No. 21-7684

In the Supreme Court of the United States

ERNEST DEWAYNE JONES,

Petitioner,

v.

RONALD BROOMFIELD, WARDEN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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CAPITAL CASE
QUESTION PRESENTED

Whether the court of appeals correctly held that the state trial court's ruling, which conditionally excluded Jones's testimony about his childhood and mental health history unless a mental health expert testified to explain their relevance to Jones's specific intent to rape at the time of the charged offenses, did not provide any basis for federal habeas relief.

DIRECTLY RELATED PROCEEDINGS

Supreme Court of the United States:

Jones v. California, No. 03-5701, certiorari denied October 14, 2003 (direct appeal).

United States Court of Appeals for the Ninth Circuit:

Jones v. Davis, No. 18-99003, judgment entered August 12, 2021; petition for rehearing and rehearing en banc denied November 29, 2021 (this case below).

Jones v. Davis, No. 14-56373, judgment entered November 12, 2015; petition for rehearing and rehearing en banc denied February 8, 2016 (this case below).

United States District Court for the Central District of California:

Jones v. Davis, No. CV 09-2158-CJC, judgment entered February 2, 2018 (this case below).

Jones v. Davis, No. CV 09-2158-CJC, judgment entered July 25, 2014 (this case below).

California Supreme Court:

In re Jones, No. S180926, petition withdrawn April 22, 2010 (state collateral review).

In re Jones, No. S159235, petition denied March 11, 2009 (state collateral review).

In re Jones, No. S110791, petition denied March 11, 2009 (state collateral review).

People v. Jones, No. S046117, judgment entered March 17, 2003 (state direct appeal).

Superior Court of California, County of Los Angeles:

People v. Jones, No. BA063825, judgment entered April 7, 1995.

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STATEMENT

1. The State of California charged petitioner Ernest Jones with the first-degree murder and rape of Julia Miller. Pet. App. 45a. Prosecutors alleged three "special circumstances"—that Jones had murdered Miller in the commission of rape, robbery, and burglary—making the murder punishable by death. *Id*. at 5a, 45a.

a. At the guilt phase of the trial, the prosecution's evidence showed that Julia Miller's husband had come home from work around midnight to find his wife's body on the bedroom floor, bound and gagged and naked from the waist down. Pet. App. 4a, 46a. Julia had been stabbed at least 16 times, with two knives still in her neck and with a fatal wound perforating her aorta. *Id*. at 4a, 46a, 48a. A few hours earlier, Jones—who lived with the Millers' daughter, Pam—had obtained drugs in exchange for some of Julia's jewelry. *Id*. at 4a, 47a.

After the discovery of Julia's body, the police began to follow Jones as he drove the Millers' car. Pet. App. 5a, 47a. Jones then led them on a 40-minute chase that ended with his arrest moments after he had shot himself in his chest with a rifle. *Id*. at 5a, 47a-48a. Subsequently, medical examiners found semen in Julia Miller's body that matched Jones's DNA. *Id*. at 4a, 48a-49a.

The prosecution also produced testimony from Dorothea H., the mother of an earlier girlfriend of Jones. Pet. App. 49a-50a. She described how Jones in 1985 had broken into her home, tied her up, and raped and sodomized her

before stealing money from her purse. *Id.* Jones was convicted and sentenced to prison for 12 years for that attack. *Id.*

In his defense, Jones testified that, while he was "paranoid" and "high" from cocaine and marijuana, Pam Miller had given him her mother's jewelry to exchange for more drugs; and that, afterwards, he had gone to Julia Miller's house to avoid the police. Pet. App. 50a. He testified that an argument ensued regarding Jones's treatment of Pam, during which Jones and Julia grabbed knives and Julia grabbed a rifle. *Id.* at 51a. Jones testified that he then "slipped back into [his] childhood," having a "vision" of an incident in which he had found his mother in bed with a man, and started to stab Julia. *Id.* Claiming that the next thing he remembered was seeing Julia's body on the floor and realizing what he had done, Jones stated that he took a different rifle from the house with a plan to commit suicide. *Id.* at 51a-52a. As to his earlier attack on Dorothea, Jones acknowledged that her testimony was true, even though he said he did not remember all of the events she had described. *Id.* at 6a, 52a.

