

Circuit Court for Baltimore City  
Case No. 111362022

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 158

September Term, 2024

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STATE OF MARYLAND

v.

BRANDON MITCHELL

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Reed,  
Shaw,  
Zic,

JJ.

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Opinion by Zic, J.

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Filed: April 18, 2025

\* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This case arises from the conviction of Brandon Mitchell of the following three counts by a jury in the Circuit Court for Baltimore City: murder in the first degree, use of a handgun in a crime of violence, and wearing, carrying, or transporting a handgun. On June 6, 2023, Mr. Mitchell filed a petition for postconviction relief, alleging ineffective assistance of counsel. The postconviction court granted Mr. Mitchell’s motion for a new trial, specifically finding that Mr. Mitchell’s trial counsel erred in failing to object to the trial court’s reasonable doubt jury instruction. The State timely appealed the grant of the motion for a new trial.

### **QUESTION PRESENTED**

The State presents one question for our review, which we have recast and rephrased as follows:<sup>1</sup> Whether the postconviction court erred in granting Mr. Mitchell’s motion for a new trial due to ineffective assistance of counsel. For the following reasons, we reverse.

### **BACKGROUND**

#### ***Jury Trial***

On December 28, 2011, Mr. Mitchell was indicted on the following charges in connection with a June 2011 shooting in Baltimore City: murder in the first degree, use

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<sup>1</sup> The State phrased the question as follows:

Did the postconviction court err in finding that defense counsel was ineffective for not objecting to the court’s reasonable doubt jury instruction where the instruction was proper and there was no reasonable probability that an objection to the instruction would have changed the trial result?

of a handgun in a crime of violence, and wearing, carrying, or transporting a handgun.

The case proceeded to a jury trial and 18 witnesses testified over the course of eight days.

For the purposes of this appeal, we need not discuss the details of the underlying crimes.<sup>2</sup>

Before the close of trial, the court gave the following jury instructions:

In reaching your verdict, you should weigh all of the evidence that was presented, whether it was direct or circumstantial and you may not convict a Defendant unless you find that the evidence when considered as a whole, establishes guilt beyond a reasonable doubt.

Now, what's reasonable doubt? The presumption always remains with the Defendant through every stage of the trial and is not overcome unless you are convinced beyond a reasonable doubt that the Defendant is guilty. The State has the burden of proving the guilt of the Defendant beyond a reasonable doubt.

This burden remains on the State throughout the trial. The Defendant isn't required to prove his innocence; however, the State is not required to prove guilt beyond all possible doubt or to a mathematical certainty; nor is the State required to negate every conceivable circumstance of innocence.

A reasonable doubt is a doubt founded upon reason. Proof beyond a reasonable doubt requires such proof as would convince you of the truth of a fact to the extent you would be willing to act upon such belief without reservation in an important business or personal affair.

However, if you're not satisfied of the defendant's guilt to that extent then reasonable doubt exists and the Defendant must be found not guilty.

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<sup>2</sup> See *Mitchell v. State*, No. 1103, Sept. Term 2013 (Md. App. Aug. 18, 2014) for a more detailed recitation of the underlying facts.

In weighing the evidence and making your determination you should consider the quality of all of the evidence, regardless of who called the witness or who introduced the exhibit. The test is not which side brings in the greater number of witnesses or produces the greater quantity of evidence, but which witness and which evidence appeals to your mind as being the most accurate and the most trustworthy.

Mr. Mitchell’s trial counsel raised no objections to this instruction.

On March 5, 2013, the jury convicted Mr. Mitchell of all three charged offenses, and, on June 27, 2013, he was sentenced to an aggregate sentence of life imprisonment plus twenty years. Mr. Mitchell filed a direct appeal, and this Court upheld the conviction. *See Mitchell v. State*, No. 1103, Sept. Term 2013 (Md. App. Aug. 18, 2014).

