NO. 23-6078

IN THE
Supreme Court of the United States

TIMOTHY RAY JONES,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

BRIEF IN OPPOSITION

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Whether the Due Process Clause and the Eighth Amendment require that a jury, as the sentencer in a capital case, be told the truth about the effect of a verdict of not guilty by reason of insanity and a capital defendant allowed to voir dire potential jurors about their ability to render this verdict.

2.

Whether a roadblock conducted by two bored police officers with minimal oversight and excessive discretion violated the Fourth Amendment.

RESPONDENT'S COUNTERSTATEMENT OF QUESTIONS PRESENTED

1.

Should the Court deny certiorari on Jones's claim that the Due Process Clause and the Eighth Amendment secures the right for a capital defendant to have the jury informed of and questioned on a point of law that is neither part of sentencing nor ever a matter for the jury to decide?

2.

Should the Court deny certiorari on Jones's Fourth Amendment claim where the Supreme Court of South Carolina rejected his "bored officer only" theory and faithfully applied this Court's precedent in rejecting the claim after full consideration of all the facts presented at the suppression hearing?

TABLE OF AUTHORITIES

BRIEF IN OPPOSITION

Capital Case

Petitioner, Timothy Ray Jones, Jr., was convicted by a jury of the murders of his five small children and sentenced to death. His petition comes to this Court after the direct appeal review by Supreme Court of South Carolina which affirmed the convictions and sentence without dissent. Jones now seeks review of two issues. Respondent submits, however, that he has failed to show a compelling reason for review, and that this Court should deny the petition.

CITATIONS TO OPINIONS BELOW

The Supreme Court of South Carolina's published opinion issued on July 19, 2023, affirming Jones's convictions and death sentence is reported at 891 S.E.2d 347, and is reproduced in the petition appendix. Pet. App. A1-A38. The July 19, 2023, order granting in part and denying in part Jones's petition for rehearing that resulted in the substituted opinion issued that same day, is unreported but is included in the petition appendix. Pet. App. A60. The former opinion issued on March 29, 2023, that was superseded by the opinion issued on July 19, 2023, is also included in the petition appendix. Pet. App. A61-A97.

JURISDICTION

On July 19, 2023, the Supreme Court of South Carolina's granted in part and denied in part Jones's petition for rehearing and issued a substituted opinion. On September 18, 2023, Jones requested an extension to file his petition. On September 28, 2023, the Chief Justice granted the extension until November 16, 2023. Jones

filed his petition on November 16, 2023. He invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1257(a). Pet. at 1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourth Amendment to the United States Constitution, which provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

Jones submits this case also involves the Eighth Amendment to the United States Constitution, which provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. amend. VIII.

STATEMENT OF THE CASE

A. Facts of the Murders and Jones's Capture.

Jones, a computer professional[1] who had graduated with a 3.81 GPA from Mississippi State, lived in Lexington County, South Carolina, in 2014. He was divorced from his wife and had primary custody of the couple's five young children: Merah Gracie, age 8, Elias Xavier (Eli), age 7, Nahtahn Hehseyd, age 6, Gabriel Asher

[1] Jones "perform[ed] validation engineering" at Intel. (R. p. 4640). He was, however, becoming "bored" with the engineering position and was going to attend medical school. (R. p. 4642, 4874 and 3608-3609).

(Gabe), age 2, and Abigail Elizabeth (Elaine), age 1. (R. p. 3295). The Supreme Court of South Carolina summarized the evidence of the horrific murders of these small children as follows:

> Throughout the day of August 28, 2014, Jones smoked spice—a form of synthetic marijuana—at work to cope with the stress of an impending project. Jones left work in the late afternoon and went to his home in Lexington County. He smoked more spice before leaving home to pick up his children. Abigail (age 1) and Gabriel (age 2) were staying at a neighbor's house, and Nahtahn (age 6), Elias (age 7), and Merah (age 8) were participating in an after-school program. Jones retrieved the children and purchased takeout from a local restaurant.
>
> After Jones and the children returned home with their supper, Jones discovered an electrical outlet in the house was not working. He accused Nahtahn of tampering with the outlet because Nahtahn had an unusual interest in electricity. To get Nahtahn to admit he played with the outlet, Jones forced Nahtahn to do one hundred pushups, one hundred situps, and two hundred squats, all in sets of ten.
>
> Nahtahn never admitted to playing with the outlet, but Jones later heard Nahtahn telling his mother over the phone, "It was an accident, Mommy." Enraged, Jones sent Nahtahn to bed. Later that night, Jones went to check on Nahtahn. He shook Nahtahn by the shoulders and again demanded to know what happened to the outlet. Nahtahn collapsed to the floor. Jones told Elias and Merah he thought Nahtahn was dead, and Merah confirmed Nahtahn was not breathing.
>
> Jones then searched the internet for a violent male-on-male rape scene from the movie *American History X* and began to fear the things he would endure in prison as a "baby killer." At approximately 2:00 a.m., Jones took Merah with him to purchase ten packs of cigarettes at a nearby convenience store. Jones claimed that on the way home, he heard voices in his head telling him to kill his

> other four children because they would be better off in Heaven than without parents.
>
> When Jones and Merah returned home, Merah went to bed. Jones smoked two bowls of spice and walked to the living room where Elias and Merah were sleeping. Jones wrapped his hands around Elias' neck and strangled him to death while Elias begged, "Dad, take me with you." Jones then turned toward Merah, who pleaded, "Daddy, I love you," and strangled her to death. Jones proceeded to strangle Abigail and Gabriel to death using a belt because his hands were too big to wrap around their tiny necks.

State v. Jones, 891 S.E.2d 347, 352–53 (S.C. 2023). (*See also* Pet. App. A2-A3).

After the murders, according to Jones, he used more spice through the night, then, the next day, "wrapped each of the five bodies in bedsheets and stacked them in the back of his Cadillac Escalade." *Id.,* at 225; Pet. App. A3. For eight days, he road from state to state collecting materials to dismember and dissolve the children's bodies – being careful to also purchase necessary items to protect himself in the process such as goggles and a dust mask – all while "he searched online for applicable extradition laws and local dumpsites, landfills, and campgrounds." *Id.,* at 225-226; Pet. App. A3.

On September 6, 2014, after having put each body in its own trash bag, he discarded the remains of his five small children in a remote logging area in Alabama. *Id.,* at 226; Pet. App. A3. He was stopped that day at an authorized checkpoint in Smith County, Mississippi, where officers, unaware of the murders and disposal of bodies, notice distinct odors coming from the Escalade – smells "of burnt marijuana and garbage coming from the vehicle." *Id.* A search of the Escalade, made with Jones's consent, showed the following:

> … bleach stains on the floorboard; synthetic marijuana; drug paraphernalia; bleach; muriatic acid; charcoal fluid; and a scribbled note reading in part, "Head to campground," "Melt bodies," "Sand to dust or small pieces," and "Day 1: Burn up bodies. Day 2: Sand down bones. Day 3: Mexican Border ☺, dissolve, and discard."

Id.

The officers arrested Jones, whose eyes appeared "red and glassy and his speech … slurred … for driving under the influence, possession of a controlled substance, and possession of drug paraphernalia." *Id.*

When later calling in the license, the officers were advised that the Escalade was tagged as being of interest in the search for five missing children from Lexington County, South Carolina. *Id.* Jones confessed, and later led officers to the decomposing and animal-ravaged remains of his five children. *Id*; Pet. App. A3-A4. Jones was returned to South Carolina for prosecution. *Id*; Pet. App. A-4.

B. Procedural History.

A Lexington County, South Carolina grand jury true-billed five indictments against Jones at the January 2015 term. (R. pp. 8356-8365). On December 9, 2015, the State served notice of intent to seek the death penalty. (R. p. 8353). Four attorneys represented him: Boyd Young, Esquire, Robert Madsen, Esquire, Bill McGuire, Esquire, and Casey Secor, Esquire.

On April 29, 2019, Jones was arraigned and entered a plea of not guilty by reason of insanity. (R. pp. 120-121). A jury trial followed with opening statements presented on May 14, 2019. On June 4, 2019, the jury convicted Jones on all five counts murder. (R. p. 5097). The sentencing phase began on June 6, 2019. (R. p. 5161).

