No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JOAQUIN S. RAMS – PETITIONER

vs.

COMMONWEALTH OF VIRGINIA – RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF VIRGINIA

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Jackson v. Virginia*, 443 U.S. 307 (1979), this Court held that the Due Process Clause requires the following standard of review for appellate claims of insufficient evidence of a criminal conviction: whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson* explicitly rejected a standard that asked instead whether "no evidence" supported a conviction. Setting itself apart from every other state and federal jurisdiction in the nation, Virginia has continued to apply its pre-*Jackson* standard of review without self-reflection: whether a criminal conviction is "without evidence to support it." Does this standard, applied in Mr. Rams's case, violate the Due Process Clause as interpreted by this Court in *Jackson*?

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PETITION FOR A WRIT OF CERTIORARI

Joaquin S. Rams, Petitioner, respectfully petitions this Court for a writ of certiorari in order to summarily reverse and remand the judgment of the Virginia courts in this case, for reconsideration of Mr. Rams's direct appeal under the correct constitutional standard of review.

OPINIONS BELOW

- *Commonwealth v. Rams*, No. CR13002303-00 & CR14003686-00, 96 Va. Cir. 215 (Va. Cir. Ct. Jul. 31, 2017), App. A-1 (slip op.)
- *Rams v. Commonwealth*, No. 1453-17-4, 823 S.E.2d 510 (Va. Ct. App. Feb. 26, 2019), App. A-68 (slip op.)
- *Rams v. Commonwealth*, No. 190399, Order Refusing Petition for Appeal (Va. Oct. 21, 2019) (unpub.), App. A-96
- *Rams v. Commonwealth*, No. 190399, Order Refusing Petition for Rehearing (Va. Feb. 14, 2020) (unpub.), App. A-113.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §1257(a).

The Virginia Court of Appeals decided petitioner's case on February 26, 2019. A copy of that decision appears in the Appendix at A-68. A petition to the Supreme Court

of Virginia was refused on October 21, 2019. A Petition for Rehearing to that court was refused February 14, 2020.[1] Those orders appear at App. A-96 and A-113, respectively.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Amendment XIV to the United States Constitution: ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law[.]"

- Virginia Code § 8.01-680 (Code of Virginia Ann. 2020):

> When a case, civil or criminal, is tried by a jury and a party objects to the judgment or action of the court in granting or refusing to grant a new trial on a motion to set aside the verdict of a jury on the ground that it is contrary to the evidence, or when a case is decided by a court without the intervention of a jury and a party objects to the decision on the ground that it is contrary to the evidence, the judgment of the trial court shall not be set aside unless it appears from the evidence that such judgment is plainly wrong or without evidence to support it.

STATEMENT OF THE CASE

Joaquin Rams was convicted by a Virginia judge of capital murder and sentenced to life without parole after discovering his 15-month-old son had died in his sleep while taking a nap.[2] At most, the trial evidence showed that the cause of death

[1] In filing this Petition, undersigned rely on this Court's Order of March 19, 2020, extending the deadline to file petitions for writ of certiorari "to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing." Order List: 589 U.S. ___ (Mar. 19, 2020).

[2] *Commonwealth v. Rams*, No. CR13002303-00 & CR14003686-00, 96 Va. Cir. 215 (Va. Cir. Ct. Jul. 31, 2017), Opinion and Verdict, at App. A-1; *Commonwealth v. Rams*, No. CR13002303-00 & CR14003686-00 (Va. Cir. Ct. Aug. 11, 2017), Sentencing/Final Order (unpub.), App. A-64.

was "undetermined."[3] According to the prosecution's own evidence, the death reasonably could have been natural,[4] as the baby was ill[5] and no physical or direct evidence supported a homicide.

In its case-in-chief, the Commonwealth introduced two expert reports, both opining not only an undetermined cause of death, but that a natural death was reasonably possible: 1) the official autopsy report of the case, amended by the state's Chief Medical Examiner;[6] and 2) a report by an independent expert with whom the Commonwealth had consulted.[7]

While the Commonwealth also presented the testimony of a former assistant medical examiner, Constance DiAngelo, who testified that the child's lungs showed indications of drowning,[8] the evidence supporting the Commonwealth's theory of

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[3] The official autopsy report in the case found that the cause of death was "undetermined." App. A-49 (trial court verdict quoting autopsy report). *See also Rams v. Commonwealth*, No. 1453-17-4 (Va. Ct. App.), Joint Appendix at 4492 ("J.A.") (autopsy report).

[4] The official autopsy report stated that natural death was possible, and concluded "a homicidal manner of death cannot be proven to a reasonable degree of medical certainty with the available data." App. A-49; J.A. 4492. In addition, the prosecution admitted the report of Dr. Tracey Corey, an independent expert with whom they consulted, stating: "Many findings in this case are consistent with a diagnosis of SUDC [Sudden Unexplained Death in Childhood]," and the cause of death should be labeled "undetermined." J.A. 4352-4355. SUDC is a version of SIDS (Sudden Infant Death Syndrome) used by some medical experts to describe such occurrences in children older the 12 months.

[5] The infant suffered from a seizure disorder, for which he had been hospitalized more than once; and an acute respiratory virus, SRV, diagnosed just the day before his death. J.A. 4279-4280 (ambulance called by his mother the day before the event, for seizure); J.A. 4168 (fever for two days before event with seizure and bleeding from mouth); *id*. (acute upper respiratory infection diagnosis day before event); J.A. 4155, 4172, 4240, 4242, 4249 (recent diagnosis of viral respiratory infection); J.A. 4136, 4141, 4149-4155, 4156-4161, 4172-4175, 4236-4255, 4256-4278 (multiple hospital and doctor visits for increasing seizures). All of these medical records were introduced by the prosecution.

[6] *Supra*, n.4.

[7] *Supra,* n.4. The defense evidence is not included here, but included the testimony of both authors of these state exhibits: the Chief Medical Examiner for the Commonwealth of Virginia; and Dr. Tracey Corey, the independent expert. Both experts, as well as others presented by the defense, corroborated the state's existing evidence of a likelihood of natural death, in particular SUDC.

[8] The Chief Medical Examiner amended and re-issued the autopsy report in this case, to reflect that the cause of death was "undetermined" and that natural death was possible. *Supra*. The rescinded, initial

drowning was so weak[9] that it changed its theory midway through the defense case, arguing in closing an entirely new cause of death: the possibility of suffocation.[10]

Although the medical evidence failed to prove *corpus delicti* beyond a reasonable doubt, the trial judge relied on two pieces of circumstantial evidence to convict Mr. Rams of intentional homicide. That circumstantial evidence was: financial motive (in the form of life insurance proceeds);[11] and statements from Mr. Rams during an emotional 911-call, and to first-responding EMTs, seeking emergency aid for his unconscious child, that his child had been "hot" and "shaking," which the trial judge

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autopsy report did not include the possibility of natural causes of death, instead identifying drowning as the cause. This was testified-to by the former assistant medical examiner who wrote it, though she acknowledged in her testimony that reasonable minds could differ. J.A. 1987, 1993, 2062, 2070-71.

[9] Numerous medical opinions were introduced (by both sides) that the liquid found in the child's lungs could reasonably be explained by his hours spent on life-support. J.A. 1784-85, 2946, 2947, 2982, 2588-2590, 2672, 2673, 2727, 2787, 2790-91, 2794-95, 2796-97, 2801-03 (testimony of six experts, including the Chief Medical Examiner); J.A. 4352-4355 (report of Dr. Corey, introduced by the prosecution, stating "I do not believe that [the child] died as a result of drowning."); J.A. 1997, 2002, 2005-2006, 2057, 2066-68 (testimony of DiAngelo on cross-examination by defense acknowledging that the liquid could be explained by extended life support, or "patchy pneumonia," which the child also had). In addition, lay witnesses for both the prosecution and the defense excluded the reasonable opportunity anyone had to drown the child during the relevant timeframe. J.A. 1668-1674, 1735, 1738-1741, 1743-1744, 1746-1747, 1750-1755, 1760 (testimony of Mr. Rams's teenaged son, for the prosecution); J.A. 2318, 2319-2320, 2350, 2402-2403, 2412, 2319-2321, 2325-2326, 2328-2329, 2337, 2339-2340, 2350, 2403-2404 (testimony of the only other persons in the home at the time, for the defense). The trial judge rejected the teenager's testimony as unreliable, App. A-55 & A-58, though it was unimpeached and found by the court to be honest. App. A-55. On review, the Court of Appeals concluded the trial court was "entitled to reject the teen's testimony[.]" App. A-88. The defense witnesses were credited by the trial court, however, and also excluded the possibility of opportunity to drown the child. App. A-51 ("given Mr. and Ms. Jestice's testimony that they did not hear the water turn on until Mr. Jestice got to the top of the stairs or into the upstairs hallway, it leaves little opportunity for an act of drowning to occur [during that time]").

[10] The prosecution opened their case stating that Mr. Rams drowned his son in "the briefest of moments" by running water from the bathtub after taking his child from his crib. J.A. 1579-1582. After their expert, DiAngelo, testified that it would not take mere seconds or "moments" to drown that way, but at least a couple of minutes, J.A. 2021-22, as well as the expert and lay testimony described *supra* in Footnote 9, they instead argued in closing: "oxygen to this little boy's brain was cut off either by drowning or by suffocation, and all the circumstances in this case point directly to that." J.A. 3425. The only time suffocation was mentioned in the state's case-in-chief was when their expert, DiAngelo, opined the child did *not* die from suffocation. J.A. 2056-57.

[11] App. A-59; A-13-25; A-74-75.

ruled were intentional lies.[12] The trial court, sitting without a jury, found Mr. Rams guilty of capital murder, noting the "possibilities" of homicidal causes of death,[13] and dismissing theories of natural death as unproved by the defense.[14]

The Court of Appeals of Virginia upheld Mr. Rams's conviction under the following standard:

> **If there is evidence to support the conviction[], the reviewing court [may not] substitute its own judgment, even if its opinion might differ from the conclusions reached by the finder of fact at the trial.**
>
> . . .
>
> **Again, the appellate court will reverse the judgment of the trial court only if it is "plainly wrong or without evidence to support it."**

Rams v. Commonwealth, No. 1453-17-4, 823 S.E.2d 510, 517 (Va. Ct. App. 2019) (emphasis added) (quoting Virginia cases), App. A-79.

In other words, Mr. Rams's conviction has stood because it is not "without evidence" and because of the "possibilit[y]" of a homicide.