***Postconviction Proceeding***

Mr. Mitchell filed a petition for postconviction relief on June 6, 2023, alleging ineffective assistance of counsel. Mr. Mitchell filed a supplemental petition on October 13, 2023, raising specific claims describing how counsel was ineffective, including: trial counsel’s failure to object to the court’s reasonable doubt jury instruction, trial counsel’s failure to request an instruction on “mere presence,” trial counsel’s failure to object to hearsay testimony of two witnesses, and trial counsel’s failure to file a motion for modification/reduction of sentence.

The postconviction court held a hearing on the motion on November 20, 2023. Mr. Mitchell’s trial counsel testified at the hearing that he “d[id] not recall any details” of the case but that he reviewed the supplemental petition and the jury instructions as included in that petition. Mr. Mitchell’s trial counsel further testified that the trial court

did not read the model instruction on reasonable doubt, stating that he “believe[d] that as an advocate [he] could attack that instruction as being improper” but could “think of no reason, no tactical reason, why [he] would not object to any instruction that could be tested on appeal.”

On or about December 6, 2023, the postconviction court granted Mr. Mitchell’s motion for a new trial and his request to file a belated motion for modification of sentence. The postconviction court specifically found that Mr. Mitchell’s trial counsel erred in failing to object to the trial court’s reasonable doubt jury instruction and in failing to file a motion for modification/reduction of sentence.

The State now appeals the grant of the motion for a new trial only as to the postconviction court’s finding that Mr. Mitchell’s trial counsel was ineffective for failing to object to the trial court’s reasonable doubt jury instruction. Additional facts are presented as necessary below.

### **STANDARD OF REVIEW**

“The review of a postconviction court’s findings regarding ineffective assistance of counsel is a mixed question of law and fact.” *Newton v. State*, 455 Md. 341, 351 (2017) (citation omitted). This Court is not a finder of fact, thus, we “defer to the factual findings of the postconviction court unless clearly erroneous.” *Id.* (citation omitted). “The legal conclusions, however, are reviewed *de novo*.” *State v. Syed*, 463 Md. 60, 73 (2019) (citation omitted). This Court “re-weigh[s] the facts in light of the law to determine whether a constitutional violation has occurred.” *Newton*, 455 Md. at 352 (citation and quotation marks omitted); *Wallace v. State*, 475 Md. 639, 653 (2021) (“As

part of our review, we exercise our own independent analysis as to the reasonableness, and prejudice therein, of counsel's conduct.” (citation and quotation marks omitted)).

## DISCUSSION

### **I. THE POSTCONVICTION COURT ERRED IN GRANTING MR. MITCHELL A NEW TRIAL BASED ON INEFFECTIVE ASSISTANCE OF COUNSEL.**

#### **A. The Parties’ Contentions**

The State argues that the postconviction court erred in finding that Mr. Mitchell is entitled to a new trial based on ineffective assistance of counsel. The State contends that the presumption of innocence and the State’s burden to prove guilt beyond a reasonable doubt were clearly conveyed to the jury, and thus, the jury instructions were constitutionally sufficient, and counsel’s performance was not deficient under the first prong of the *Strickland* test. The State further asserts that the postconviction court erred by failing to conduct a prejudice analysis under the second prong of the *Strickland* test.

Mr. Mitchell argues that the postconviction court did not err in granting a new trial based on a finding of ineffective assistance of counsel. Mr. Mitchell asserts that trial counsel rendered deficient performance under the first prong of the *Strickland* test by failing to object to the erroneous jury instructions on presumption of innocence and reasonable doubt. Mr. Mitchell further argues that prejudice under the second prong of the *Strickland* test is automatically satisfied when, as here, there is an insufficient reasonable doubt instruction, which constitutes a structural error that always results in fundamental unfairness.