On June 13, 2019, the jury returned a verdict that the State had proven beyond a reasonable doubt a required statutory aggravating circumstance which authorized consideration of a death sentence, in particular the jury found: "Two or more persons were murdered by the Defendant by act or pursuant to one scheme or course of conduct" and "the murder of five children eleven years of age or younger," (R. pp. 5953, 5965), then recommended death, (R. p. 5966). That same day Judge Griffith imposed the death sentence as required by the jury's decision. (R. p. 5971). Jones timely appealed to the Supreme Court of South Carolina where his convictions and sentence were affirmed without dissent. *Jones, supra.* (*See also* A1-A38).

REASONS WHY CERTIORARI SHOULD BE DENIED

Jones presents no compelling reason to grant his petition. He first claims that the Constitution secures a right to inform capital jurors of a point of law that they are never asked to decide. In support, Jones argues that the States differ in their approach; however, he cannot show a split as to application of a Constitutional right as there is none. A general showing of policy differences among the States fails to show a split in application of federal law. Further, in his second issue Jones tries to bring in an argument based on *Brown v. Texas*, 443 U.S. 47 (1979), but he failed to argue *Brown* in his brief to the Supreme Court of South Carolina and made only passing reference to it in reply. There is no ruling on the argument to review. As to the arguments addressed, the state court correctly applied this Court's precedent to the facts received at the suppression hearing. Jones fails to present either a case or claim worthy of certiorari review and his petition should be dismissed.

I. The Court should deny certiorari on Jones's claim that the Due Process Clause and the Eighth Amendment secures the right for a capital defendant to have the jury informed of and questioned on a point of law that is neither part of sentencing nor ever a matter for the jury to decide.

Special capital *voir dire* provisions exist to determine whether a potential juror can fairly consider both the possibility of a life sentence or the possibility of a death sentence. Neither Due Process nor the Eighth Amendment compel a state court to allow a potential juror during capital *voir dire* to be advised of the result of a "not guilty by reason of insanity" verdict because sentencing is not a jury concern where such a verdict is returned. There is no merit to Jones's contention.

A. Resolution by the Supreme Court of South Carolina.

The Supreme Court of South Carolina acknowledged "Jones's request for voir dire and a jury instruction detailing the consequences of an NGRI verdict" during his trial proceedings and considered on the merits his argument that the trial court erred in denying both. (Pet. App. 12). It affirmed finding state law, with limited exceptions (including an exception to cure an incorrect statement on the matter), does not allow a jury instruction on insanity verdict consequences in non-capital cases or on similar matters not decided by the jury in capital cases.[2] (Pet. App. A12).

The state supreme court also rejected Jones's argument that the Due Process Clause and the Eighth Amendment compelled a different result. (Pet. App. A13). As

[2] In *State v. Bell*, 360S.E.2d 706 (S.C. 1987), the capital case cited, the request was for an instruction that sentencing would proceed if the jury found a capital defendant guilty but mentally ill. *Bell,* 360 S.E.2d at 710. The Supreme Court of South Carolina found no error in declining that instruction on the same principle: "The subsequent progress of a trial is not relevant to the jury's determination of whether a defendant is guilty, guilty but mentally ill, or not guilty, and it is not error to refuse to instruct the jury regarding punishment at the guilt phase. " *Id.,* at 710.

to his due process violation, the state supreme court found Jones only relied on federal cases where other instructions were necessary to qualify a point relevant to *sentencing phase* deliberations, however, since the instruction here could only be given in the *guilt phase*, the cases were not controlling. (Pet. App. A13). As to his argument for an Eighth Amendment violation, the court rejected Jones's "heightened reliability requirement of the Eighth Amendment" argument based on this Court's precedent "where the defendant is mentally ill or less culpable due to his mental state," observing that the jury found Jones was "neither mentally ill nor insane." (Pet. App. A14).

B. Jones fails to show a consequential split in authority as the Constitution does not compel a jury instruction or jury *voir dire* on the consequences of an insanity verdict either in a capital or non-capital case.

Jones attempts to show a split in authority among the states as a reason for certiorari review. This fails in several ways.

