed the little girl, too’ would have directly established [his] guilt for the homicide of the minor victim.” (citation omitted)); *id.* at 46 (“There was no other evidence at trial in which [Perez] admitted killing the minor victim.”); *id.* at 52 (“Sumner was the only witness who presented direct evidence of [Perez’s] admission that he killed [Kayla].”). In my view, applying the more-defense friendly *Napue* standard in light of our Court’s precedents — and viewing the record in the light most favorable to Perez — the PCRA court’s decision is generally consistent with *Glossip* and the general legal principle that where a prosecution witness’s testimony supplied “the only direct evidence of [a defendant’s] guilt of capital murder, the jury’s assessment of [that witness’s] credibility was necessarily determinative” of the defendant’s guilt. *Glossip*, 604 U.S. at 248.¹⁷

¹⁷ *See also Hallowell*, 383 A.2d at 910-912 (granting new trial where the uncorrected false testimony concerned promises of leniency and came from a codefendant, “who testified as the only eyewitness to the killing and robbery”); *Wallace*, 455 A.2d at 1191 (granting new trial where material witness’s “testimony on several items concerning his criminal record and background was false, and was allowed to go uncorrected by the district attorney”); *Moehring*, 285 A.2d at 489 (granting new trial where material witness’s “false testimony, uncorrected by the Commonwealth, may well have been determinative of guilt and led to a tainted conviction” (internal quotation marks omitted)); *cf. Commonwealth v. Markman*, 916 A.2d 586, 605 (Pa. 2007) (concluding codefendant’s improperly admitted statement “was not cumulative of other, properly admitted evidence[,]” where that statement “constituted the only proof directly contradicting [the defendant’s] rendition of what occurred in the trailer on the of the murder”).

The Commonwealth says *Glossip* is “factually distinguishable.” Reply Brief at 4. But that argument misses the mark. What matters is the prosecution in both cases failed to correct the false testimony of its star witness who provided “the only direct evidence of (continued...)

However, as stated at the outset, I share the Majority's skepticism of Perez's alternative explanation for the deaths of Duceliz and Kayla. I also recognize that, while the PCRA court's reading of the trial record is entitled to a degree of deference, less deference may be required where, as here, the PCRA court judge was not the presiding trial court judge.¹⁸ Still, Sumner's testimony was the only direct evidence that Perez was the proximate cause of Kayla's death, and it is undisputed that he lied under oath about his prior criminal record and his history of cooperating with police. See Majority Opinion at 44, 64. The Majority refuses to apply the correct (*Napue*) prejudice standard and relieves the Commonwealth of its burden of proving a lack of prejudice. See *id.* at 61-62. Compounding its error, the Majority views the entire record in the light most favorable to the Commonwealth rather than Perez, without distinguishing between the PCRA court's firsthand credibility determinations and its findings derived exclusively from the cold trial

[a defendant's] guilt of capital murder," which means the jury's assessment of Sumner's testimony "was necessarily determinative here." *Glossip*, 604 U.S. at 248.

¹⁸ Compare *Commonwealth v. Martin*, 5 A.3d 177, 197 (Pa. 2010) ("[F]act-based findings of a post-conviction court, which hears evidence and passes on the credibility of witnesses, should be given great deference, particularly where ... the PCRA court judge also served as the trial court judge. Factual findings will not be disturbed on appeal if they are supported by the record, even where the record could support a contrary holding." (citations omitted)), with *Commonwealth v. Weiss*, 986 A.2d 808, 816 & n.3 (Pa. 2009) (vacating grant of new trial and remanding for application of correct materiality standard after concluding that the PCRA court's key factual finding was "erroneous as it is not supported by the record[,] while noting that "[t]he PCRA court was not the trial court, and its finding of fact that the testimony of these witnesses was the crux of the Commonwealth's case is not based on any personal observation of or participation in the trial proceedings"), and *Armbruster v. Horowitz*, 813 A.2d 698, 704 n.5 (Pa. 2002) (noting that "a cold record does not become any warmer in the hands of a trial judge who has no prior connection with the case than it does in the hands of an appellate judge" (brackets and citation omitted)).

record,¹⁹ and relies on contested circumstantial evidence to reverse the grant of a new capital trial. See *id.* at 39-44, 65-66.