While Jones was on the witness stand, defense counsel sought to elicit from him testimony about his childhood, family background, and prior mental health treatment and symptoms—including blackouts, flashbacks, and hearing voices. Pet. App. 8a. Defense counsel asked Jones whether he had received any psychiatric treatment while in prison, and intended to question Jones "about his background . . . his family problems, [and] the past times

when he heard voices." *Id.* The prosecutor objected, arguing that, without a mental health expert's testimony explaining a connection, such evidence was not relevant to the issue of Jones's specific intent to rape Julia years later. *Id.*[1] The trial court agreed that Jones could testify about his current medications and about attending counseling in 1992, prior to Julia's murder. *Id.* at 9a. But it ruled that Jones could not testify about his childhood or other past treatment unless a mental health expert also testified. *Id.*

Later, during the prosecutor's cross-examination of Jones, defense counsel proffered proposed testimony from Jones about a miscellany of events: his alleged abusive childhood; his family history of mental illness; his witnessing his mother's infidelity; his prior mental health symptoms; drug use; an aunt who committed suicide; a delusional grandfather; family alcoholism; problems in school; lack of food and electricity in the family home; and a brother who had been killed. Pet. App. 9a-10a & n.3. According to defense counsel, all of this evidence "led to the explosion" on the night of the murder. *Id.* at 9a. The prosecutor again argued that such evidence, as it related to Jones's specific intent, would be beyond the jury's understanding without the assistance of expert testimony. *Id.* at 10a. The prosecutor noted that the defense already had been provided with a mental health expert for that purpose; but defense counsel stated that he did not intend to use that expert

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[1] A finding of specific intent to rape was a prerequisite to a conviction for first-degree felony murder in the course of a rape and to a finding of the rape-murder "special circumstance." Pet. App. 71a.

at that time. *Id.* at 10a-11a. The trial judge again precluded Jones from testifying about his childhood and past symptoms. *Id.* at 11a.

Next, the prosecutor asked Jones on cross-examination whether, when he killed Julia, he had been trying to kill his mother. Pet. App. 11a. On re-direct examination, defense counsel asked Jones about his relationship with his mother, but the judge re-affirmed his prior evidentiary ruling and sustained an objection by the prosecutor to that question. *Id.*

The judge instructed the jury that, in determining whether Jones harbored the specific intent to rape, it could consider evidence of any mental disorder. Pet. App. 11a. The jury found Jones guilty of first-degree murder and rape and found true the special-circumstance allegation that the murder was committed during the commission of rape. *Id.* at 12a, 45a.[2]

b. At the penalty phase of the trial, the prosecution produced (among other things) evidence that Jones had committed yet another rape, one in which he had threatened at knifepoint to kill the victim. Pet. App. 53a. It also produced testimony describing the impact of Julia Miller's murder on her family, and evidence that Jones had told his sister that he "didn't give a fuck about Pam or her family." Id. at 52a.

In the defense case, court-appointed psychiatrist Dr. Claudewell S. Thomas testified to his opinion that Jones suffered from schizoaffective

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[2] The jury acquitted Jones of robbery and burglary and found not true special-circumstance allegations that the murder was committed during the commission of robbery and burglary. Pet. App. 12a, 45a.

schizophrenia characterized by psychotic response (whereby a person's reality-oriented judgment is disrupted) and dissociation (whereby thoughts and feelings function independently). Pet. App. 13a, 54a; Reporter's Transcript (RT) 4413-4414, 4433-4435. Dr. Thomas testified that a person with such a disorder might be unable to control the "normal functioning self." Pet. App. 13a; RT 4435. He characterized Jones's childhood as extremely troubled and destructive, and opined that any child would be traumatized if he witnessed his father discovering his mother in bed with another man, as Jones claimed he had. RT 3335, 4436, 4439-4440. Dr. Thomas believed that Jones suffered from a simultaneous sexual attraction to, and hatred of, his mother, and stated that such ambivalent feelings are characteristic of schizophrenia. RT 4439. Dr. Thomas also reported that, with respect to Jones's sexual attacks on Dorothea H. and Julia Miller, Jones initially had claimed the sex was consensual but then admitted that he had raped both women. RT 4438-4439. Dr. Thomas opined that such an inconsistency was also a characteristic of schizophrenia. *Id*. He further opined that the true object of Jones's attacks on both victims was actually Jones's mother. Pet. App. 13a; RT 4444.

The jury returned a verdict of death. Pet. App. 14a.