First, there is a glaring absence of authority grounded in the Due Process Clause or Eighth Amendment in the petition. Instead of relying on an actual split on whether the Constitution requires such a charge, he argues that state courts have made different policy decisions on better practice for that state. (*See* Pet. at 11). However, "[d]ebates as to which policy is *best,* as opposed to whether a practice is constitutionally acceptable, are better left in the province of the legislature and the rulemaking process." *State v. Becker*, 818 N.W.2d 135, 159 (Iowa 2012), *overruled on other grounds by Alcala v. Marriott Int'l, Inc.*, 880 N.W.2d 699 (Iowa 2016). As this Court has observed, for federal courts, it may exercise "supervisory power" in deciding

best practice in *voir dire*, but in review of state matters the Court's "authority is limited to enforcing the commands of the United States Constitution." *Mu'Min v. Virginia*, 500 U.S. 415, 422 (1991). A split in state policy or practice does not make an issue worthy of this Court's review – it does quite the opposite.

Second, the "division" Jones references in state case law is in large part driven by old acceptance of persuasive authority in *Lyles v. United States*, 254 F.2d 725 (D.C. 1957). The Supreme Court of South Carolina in the Jones opinion did recognize what it termed a "trend" in allowing an instruction, (Pet. App. A13), but notably, it did not label it as a "growing" trend. Rightfully so. Of the 12 items listed in support of a "trend," 5 are cases that predate this Court's 1994 opinion, *Shannon v. United States,* 512 U.S. 573 (1994), that found such an instruction should not generally be given in federal cases, and 5 others are state statutes. The other referenced authority in the footnote shows an instruction may be requested by a party or the jury. This places even more distance between Jones's position and a finding that the varied state practices somehow tie to mandatory Constitutional mandates. And, to his credit, Jones concedes, as he must, that this Court has directed the federal courts not to instruct on consequences of such a verdict. (Pet. at 9). It is a difficult argument to make that the Supreme Court of South Carolina's resolution that follows this Court's direction to federal courts is Constitutionally inadequate and must be reviewed.

Third, his reliance on capital *voir dire* instructions and "heightened requirements" for capital cases is misplaced. In *voir dire,* potential jurors are questioned to ensure they are unbiased to the penalty, *i.e.*, will they following the

judge's instructions as given and fairly consider either a life sentence or death sentence. *See, e.g., Wainwright v. Witt*, 469 U.S. 412, 424 (1985) (to disqualify potential juror, "the juror's views" must be such as "would 'prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath'") (quoting *Adams v. Texas*, 448 U.S. 38 (1980)). But again, the "views at issue are those "*on capital punishment.*" *Id.,* at 424 (emphasis added). The information Jones seeks to have conveyed amplifies or explains neither unyielding belief or impairment as to capital punishment. Related to the *voir dire* aspect of his argument, Jones refers to one potential juror who appeared to require an explanation of what happens after returning a "not guilty by insanity" verdict. (*See* Pet. at 20). The trial judge found her disqualified "because the trial court is forbidden from informing the jury of those consequences," and, citing to the controlling state law, the Supreme Court of South Carolina agreed. (Pet. App. A11).[3] This shows no error in the capital *voir dire* process, *i.e.,* questions to discern "the juror's views" on the death penalty.

Fourth, Jones pins great hope on this Court's footnote in *Shannon* that referenced a capital jury may have a sentencing function. Jones asserts "*Shannon* pointedly left open the question of whether a capital jury must receive a consequence instruction," and the Court's reference to *Simmons v. South Carolina,* 512 U.S. 154 (1994) in the note, "is a strong indication that the logic of *Simmons* would apply to an

[3] Petitioner asserts "[t]he state had this juror struck," but the record is clear the trial judge made the determination on qualification, mostly on the basis of the direct questioning between the juror and the trial judge. (Pet. App. A9-A11).

