No. 23-5654

IN THE
SUPREME COURT OF THE UNITED STATES

DAQUAIL RAMON JOHNSON,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of Virginia

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the intermediate state appellate court correctly applied the *Jackson* v. *Virginia*, 443 U.S. 307 (1979), standard in rejecting the defendant's sufficiency of the evidence challenge on the grounds that a "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."

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INTRODUCTION

Petitioner asks this Court to engage in error correction in a heavily fact-bound case in the absence of any error or split in authority. The petition should be denied. Petitioner identifies no constitutional error in the unpublished ruling by the intermediate state appellate court below. Petitioner contends that the court in his case, and Virginia appellate courts generally, fail to apply the due process standard articulated in *Jackson* v. *Virginia*, 443 U.S. 307 (1979). Pet. 7–8. This argument is erroneous. *Jackson* held that the Due Process Clause of the Fourteenth Amendment requires reversal of a criminal conviction where "no rational trier of fact could find guilt beyond a reasonable doubt." *Jackson*, 443 at 317. *Jackson* emphasized, however, that "this inquiry does not require a court to ask itself whether *it* believes that the evidence at trial established guilt beyond a reasonable doubt." *Id.* at 318–19 (quotation marks and citation omitted). Rather, "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." *Id*. at 319.

The Virginia court of appeals applied exactly that standard to Petitioner's sufficiency challenge here: it held that "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." App. 6a. The court even quoted *Jackson*, 443 U.S. at 319, for this point. In addition to reciting the *Jackson* standard correctly, the court correctly applied it. It carefully analyzed the evidence and held that the Commonwealth had "sufficiently proved all of the elements of rape and supported the conviction beyond a reasonable doubt." App. 10a. Petitioner is thus incorrect in contending that the court below applied an analysis "directly contrary to this Court's clear holding in *Jackson*." Pet. 7.

Petitioner's argument that Virginia appellate courts generally fail to apply *Jackson* is equally erroneous. Virginia courts, including the Commonwealth's

Supreme Court, consistently apply *Jackson* to sufficiency challenges to criminal convictions. See Part II, *infra*. Petitioner challenges Virginia's statutory standard, which provides for reversal of a judgment when "it appears from the evidence that [the] judgment is plainly wrong or without evidence to support it." Pet. 10; Va. Code § 8.01-680. He contends that the statutory standard is invalid because *Jackson* disapproved "a standard that asked whether 'no evidence' supported a conviction." Pet. i. But the statutory standard is disjunctive: it instructs the court to overturn a conviction for lack of sufficient evidence if the judgment is "plainly wrong *or* without evidence." Va. Code § 8.01-680 (emphasis added). And, unsurprisingly given that Virginia was a party to *Jackson*, Virginia Supreme Court precedent expressly harmonizes this statutory standard with *Jackson*, making clear that a conviction is "plainly wrong" where no "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Commonwealth* v. *Perkins*, 812 S.E.2d 212, 216 (Va. 2018).

There is no "compelling reason" for this Court to review this case to instruct Virginia's courts to apply a standard they already use. See Sup. Ct. R. 10.

The petition for a writ of certiorari should be denied.

STATEMENT

1. Petitioner Daquail Johnson raped a 17-year-old girl, G.T. App. 4a–5a. Petitioner was 24 at the time of the rape, and his fiancée was in the hospital recovering from the birth of their child. *Ibid*. Petitioner had talked to G.T. on a number of occasions and attempted to convince her to have sex with him, but she refused. *Ibid*. Petitioner then pinned G.T. down and raped her, while she struggled and "asked [him] to stop." App. 4a. Afterwards, Petitioner "made fun of" G.T. for being upset. App. 4a–5a. When G.T. and her godmother confronted Petitioner four days later, he again "laughed [the rape] off," and stated that when "girls say stop . . . they don't really

mean it." *Ibid*. After his arrest, Petitioner told an officer that his "problem is" that he "[p]ut[s] [his] dick in everything." App. 5a.

2. At trial, Petitioner moved to strike G.T.'s testimony as incredible. App. 5a. He also offered alibi evidence from his fiancée, who testified that Petitioner had been with her in the hospital "during the entirety of her stay." *Ibid*. Petitioner presented evidence, authenticated by his fiancée, that he had posted a live video to social media from the hospital around five hours before G.T.'s rape. App. 5a–6a. Petitioner moved for a judgment of acquittal both at the close of the government's case in chief and after presenting his own evidence App. 1a. The trial court denied both motions and submitted the case to the jury. The jury convicted him.