2. The California Supreme Court affirmed the judgment. Pet. App. 45a-46a. Among other things, it rejected Jones's claim that the trial court erroneously precluded Jones from testifying, with respect to "the question whether he was capable of forming the specific intent to rape Mrs. Miller," that

he had experienced "an extensive history of hearing voices, flashbacks, and blackouts." *Id.* at 65a-67a. The court noted that Jones had never specifically asked the trial judge to rule on the admissibility of his alleged history of hearing voices, flashbacks, and blackouts; rather, his request "was jumbled deep inside an extraordinary grab bag of a proffer that included such disparate allegations as that [Jones] 'attended many schools' and that 'Aunt Jackie shot herself to death.'" *Id.* at 65a (footnote omitted). In any event, the court held that "[t]here was no error." *Id.* at 66a. It explained that, since Jones's trial testimony was that he heard voices only after raping and killing his victim, whether he had a prior history of hearing voices was not relevant to his specific intent at the time he raped Julia. *Id.*

The court also concluded that any error was harmless because Dr. Thomas, who had repeatedly interviewed Jones and reviewed reports from family members and other experts who had examined Jones, did not mention in his penalty-phase testimony that Jones had any history of flashbacks and blackouts. Pet. App. 66a-67a. The absence of such evidence, the court inferred, "suggests that [Jones's] proposed testimony concerning such a history would have been a recent fabrication." *Id.* at 67a.

3. Jones filed a petition for a writ of certiorari in this Court. *Jones. v. California*, No. 03-5701. That petition did not raise the claim that he now seeks to raise in the instant petition. *See id.* This Court denied certiorari. 540 U.S. 952 (2003).

4. Jones then filed a federal habeas petition alleging, in relevant part, that the "trial court deprived [him] of his constitutional rights to testify and to present a defense when it arbitrarily restricted [his] testimony to whether or not he was receiving counseling or taking medication in 1992, the year of the crime." D. Ct. Dkt. 105 at 154 (amended petition for writ of habeas corpus).

The district court granted relief, ruling that the California Supreme Court had unreasonably applied the holdings of *Rock v. Arkansas*, 483 U.S. 44 (1987), and *Washington v. Texas*, 388 U.S. 14 (1967). Pet. App. 41a. In contrast to Jones's complaint about restrictions on "counseling" and "medication" testimony, the district court reasoned that it was error to preclude Jones from testifying about hearing voices—because that testimony was relevant to show he suffered from schizophrenia—and to prevent Jones from testifying about his childhood and history of blackouts and flashbacks. *Id.* at 35a-36a. The court concluded that Jones had been denied his right "to tell what was going on in his mind at the time he raped and killed his victim." *Id.* at 27a.

5. In a unanimous opinion authored by Judge Friedland, the court of appeals reversed. Pet. App. 3a. The court of appeals acknowledged that Jones's federal habeas petition was governed by 28 U.S.C. § 2254(d), and that the California Supreme Court's denial of Jones's claim constituted an adjudication on the merits within the meaning of Section 2254(d). *Id.* at 16a-17a & n.7. But the court viewed it as unnecessary to resolve whether the state

court's ruling satisfied the deferential standards of Section 2254(d) because it determined that Jones's claim "failed even on de novo review." *Id.* at 17a.

The court of appeals held that the state trial court's ruling—that expert testimony was necessary to contextualize the matters to which Jones sought to testify—was neither "arbitrary" nor "disproportionate" to the legitimate purpose it served. Pet. App. 20a. The ruling was based on an evaluation of relevance, and "[e]nsuring that the jury would have understood the relevance of Jones's testimony and that Jones's testimony would not have confused the issues at trial was a proper and proportionate application of the standard rules of evidence to which the right to testify is always subject." *Id.* (citations omitted). The court of appeals also reasoned that the expert-testimony condition was not arbitrary because defense counsel never explained how Jones could have been able to provide the causal link between his traumatic childhood or mental health history and the crimes he later committed. *Id.* at 21a. The trial court's ruling thus "'was a measured means to serve an important purpose.'" *Id.* at 22a (citation omitted). Further, the ruling was not "onerous," since Jones already had been appointed a psychiatrist who had written a report and was available to testify. *Id.* at 22a. The court concluded,

> Ultimately, what Jones challenges is a reasonable and measured determination that, without expert contextualization, his proffered testimony about past events and experiences would not assist the jury in determining his specific intent during an incident that occurred years later. The fact-specific ruling appropriately served valid rules of evidence and was not disproportionate to the purposes served by those rules. It was thus not unconstitutional.

Id. at 25a.