NGRI consequences instruction in a capital case." (Pet. at 10). Jones reads too much into footnote 4. The note merely reflects recognition that capital juries may be given a "sentencing function" but that was not the case for *Shannon's* jury. *Id.*, at 579 n. 4. The remainder of the paragraph makes clear the "division of labor in our legal system between judge and jury" is the key point and ends with the Court's conclusion that "providing jurors sentencing information invites them to ponder matters that are not within their province, distracts them from their factfinding responsibilities, and creates a strong possibility of confusion." *Id.* While it is true that in capital proceedings a jury may determine a sentence, they do not determine a sentence during the guilt phase. *See United States v. Battle*, 264 F. Supp. 2d 1088, 1198 (N.D. Ga. 2003) (no such instruction is warranted in the guilt phase of a capital trial as that is separate part of the capital bifurcated process). *Accord Coe v. Bell*, 161 F.3d 320, 346 (6th Cir. 1998) (on federal habeas corpus review of state capital case where capital defendant complained that a consequence instruction was given to his prejudice, finding: "Because bright-line rules of constitutional law were not at issue (in *Shannon* or any other case), Coe has not sufficiently demonstrated that the state courts in this case violated a principle of federal law that bound them."). *Cf. State v. Cooper*, 700 A.2d 306, 331 (N.J. 1997) ("An ultimate-outcome instruction is required only during the penalty phase."). However, *Shannon* is instructive as to possible reasons why some States prohibit instructions.

In *Shannon*, this Court acknowledged that "providing jurors sentencing information invites them to ponder matters that are not within their province,

distracts them from their factfinding responsibilities, and creates a strong possibility of confusion." *Id.,* at 579. The Court rejected the concept that Jones appears to embrace:

> We also are not persuaded that the instruction Shannon proposes would allay the fears of the misinformed juror about whom Shannon is concerned. "[I]f the members of a jury are so fearful of a particular defendant's release that they *would violate their oaths* by convicting [the defendant] solely in order to ensure that he is not set free, it is questionable whether they would be reassured by anything short of an instruction strongly suggesting that the defendant, if found NGI, would very likely be civilly committed for a lengthy period."

Id., 585–586 (quoting *United States v. Fisher,* 10 F.3d 115, 122 (3rd Cir. 1993)).

Further, again addressing the concerns Jones now embraces, this Court reasoned:

> Instead of encouraging a juror to return an NGI verdict, as Shannon predicts, such information might have the opposite effect—that is, a juror might vote to convict in order to eliminate the possibility that a dangerous defendant could be released after 40 days or less.

Id., at 586.

Regardless of benefit or detriment, the broader point remained that "the inevitable result of such an instruction would be to draw the jury's attention toward the very thing—the possible consequences of its verdict—it should ignore." *Id.,* at 586.[4] Moreover, what to charge is a challenging question:

> …if it is proper to inform the jury that commitment to a mental institution results from a verdict of not guilty by reason of insanity, it would be equally appropriate that the jury be aware of the statutory

[4] A short word about the one study Jones references, the most prominent part of the result is that "if a judge told them to disregard the outcomes, 70.6% reported that knowing the outcomes would influence their decisions." (Pet. at 21). Of course, Jones offers these number without context, but even so, whether that is in favor of the defense or in favor of the prosecution, it is likely to detract from the evidence and the jury's duty.

> provisions for subsequent release. Because of the numerous approaches authorized …. no instruction could adequately postulate the impact of such a verdict on the appellant's future tenure in the institution. We agree with the Delaware Court (responding to a similar contention) that '(s)uch instruction would have substituted one unacceptable area of speculation and conjecture for another.'

State v Wallace, 333 A.2d 72, 79 (Me. 1975) (quoting *Garrett v. State*, 320 A.2d 745, 750 (Del.1974)). *See also People v. Goad*, 364 N.W.2d 584, 589–90 (Mich. 1984) (agreeing with *Wallace* given "the numerous possible contingencies under the statutory scheme" it is impossible to give fair instruction).[5] Therefore, other jurisdictions could easily accept that logic, as well, without offending the Constitution.

Fifth, Jones's concept of an Eight Amendment violation is flawed. He based his argument on this Court's capital jurisprudence related to intellectual disability and exemption from capital punishment – citing *Atkins v. Virginia*, 536 U.S. 304 (2002), and *Hall v. Florida*, 572 U.S. 701 (2014), and, the precedent regarding competency to be executed, *Ford v. Wainwright*, 477 U.S. 399 (1986). (Final Brief of Appellant at 45-46). Here, he subtracts *Wainwright* and adds *Miller v. Alabama*, 567 U.S. 460 (2012), to his *Roper v. Simmons*, 543 U.S. 551, 573 (2005) that was also referenced in his state court brief, (Final Brief of Appellant at 46). to discuss