**B. The *Strickland* Test**

A claim for ineffective assistance of counsel is analyzed under the test set forth by the Supreme Court of the United States in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Under this test, the defendant must show (1) “that counsel’s performance was deficient” and (2) “that the deficient performance prejudiced the defense.” *Strickland*, 466 U.S. at 687. Both prongs must be satisfied for a party to prevail on a claim for ineffective assistance of counsel, *id.*, and “[g]enerally, where a petitioner alleges ineffective assistance of counsel, ‘the burden rests on’ him or her to satisfy both the performance prong and the prejudice prong.” *Ramirez v. State*, 464 Md. 532, 562 (2019) (quoting *United States v. Cronin*, 466 U.S. 648, 658 (1984)).

To establish deficient performance under *Strickland*, “the defendant must show that counsel’s representation fell below an objective standard of reasonableness.” *Strickland*, 466 U.S. at 688. This reasonableness standard is defined by “[p]revailing professional norms,” and considers the entire context of counsel’s performance. *Newton*, 455 Md. at 355 (quoting *Mosley v. State*, 378 Md. 548, 557 (2003)). Additionally, “[j]udicial scrutiny of counsel’s performance must be highly deferential.” *Strickland*, 466 U.S. at 689. This Court, in *State v. Brand*, \_\_ Md. App. \_\_, No. 2441, Sept. Term 2023, slip op. at 37-38, 2025 WL 957558, at \*18 (filed Mar. 31, 2025), explained:

It is important to distinguish between a claimed violation of the right to effective assistance of counsel (that is, an ineffective assistance claim) and the underlying claim or right alleged to have been violated because of an attorney’s deficient performance. Typically, an ineffective assistance

claim alleges that counsel failed to raise a claim in a prior proceeding, that counsel’s failure to do so was objectively unreasonable, and that the defendant suffered prejudice as a result.

To establish prejudice under *Strickland*, the petitioner must show that an error by counsel was “so serious as to deprive the defendant of a fair trial[.]” *Id.* at 687. “The defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. “[A] court making the prejudice inquiry must ask if the defendant has met the burden of [that] showing[.]” *Id.* at 696.

We analyze each prong of the *Strickland* test below.

**1. Deficient Performance Prong**

The State argues that the trial court’s instruction regarding weighing the evidence “was not an embellishment of the reasonable doubt instruction” and it was not ineffective for trial counsel to decline to object to that instruction. The State additionally contends that trial counsel’s performance was not deficient because the instruction given “neatly and simply explained what the presumption of innocence actually meant” despite omitting one sentence from the pattern instructions and that this was not a deviation in substance under *Ruffin v. State*, 394 Md. 355 (2006). The State further argues that the postconviction court erred by looking at the instruction “in isolation, rather than in the context of the rest of the instructions.”

Mr. Mitchell contends that, because the jury instructions on the presumption of innocence and reasonable doubt were erroneous, trial counsel’s failure to object to the instructions constitutes deficient performance. Mr. Mitchell argues that the jury

instructions given were erroneous because the trial court lowered the burden of proof from beyond a reasonable doubt to a preponderance of the evidence, violating the Due Process Clause of the United States Constitution. Mr. Mitchell also contends that, because the trial court omitted the first sentence of the pattern instructions on presumption of innocence, the instruction was constitutionally insufficient.

It is undisputed that trial counsel did not object to the jury instructions at issue. Therefore, the claim for this prong hinges on whether the jury instructions were erroneous.

“The Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article 24 of the Maryland Declaration of Rights guarantee that a criminal defendant shall only be convicted upon proof beyond a reasonable doubt.” *Ruffin*, 394 Md. at 363 (citations omitted). Under Maryland law:

the trial court is required to instruct the jury that the defendant is presumed innocent, that in order to convict the defendant of the charged crime the State must prove the guilt of the defendant beyond a reasonable doubt, and that the jury has a duty to acquit in the absence of such proof.

*Id.* at 356 (citing *Merzbacher v. State*, 346 Md. 391, 398 (1997)).