3. On appeal, Petitioner argued that the evidence was insufficient to support his conviction, again contending that G.T. was not credible and that he had an alibi. App. 6a. The intermediate Virginia appellate court affirmed his conviction in an unpublished opinion. In analyzing Petitioner's sufficiency claim, the court held that "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." App. 6a (quoting *Kelly* v. *Commonwealth*, 584 S.E.2d 444, 447 (Va. Ct. App. 2003), and *Jackson*, 443 U.S. at 319). The court also stated that it would "not substitute our own judgment for that of the factfinder," and would "not reverse the trial court's judgment unless its decision is plainly wrong or without evidence to support it." App. 6a (internal quotation marks omitted).

The court held that there was sufficient evidence to support Petitioner's conviction. G.T.'s testimony was "not inherently unbelievable," and was "corroborated," among other things, by G.T.'s godmother and by Petitioner's "own statements." App. 5a–6a. Although "G.T.'s testimony did contain inconsistencies . . . these inconsistencies were matters for the jury's consideration," and the court "will not disturb the jury's resolution of the inconsistencies." App. 9a. And while the alibi evidence "showed

[Petitioner] was at the hospital at 6:30 a.m." on the morning of the rape, "the only evidence proving that he remained there all morning came from his fiancée," whom a rational jury could disbelieve. App. 9a. "G.T.'s version of events, believed by the jurors, sufficiently proved all of the elements of rape and supported the conviction beyond a reasonable doubt." App. 10a. The intermediate appellate court therefore affirmed Petitioner's conviction.

The Virginia Supreme Court denied his petition for appeal, and he then filed a petition for certiorari with this Court.

REASONS FOR DENYING THE PETITION

I. The court below correctly applied *Jackson*

Petitioner contends that the court below applied a standard "directly contrary to this Court's clear holding in *Jackson*." Pet. 7. That contention is flatly wrong. The Virginia court of appeals correctly stated the *Jackson* standard, and correctly applied it in holding that sufficient evidence supports Petitioner's conviction.

The court below held that "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." App. 6a. That is precisely the standard this Court set forth in *Jackson*. *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"). The court then carefully analyzed the evidence presented at Petitioner's trial under the *Jackson* standard, correctly concluding that the Commonwealth had "sufficiently proved all of the elements of rape and supported the conviction beyond a reasonable doubt." App. 10a; see pp. 4–5, *supra*.

Petitioner nonetheless contends that the court "upheld [his] conviction for rape under a standard substantially identical to the 'no evidence' standard" that *Jackson* rejected. Pet. 7. He asserts that the court applied the disapproved "no evidence" standard pursuant to a Virginia statute providing that judgments should not be reversed for lack of evidence where "[t]he jury's verdict was not plainly wrong or without evidence to support it." Pet. 7 (quoting App. 8a). This argument misconstrues both the *Jackson* standard and the Virginia statute.

Jackson does not, as Petitioner suggests, mandate "appellate fact-finding" or prohibit appellate "deference to trial-level fact-finding." Pet. 11. To the contrary, "*Jackson* leaves juries broad discretion in deciding what inferences to draw from the evidence presented at trial, requiring only that jurors 'draw reasonable inferences from basic facts to ultimate facts.'" *Coleman* v. *Johnson,* 566 U.S. 650, 655 (2012) (quoting *Jackson*, 443 U.S. at 319). Indeed, *Jackson* "unambiguously instructs that a reviewing court 'faced with a record of historical facts that supports conflicting inferences must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution.'" *Cavazos* v. *Smith*, 565 U.S. 1, 7 (2011) (quoting *Jackson*, 443 U.S. at 326). "[I]t is the responsibility of the jury—not the court—to decide what conclusions should be drawn from evidence admitted at trial." *Cavazos*, 565 U.S. at 2. For an appellate court to weigh the evidence to determine guilt beyond a reasonable doubt would "unduly impinge[] on the jury's role as factfinder." *Coleman*, 566 U.S. at 655. Thus, "the only question under *Jackson* is whether that finding was so insupportable as to fall below the threshold of bare rationality." *Id.* at 656.