The Majority essentially adopts the Commonwealth's view that Perez's alternate account is implausible based on the "overwhelming evidence of Perez's guilt." *Id.* at 66 (*citing* Reply Brief at 4).²⁰ But this Court historically "ha[s] been reluctant to find an error harmless on the basis of overwhelming evidence." *Story*, 383 A.2d at 166; *cf.* Concurring and Dissenting Opinion at 4 (Wecht, J.) ("Prejudice may be established even in a case involving substantial or overwhelming evidence of guilt.").²¹ This is especially true of constitutional errors, since "too free a use of the harmless error doctrine in the constitutional setting can be a slippery slope." *Commonwealth v. Rivera*, 296 A.3d 1141,

¹⁹ The Majority does not even acknowledge that our scope of review in PCRA appeals "is limited to the findings of the PCRA court and the evidence of record, **viewed in the light most favorable to the prevailing party at the PCRA court level.**" *Conforti*, 303 A.3d at 725 (emphasis added; citation omitted). Compare *Commonwealth v. Rizor*, 304 A.3d 1034, 1058 (Pa. 2023) ("Given that the PCRA court, as fact-finder, has the opportunity to listen to witnesses, to observe their demeanor and attitude, we have stated that 'there is no justification for an appellate court, relying solely upon a cold record, to review the fact-finder's first-hand credibility determinations.'" (*citing Commonwealth v. White*, 734 A.2d 374, 381 (Pa. 1999))), with *Commonwealth v. Izurieta*, 171 A.3d 803, 809 (Pa. Super. 2017) ("[T]he successor judge's opinion should not be afforded the level of discretion given to a judge who presided at the trial in question."). The PCRA court's firsthand credibility determinations are, without question, entitled to deference if they are supported by the record. See *Rizor*, 304 A.3d at 1058.

²⁰ See, e.g., Majority Opinion at 39 ("[T]he other proofs of [Perez's] guilt in relation to Kayla's death were powerful and compelling. First, the jury was already aware [Perez] was fundamentally untruthful based on a number of factors, many of which are not in dispute. Second, [Perez] admittedly lied to the police on numerous occasions as they were conducting their investigation.").

²¹ I agree with Justice Wecht that "[t]he framework of the PCRA itself and the legal standards necessary to establish relief on individual substantive claims ensure that overwhelming evidence of guilt, such as that described by the Majority, cannot serve as a universal rejection to PCRA claims." Concurring and Dissenting Opinion at 4 (Wecht, J.).

1161 n.20 (Pa. 2023). As “a court of review, not of first view,”²² we should proceed with caution before reversing the grant of PCRA relief to a capital defendant where remand for the lower court to apply the correct legal standard is an available option. See *Commonwealth v. Widmer*, 744 A.2d 745, 752 (Pa. 2000) (“Normally where the reviewing court applies the incorrect legal standard our court will remand the matter with appropriate directions.”); cf. *Burger v. Kemp*, 483 U.S. 776, 785 (1987) (“Our duty to search for constitutional error with painstaking care is never more exacting than it is in a capital case.”). For these reasons, as well as the Majority’s adoption of an overly restrictive one-size-fits-all prejudice standard for all federal constitutional claims brought under the PCRA, I dissent.

Justices Donohue and Wecht join this concurring and dissenting opinion.

²² *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (citations omitted); see also *CRST Van Expedited, Inc. v. EEOC*, 578 U.S. 419, 435 (2016) (recognizing that the “usual practice” of appellate courts is not “to adjudicate either legal or predicate factual questions in the first instance” (citation omitted)).