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[12] App. A-32-34 (describing Mr. Rams's statements and finding them incredible); A-60 (noting "the Defendant's lies to emergency and medical personnel" as evidence of "guilty knowledge . . . criminal intent and proof of his scheme"). *See also* App. A-72-73; J.A. 4283-4293.

[13] The trial court explained in its written verdict that the Commonwealth "suggested two possibilities" of homicidal cause of death, and repeatedly referred to them as "possibilities," explaining: "The Court will discuss both possibilities but it is important to emphasize at the outset that a finding of 'criminal agency' does not require the Court to find a precise cause of death." App. A-42. The Court's ultimate conclusion was made by exclusion of non-homicidal causes, rather than a finding of a homicidal cause: "If [the child] died of [oxygen loss to his brain], and it was not by natural cause, his oxygen supply had to be cut off by some other means. As the preceding section makes clear, it may have been by drowning. The Court now finds beyond a reasonable doubt that if the cause of the [oxygen loss] was not drowning, it was suffocation. As stated above, the 'criminal agency' requirement does not require the Court to find a precise cause of death." App. A-52.

[14] App. A-27-39 (discussing and rejecting possible natural causes); A-61 ("Finally, the fact that [the child] did not die of natural causes of accident and, of course, did not commit suicide, leaves [homicide] as the only reasonable and rational explanation for his death.").

Mr. Rams argued at every opportunity below that the Commonwealth's evidence was insufficient under the constitutional due process standard of beyond a reasonable doubt. He first raised an oral motion to strike the evidence, which the trial court denied.[15] On appeal to the Court of Appeals of Virginia, petitioner further pressed the claim under federal due process of law and *Jackson v. Virginia*, 443 U.S. 307 (1979);[16] but the court denied it, applying the lower standard of review recited above. App. A-79. From there, petitioner raised his claim in a petition for discretionary review to the Supreme Court of Virginia,[17] which was summarily refused.[18] In a Petition for Rehearing, Mr. Rams then urged the Supreme Court of Virginia, at length, to address Virginia's adherence to its pre-*Jackson* sufficiency-of-evidence standard.[19] That Petition, too, was summarily denied.[20]

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[15] J.A. 3342-46 (argument and ruling on Motion to Strike).

[16] Brief of Petitioner, *Rams v. Commonwealth*, No. 1453-17-4 (Va. Ct. App.), 19 n.100 & 41 n.266(citing *Jackson* and federal due process).

[17] Pet. for Appeal to Sup. Ct. of Va., Assignment of Errors C & D, at 4 ("The Court of Appeals erred by failing to hold the evidence insufficient to prove corpus delicti" and "The Court of Appeals erred by failing to hold that the Commonwealth failed to prove Mr. Rams committed capital murder, because evidence of "Time" and "Opportunity" break the circumstantial chain"); *id.* at 12 n.25 & 23 n.54 ("*See also Jackson v. Virginia*, 443 U.S. 307 (1979) (federal due process is violated by conviction based on insufficient evidence of guilt beyond a reasonable doubt.").

[18] *Rams v. Commonwealth*, No. 190399, Order Refusing Petition for Appeal (Va. Oct. 21, 2019) (unpub.), App. A-96. Refusals of Petitions for Appeal to the Supreme Court of Virginia have been considered by this Court to be decisions on the merits. *See Wright v.* West, 505 U.S. 277, 283 (1992) (citing *Saunders v.* Reynolds, 204 S.E.2d 421, 424 (Va. 1974) (refusal of Petition for Appeal by Supreme Court of Virginia is "a disposition indicating that the court found the petition without merit").

[19] Pet. for Reh'g to Sup. Ct. of Va. (*Rams v. Commonwealth*, No. 190399), App. A-97.

[20] *Rams v. Commonwealth*, No. 190399, Order Refusing Pet. for Reh'g (Va. Feb. 14, 2020), App. A-113.

REASONS FOR GRANTING THE WRIT, VACATING, AND REMANDING

I. Virginia's courts are operating in direct conflict with this Court's decision in *Jackson v. Virginia*, 443 U.S. 307 (1979).

A. Mr. Rams's due process claim was rejected under a standard of review equivalent to the one the *Jackson* Court rejected.

i. The Due Process Clause, as interpreted by Jackson, forbids a criminal conviction from standing on appeal unless "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."

The Due Process Clause of the Fourteenth Amendment protects a defendant in a criminal case against conviction "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged[,]" as this Court held over 50 years ago. *In re Winship,* 397 U.S. 358, 364 (1970). The reasonable doubt standard is so fundamental that it "'symbolizes the significance that our society attaches to the criminal sanction and thus to liberty itself.'" *Jackson v. Virginia*, 443 U.S. 307, 315 (1979) (quoting *In re Winship*, 397 U.S. at 372 (Harlan, J., concurring)).

For that reason, this Court held in *Jackson v. Virginia* that due process entitles those convicted of a crime to appeal the sufficiency of the evidence supporting their convictions, and requires an appropriately-high standard of review for those claims: whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." 443 U.S. at 319 (citing *Johnson v. Louisiana*, 406 U.S. 356, 362 (1972)). Only this standard of review can safeguard against unconstitutional convictions, as guilt should rest only upon a "subjective state of near certitude of the guilt of the accused[.]" *Id*. at 315.

ii. A lesser "no evidence" standard does not comply with due process of law.

The *Jackson* Court rejected a lower standard in reaching its holding: that of *Thompson v. Louisville*, 362 U.S. 199, 199 (1960), which only required a sufficiency claim to be granted if supported by "no evidence." *Jackson*, 443 U.S. at 320 ("That the *Thompson* 'no evidence' rule is simply inadequate… is readily apparent."). Under *Thompson*, due process was satisfied unless "there [was] no support for these convictions in the record," 362 U.S. at 204, "the record [was] entirely lacking in evidence to support any of the charges," *id*., and there was "no evidence whatever in the record to support the[] convictions." *Id*. at 206.

This "no evidence" standard was not good enough, the *Jackson* Court held. It "could lead to absurdly unjust results," 443 U.S. at 320 n.14, for under such a standard "a defendant against whom there was but one slender bit of evidence" could not prevail on appeal. *Id.* "Such results would be wholly faithless to the constitutional rationale of *Winship*." *Id*.

A "no evidence" rule, this Court went on, "is simply inadequate to protect against misapplications of the constitutional standard of reasonable doubt[.]" *Id.* at 320. Under the inadequate "no evidence" standard, a conviction may be upheld on the basis of even a slight piece of relevant evidence,[21] even though "it could not seriously be argued that such a 'modicum' of evidence could by itself rationally support a conviction beyond a reasonable doubt." *Id*.

[21] *Id.* (evidence "that has any tendency to make the existence of an element of a crime slightly more probable than it would be without the evidence").

Finally, the "no evidence" rule was unconstitutional because, in failing to enforce the heightened standard of proof that the Due Process Clause required in criminal cases, it failed to honor the significant constitutional difference between criminal and civil verdicts: "Proof beyond a reasonable doubt is the decisive difference between criminal culpability and civil liability." *In re Winship,* 397 U.S. at 358-362; *see also Jackson*, 443 U.S. at 315 ("proof beyond a reasonable doubt has traditionally been regarded as the decisive difference between criminal culpability and civil liability.") (citing cases).

iii. Virginia courts are acting directly contrary to this Court's clear holding in Jackson, as they did in Mr. Rams's case.

Virginia's courts upheld Mr. Rams's conviction for capital murder under a standard substantially identical to the "no evidence" standard of *Thompson*: an "appellate court will reverse the judgment of the trial court only if it is **'plainly wrong or without evidence to support it**.'" *Rams v. Commonwealth*, 823 S.E.2d 510, 517 (Va. Ct. App. 2019) (emphasis added) (quoting Virginia cases),[22] App. A-79. This practice of Virginia's appellate courts violates the Due Process Clause and *In re Winship*, *supra*, precisely in the way the *Jackson* Court prohibited. Under the standard of review applied in Mr. Rams's appeal "a defendant against whom there was but one slender bit of evidence" could not prevail – a result "wholly faithless to the constitutional rationale of *Winship*." *Jackson*, 443 U.S. at 320 n.14

[22] The Virginia Court also explained: "If there is evidence to support the conviction[], the reviewing court [may not] substitute its own judgment, even if its opinion might differ from the conclusions reached by the finder of fact at the trial[.]" *Id.* (brackets in original).

Virginia's "without evidence" standard is no different from the "no evidence" standard roundly rejected by this Court in *Jackson*. Thirty-nine years later, the Commonwealth's jurisprudential practice is still wanting – despite Mr. Jackson himself having been a Virginia inmate.[23] And the byproduct of Virginia's recalcitrant practice is troubling: appellants in the Commonwealth apparently must still meet the equivalent of a "no evidence" standard to win relief from constitutionally-insufficient convictions. When reviewing cases in which Virginia courts have actually granted sufficiency claims, it appears that they most-often result when "no evidence" supports an element or conviction.[24]

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[23] James A. Jackson was convicted of first-degree murder in 1975 following a bench trial in Chesterfield County, Virginia. He unsuccessfully petitioned to the Supreme Court of Virginia, raising a sufficiency of the evidence claim. *Jackson*, 443 U.S. at 311 n.4. The standard of review for sufficiency claims was at that time found under Section 8-491 of Virginia's code, and was identical to the "without evidence" standard used now. Jackson filed a habeas petition in the United States District Court for the Eastern District of Virginia, which granted relief under *Thompson*'s "no evidence" standard. *Id*. at 312. The United States Court of Appeals for the Fourth Circuit reversed, finding "some evidence" under *Thompson*. *Id*. This Court, reviewing the Court of Appeals' holding, rejected *Thompson*'s "no evidence" standard, but nonetheless found sufficient evidence to convict Jackson because a "rational factfinder could readily have found the petitioner guilty beyond a reasonable doubt of first-degree murder under Virginia law." *Id*. at 324.