The issue in *Ruffin* was whether the trial court erred in its instruction on presumption of innocence and reasonable doubt because it deviated from the Maryland Criminal Pattern Jury Instruction (“MPJI-Cr”). *Ruffin*, 394 Md. at 356-57. The Court held that “in every criminal jury trial, the trial court is required to instruct the jury on the presumption of innocence and the reasonable doubt standard of proof which *closely adheres* to MPJI-CR 2:02.” *Id.* at 373 (emphasis added). In evaluating a jury instruction,

“the appellate court considers an explanation of reasonable doubt as a whole; it does not determine the propriety of an explanation from an isolated statement.” *Wills*, 329 Md. at 384.

While exact adherence to the pattern instructions is not required, great deference should be given to the “wisdom” of the “judges at the trial and appellate level, prosecutors and former prosecutors, defense attorneys, law professors and other distinguished members of the Maryland bar” who established the Maryland Criminal Pattern Jury Instructions. *Wills v. State*, 329 Md. 370, 383-84 (1993). If the trial court chooses to deviate from the wording of the pattern instructions, “[d]eviations in substance will not be tolerated.” *Ruffin*, 394 Md. at 373.

To avoid deviations in substance, the Supreme Court of Maryland has explicitly endorsed the use of the pattern instructions. *See, e.g., id.* (“Uniformity in defining those terms for the jury, by giving the pattern jury instruction, ensures that all defendants will equally receive an appropriate definition of the presumption of innocence and reasonable doubt standard of proof.”). “The first paragraph of the instruction explains the presumption of innocence and explains its relationship to reasonable doubt.” Comment, MPJI-Cr 2:02. The Supreme Court of Maryland, in *Williams v. State*, 322 Md. 35, 48 (1991), stated:

The heart of the principle [of the presumption of innocence] is that the accused stands innocent until the jury is convinced that he is guilty upon evidence placed before it which is legally sufficient to sustain its verdict. The phrasing should be adequate to convey the heart of the principle to a man on the street as representative of the average juror.

In the first paragraph of the jury instructions at issue, the court stated: “you may not convict a Defendant unless you find that the evidence when considered as a whole, establishes guilt beyond a reasonable doubt.” In the second paragraph, the court explicitly provided that “[t]he State has the burden of proving the guilt of the Defendant beyond a reasonable doubt.” In the third paragraph, the court reiterated that the burden of proof “remains on the State throughout the trial.” Lastly, the fourth and fifth paragraphs clarify the definition of proof beyond a reasonable doubt. Throughout the instructions, the trial court emphasized several times that the State has the burden to prove the guilt of the defendant beyond a reasonable doubt.

We, therefore, conclude that the trial court sufficiently and clearly conveyed that the burden of proof in this trial was that the defendant must be found guilty beyond a reasonable doubt and that such a burden is on the State. We now address whether the last paragraph of the jury instructions at issue served to lessen the State’s burden of proof.

The paragraph at issue instructs the jury to weigh the evidence. When taken out of context, this may be understood to lower the burden of proof, but, viewing the jury instructions as a whole, the trial court made clear that the State had the burden to prove Mr. Mitchell’s guilt beyond a reasonable doubt through the repeated statements outlined above.

The first sentence of the pattern instruction provides that “[t]he defendant is presumed to be innocent of the charges.” MPJI-Cr 2:02. The trial court deviated from the wording of MPJI-Cr 2:02 by omitting that sentence from its jury instructions; however, this was the only deviation in wording. The trial court’s instruction made clear

that the defendant “isn’t required to prove his innocence” and that the defendant remains not guilty until evidence is presented to prove guilt beyond a reasonable doubt. The trial court’s instruction sufficiently conveyed the heart of the principle, even though it deviated in wording from MPJI-Cr 2:02. The jury instructions, therefore, complied with *Ruffin* because the instruction closely adhered to the pattern instruction and did not deviate in substance. *See Ruffin*, 394 Md. at 373.