ARGUMENT

Jones argues that the state trial court, by requiring expert-opinion foundation for Jones's proffered testimony, violated *Rock v. Arkansas*, 483 U.S. 44 (1987). Pet. 19-36. The court of appeals correctly rejected that claim. As the court of appeals recognized, the trial court did allow Jones to testify about what was going through his mind when he killed Julia Miller. Pet. App. 7a, 51a. Disallowing Jones's further testimony about his traumatic childhood and mental-health history, in the absence of expert opinion explaining how that history might have affected Jones's ability to form specific intent in committing later crimes, did not offend the Constitution. Moreover, even if that were a closer question as a de novo matter, Jones would not be entitled to federal habeas relief: the California Supreme Court's rejection of Jones's claim was at least a reasonable application of this Court's precedents, *see* 28 U.S.C. § 2254(d)(1); and, in any event, any error would be harmless in light of the overwhelming evidence of Jones's ability to form the requisite specific intent.

1. "[T]he Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (citation and internal quotation marks omitted). But "state and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials." *Nevada v. Jackson*, 569 U.S. 505, 509 (2013) (per curiam) (citation and internal quotation marks omitted). "The accused does not have an unfettered right to offer testimony that is

incompetent, privileged, or otherwise inadmissible under standard rules of evidence." *Taylor v. Illinois*, 484 U.S. 400, 410 (1988). The Constitution also allows the exclusion of evidence "that is repetitive . . . , only marginally relevant or poses an undue risk of harassment, prejudice, [or] confusion of the issues." *Holmes v. South Carolina*, 547 U.S. 319, 326-327 (2006) (citations and internal quotation marks omitted); *accord United States v. Tsarnaev*, 142 S. Ct. 1024, 1038 (2022) (States retain "'traditional authority'" to exclude evidence of "'insufficient probative value'").

As this Court recognized in *Rock*, "restrictions of a defendant's right to testify may not be arbitrary or disproportionate to the purposes they are designed to serve." 483 U.S. at 55-56; *see also Holmes*, 547 U.S. at 325 (rules are arbitrary if they exclude important defense evidence but do not serve any legitimate interests). In *Rock*, for example, this Court held that a state rule barring an entire category of evidence—hypnotically refreshed testimony—was arbitrary and violated the defendant's constitutional rights. *See* 483 U.S. at 62 (rule "infringes impermissibly on the right of a defendant to testify on his own behalf").

Here, the state trial court's decision excluding Jones's testimony concerning aspects of his childhood and mental health history was neither arbitrary nor disproportionate. Pet. App. 20a, 25a. To the contrary, it was proper for the court to ensure that the jurors had a reliable basis for understanding how proffered evidence related to the issues in the case. *See id.*

at 20a.[3] To that end, the court allowed Jones to testify to exactly what was going through his mind on the night of the crimes. *Id.* at 7a, 51a. But the defense's further offer of proof—which included proposed testimony by Jones about his problems in school, lack of food and electricity in his childhood home, and his aunt shooting herself—would not have provided the jury with a reliable means of connecting such testimony to the question of whether Jones specifically intended to rape Julia Miller when he engaged in sexual intercourse with her and stabbed her to death. *See id.* at 9a-10a n.3.

Similarly, the court of appeals also correctly held that the trial court did not offend the Constitution by requiring expert-opinion testimony as a condition for admitting Jones's testimony about past events that lacked any apparent relationship to proof of the specific-intent element of the charged rape. Pet. App. 21a. Perhaps a jury could have discerned significance in the proffered evidence if a mental health expert had explained how it might have impacted Jones's mental intent and purpose at the time of the crimes. Without such expert guidance, however, the jury would have been left only to speculate about a link.

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[3] Under California Evidence Code Section 350, only relevant evidence is admissible. Under California Evidence Code Section 352, a trial court has discretion to exclude evidence "if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

Unlike in *Rock*, the trial court here did not reflexively or mechanistically enforce a statute or rule that barred a particular category of evidence. Instead, the court considered the relevance of the proffered testimony under traditional standards of logical and legal relevance. Pet. App. 20a. And, rather than outright prohibiting the proffered testimony, the court merely conditioned its admissibility on accompanying testimony of a mental health expert to explain its alleged connection to the material issue of Jones's mens rea. *Id.* at 20a. Moreover, as the court of appeals observed, "at no point did [defense] counsel explain how Jones alone would have been able to draw the causal link for the jury." *Id.* at 21a.