Petitioner's argument also misconstrues Virgina Code § 8.01-680. That statute directs courts "to set aside the verdict of a jury on the ground that it is contrary to the evidence" if "it appears from the evidence that such judgment is plainly wrong or without evidence to support it." Va. Code § 8.01-680. Petitioner contends that the

statute "violates the Due Process Clause" because "Virginia's 'without evidence' standard is no different from the 'no evidence' standard the *Jackson* Court rejected." Pet. 7. According to Petitioner, the statute requires appellate courts to uphold convictions based on "but one slender bit of evidence," even if that evidence is insufficient for a rational factfinder to find guilt beyond a reasonable doubt. *Ibid.* But this construction is contrary to both the plain text of the statute and Virginia Supreme Court precedent interpreting it. Petitioner overlooks that the statute sets forth a disjunctive standard. The statute does not require a defendant to demonstrate that a conviction is "without evidence" to prevail on a sufficiency challenge; rather, it requires a defendant to demonstrate that the conviction "is *plainly wrong or* without evidence to support it." Va. Code § 8.01-680 (emphasis added). Thus, a Virginia appellate court will reverse a conviction for lack of sufficient evidence even if some evidence supports it, if the court concludes that the conviction is "plainly wrong." See *Encino Motorcars, LLC* v. *Navarro*, 584 U.S. __, 138 S. Ct. 1134, 1141 (2018) ("'[O]r' is 'almost always disjunctive.'" (quoting *United States* v. *Woods*, 571 U.S. 31, 45 (2013))).

Further, Virginia Supreme Court precedent makes clear that the statutory standard for reversing convictions is satisfied where no "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Perkins*, 812 S.E.2d at 216; see *Commonwealth* v. *McNeal*, 710 S.E.2d 733, 735–36 (Va. 2011) ("[W]e conclude that a 'rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' The circuit court's judgment finding [the defendant] guilty . . . thus was not 'plainly wrong or without evidence to support it.'" (citations omitted) (quoting *Jackson*, 443 U.S. at 319, and Va. Code § 8.01-680)). The court has further held that Virginia Code § 8.01-680 creates a presumption of correctness and, "[i]n light of this presumption, this Court does not 'ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt.'" *Perkins*, 812 S.E.2d at 216 (quoting *Williams* v. *Commonwealth*, 677 S.E.2d 280, 282

(Va. 2009). But that presumption is entirely consistent with *Jackson*; indeed, the Virginia Supreme Court quotes *Jackson*, 443 U.S. at 318–19, for the proposition. *Perkins*, 812 S.E.2d at 216. There is thus no inconsistency between *Jackson* and Virginia Code § 8.01-680, as the Commonwealth's highest court has interpreted that statute. See *New York* v. *Ferber*, 458 U.S. 747, 767 (1982) ("[T]he construction that a state court gives a state statute is not a matter subject to our review.").

In short, Petitioner identifies no error in the unpublished state intermediate court ruling below. This case does not warrant this Court's consideration. Cf. Sup. Ct. R. 10; see also *City of Oklahoma City* v. *Tuttle*, 471 U.S. 808, 816 (1985) ("Our decision to grant certiorari represents a commitment of scarce judicial resources with a view to deciding the merits of one or more of the questions presented in the petition."); Stephen M. Shapiro et al., *Supreme Court Practice* § 6.37(i)(3), at 508 (10th ed. 2013) (noting that while review of unpublished decisions is sometimes granted, "the fact that an opinion is unpublished may nevertheless be relevant to the Court's consideration of the need for review"). The petition should be denied.

II. Virginia courts consistently apply *Jackson* in criminal sufficiency of the evidence appeals

Unable to demonstrate that the court below defied *Jackson* when it expressly cited and applied *Jackson*, Petitioner instead argues that Virginia courts frequently disregard *Jackson* in other cases. This argument is meritless. Pet. 5. Virginia courts consistently apply the *Jackson* standard and are explicit that the standard governs the sufficiency of evidence in criminal appeals.

Just this year, for example, the Virginia Supreme Court has twice reiterated that the *Jackson* standard applies to sufficiency of the evidence challenges to criminal convictions. In both *Tomlin* v. *Commonwealth*, 888 S.E.2d 748 (Va. 2023), and *Commonwealth* v. *Barney*, 884 S.E.2d 81 (Va. 2023), the Virginia Supreme Court held that "[t]he only 'relevant question" in a sufficiency-of-the-evidence challenge "is, after

reviewing the evidence in the light most favorable to the prosecution, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Tomlin*, 888 S.E.2d at 753; *Barney*, 884 S.E.2d at 89. Both decisions quoted *Sullivan* v. *Commonwealth*, 701 S.E.2d 61 (Va. 2010), which relied directly on *Jackson*. 701 S.E.2d 61, 63 (Va. 2010) (citing *Jackson*, 443 U.S. at 319). Indeed, the Virginia Supreme Court has reiterated this rule time and again. See also, *e.g.*, *Commonwealth* v. *Cady*, 863 S.E.2d 858, 861 (Va. 2021) (citing *Jackson*, 443 U.S. at 318–19); *Williams*, 677 S.E.2d at 282 (same).