[5] Presumably, a defendant would not be able to modify the actual terms of the statute in conveying information to potential jurors. The South Carolina statute only provides for a *required maximum* of one hundred and twenty days in the South Carolina State Hospital, and additional proceedings determine release or further commitment. S.C. Code Ann. § 17-24-40. Logic supports that such information would not be particularly helpful to any defendant charged with a particularly violent crime, but how much more so for a capital defendant where concern of continuing danger arises. *See People v. Meeker*, 407 N.E.2d 1058, 1066 (Ill. App. 5 th Dist. 1980) ("If the instruction tendered here were given it would still appear the jury could prevent defendant's release only by finding him guilty. … we find the instruction so uncertain regarding the possibility of post-verdict confinement that it would not benefit defendant if it were given.").

automatic life without parole sentences for juveniles without considering circumstances of youth. (Pet. at 20). However, his reasoning lacks any basis for finding Eighth Amendment error apart from the sole fact that he is a capital defendant. (*See* Pet. at 20). He then generally asserts how important it was that jurors could consider his insanity defense because he otherwise had no defense to the murders of his five small children in a case where the jurors understood that the State was seeking the death penalty. (Pet. at 20). He asserts that he could not explore the consequences "in voir dire to eliminate jurors who could not consider an NGRI verdict." (Pet. at 20). This concedes the point he makes is not one rooted in punishment, but avoidance of a guilty verdict. The Eighth Amendment, going to punishment, is not implicated.[6] Further, just because a question to a potential juror may be "helpful" to a party, does not make the question required under the Constitution. *Mu'Min*, 500 U.S. at 416. *See, e.g., State v. Poindexter,* 431 S.E.2d 254, 255 n. 2 (S.C. 1993) ("*voir dire* is not to be used as a means of pre-educating or indoctrinating a jury or … impaneling a jury with particular predispositions" consequently "the discovery and elimination of biased or prejudiced jurors during *voir dire* does not require that they first be informed of the consequences of each potential verdict.").[7]

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[6] Moreover, even if instructed on consequences, the consequences still should not drive the verdict. *See People v. Tally*, 7 P.3d 172, 184 (Colo. App. 1999) (instruction authorized "that such defendant will be committed to a mental institution until it is determined that he or she is no longer insane. However, the jurors should also be told that such information is given to them only so that they may know the consequences of any verdict of insanity and that such information should have no bearing upon their determination of a defendant's mental status.").

[7] Relatedly, the Supreme Court of South Carolina has expressly ruled that a capital defendant may not "ask potential jurors about their specific views of the insanity defense during *voir dire"*

In sum, Jones has failed to show any split of significance; failed to show an infringement of a Constitutional right; and for that matter, any error that could be corrected. His petition should be denied.

II. The Court should deny certiorari on Jones's Fourth Amendment claim where the Supreme Court of South Carolina rejected his "bored officer only" theory and faithfully applied this Court's precedent in rejecting the claim after full consideration of all the facts presented at the suppression hearing.

Again, Jones fails to show a compelling reason to grant his petition. In this issue, he is merely seeking another interpretation of the facts since the Supreme Court of South Carolina rejected his "bored officer only" theory and affirmed by ordinary application of this Court's well-established precedent to the full of the facts developed at the suppression hearing.

Jones submits, though, that this Court has not revisited "the constitutionality of roadblocks in almost twenty years" in attempting to present a compelling case for review. (Pet. 22). However, that shows this Court has already announced decisions that can, and have been, followed by the lower federal courts and the States. He has again failed to show a compelling reason to grant his petition. As hundreds of other cases have shown, court routinely apply the relevant guidance as outlined *Delaware v. Prouse*, 440 U.S. 648 (1979) and *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000). The Supreme Court of South Carolina did so here. Jones simply asks this Court to

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including their views on an insanity defense. *State v. Stanko*, 658 S.E.2d 94, 96 (S.C. 2008). Recognizing that "the Sixth and Fourteenth Amendments to the United States Constitution provide a defendant with the constitutional right to a fair and impartial jury of his peers," noting that "this right does not entitle a defendant to handpick a jury." *Id.,* 96-76.

review a fact-driven issue. Such a request will seldom support the grant of certiorari review.