[24] *See, e.g., Farhoumand v. Commonwealth*, 764 S.E.2d 95, 102 & 104 (Va. 2014) (under "without evidence to support it" standard, evidence insufficient where "no evidence" of exposure); *Jordan v. Commonwealth*, No. 071559, 2008 Va. LEXIS 150 at *1, *3 (Mar. 21, 2008) (evidence insufficient "because there was no evidence introduced at trial" in support of furthering robbery, and "no evidence introduced at trial to establish" Jordan knew controlled substance present); *McCoy v. Commonwealth*, No. 0858-01-02, 2002 Va. App. LEXIS 457 at *5 (Aug. 6, 2002) (evidence insufficient where "no evidence tended to show the heroin was subject to McCoy's dominion and control"); *Wilson v. Commonwealth*, No. 1072-00-1, 2001 Va. App. LEXIS 121, at *10-11 (Mar. 13, 2001); *Dotson v. Commonwealth*, No. 1541-99-3, 2000 Va. App. LEXIS 493, at *17-18 (July 5, 2000) (evidence insufficient where "no evidence proved that [the injury] was caused by a willful act"); *Person v. Commonwealth*, No. 1897-98-1, 1999 Va. App. LEXIS 494, at *9 (Aug. 10, 1999) (evidence insufficient where "no evidence to prove that appellant was that person"); *Adsit v. Commonwealth*, No. 0882-98-2, 1999 Va. App. LEXIS 86, at *5 (Feb. 9, 1999) (evidence insufficient where "[t]here is no evidence in this record to support" conviction); *Harris v. Commonwealth*, No. 2078-98-2, 1999 Va. App. LEXIS 683, at *2, *6 (Dec. 21, 1999) (record insufficient under "without evidence" standard because "[t]here was no evidence in the record to suggest that appellant's speed and intoxication caused him to drive in a manner which of itself endangered . . . another person").

On the other hand, Virginia petitioners like Mr. Rams, whose sufficiency claims should meet the *Jackson* standard, are losing because their trial records are not entirely "without evidence."[25] Thus, the standard applied to Mr. Rams's claim, like the one the lower courts applied to Mr. Jackson's, was "simply inadequate to protect against misapplications of the constitutional standard of reasonable doubt[.]" 443 U.S. at 320.

B. State courts are bound by *Jackson*'s interpretation of the Due Process Clause.

Even though *Jackson* addressed a federal habeas review of a state court judgment, this Court has made clear that its Fourteenth Amendment standard of review applies equally to state courts as well as federal. *See Wright v. West*, 505 U.S. 277, 290 (1992) ("[In *Jackson* we] indicated that the habeas court itself should apply the *Jackson* rule, *see* [*Jackson*] at 324, rather than merely reviewing the state courts' application of it for reasonableness."). *See also McDaniel v. Brown*, 558 U.S. 120, 131 n.4 (2010) (examining Nevada's appellate sufficiency standard and finding it not "contrary to" *Jackson* under 28 U.S.C. § 2254(d)).[26]

As *Jackson* explicitly held, sufficiency of the evidence is a federal constitutional claim: "a state prisoner who alleges that the evidence in support of his state conviction

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[25] As detailed *supra*, the Virginia Court of Appeals in reviewing Mr. Rams's claim applied the following standard: "[i]f there is evidence to support the conviction[], the reviewing court [may not] substitute its own judgment, even if its opinion might differ from the conclusions reached by the finder of fact at the trial." *Rams*, 823 S.E.2d at 517 (quoting other Virginia cases); *id*. ("Again, the appellate court will reverse the judgment of the trial court only if it is 'plainly wrong or without evidence to support it.'").

[26] *See also Tibbs v. Florida*, 457 U.S. 31, 45 (1982) (discussing state court appellate review and noting: "We held in *Jackson* that the Due Process Clause forbids any conviction based on evidence insufficient to persuade a rational factfinder of guilt beyond a reasonable doubt. The Due Process Clause, in other words, sets a lower limit on an appellate court's definition of evidentiary sufficiency. This limit, together with our belief that state appellate judges faithfully honor their obligations to enforce applicable state and federal laws, persuades us that today's ruling will not undermine *Burks*.").

cannot be fairly characterized as sufficient to have led a rational trier of fact to find guilt beyond a reasonable doubt has stated a federal constitutional claim." 443 U.S. at 321. And state supreme courts are bound to follow the rulings of this Court on matters of the United States Constitution. *See Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 382 n.12 (2012) ("The Supremacy Clause declares federal law the 'supreme law of the land,' and state courts must enforce it 'in the absence of a valid excuse.'") (quoting *Howlette v. Rose*, 496 U.S. 356, 371 (1990)).

C. Virginia courts reflexively apply the "plainly wrong or without evidence to support it" standard to appellate claims of insufficient evidence, as they have in both civil and criminal cases alike for over a century.

The phrase "plainly wrong or without evidence to support it" appears in the vast majority of Virginia's sufficiency reviews of criminal convictions,[27] even though it is essentially a civil standard for post-verdict motions. It comes from a statutory relic housed in the state's civil procedural code,[28] which applies to any motion (civil or criminal) to disturb a verdict on sufficiency grounds. Va. Code § 8.01-680.[29] Under the provision, relief is prohibited "unless it appears from the evidence that such judgment is plainly wrong or without evidence to support it." *Id*.

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[27] *See infra* for a quantitative survey of its prevalence compared to other standards.

[28] Va. Code § 8.01-680 is housed within title 8.01 of the Code of Virginia (Civil Remedies and Procedure), Chapter 26.2 (Appeals Generally). Section 8.01-680 governs review of denials of motions for a new trial or motions to set aside a verdict of a jury (or judge) on the ground that it is contrary to the evidence. This standard of appellate review is applied to all higher court review of factfinding in both civil and criminal cases.

[29] Va. Code § 8.01-680 provides in full: "When a case, civil or criminal, is tried by a jury and a party objects to the judgment or action of the court in granting or refusing to grant a new trial on a motion to set aside the verdict of a jury on the ground that it is contrary to the evidence, or when a case is decided by a court without the intervention of a jury and a party objects to the decision on the ground that it is contrary to the evidence, the judgment of the trial court shall not be set aside unless it appears from the evidence that such judgment is plainly wrong or without evidence to support it."

That standard ("plainly wrong or without evidence to support it") is also used by Virginia appellate courts in their sufficiency-of-the-evidence reviews, often but not always in explicit reliance on the statute. This has been the case since passage of the 1919 Code of Virginia,[30] and for decades prior to that.[31] In the telling of one storied Virginia scholar and legal publisher, T.J. Michie, Jr., in 1921: "Judge Burks in his authoritative work on Pleading and Practice thus explains the effect of the old rule: '. . . the verdict and the judgment thereon of the trial court will not be disturbed unless it is plainly contrary to the evidence, or is 'without evidence to support it.'"'[32]

Virginia's deference to trial-level fact-finding is familiar, originating from the legal maxim *ad questionem facti non respondent judices; ad questionem juris non respondent juratores*.[33] Virginia in particular has long demonstrated commitment to this principle: as a contingency to ratifying the United States Constitution, Virginia joined a small handful of states demanding inclusion of an amendment expressly

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[30] Va. Code § 6363 (1919) ("When a case at law, Civil or Criminal, is tried by a jury and a party excepts to the judgement or action of the court in granting or refusing to grant a new trial on a motion to set aside the verdict of a jury on the ground that it is contrary to the evidence, or when a case at law is decided by a court or judge without the intervention of a jury and a party excepts to the decision on the ground that it is contrary to the evidence and the evidence (not the facts) is certified, the judgement of the trial court **shall not be set aside unless it appears from the evidence that such judgement is plainly wrong or without evidence to support it.**") (emphasis added).

[31] See *Dennis v. Commonwealth*, 823 S.E.2d 490, 501 (Va. 2019) ("Virginia has enshrined this tradition of appellate deference to trial-level factual findings in a statutorily mandated standard of review since 1887, when the General Assembly enacted Code § 3484. The statute persisted through several reenactments of the Code of Virginia, and its current form, Code § 8.01-680[.]").

[32] T. J. Jr. Michie, Rule of Decision in Appellate Court under Sec. 6363, 7 Va. L. Reg. n.s. 321, 323 (1921).

[33] *Dennis,* 823 S.E.2d at 50); *Jones v. United States,* 526 U.S. 227, 247, n. 8 (1999) (quoting 1 E. Coke, Institutes of the Laws of England 155b (1628)("Ad questionem facti non respondent judices; ad questionem juris non respondent juratores")).

prohibiting appellate fact finding in civil cases.[34] Older caselaw in the Commonwealth is replete with recognition of this "essential rule in the administration of justice," and a fear that its erosion would "lead to constant invasion in the province of the jury to pass upon the facts of the case, and whose conclusions upon questions of fact are entitled to great weight, and ought not to be lightly disturbed."[35]

In modern practice, Virginia continues to place this principle first, even ahead of this Court's recognition in *Jackson* of something more supreme in criminal cases: the constitutional role appellate courts must play to enforce the standard of proof beyond a reasonable doubt in criminal cases. 443 U.S. at 320. The *Jackson* opinion attempted to stave off this very response by stating: "The [standard of review required by this holding] thus impinges upon 'jury' discretion only to the extent necessary to guarantee the fundamental protection of due process of law[,]" *Id.* at 319, and "courts can and regularly do gauge the sufficiency of the evidence without intruding into any legitimate domain of the trier of fact[.]" *Id.* at 321.

This Court spoke with clarity when it announced *Jackson*'s standard. And yet, a criminal conviction still stands in Virginia unless the appellant can meet the steeper, unconstitutional, pre-*Jackson* standard that it is "without evidence to support it." Historical commentary on Virginia's standard paraphrased the practice in even starker terms: a conviction is not overturned under Virginia's standard unless "the

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[34] *Dennis,* 823 S.E.2d at 500 (citing Edward Dumbauld, *The Bill of Rights and What it Means Today 76,* 181-82, 183-84, 188, 190-92, 200, 204 (1957)). This effort led to the ratification of the Seventh Amendment. *Id.*; U.S. Const. amend. VII (governing federal civil trials).

[35] *Finchim v. Commonwealth,* 83 Va. 689, 690 (1887) (citing *Grayson v. Commonwealth*, 47 Va. 712 (1849); *Dean v, Commonwealth,* 73 Va. 912 (1879); *Cluverius v. Commonwealth*, 81 Va. 787 (1886)).

overwhelming weight of evidence is in [the appellant's favor] and the trial court has failed in its duty of setting aside the verdict";[36] or "if there was any evidence to support a verdict against him in the trial court[.]"[37]

These characterizations are still true today, as the pertinent language of the statutory standard of review has not changed in over a century. The 1919 statute's "'plainly wrong or without evidence to support it" standard has survived all subsequent iterations of the Code; in 1950 when Section 6363 became Section 8-491, and again in 1977 when Section 8-491 became the modern-day Section 8.01-680.[38] And, as demonstrated in the next subsection, Mr. Rams's case is but one example of many in the Commonwealth; a survey of actual practice by Virginia appellate courts confirms widespread reliance on this standard.