Further, the Virginia Supreme Court has also made clear that Virginia Code § 8.01-680 does not create a more demanding standard for sufficiency challenges to criminal convictions than *Jackson* does. See pp. 7–9, *supra*; see also *Pijor* v. *Commonwealth*, 808 S.E.2d 408, 413 (Va. 2017) (citing both Va. Code § 8.01-680 and *Jackson*, 443 U.S. at 318–19); *Dietz* v. *Commonwealth*, 804 S.E.2d 309, 313–14 (Va. 2017) (same); *Commonwealth* v. *Moseley*, 799 S.E.2d 683, 686–87 (Va. 2017) (same).

Petitioner includes a statistical analysis purporting to show the "breadth of Virginia's failure to apply Jackson." Pet. 13; see Pet. 13–17. Because Petitioner fails to identify the vast majority of the approximately 2,000 cases he purportedly analyzed, it is impossible to respond fully. It is clear, however, that the statistical analysis is deeply flawed, and demonstrates no constitutional issues with Virginia caselaw. Most fundamentally, Petitioner assumes that all cases applying the statutory "plainly wrong or without evidence" standard are "constitutionally[ ]deficient" and conflict with *Jackson*. Pet. 14 (asserting that 70.9% of analyzed cases apply the statutory standard). But, as discussed above, this statutory standard is fully consistent with *Jackson*, both on its face and under the definitive interpretation adopted by the Virginia Supreme Court. See pp. 7–9, *supra*; *Perkins*, 812 S.E.2d at 216. The frequent citations of the statute therefore do not create a conflict between Virginia's law and *Jackson*.

Second, Petitioner asserts that 19.7% of the cases in his analysis were erroneous because they cited "no standard of review whatsoever." Pet. 15. Nothing in this Court's case law requires that every opinion, including in straightforward unreported cases, specifically incant all standards of review that the court is applying. See, *e.g.*, *Sebelius* v. *Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 153 (2013) (noting that it is not necessary to "incant magic words in order to speak clearly"); *United States* v. *Smith*, 949 F.3d 60, 66 (2d Cir. 2020) ("[W]e do not require district courts to engage in the utterance of 'robotic incantations' when imposing sentences in order to assure us that they have weighed in an appropriate manner the various [sentencing] factors." (internal quotation marks omitted)). That a decision did not expressly recite the *Jackson* standard provides no reason to conclude that it applied the wrong standard or "no standard" at all. Pet. 15.

Finally, where Petitioner does identify cases included in his statistical analysis, those cases show no error regarding the *Jackson* standard. Indeed, some of the cases are not even sufficiency of the evidence challenges to convictions at all. For example, *Clark* v. *Commonwealth* (cited at Pet. 15 n.26) involved whether a defendant's actions constituted the "intentional behavior" required for "an assault or battery." 676 S.E.2d 332, 339 n.5 (Va. Ct. App. 2009) (en banc), aff'd, 691 S.E.2d 786 (Va. 2010). The defendant had "not disputed, at trial or in th[e] appeal, the sufficiency of the evidence" relevant to that question. *Id.* at 334 n.1. The cases that do involve sufficiency challenges are consistent with *Jackson*. For instance, *Allard* v. *Commonwealth*, 480 S.E.2d 139 (Va. Ct. App. 1997), which Petitioner describes as applying "no standard," Pet. 15 & n.26, summarized the evidence that the defendant participated in a burglary, and held that "the jury could reasonably infer from this evidence" that the defendant was guilty of the crime, *Allard*, 480 S.E.2d at 142. *Jackson* requires nothing more. Petitioner also points to *Moore* v. *Commonwealth*, No. 190856, 2020 Va. Unpub. LEXIS 13 (Va. Sup. Ct. May 14, 2020), as an example of a case that

"clearly only appl[ies] the statutory language." Pet. 16 & n.29. But *Moore* also cites *Jackson*, and holds that "the relevant question is, upon review of the evidence in the light most favorable to the prosecution, 'whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Moore*, 2020 Va. Unpub. LEXIS 13 at *9.

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Petitioner's central premise is incorrect: Virginia courts apply *Jackson* in sufficiency of the evidence appeals in criminal cases. There is no "compelling reason" for this Court to grant the petition to tell Virginia's courts to apply a standard they already use. See Sup. Ct. R. 10.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

December 15, 2023

Respectfully submitted,

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