One further point exists to show yet another cause to deny the petition. Jones complains in his petition that the Supreme Court of South Carolina failed to apply *Brown v. Texas,* 443 U.S. 47 (1979), (Pet. at 25), but Jones did not raise any issue or argument based on *Brown* to the state supreme court. The issue presented on this matter was follows:

> The trial court erred in denying appellant's motion to suppress evidence obtained as a result of an illegal roadblock conducted by two bored police officers with minimal oversight and excessive discretion, in violation of the Fourth Amendment.

Brown appeared nowhere in his brief and was only briefly mentioned in the reply brief with one parenthetical with summarizing generally, "holding that the Fourth Amendment requires 'a plan embodying explicit, neutral limitations on the conduct of individual officers'," and one "quoting" the case reference for the same point. (Reply Brief at 15 and 16). It appeared more fully in the petition for rehearing *after* the decision had been made. (*See* Pet. App. A45). Jones can hardly fault the Supreme Court of South Carolina for failing to consider that which he did not present.

A. Resolution by the Supreme Court of South Carolina.

The Supreme Court of South Carolina adequately summarized the controlling facts as this issue in the direct appeal opinion:

> Quite by chance, on the same day Jones disposed of the children's bodies, he was apprehended at a safety checkpoint in Smith County, Mississippi. Deputy Charles Johnson, one of the two officers conducting the checkpoint,

> testified that "because things were quiet" on the night of September 6, 2014, he and Deputy Robert Thompson asked Smith County Under-Sheriff Marty Patterson for permission to conduct a safety checkpoint. Sheriff Charlie Crumpton testified safety checkpoints were intended to check for driver's licenses, seatbelt violations, proper child restraints, and proof of insurance. Sheriff Crumpton estimated approximately ten percent of drivers are ticketed or arrested at safety checkpoints. He also testified the department's verbal policy required that checkpoints be approved by a supervisor and conducted at a safe location by two or more officers who wear reflective vests and stop all vehicles. Deputy Johnson testified he and Deputy Thompson followed the department's policy. Deputy Johnson further testified he was normally equipped with a portable device to conduct breathalyzer tests on suspected drunk drivers.

Jones, 891 S.E.2d at 359-360; Pet. App. A14-A15.

The state supreme court noted that Jones had moved to suppress the evidence discovered as a result of the " checkpoint, arguing the checkpoint violated the Fourth Amendment because its primary purpose was general crime prevention." *Id*; Pet. App. A15. The court agreed that the Fourth Amendment applied and reviewed both the holdings in *Prouse* and *Edmond,* along with *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, (1990). *Id*; Pet. App. A15-A16. In comparing approved and non-approved checkpoints as described in those cases, the state supreme court reasoned, based on the evidence presented at the suppression motion hearing that:

> Here, the checkpoint was precisely the type of checkpoint suggested by the Supreme Court in *Prouse* and *Edmond*. The State presented evidence sufficient to prove the primary purpose of the Smith County checkpoint was highway safety, not general crime prevention. Four officers testified the checkpoint was intended to check for driver's licenses, vehicle registrations, and proof of insurance. At no point did any witness suggest a contrary purpose. As in

> *Sitz*, the Smith County Sheriff's Department had a policy requiring that all vehicles passing through checkpoints be stopped in a safe, structured manner. Officers did not have unbridled discretion as was the case in *Prouse*; instead, stops were brief and minimally intrusive. For these reasons, we hold the trial court did not err in denying Jones's motion to suppress.

Id., at 360-361; Pet. App. A16.

B. Jones fails to show any reason for review because, though Jones disagrees with the result, the Supreme Court of South Carolina simply applied well-established precedent to the facts of his case. If the Court were inclined to grant the petition for error correction, there is no error to correct.

This Court in a series of cases including *Prouse, Edmond,* and *Sitz,* defined the parameters for a permissible checkpoint. Jones does not attempt to find fault with the state court's reliance on the precedent but appears to argue the state court should have applied the precedent differently here. It is evident that Jones falls back on the very points at issue in *Prouse* and *Edmond* – random and general-purpose stops to argue the stop was improper. (Pet. at 23). It was not. The evidence of record well supports the state court resolution.