D. Virginia's appellate courts use constitutionally-inadequate standards - most often "plainly wrong or without evidence to support it" - to review the vast majority of sufficiency claims from criminal appellants.

In an effort to understand the breadth of Virginia's failure to apply *Jackson*, we attempted to identify all post-*Jackson* sufficiency reviews by the Commonwealth's appellate courts, and separated them by the standards of review they employed for

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[36] Michie, 7 Va. L. Reg. at 336 (analyzing Va. Code § 6363 (1919)).

[37] Pollard's Code, § 3484 (1908), at 356 ("When the evidence (and not the facts) is certified, a plaintiff in error stands in this court as on a demurrer to the evidence, and if there was *any evidence to support a verdict against him in the trial court*, it will not be set aside.") (emphasis added), https://books.google.com/books?id=RBUSAAAAYAAJ&pg=PA356&lpg=PA356&dq=Pollard%E2%80%99s+Code+Section+3484+(1908)&source=bl&ots=RxfOf7lAWo&sig=ACfU3U3BEqB9qo1_nhxZxcBa7h7a7hT2qA&hl=en&sa=X&ved=2ahUKEwjxmMbMrb7qAhVhhHIEHTTPDhkQ6AEwAHoECAcQAQ#v=onepage&q=Pollard%E2%80%99s%20Code%20Section%203484%20(1908)&f=false (last visited July 9, 2020).

[38] The only modifications throughout this time were minor. Section 8-491(1950) was identical to its predecessor, Section 6363 (1919). Section 8.01-680 (1977) removed the phrase "at law," and moved the location of the statute, but is otherwise identical to its predecessors.

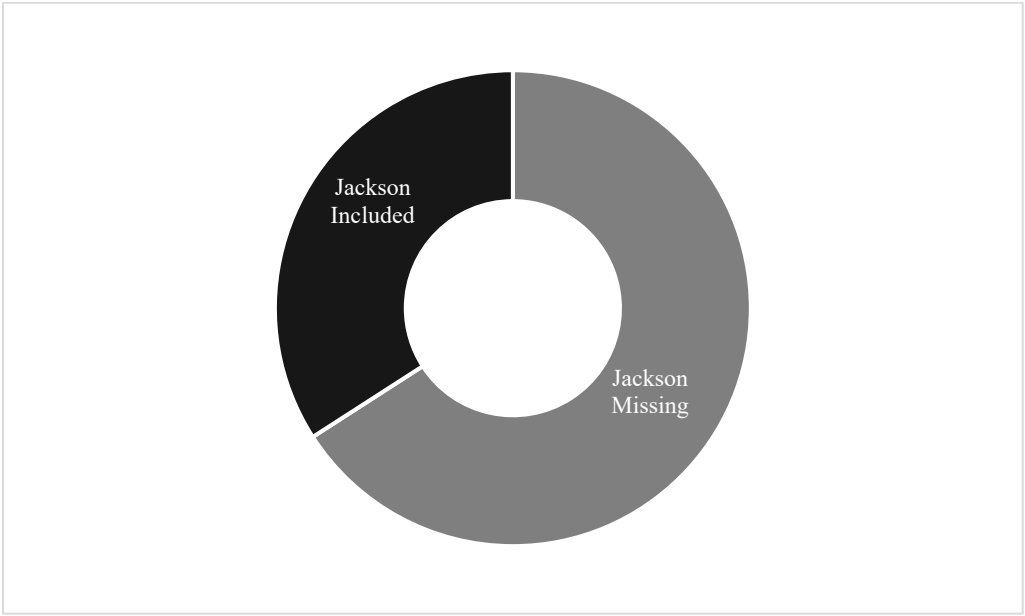
those claims. 2,296 cases were identified, using a variety of search methods. Their review supports two strong conclusions:

1) **Low prevalence of the *Jackson* standard:** under the most deferential interpretation,[39] at most one-third (34.1%) of cases included *Jackson*'s standard of review, *see* Charts 1 & 2, *infra*; and

2) **High prevalence of the "plainly wrong or without evidence to support it" standard:** well over two-thirds (70.9%) of cases included the constitutionally-deficient "plainly wrong or without evidence to support it" standard of review,[40] with an additional 19.7% of cases identifying no governing standard at all[41] -- totaling *90.6% of cases that employ either an unconstitutional standard or no standard. See* Chart 2, *infra*.

Mr. Rams's case falls squarely on the unconstitutional side of both these statistics: failing to apply *Jackson*; and relying on the "without evidence" standard.

Chart 1: How many of Virginia's post-*Jackson* sufficiency cases include *Jackson*?

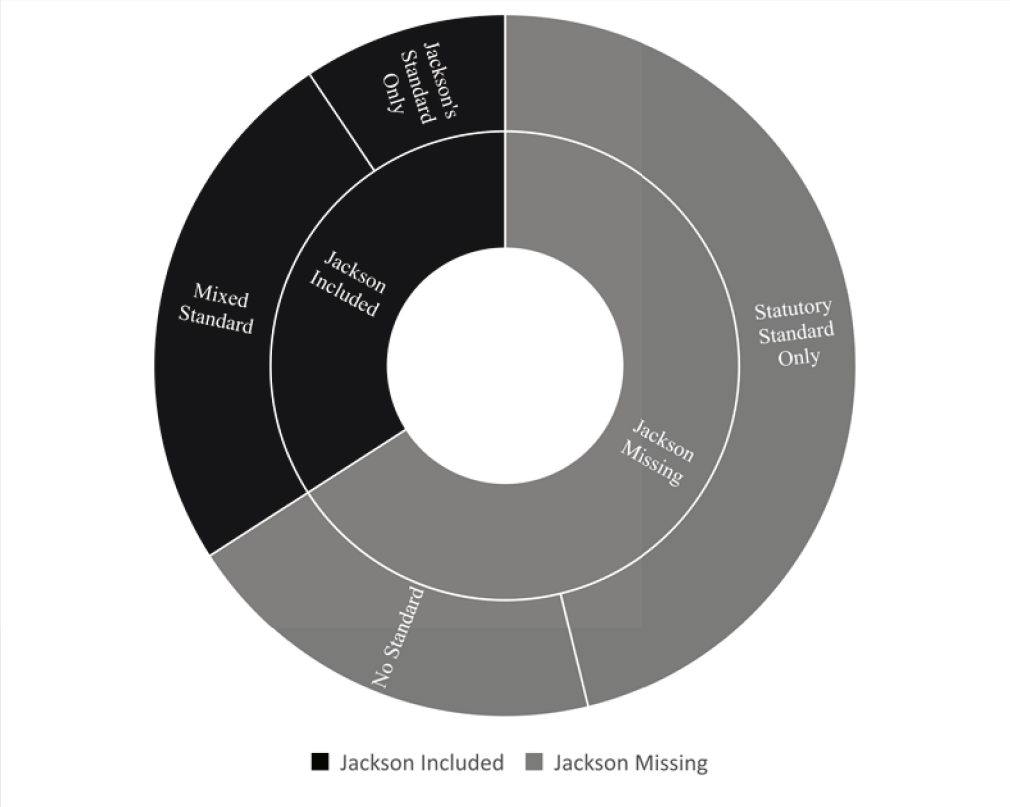


[39] In cataloguing the 34.1% of cases that include *Jackson*'s standard ("Jackson included" in Chart 1), we included the following: cases that apply the required *Jackson* standard, either by exclusively citing *Jackson* or exclusively applying *Jackson*'s test without attributing it to *Jackson* (labeled "Jackson's Standard Only" in Chart 2); and that cite the statutory standard *and* the standard from *Jackson* (labeled "Mixed Standard" in Chart 2). The "Mixed Standard" cases are further broken down in Chart 3. Numbers and percentages are detailed in the discussion of Chart 2, *infra*.

[40] This group includes two of the labels in Chart 2: "Statutory Standard Only"; and "Mixed Standard." Details about these categories are found in the discussion of Chart 2, *infra.*

[41] This group is labeled "No Standard" in Chart 2.

Chart 2: Breakdown of Virginia Sufficiency Cases that Do or Do Not Include *Jackson*



Adding context to Chart 2, out of the 2,296 total cases identified:

- "**Jackson's Standard Only**": 216 (9.4% of total) apply the *Jackson* standard alone, either by exclusively citing *Jackson*, or exclusively applying *Jackson*'s test without attributing it to *Jackson*.[42] The statutory standard is not referenced.

- 1,628 (70.9% of total) cite the "without evidence" standard found in Virginia Code Section 8.01-680, whether or not explicitly citing the statute. These cases are comprised of two groups in Chart 2:

    - "**Statutory Standard Only**": 1,060 cases cite the statutory standard of review exclusively (46.2% of the total),[43] and

[42] *See, e.g., Yerling v. Commonwealth,* 838 S.E.2d 66, 68 (Va. Ct. App. 2020) (citing *Jackson*, 443 U.S. at 318-19) (evidence insufficient for rational trier of fact to find guilt beyond reasonable doubt); *Lambert v. Commonwealth*, 840 S.E.2d 326, 328-29 (Va. 2020) (evidence sufficient for rational trier of fact to find guilt beyond reasonable doubt, not citing *Jackson*).

[43] 594 cases use the statutory standard (with or without citing statute) and exclude reference to *Jackson* or its test, *see, e.g., Murray v. Commonwealth*, 837 S.E.2d 85, 90-91 (Va. Ct. App. 2020)(evidence sufficient because not plainly wrong or without evidence to support it); *Carlson v. Commonwealth*, 823 S.E.2d 28, 37 (Va. Ct. App. 2019) (same); *Bolden v. Commonwealth*, 654 S.E.2d 584, 586 (Va. 2008) (same). 466 cases use the statutory standard (with or without citing statute) and exclude *Jackson*,

- "**Mixed Standard**": 568 cases cite the statutory standard *and* the standard from *Jackson* (24.7% of total).[44]

- "**No Standard**": 452 cases (19.7% of total) appear to set no standard of review whatsoever.[45]

The "Mixed Standard" cases from Chart 2 warrant a closer look. While they all include both statutory language and *Jackson* in some way, they vary greatly in terms of how they ultimately apply *Jackson* (if at all).

Accordingly, Chart 3 adds the following detail:

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though at some point in analysis use either the phrase "beyond a reasonable doubt" to describe the burden of proof or the word "rational" to describe the factfinder (but not both). *See, e.g., Falls v. Commonwealth*, No. 1161-07-3, 2008 WL 4773943, at *3 (Va. Ct. App. Nov. 4, 2008) (relying on statutory standard, but including phrase "beyond a reasonable doubt" to describe burden of proof at trial).