We conclude that trial counsel did not err in withholding an objection because the jury instructions did not impermissibly shift or lower the burden of proof and sufficiently conveyed the presumption of innocence and the State’s burden to prove guilt beyond a reasonable doubt. Accordingly, we hold that trial counsel’s conduct was not constitutionally deficient, and that the first prong of the *Strickland* analysis is not met.

## **2. Prejudice Prong**

Because this Court finds that the jury instructions were proper, and, therefore, trial counsel’s performance was not deficient, it is not necessary to evaluate the second *Strickland* prong. *See Strickland*, 466 U.S. at 687 (explaining that “[u]nless a defendant makes both showings,” a court cannot say “that counsel’s assistance was so defective as to require reversal of a conviction”). However, since the parties dispute the prejudice analysis, we will address it here for the sake of completeness.

Under the Sixth Amendment of the United States Constitution, “a defendant has a right to effective representation, not a right to an attorney who performs his duties ‘mistake-free.’” *Weaver v. Massachusetts*, 582 U.S. 286, 300 (2017) (quoting *United States v. Gonzalez-Lopez*, 548 U.S. 140, 147 (2006)). Therefore, when a claim for

ineffective assistance of counsel is raised, it “is not complete until the defendant is prejudiced.” *Weaver*, 582 U.S. at 300 (citation and quotation marks omitted). “[W]hen a court is evaluating an ineffective-assistance claim, the ultimate inquiry must concentrate on ‘the fundamental fairness of the proceeding.’” *Weaver*, 582 U.S. at 300 (quoting *Strickland*, 466 U.S. at 696).

“The Supreme Court of the United States has identified three circumstances where a presumption of prejudice applies to an ineffective assistance claim: (1) actual denial of the assistance of counsel; (2) constructive denial of the assistance of counsel; and (3) counsel’s actual conflict of interest.” *Brand*, No. 2441, slip op. at 29, 2025 WL 957558, at \*15 (citing *Strickland*, 466 U.S. at 692; *Ramirez*, 464 Md. at 573). Beyond those limited situations however, prejudice will not be presumed and “‘the [petitioner] must show that the particular [ ] unreasonable errors of counsel [ ] had an adverse effect on the defense.’” *Ramirez*, 464 Md. at 563 (quoting *Bowers v. State*, 320 Md. 416, 425 (1990)).

The Supreme Court of the United States has adopted the general rule that certain errors, known as structural errors, “should not be deemed harmless beyond a reasonable doubt” because they “affect[] the framework” of a trial. *Weaver*, 582 U.S. at 294-95 (citation and quotation marks omitted). The Court noted that “the term ‘structural error’ carries with it no talismanic significance as a doctrinal matter. It means only that the government is not entitled to deprive the defendant of a new trial by showing that the error was ‘harmless beyond a reasonable doubt.’” *Id.* at 299 (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)).

The Court in *Weaver* outlined three broad categories of structural errors, the third of which is most pertinent here: “Third, an error has been deemed structural if the error always results in fundamental unfairness.”<sup>3</sup> *Id.* at 296. The Court stated that the failure of a trial court to give a reasonable doubt instruction is an example of a structural error that always results in a fundamentally unfair trial. *Id.* at 296 (citing *Sullivan v. Louisiana*, 508 U.S. 275, 279 (1993)). The Court explained that the doctrines of structural error and ineffective assistance of counsel “are intertwined; for the reasons an error is deemed structural may influence the proper standard used to evaluate an ineffective-assistance claim premised on the failure to object to that error.” *Weaver*, 582 U.S. at 294). “Different rules . . . apply to claims of structural error raised at different stages of a criminal proceeding, including derivative claims (i.e., ineffective assistance claims) predicated upon an underlying structural error.” *Brand*, No. 2441, slip op. at 34, 2025 WL 957558, at \*17.