The deputies did not on their own devise protocol in an effort to stop a specific vehicle, rather, the deputies followed policy of the Smith County Sheriff's Department and requested and received permission for the safety checkpoint. (R. p. 2740 - p. 2741; p. 2780). The area selected was not chosen for its suspected crime, but because it was well traveled, large road with adequate lighting and room on both sides of the highway for a car to pull off without blocking the highway, a place previously used for these types of checkpoints. (R. p. 2780; p. 6623). The deputies checked driver's

licenses, proof of insurance and proper child restraints. (R. p. 6648). During the night, "possibly four or five" cars were stopped prior to Jones, each driver was asked for their driver's license and proof of insurance. (R. p. 6653). They used their flashlights to observe the use of any child safety restraints. The stops were minimal and once everything checked out, each was allowed to proceed. (R. p. 6652). Notably, when Jones was stopped and rolled his window down, a deputy could immediately smell what he thought to be burned marijuana and another awful smell, a smell Jones identified as "garbage." (R. p. 2743 and 6710). Jones's eyes were red and had a glassy appearance, and his speech was slurred. (R. p. 2745). Jones appeared to be under the influence and was asked to pull over and step out of the vehicle. (R. p. 6654). He gave consent to search the vehicle. (R. pp. 6654-6655). The synthetic marijuana, which was illegal in the state, was located, with a bent drink can commonly used to smoke marijuana. (R. p. 6657; p. 2747-2748). It was only afterwards that the connection was made to the missing children. (R. p. 2751; p. 2783; p. 2786-2787; p. 6665).

Jones argues that "law enforcement may not circumvent the dictates of the Fourth Amendment by using a constitutional purpose as a foundation for the initiation of a roadblock to then later pursue an unconstitutional purpose." (Pet. at 23). He also argues "[s]afety is as broad of a category as crime prevention" apparently suggesting no check point is ever acceptable. (*See* Pet. at 24). However, in *Edmond,* this Court determined that safety checkpoints are a lawful means to protect highway safety, which is the responsibility of local law enforcement, noting the "vital interest"

in safety, and has "suggested that "[q]uestioning of all oncoming traffic at roadblock-type stops" would be a lawful means of serving this interest in highway safety. *Edmond,* 531 U.S. at 39 (*quoting Prouse,* at 663). Jones's argument lacks factual or legal support. The evidence at the suppression hearing supports a proper checkpoint for safety purposes and the Supreme Court of South Carolina logically found "the checkpoint was precisely the type of checkpoint suggested by the Supreme Court in *Prouse* and *Edmond*." (Pet. App. A16).

After the above argument in the petition, Jones then appears to veer into random stop issues, *see* Pet. at 27, but this safety checkpoint cannot be considered identical to a random stop. Permission was requested and received, criteria followed (which included stopping all vehicles), and the location has been previously used for permissible checkpoints. *See United States v. Martinez-Fuerte,* 428 U.S. 543, 559 (1976) (approval of "routine checkpoint" sites authorized by "responsible officials" considering "limited resources" and obligation to "stop only those cars passing the checkpoint" which limits danger of "abuse or harassing stops"). His remaining arguments cite to individual state cases in Georgia or Florida, and a general objection to "random stops." (*See* Pet. at 28-31). This Court has already addressed these concerns in the cited cases. There is no compelling reason to review them once more. Again, Jones has failed to show a compelling case for this Court to grant his petition.

CONCLUSION

For the reasons presented above, this Court should deny the petition.

Respectfully Submitted,

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No. 23-6078

IN THE
SUPREME COURT OF THE UNTED STATES

TIMOTHY RAY JONES, JR.,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF SOUTH CAROLINA

PROOF OF SERVICE

I, **MELODY J. BROWN**, counsel for the Respondents, certify that I have this day served the Brief in Opposition on Petitioner by email service on his attorneys of record, Robert M. Dudek, Esquire, at Rdudek@sccid.sc.gov; David Alexander, Esquire, at dalexander@sccid.sc.gov; and Lara M. Caudy, Esquire at Lcaudy@sccid.sc.gov and by depositing a copy of the same in the U.S. Mail, first class, postage prepaid to address listed below:

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