[44] For further breakdown of these cases, and examples, see discussion of Chart 3, *infra.*

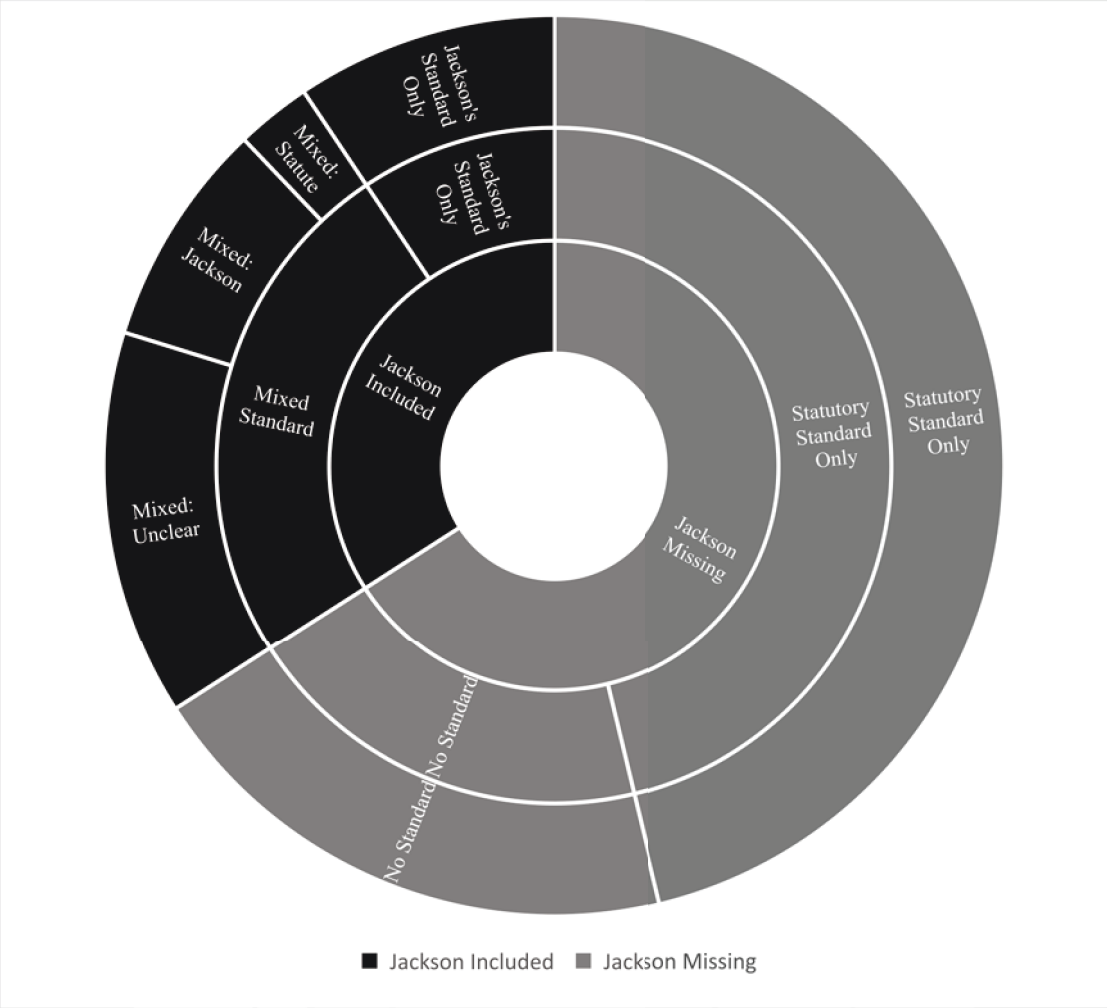
[45] *See, e.g., Clark v. Commonwealth*, 676 S.E.2d 332 (Va. Ct. App. 2009) (en banc); *Allard v. Commonwealth*, 480 S.E.2d 139, 141-42 (Va. Ct. App. 1997); *Williams v. Commonwealth*, 450 S.E.2d 365, 376-77 (Va. 1994); *Essex v. Commonwealth*, 442 S.E.2d 707, 711 (Va. Ct. App. 1994). *See also Lavalliere v. Commonwealth*, No. 1709-17-2, 2019 Va. App. unpub. LEXIS 81 (Apr. 9, 2019) (asking if verdict was "plainly wrong"); *Berger v. Commonwealth*, No. 0731-06-3, 2006 Va. App. LEXIS 609 (Nov. 17, 2006) (same).

- "**Mixed: Jackson**": 185 of the "Mixed Standard" cases (8.1% of total) clearly apply *Jackson*'s full test;[46]

- "**Mixed: Unclear**": 320 of the "Mixed Standard" cases (13.9% of total) leave it unclear which standard is ultimately applied;[47] and

- "**Mixed: Statute**": 63 of the "Mixed Standard" cases (2.7% of total) clearly only apply the statutory language.[48]

Chart 3: Breakdown of Sufficiency Cases that Include Both *Jackson* and the Statute



[46] 86 cases cite statutory language and *Jackson*, and apply both prongs of *Jackson*, *see, e.g. Girard v. Commonwealth*, 783 S.E.2d 561, 564-65 (Va. Ct. App. 2016). 99 cases cite statutory language, and not *Jackson*, but use *Jackson*'s full test. *See, e.g., Walker v. Commonwealth*, 622 S.E.2d 282, 285 (Va. Ct. App. 2005). When referring to *Jackson*'s two "prongs," we mean the "rational trier of fact" phrase, and the "beyond a reasonable doubt" phrase. When reviewing this category for inclusion of the first prong, we included related terms such as "rational factfinder," "rational juror," etc.

[47] *See, e.g., Clark v. Commonwealth*, No. 0980-17-1, 2018 Va. App. LEXIS 204 (Ct. App. July 24, 2018) (cites *Jackson* and statutory standards, but application unclear as neither appears again).

[48] *See, e.g., Moore v. Commonwealth*, 2020 Va. Unpub. LEXIS 13, at *5-10 (May 14, 2020) (cites *Jackson* and statutory standard in standard of review, but applies only statute later).

In conclusion, the vast majority (70.9%, or 1,628 out of 2,296) of post-*Jackson* criminal sufficiency cases in the Commonwealth explicitly include a constitutionally-deficient standard ("without evidence to support it"). That statistic jumps to a stunning 90.6% when combined with cases in which no apparent standard was applied at all. Chart 2, *supra.* Of those cases using the statutory standard, most rely on it exclusively, while some add *Jackson*'s standard to varying degrees of success. Charts 2 & 3, *supra* (detailing "mixed"-standard cases).

Virginia courts simply do not use the standard of review required by this Court in *Jackson*. They are relying on *Jackson*'s standard exclusively only 9.4% of the time, Charts 2 & 3, *supra*, and relying on *Jackson* to even the most minimal degree[49] only 34.1% of the time, at most. Chart 1, *supra*. The majority of the time the Commonwealth's courts use a "without evidence" standard, with origins dating long before *Jackson* and directly contrary to its holding.

II. Virginia's ingrained practice of reflexively applying its pre-*Jackson* standard in sufficiency cases is in direct conflict with all other state and federal jurisdictions.

Other state courts appear to comply with *Jackson*, often explicitly addressing the need to follow its mandate. Like Virginia, many jurisdictions used a "no evidence" standard for sufficiency claims prior to *Jackson*.[50] Unlike Virginia, however, all of the

[49] As detailed *supra*, this group includes: 216 cases (9.4% of the total) that apply the required *Jackson* standard, either by exclusively citing *Jackson*, or exclusively applying *Jackson*'s test without attributing it to *Jackson* (labeled "Jackson Standard Only" in Chart 2); and 568 cases (24.7% of the total) citing the statutory standard *and* the standard from *Jackson* (labeled "Mixed Standard" in Chart 2). The "Mixed Standard" cases are further broken down in Chart 3.

[50] *See, e.g., Eubanks v. State*, 242 S.E.2d 41, 43 (Ga. 1978) (conviction upheld "[s]o long as there [was] any evidence to support the jury's verdict"); *State v. Coleman*, 257 So.2d 652, 653 (La. 1972) (applying "no evidence" standard to sufficiency claim); *People v. Vail*, 227 N.W.2d 535, 536 (Mich. 1975)

others updated that practice to comply with *Jackson*, almost-uniformly abandoning the "no evidence" standard entirely.[51]

Similarly, jurisdictions that used a variety of other standards to review claims of insufficient evidence on appeal adopted *Jackson*'s standard after it was handed down; or examined whether their existing standards comported with *Jackson*'s mandate. Federal courts have also engaged in many reviews of states' sufficiency standards to test compliance with *Jackson*. All of these comparative practices are discussion herein.

(examining if there was "any evidence upon which a jury could predicate a finding of guilty"), *overruled on other grounds*, *People v. Graves*, 581 N.W.2d 229 (Mich. 1998).

[51] *See Boyd v. State*, 259 S.E.2d 71, 73 (Ga. 1979) (applying *Jackson*'s standard); *State v. Brown*, 421 So.2d 854, 856 (La. 1982) (same); *People v. Wolfe*, 489 N.W.2d 748 (Mich. 1992), *am.* (Oct. 9, 1992) (citing *People v. Hampton*, 285 N.W.2d 284, 288 (Mich. 1979)) ("[A]n appellate court is required to apply the standard adopted by this Court in *Hampton*. There, we stated that a reviewing court must consider not whether there was any evidence to support the conviction but whether there was sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt."). Two jurisdictions (West Virginia and D.C., *infra*) still use the "no evidence" phrase, but combine it with language from *Jackson*.