“[I]n the case of a structural error where there is an objection at trial and the issue is raised on direct appeal, the defendant generally is entitled to automatic reversal regardless of the error’s actual effect on the outcome.” *Id.* (citations and quotation marks omitted). With certain exceptions, “the rule of *automatic* reversal applies only to

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<sup>3</sup> The other two categories are:

First, an error has been deemed structural in some instances if the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest. . . . Second, an error has been deemed structural if the effects of the error are simply too hard to measure.

*Weaver*, 582 U.S. at 295.

*preserved* claims of structural error; generally, an unpreserved claim of structural error is not reviewable as of right on direct appeal, but rather, is reviewable only for plain error.” *Id.*, slip op. at 35, 2025 WL 957558, at \*17 (citations omitted). In the alternative, “with narrow exceptions, an ineffective assistance claim requires that the defendant prove prejudice, regardless of the underlying claim or right that has been infringed.” *Id.*, slip op. at 38, 2025 WL 957558, at \*18 (citing *Ramirez*, 464 Md. at 573-75). In sum, courts must apply “a higher standard for granting a new trial when a defendant raises a structural error on postconviction, rather than on direct appeal.” *Newton*, 455 Md. at 356-57 (explaining that “even though a public-trial right violation requires automatic reversal on direct appeal, it is still analyzed under the *Strickland* framework when raised as part of an ineffective-assistance-of-counsel claim” (citing *Weaver*, 582 U.S. at 302-03)).

The Supreme Court articulated this higher standard for ineffective assistance claims due to a concern that “the costs and uncertainties of a new trial are greater because more time will have elapsed[ and t]he finality interest is more at risk[.]” *Weaver*, 582 U.S. at 302. For example, “if a new trial is ordered on direct review, there may be a reasonable chance that not too much time will have elapsed for witness memories still to be accurate and physical evidence not to be lost.” *Id.* Further, the Supreme Court of Maryland stated, “reviewing courts are in a better position to instruct trial courts on facts and legal principles to consider on remand. [] Postconviction courts, by contrast, assess ineffective-assistance-of-counsel claims through the *Strickland* lens and do not address the merits of particular trial court errors.” *Newton*, 455 Md. at 356 (citing *Weaver*, 582

U.S. at 302). Therefore, when making a claim for ineffective assistance of counsel in a postconviction proceeding, “a petitioner is not relieved of his or her burden of proving prejudice simply because he or she alleges that his or her trial counsel caused structural error.” *Ramirez*, 464 Md. at 576-77. Even when the underlying claim is one of structural error, the reviewing court must evaluate “whether [the petitioner] has demonstrated a reasonable probability that, had [the error not occurred], the verdict would have been different or that, in any other way, the result of the proceeding was ‘fundamentally unfair.’” *Brand*, No. 2441, slip op. at 50, 2025 WL 957558, at \*24.

The postconviction court found that the alleged error was structural and affected Mr. Mitchell’s right to a fair trial. The postconviction court’s memorandum and order stated, therefore, “that there was a reasonable probability that such error undermined confidence in the outcome of the trial.” This was the entire analysis of prejudice conducted by the court on the record. Additionally, the events at issue in this case occurred in 2011, and the jury trial took place in 2013. Given that more than ten years have passed, this case reflects the concerns of the Court in *Weaver* in its hesitancy to allow the assumption of prejudice in a postconviction proceeding. *See Weaver*, 582 U.S. at 302.

We hold that the postconviction court erred by failing to conduct a proper prejudice analysis under *Strickland*. Further, because we conclude that the jury instructions were not erroneous, and, as such, counsel made no error in withholding an objection, Mr. Mitchell could not have met his burden under *Strickland*.

## **CONCLUSION**

The postconviction court erred in granting Mr. Mitchell's motion for a new trial, and we, therefore, reverse.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY REVERSED;  
COSTS TO BE PAID BY APPELLEE.**