That same gap persists in Jones's certiorari petition. Jones asserts that a "typical jury is capable of understanding a defendant's testimony about facts within his personal knowledge and how those facts relate to an element of the offense." Pet. 24. But a jury's capacity to understand depends upon the fact-specific nature of the testimony they are asked to understand. Jones does not attempt to explain how his jury could have understood the relationship between past events in his personal history and his ability to form the intent to rape Julia Miller on the night of the crimes. He suggests that any relevancy problems could have been cured through cross-examination. Pet. 31-32. But he does not explain how cross-examination—normally used for testing credibility and not for establishing relevance—could have shown how past

events informed his specific intent with respect to rape at the moment of the charged crimes.

The court of appeals also correctly determined that the expert-testimony condition imposed by the state trial court was not "disproportionate." Pet. App. 22a. Indeed, a defense psychiatrist already had been appointed, had evaluated Jones and written a report, and was available to testify for the defense at the guilt phase of the trial. *Id.* at 10a. Jones could have satisfied the evidence-foundation condition, but apparently made a tactical decision not to do so.

Jones contends that the court of appeals' characterization of the trial court's ruling as a condition on the admission of the evidence, rather than an absolute restriction, is irrelevant under *Rock*. *See* Pet. 20-23. In evaluating whether a ruling excluding a defendant's testimony is arbitrary, however, the nature and scope of the particular ruling necessarily must be examined. As the court of appeals explained, "the conditional nature of a ruling will often be relevant to whether it is arbitrary or disproportionate." Pet. App. 21a. A ruling that allows the introduction of evidence so long as a logical foundation is laid is less restrictive—and thus less likely to be arbitrary—than the outright exclusion of evidence.

Next, Jones notes that the prosecution presented evidence concerning his prior rape of his ex-girlfriend's mother in order to help prove his intent to rape Julia Miller, and argues that he should have been allowed to counter that with his own testimony that he heard voices and blacked out during the prior

assault. Pet. 27-29. The relevance of the Dorothea H. rape was readily apparent, however: its similarity to the charged crime logically implied in a commonsense way that Jones had intended to rape Julia Miller too. *Cf.* Fed. R. Evid. 404(b) (permitting evidence of other crimes to prove intent). Jones offered nothing similar demonstrating the relevance of the "grab bag" (Pet. App. 65a) of topics about which he sought to testify.

Finally, Jones argues that the court of appeals conflated different standards for assessing a defendant's right to testify with his more general right to present witnesses in his defense. Pet. 33-36. But the court of appeals squarely considered whether the trial court's evidentiary ruling violated a defendant's right to testify under *Rock v. Arkansas*—the same case Jones invokes in his certiorari petition—and correctly held that the court's ruling comported with that precedent.

2. Even if Jones's underlying claim presented a closer constitutional question, he would still not be entitled to federal habeas relief. The court of appeals chose to reject the claim de novo rather than addressing the threshold question of whether the California Supreme Court's adjudication denying the claim was "contrary to" or an "unreasonable application" of "clearly established Federal law" as demonstrated in the holdings of this Court's applicable precedents. 28 U.S.C. § 2254(d); *see* Pet. App. 17a. That de novo analysis was correct, as explained above. But, even if this Court were to disagree, Jones would have to prevail with respect to the separate Section 2254(d) issue before

he could obtain relief on his claim. Under the present circumstances, Jones cannot establish that the state court's ruling was contrary to, or an unreasonable application of, any clearly established Supreme Court precedent.

In addition, the claimed error was harmless: under the particular circumstances here, Jones could not establish that any "error had a ""substantial and injurious effect or influence"" on the outcome of his trial." *Brown v. Davenport*, 142 S. Ct. 1510, 1519 (2022) (quoting *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993)). The overwhelming evidence of Jones's deliberate and goal-oriented conduct demonstrated that he intended to rape and to kill Julia Miller. He tied her up and gagged her. Pet. App. 46a. He stabbed her at least 16 times. *Id.* at 48a. He used multiple knives—two kitchen knives were sticking out of her neck and pieces of three other knives were on or around her body—indicating that he either had brought several knives with him or had gone to the kitchen to retrieve additional knives. *Id.* at 46a. He raped her and ejaculated inside her. *Id.* at 48a-49a. And he had previously bound and raped the mother of a former girlfriend. *Id.* at 49a. Under these circumstances, the trial court's exclusion of Jones's proffered testimony about his childhood, hearing voices, flashbacks, or blackouts did not have any substantial and injurious effect or influence on the jury's verdict.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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