In total, twenty-three states and territories explicitly adopted *Jackson*'s standard,[52] and have been affirmed by federal courts as compliant.[53] Nineteen more states and territories that already employed standards similar to *Jackson*'s have since

[52] Those jurisdictions are Alabama, Connecticut, Delaware, Florida, Georgia, Kansas, Louisiana, Maine, Maryland, Michigan, Mississippi, Nebraska, Oklahoma, New Hampshire, New York, Ohio, Oregon, Tennessee, Texas, Vermont, Washington, the Virgin Islands, and Guam. *See Ex parte* G.G., 601 So. 2d 890, 892 (Ala. 1992) (applying *Jackson*'s standard); *State v. Brown*, 505 A.2d 690, 695–96 (Conn. 1986) (same); *Boyer v. State*, 436 A.2d 1118, 1122 (Del. 1981) (same); *Pagan v. State*, 830 So. 2d 792, 803 (Fla. 2002) (same); *Boyd v. State*, 259 S.E.2d 71, 73 (Ga. 1979) (same); *People v. Cruz,* 1998 Guam 18 (Guam Sept. 11, 1998) (same); *State v. Voiles*, 601 P.2d 1121, 1125 (Kan. 1979) (same); *Brown*, 421 So.2d at 856 (La. 1982) (same); *State v. Van Sickle*, 434 A.2d 31, 34–35 (Me. 1981) (same); *Tichnell v. State*, 415 A.2d 830, 842 (Md. 1980) (same); *People v. Hampton*, 285 N.W.2d 284, 288 (Mich. 1979) (same); *Magee v. State*, 966 So.2d 173, 179 (Miss. Ct. App. 2007) (same); *State v. Myers,* 603 N.W.2d 378, 388 (Neb. 1999) (same); *State v. Kiluk*, 410 A.2d 648, 650 (N.H. 1980) (same); *People v. Contes*, 454 N.E.2d 932, 932–33 (N.Y. 1983) (same); *State v. Thompkins*, 678 N.E.2d 541, 546 (Ohio 1997) (same); *Spuehler v. State*, 709 P.2d 202, 203–04 (Okla. Crim. App. 1985) (same); *State v. Harris*, 609 P.2d 798, 807-08 (Or. 1980) (same); *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982) (same); *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2009) (same); *State v. Derouchie*, 440 A.2d 146, 148 (Vt. 1981) (same); *Davis v. People*, 69 V.I. 619, 631 (V.I. 2018) (same); *State v. Green*, 616 P.2d 628, 632 (Wash. 1980) (same).

[53] See e.g. *Bates v. Workman*, 311 F. App'x 125, 128 (10th Cir. 2009) (unpub.) (Oklahoma court "applied the *Jackson* standard as identified and described in *Spuehler*"); *Wiggins v. Corcoran*, 288 F.3d 629, 637 (4th Cir. 2002) ("Maryland Court of Appeals identified these controlling principles of law correctly."), *rev'd on other grounds, sub nom*., *Wiggins v. Smith*, 539 U.S. 510 (2003); *Shaw v. Davis,* No. 4:17-CV-261-O, 2018 WL 6068787 at *4-5 (N.D. Tex. Nov. 9, 2018) (quoting extensively from the Texas opinion, which "appl[ied] the *Jackson* standard"); *Rice v. Parnell*, No. 315CV05381BHSJRC, 2016 WL 1638078 at *10 (W.D. Wash. Jan. 6, 2016), report and recommendation adopted, No. C15-5381 BHS, 2016 WL 1626747 (W.D. Wash. Apr. 25, 2016) ("Washington's test for determining the sufficiency of evidence is identical to that set forth by the Supreme Court in *Jackson*."); *Brooks v. Pierce*, No. 12-466-GMS, 2015 WL 5793922 at *4 (D. Del. Sept. 30, 2015) ("The governing sufficiency of the evidence standard in Delaware is identical to the standard articulated in *Jackson*.") (internal citation omitted); *Jackson v. Hill,* No. CV. 08-895-KI, 2009 WL 5066648 at *7-8 (D. Or. Dec. 15, 2009) (("Oregon state and federal constitution standards for insufficiency of the evidence are identical"), aff'd, 405 F. App'x 142 (9th Cir. 2010); *Hammell v. Cattell,* No. CIV. 03-422-SM, 2004 U.S. Dist. LEXIS 17415 at *6 (D.N.H. Aug. 31, 2004) ("[S]tate sufficiency-of-the-evidence rule [is] the functional equivalent of the rule established in *Jackson*.").

deemed them equivalent;[54] and federal courts that have examined them have also found them compliant.[55]

[54] Those jurisdictions are Alaska, California, Colorado, Idaho, Illinois, Kentucky, Massachusetts, Minnesota, Missouri, Montana, Nevada, New Jersey, New Mexico, North Dakota, Northern Mariana Islands, Puerto Rico, South Dakota, Wisconsin, Wyoming. *See Esmailka v. State*, 740 P.2d 466, 470 (Alaska Ct. App. 1987) ("The Alaska rule regarding sufficiency of the evidence is also consistent with the United States Constitution as interpreted in *Jackson*."); *People v. Johnson*, 606 P.2d 738, 750 (Cal. 1980) (holding that the "substantial evidence" standard is "an identical standard" to that in *Jackson*); *People v. Gonzales*, 666 P.2d 123, 127 (Colo. 1983) (connecting the Colorado standard to *Jackson's*); *State v. Merrifield*, 704 P.2d 343, 346–47 (Idaho Ct. App. 1985) (stating that *State v. Filson*, 613 P.2d 938, 943 (Idaho 1980) "implicitly adopted" *Jackson* while preserving the "competent and substantial evidence" standard); *People v. Ehlert*, 811 N.E.2d 620, 625 (Ill. 2004) ("The *Jackson* equivalent applied by appeals courts in Indiana states that '[a] reversal is warranted only if the evidence is so improbable or unsatisfactory that it leaves a reasonable doubt as to defendant's guilt.'"); *Beaumont v. Commonwealth*, 295 S.W.3d 60, 66-68 (Ky. 2009) (state standard for reviewing denial of direct verdict, analyzed as a sufficiency claim, complies with *Jackson*); *Commonwealth v. Latimore*, 393 N.E.2d 370, 374–75 (Mass. 1979) (state standard is "substantially comparable" to *Jackson*); *State v. Grim*, 854 S.W.2d 403, 405 (Mo. 1993) (state standard "echoes the due process standard announced by . . . *Jackson*"); *State v. Wilson*, 631 P.2d 1273, 1278–79 (Mont. 1981) ("[T]he standard of review applied in Montana since before 1979 does not fall short of the standard mandated in *Jackson* . . . [and] [i]ndeed, the *Jackson* test has previously been applied by this Court."); *Hern v. State,* 635 P.2d 278, 279 (Nev. 1981) (citing state cases and *Jackson*) ("The issue is not whether this court would have found beyond a reasonable doubt that appellant was guilty of first degree murder, but whether the jury, acting reasonably, could have been convinced to that certitude by the evidence it had a right to consider."); *State v. Brown*, 404 A.2d 1111, 1113 (N.J. 1979) (state standard is "consistent with that articulated by the United States Supreme Court . . . in *Jackson*"); *State v. Sutphin,* 753 P.2d 1314, 1319 (N.M. 1988) (state standard "is the same as [the standard] annunciated in *Jackson*"); *State v. Kringstad*, 353 N.W.2d 302, 306 (N.D. 1984) (state standard satisfies *Jackson*); *State v. Holzer*, 611 N.W.2d 647, 650, 654 n.6 (S.D. 2000) (applying the standard "whether there is sufficient evidence in the record which, if believed by the jury, is sufficient to sustain a finding of guilt beyond a reasonable doubt," and appearing to find it compatible with *Jackson*); *State v. Poellinger*, 451 N.W.2d 752, 755 (Wis. 1990) (applying *Jackson* to articulate the standard: "so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt"); *Broom v. State*, 695 P.2d 640, 642 (Wyo. 1985) (applying *Jackson* to articulate the standard: "[n]ot whether or not the evidence was sufficient to establish guilt beyond a reasonable doubt, but whether or not the evidence could reasonably support such a finding by the factfinder"). Minnesota courts have not explicitly held their standard equivalent to *Jackson*, but a federal district court has. *See Strother v. Minnesota*, No. CV 15-488 (PAM/JJK), 2016 WL 861294, at *3 (D. Minn. Feb. 10, 2016), report and recommendation adopted, No. CV 15-488 (PAM/JJK), 2016 WL 868175 (D. Minn. Mar. 7, 2016) (holding that when applying its general sufficiency of the evidence standard, the Minnesota Supreme Court "engaged a standard of review that is identical to *Jackson's* requirement"); *Bernhardt v. State*, 684 N.W.2d 465, 476 (Minn. 2004) (citing *State v. Merrill*, 274 N.W.2d 99, 111 (Minn. 1978)) ("we are limited to ascertaining whether, given the facts in the record and the legitimate inferences that can be drawn from those facts, a jury could reasonably conclude that the defendant was guilty of the offense charged."). Puerto Rico applies a standard very similar to *Jackson*, and appears to implicitly find it consistent therewith. *See Pueblo v. Vega de Jesus*, No. KDB2014-G0030, 2016 WL 5349666, at *8 (P.R. Cir. June 10, 2016) ("whether the factual judge could reasonably conclude that the Appellant was guilty beyond reasonable doubt with the evidence before him") (citing *Jackson* and

Only eleven states and territories chose to stick with pre-*Jackson* standards that differed from that of *Jackson*, concluding after their own analysis that they are constitutionally adequate nonetheless.[56] Those reviewed by federal courts for

other cases). *See also Commonwealth v. Delos Reyes,* No. 93-6385, 1996 WL 33364330 at *3 (D. N. Mar. I. Apr. 12, 1996) ("whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt").

[55] *See McDaniel*, 558 U.S. at 131, n.4 (Nevada sufficiency standard not contrary to *Jackson*); *Morgan v. Dickhaut*, 677 F.3d 39, 49 (1st Cir. 2012) (Massachusetts standard is "consistent with *Jackson*"); *Coluccio v. Montana*, 469 F. App'x 650, 652 (9th Cir. 2012) (unpub.) (Montana courts "have correctly identified the governing rule of *Jackson* [] for sufficiency of the evidence claims"); *Adams v. Bertrand,* 453 F.3d 428, 432 (7th Cir. 2006) (Wisconsin's *Poellinger* standard "effectively duplicates the Supreme Court standard for sufficiency challenges"); *Clark v. Carey*, 100 F. App'x 623, 624–25 (9th Cir. 2004) ("It is undisputed that California courts use the *Jackson* standard when reviewing claims of insufficient evidence."); *Cabrera v. Hinsley,* 324 F.3d 527, 533 (7th Cir. 2003) ("The Illinois court was using the right burden of proof even though the phrase from *Jackson* was not parroted. We do not see this standard as contrary to *Jackson*."); *Strother*, 2016 WL 861294 at *3 (federal court finding Minnesota's standard "identical to Jackson's requirement"); *Heard v. Kemna,* No. 403CV793CASMLM, 2005 WL 1474123 at *14 (E.D. Mo. June 22, 2005) (Missouri's sufficiency standard is "a reasonable interpretation of federal law and that it is not contrary to federal law").

[56] Those jurisdictions are Arizona, Arkansas, Hawaii, Indiana, Iowa, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Utah. *See State v. Tison,* 633 P.2d 355, 362 (Ariz. 1981) ("In Arizona, the substantial evidence test applied to reviews on appeal is consistent with the constitutional principles enunciated in *Jackson v. Virginia*."); *Jones v. State*, 598 S.W.2d 748, 749 (Ark. 1980) ("the language in the *Jackson* case [does not] require[] [the courts] to abandon" their "substantial evidence" standard); *State v. Robinson,* 288 N.W.2d 337, 339-340 (Iowa 1980) (state's "substantial evidence rule" is "generally consistent" with *Jackson*, with one modification); *State v. Brown*, 308 S.E.2d 346, 348 (N.C. Ct. App. 1983) (state test of "substantial evidence of each essential element of the offense charged" is constitutional if applied alongside *Jackson* standard); *Commonwealth v. Brown*, 52 A.3d 1139, 1164 (2012) (finding its state standard of review higher than that of *Jackson*, and compliant); *State v. Perkins*, 460 A.2d 1245, 1247 (R.I. 1983) ("[N]o rational factfinder could have found the defendant guilty beyond a reasonable doubt, that is, the state failed as a matter of law to prove its case despite a fair opportunity to do so"); *State v. Scott,* 497 S.E.2d 735, 132 (S.C. 1998)(applying a "substantial evidence" test and observing it comports with *Jackson*); *State v. Gardner*, 789 P.2d 273, 285 (Utah 1989) (applying state test very similar to *Jackson*, and citing *Jackson*). Indiana has explicitly declined to adopt the *Jackson* standard, but its own is a parallel, as confirmed by federal courts. *Crittenden v. Butts*, No. 117CV02279JMSDLP, 2018 WL 6019593, at *9 (S.D. Ind. Nov. 16, 2018) (Indiana standard is an "analog" of, and "comports" with, *Jackson*); *Norris v. State,* 419 N.E.2d 129, 134 (Ind. 1981) (declining to adopt the *Jackson* standard); *Loyd v. State*, 398 N.E.2d 1260, 1264 (Ind. 1980) ("only to the evidence most favorable to the State and all reasonable inferences to be drawn therefrom" to ensure that the existence of each element of the crime charged may be found therefrom, beyond a reasonable doubt"). Hawaii courts have not explicitly found their standard complies with *Jackson*, but federal courts have. *See Yamada v. Thomas*, No. CIV. 09-00298 LEK, 2012 WL 3150262 at *13–14 (D. Haw. July 31, 2012) (Hawaii's sufficiency reviews are "consistent with the principles set forth in *Jackson*"); *State v. Batson*, 831 P.2d 924, 931 (Haw. 1992) ("Substantial evidence as to every essential element of the crime charged is credible evidence which is of sufficient quality and probative value to enable a man of reasonable caution to reach a conclusion.").

compliance with *Jackson* have been considered "at least as protective," "reasonable," "equivalent" to, and functionally "the same" as *Jackson*, and left undisturbed.[57]

Five states including Virginia have chosen to apply a separate and distinct standard to some circumstantial-evidence cases: probing whether the prosecution failed to disprove any "reasonable hypotheses of innocence," sometimes alongside the *Jackson* standard.[58] Four of these five states use *Jackson* exclusively for direct-evidence cases.[59] Virginia is the only one that (sometimes) applies the "reasonable hypothesis" standard to circumstantial cases[60] (though, notably, in Mr. Rams's case the

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[57] *See, e.g., Dansby v. Hobbs,* 766 F.3d 809, 817–18, 818–19 (8th Cir. 2014) (Arkansas standard "not an unreasonable way for a state court to ensure that a rational trier of fact could have found the requisite elements beyond a reasonable doubt[,]" and "not contrary to" *Jackson*) (internal citation omitted); *Runningeagle v. Ryan*, 686 F.3d 758, 763 n.1 (9th Cir. 2012) ("Arizona standard is equivalent to the standard for sufficiency of the evidence federal courts"); *Rivera v. Wall*, 333 F. Supp. 3d 47, 64 (D.R.I. 2018) ("The Rhode Island Supreme Court did not mention *Jackson*. However . . . [its] standard is at least as protective of the defendant's rights as the federal counterpart.'"); Crittenden, 2018 WL 6019593 at *9 (Indiana standard an "analog" of, and "comports" with, *Jackson*); *Yamada*, 2012 WL 3150262 at *13–14 (Hawaii's sufficiency reviews "consistent with the principles set forth in *Jackson*"); *Watson v. Nix*, 551 F. Supp. 1 (S.D. Iowa 1982) ("the Iowa substantial evidence standard . . . is the same as the *Jackson* standar[.]"), aff'd, 696 F.2d 1000 (8th Cir. 1982)).

[58] Those states are Alabama, Florida, Louisiana, Minnesota, and Virginia. *See Lewis v. State*, 24 So. 3d 480, 523 (Ala. Crim. App. 2006), aff'd sub nom. *Ex parte Lewis,* 24 So. 3d 540 (Ala. 2009) ("The test to be applied is whether the jury might reasonably find that the evidence excluded every reasonable hypothesis except that of guilt[.]"); *State v. Law, 559* So. 2d 187, 188 (Fla. 1989) ("The question of whether the evidence fails to exclude all reasonable hypotheses of innocence is for the jury to determine, and where there is substantial, competent evidence to support the jury verdict, we will not reverse."); *State v. Ricks*, 428 So. 2d 794, 796 (La. 1983) (applying *Jackson* along with LSA-R.S. 15:438, which provides that "in order to support a conviction, circumstantial evidence must exclude every reasonable hypothesis but guilt."); *State v. Harris*, 895 N.W.2d 592, 598 (Minn. 2017) (stating that "[f]or approximately a century, we have applied a separate standard of review to challenges to the sufficiency of circumstantial evidence . . . we take this opportunity to reaffirm what we have already stated about the circumstantial-evidence standard of review."). Virginia's practice is detailed *infra*.

[59] *See Strother*, 2016 WL 861294, at *3; *Pagan,*, 830 So. 2d at 803; *Ex parte* G.G., 601 So. 2d at 892; *Brown*, 421 So.2d at 856.

[60] Virginia often, but not always, uses the "reasonable hypothesis of innocence" standard for circumstantial-evidence cases. *Compare Jones v. Commonwealth*, 170 S.E.2d 779 (Va. 1969) ("The Commonwealth must prove the guilt of an accused to the exclusion of every reasonably hypothesis consistent with his innocence."), *with Rams*, App. A-79 (using "without evidence" standard). Virginia at

Court of Appeals used the "without evidence" standard, *see* App. A-79), and also fails to apply *Jackson* in direct-evidence cases. It is notable that more states once used this special circumstantial-evidence standard[61] but now apply *Jackson*'s standard to all cases. Oklahoma, for example, applied a "reasonable hypothesis" standard to circumstantial cases until 2004, when it corrected course and began applying Jackson to all cases.[62] Similarly, Texas applied "reasonable hypothesis" language to interpret *Jackson* in circumstantial cases until 1991.[63]

Finally, the "no evidence" standard, while abandoned by most jurisdictions, is still used in unusual ways by three jurisdictions: West Virginia; the District of Columbia; and Virginia. But only Virginia's use unmitigatedly defies *Jackson*'s holding.

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times uses the circumstantial-evidence standard alongside *Jackson*, alongside the statutory standard, or alone. *Compare Kelly v. Commonwealth*, 584 S.E.2d 444, 447-48 (Va. Ct. App. 2003) (*Jackson* and reasonable hypothesis standards), *with Stevens v. Commonwealth*, 567 S.E.2d 537, 539-40 (Va. Ct. App. 2002) (statutory and reasonable hypothesis standards), *and Tribuzi v. Commonwealth*, 487 S.E.2d 870 (Va. Ct. App. 1997) (reasonable hypothesis standard alone). The circumstantial-evidence standard in Virginia, which predates *Jackson*, also contains its own "beyond a reasonable doubt" clause, *see Burton v. Commonwealth*, 62 S.E. 376, 379 (Va. 1908), and Virginia courts interpret it as a formulation of the existing burden of proof, rather than a heightened standard. *See Commonwealth v. Hudson*, 578 S.E.2d 781, 785 (Va. 2003). The U.S. Court of Appeals for the Fourth Circuit, however, has characterized the standard as higher than that required by *Jackson*. *Inge v. Procunier*, 758 F.2d 1010, 1014 (4th Cir. 1985) ("we should not adopt Virginia's stricter standard of review for sufficiency of the evidence because *Jackson* establishes the federal standard").

[61] *See, e.g., Dolvin v. State*, 391 So. 2d 133, 137 (Ala. 1980) (citing the "reasonable hypothesis" standard to test verdicts based wholly on circumstantial evidence); *State v. Buchanan*, 312 N.W.2d 684, 689 (Neb. 1981) ("[B]efore an accused may be convicted on the basis of circumstantial evidence alone, the State must disprove every hypothesis but that of guilt.").; *Poellinger*, 451 N.W.2d at 756-58 (Wisc. 1990) (shifting from distinct "reasonable hypothesis of innocence" standard in circumstantial cases to a *Jackson*-compliant standard in all cases).

[62] *See Easlick v. State*, 90 P.3d 556, 557–58 (Okla. Crim. App. 2004).

[63] *Compare Butler v. State*, 769 S.W.2d 234, n. 1 (Tex. Crim. App. 1989) (using "reasonable hypothesis theory" as an "analytical construct to facilitate the application of the *Jackson* standard")), *with Geesa v. State,* 820 S.W.2d 154, 158 (Tex. Crim. App. 1991) ("It follows that circumstantial evidence should not be tested by an *ultimate* "standard for review" different from direct evidence; the standard in both kinds of cases is whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.").

West Virginia has created a hybrid standard that uses part of the "no evidence" standard along with key language from *Jackson*: "'a jury verdict should be set aside only when the record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt.' This passage requires the presence of evidence in order for the jury to find guilt beyond a reasonable doubt." *State v. Boyd*, 796 S.E.2d 207, 216 & n.12 (W.Va. 2017) (quoting *State v. Guthrie*, 461 S.E.2d 163 (1995)) (rejecting argument that standard conflicts with *Jackson*). The Supreme Court of West Virginia has sought explicitly to explain how this language functions constitutionally alongside *Jackson*'s standard, which it also uses. *Id.* Federal district courts appear to have accepted that conclusion, though without directly examining its reasoning;[64] and undersigned found no Fourth Circuit review of the language.

In a similarly unusual move, the District of Columbia sometimes employs a standard similar to Virginia's statutory one, but found in a D.C. code provision that is

[64] *See, e.g., Payne v. Ballard*, No. 2:17cv126, 2018 U.S. Dist. LEXIS 150943 at *5 n. 2 (N.D.W. Va. June 12, 2018) ("[T]he first assignment of error was based upon the Petitioner's claim that there was insufficient evidence to support a conviction upon each count under *State v. Guthrie*, [], which itself was based largely on the United States Supreme Court case law (namely, *Jackson v. Virginia*[.])"); *Horn v. Ballard*, No. 1:07-0503, 2009 U.S. Dist. LEXIS 34998 at *44 n. 12 (S.D. W. Va. Feb. 26, 2009) ("In *State v. Guthrie* [], the West Virginia Supreme Court of Appeals adopted the analysis set forth in Jackson to determine whether the evidence was sufficient to support the jury's verdict.").

applicable only to bench trials.[65] Since *Jackson*, D.C.'s Court of Appeals appears to use *Jackson* or a *Jackson* analog to review jury verdicts.[66]

Virginia is the third, and most glaringly unconstitutional, exception, as already discussed. Not only does it use its "without evidence" standard in most cases, but it has never engaged in any introspective analysis of whether that standard can comply with *Jackson*.[67]

As for federal review of Virginia's standard, federal district courts have a few times found the practice "not contrary to" *Jackson*, though without reasoned analysis.[68] The U.S. Court of Appeals for the Fourth Circuit has not spoken on the issue,

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[65] *See Burwell v. United States*, 901 A.2d 763, 765-66 (D.C. 2006) (quoting D.C.Code § 17–305(a) (2001)) ("Where a defendant has been tried by a judge sitting without a jury, 'the court may review both as to the facts and the law, but the judgment may not be set aside except for errors of law unless it appears that the judgment is plainly wrong or without evidence to support it.'").

[66] *See, e.g., Timberlake v. United States*, 758 A.2d 978, 980-981 (D.C. 2000) (quoting *Jackson* 443 U.S. at 319) ("[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."). Sometimes, the D.C. Court of Appeals uses the "no evidence" phrase in conjunction with *Jackson*'s standard when consider jury verdicts, similar to the practice of West Virginia, *supra*. *See id.* at 981 (*quoting Curington v. United States*, 621 A.2d 819, 824 (D.C. 1993)) ("Reversal is warranted only where there is *no evidence* upon which a reasonable [juror] could infer guilt beyond a reasonable doubt[.]") (emphasis added)); *Harris v. United States*, 668 A.2d 839, 840 (D.C. 1995) (*citing Curry v. United States*, 520 A.2d 255, 263 (D.C. 1987)) ("This court will only overturn a conviction where there is *no evidence* upon which a reasonable mind could fairly conclude guilt beyond a reasonable doubt, drawing no distinctions between direct and circumstantial evidence.").

[67] When Virginia courts use the "without evidence" and *Jackson* standards together in the same case, they do not acknowledge that they are different. *See e.g., Seaton v. Commonwealth*, 595 S.E.2d 9, 13 & n.2 (Va. Ct. App. 2004) (reciting *Jackson*'s standard in the body, and then stating in a footnote: "This standard comes from Code § 8.01-680 – the basis for our appellate review of factfinding in civil and criminal cases as well as bench and jury trials.").

[68] *See, e.g., MacDonald v. Holder*, No. 1:09cv1047 (GBL/TRJ), 2011 U.S. Dist. LEXIS 109749 at *20-22 (E.D. Va. Sep. 26, 2011) (Virginia standard "is clearly in line with the federal standard"), rev'd on other grounds by *MacDonald v. Moose*, 710 F.3d 154 (4th Cir. 2013); *Jackson v. Warden, Buckingham Corr. Ctr.*, No. 1:09cv1157 (JCC/IDD), 2011 U.S. Dist. LEXIS 42852 at *14 (E.D. Va. Apr. 20, 2011) ("Although the Court of Appeals of Virginia did not explicitly cite the federal standard, the court did not arrive at a different conclusion than the Supreme Court of the United States on a question of law because its reasoning comports with the standard from *Jackson*. Therefore, its determination was not contrary to clearly established federal law.").

despite its long-term presence in Virginia practice. This stands in contrast to experiences of states like Arizona, where state courts have been reprimanded on federal review for including a "no evidence" component to their sufficiency standard (even when used alongside other language the federal court found *Jackson*-compliant when on its own),[69] and subsequently removed the unconstitutional phrase from their lexicon.[70]

Furthermore, federal courts routinely apply *Jackson* not only to review state court convictions, as detailed *supra*, but every Court of Appeal, including for the Armed Forces, also relies upon *Jackson* to review federal convictions on direct appeal.[71]

Virginia is thus an outlier among both state and federal jurisdictions.

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[69] The U.S. District Court stated that although Arizona's "substantial evidence" standard complied with *Jackson*, the state also applied "a standard of a complete absence of probative facts," and thus "contradict[ed] that holding in *Jackson*, [making] its decision [] contrary to Supreme Court law." *Sandoval v. Ryan*, No. CV188250PCTJJTJFM, 2019 WL 3558198 at *15 (D. Ariz. June 3, 2019), rpt. and recommendation adopted, No. CV1808250PCTJJTBSB, 2019 WL 3556968 (D. Ariz. Aug. 5, 2019).

[70] Arizona cases since *Sandoval* have left out the "complete absence of probative facts" prong. *See, e.g., State v. Dunbar,* No. 2 CA-CR 2018-0064, 2020 Ariz. App. LEXIS 419 at *14-15 (Ct. App. Apr. 29, 2020) (unpub.) ("'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.") (citing other Arizona cases)).

[71] See *United States v. Smith*, 749 F.3d 465, 476-77 (6th Cir. 2014) (quoting and applying *Jackson* standard); *United States v. Brown*, 726 F.3d 993, 1005 (7th Cir. 2013) (same); *United States v. Bansal*, 663 F.3d 634, 665 (3d Cir. 2011) (same); *United States v. Aponte*, 619 F.3d 799, 804 (8th Cir. 2010) (same); *United States v. Madrigal-Valadez*, 561 F.3d 370, 374 (4th Cir. 2009) (same); *United States v. Zavala-Mendez*, 411 F.3d 1116, 1118 (9th Cir. 2005) (same); *United States v. Magallanez*, 408 F.3d 672, 681 (10th Cir. 2005) (same); *United States v. Arrington*, 309 F.3d 40, 48 (D.C. Cir. 2002) (same); *United States v. Diaz*, 248 F.3d 1065, 1093 (11th Cir. 2001) (same); *United States v. Dhinsa*, 243 F.3d 635, 649 (2d Cir. 2001) (same); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000) (same); *United States v. Olbres*, 61 F.3d 967, 970 (1st Cir. 1995) (same); *United States v. Greenwood*, 974 F.2d 1449, 1456 (5th Cir. 1992) (same).

III. This Court would act judiciously to summarily vacate and remand this case to the state court to apply *Jackson* to Mr. Rams's sufficiency claim.

This Court should grant certiorari in order to summarily vacate and remand this case for adjudication of Mr. Rams's claim under the constitutionally-required standard of review.

Virginia never adequately adopted *Jackson*, and is operating in direct conflict not only with this Court's ruling but with every other jurisdiction in the country on an clear application of federal law. As much is clear from the history, patterns, and survey presented in this Petition.

The posture of Mr. Rams's case is ideal for addressing this problem simply and directly with a summary reversal. The most time- and resource-efficient mode of correcting the Virginia courts at this juncture is also the only sure way to ensure they meaningfully change their practices. In contrast, waiting for federal habeas proceedings in Mr. Rams's case will most-likely insulate the problem. Not only would the deferential doctrines of federal review make it difficult for a federal court to directly review the claim, but Mr. Rams, who is indigent, is not entitled to counsel for any proceedings past this direct appeal. The same reasons may explain why this issue has evaded federal inspection for nearly forty years. And it means, realistically, that this Petition is Mr. Rams's most meaningful (and likely his last) opportunity to seek redress.

This Court should, respectfully, grant certiorari to summarily vacate and remand this case, in order to ensure conformity with the clear holding of *Jackson*. Virginia will not do this on its own, as the last four decades have shown. Instead it will continue, as it did in this case and many-hundreds of others, to apply its own pre-*Jackson* artifact

without self-reflection, and in direct conflict with a bedrock doctrine of this Court. The *Jackson* appellate standard is as fundamental as the "reasonable doubt" requirement itself, "'symboliz[ing] the significance that our society attaches to the criminal sanction and thus to liberty itself.'" *Jackson*, 443 U.S. at 315 (*quoting In re Winship*, 397 U.S. at 372 (Harlan, J., concurring)). This case presents a simple opportunity for this Court to redirect Virginia's path going forward.

And finally, for Mr. Rams, justice can only come from the review sought here. Mr. Rams's case is a poignant example of precisely why this Court held that *Thompson's* "no evidence" standard was untenable with Due Process guarantees. Mr. Rams was convicted on a bare, circumstantial record, without constitutionally-sufficient proof of even the *corpus delicti*. Without this Court's intervention, Mr. Rams's conviction will stand, as it has thus far, merely because there was not "no evidence" supporting it.

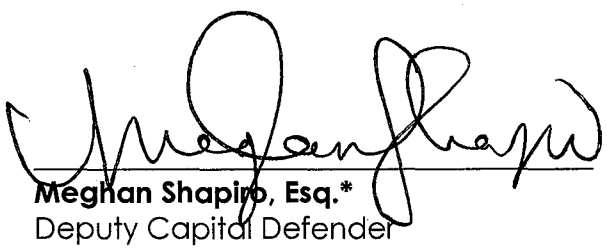
If the Virginia courts are required to apply the proper due process standard to his case, Mr. Rams may finally receive relief from his flawed conviction. No rational trier of fact could find the existing evidence proves beyond a reasonable doubt that Mr. Rams committed Virginia's most serious crime. The Due Process Clause and *Jackson* compel a different result for Mr. Rams.

For all of these reasons, Mr. Rams respectfully seeks a grant of certiorari, summary reversal and remand to the Supreme Court of Virginia for application of *Jackson v. Virginia* to his claim.

CONCLUSION

The petition for a writ of certiorari should be granted, to allow this Court to summarily vacate and remand Mr. Rams's case to the Supreme Court of Virginia for application of *Jackson v. Virginia*.

Respectfully submitted this 13th day of July, 2020,



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