No. 23-6078

IN THE

Supreme Court of the United States

STATE OF SOUTH CAROLINA,
Respondent,

v.

TIMOTHY RAY JONES,
Petitioner.

REPLY OF PETITIONER

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Reply on Question One - The State's Arguments Against Granting Certiorari are Superficial

As it must, the state acknowledges the wide disparity among jurisdictions on what jurors should be instructed about an NGRI verdict. The state downplays the glaring variance throughout the nation in what juries are told by pointing out that many jurisdictions have made decisions based on policy instead of the constitutional grounds asserted by Jones. While the state is correct that many jurisdictions have not expressly cited Due Process, the rationales are based on the same constitutional concerns presented here.

An examination of Massachusetts' approach discredits the state's attempt to elevate form over substance. *See Commonwealth v. Mutina*, 323 N.E.2d 294 (Mass. 1975). Just like in Jones' case, no question existed in *Mutina* that the defendant killed the victim. *Mutina*, 323 N.E.2d at 301. The *Mutina* jury heard evidence that the defendant was insane and that he would pose a future danger to society. *Id.* at 298.

The Massachusetts high court reasoned that jurors "are not disembodied spirits arriving at intellectual judgments in a vacuum." *Id.* at 300. Jurors know the results of guilty and not-guilty verdicts. *Id.* at 300-01. "Only where the insanity defense is raised are the jury given a third alternative whose legal consequences they may not know or fully understand." *Id.* Not giving a consequences instruction "invites unnecessary speculation into their deliberations" and "may very well cause them to proceed on an erroneous basis." *Id.* at 301. "The jury, lacking knowledge of

the commitment necessarily flowing from a verdict of not guilty by reason of insanity, applied their own standards of justice in arriving at a verdict designed to ensure the confinement of the defendant for his own safety and that of the community." *Id.* at 301-02. The court concluded that juries should be told the truth about an NGRI verdict. *Id.*

When the rationale of *Mutina* is compared to this Court's reasons for telling jurors the truth about parole in *Simmons v. South Carolina*, 512 U.S. 154 (1994), it is easy to see that Due Process is the basis for the instruction. This Court began its analysis in *Simmons* by stating, "The Due Process Clause does not allow the execution of a person on the basis of information which he had no opportunity to deny or explain." *Simmons*, 512 U.S. at 161 (internal quotations and citations omitted). The *Mutina* court's grave concerns about juries speculating and reaching verdicts based on "their own standards of justice" are exactly the same as this Court's specific Due Process concern in *Simmons*. Jones' jurors were left to speculate, which is the sin condemned by *Simmons* and *Mutina*. *Mutina*'s reasoning is representative of cases reaching the opposite result of South Carolina. The state's attempt to explain away the different approaches is superficial.

The state's attempt to distinguish this Court's recognition in *Shannon v. United States*, 512 U.S. 573, 579 n.4 (1994), that Due Process may play a role when juries have sentencing functions falls flat. The state wants to execute Jones and vociferously opposed a consequences instruction at trial. It now claims *Shannon* supports a conclusion that a consequences instruction would not be in Jones' best

interest. The state's paternalistic pandering should not distract this Court from engaging with the serious constitutional question presented by Jones.

Finally, the state casually dismisses Jones' Eighth Amendment rationale by claiming that petitioner's efforts to voir dire jurors on NGRI shows that Jones is concerned with guilt, not punishment. Br. Opp. at 14. The state's argument might have force if South Carolina had separate juries for guilt and sentencing. But South Carolina only uses one jury. The jurors knew from the outset they were hearing a death penalty case and would be blamed if they were tricked into letting a dangerous defendant go free. The state presented evidence of malingering to capitalize on such fears, and did so with the knowledge that the jury would never know the truth about the consequences of an NGRI verdict.[1] The Eighth Amendment and Due Process questions are cleanly presented for this Court's review. Certiorari should be granted.

[1] The state supreme court held the trial judge improperly prevented Jones from rebutting this evidence of malingering. App. 79 (holding trial court erred in preventing psychologist from rebutting state's expert's malingering charge).

Reply on Question Two - The Decision Below Upholding the Constitutionality of the Mississippi Roadblock Conflicts with Other Jurisdictions' Interpretation of the Fourth Amendment and this Court's Decisions in *Edmond* and *Prouse*

The state argued the Supreme Court of South Carolina "simply applied well-established precedent to the facts of his case" and the evidence "well supports the state court resolution." Br. Opp. at 18. However, the opinion of the state supreme court upholding the spontaneous decision of two bored police officers in Mississippi to conduct a roadblock conflicts with this Court's decisions in *Delaware v. Prouse*, 440 U.S. 648 (1979) and *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000). The roadblock here was exactly the type of pretextual excuse to seize motorists warned against by this Court in *Edmond*.

The officers conducted the roadblock under the pretext of general safety on the roadway. However, its real purpose was evident: to generally prevent crime and to apprehend those who may have violated the law. *Edmond* does not permit law enforcement to circumvent the Fourth Amendment by using a constitutional purpose as a foundation for the initiation of a roadblock and then pursue an unconstitutional purpose, which is what happened here. A contrary conclusion would render any roadblock constitutional. Simply put, as argued at trial, if the roadblock here is constitutional, then all roadblocks are constitutional. R. 6746.

Even if the alleged primary purpose of the roadblock in this case is accepted, it does not reach the level of specificity required to survive constitutional scrutiny. In

Edmond, this Court held the "high level of generality" of the crime prevention roadblock posed constitutional concerns. *Edmond*, 531 U.S. at 32. Allowing such a broad purpose to warrant a roadblock would give law enforcement the ability to conduct such seizures for "any conceivable law enforcement purpose." *Id.* The Sheriff of Smith County, Mississippi testified that the roadblock in this case was a "safety checkpoint." R. 6624-6625. This category is too broad to be constitutional under *Edmond*.

Additionally, the record lacks any evidence establishing a particular need to conduct this roadblock. Instead, a quiet night—not an imminent or grave concern—prompted the roadblock. This pretextual and unnecessary roadblock cannot serve as a basis upon which law enforcement may infringe on Americans' privacy interests.

The state also argued lower "courts routinely apply the relevant guidance" in *Prouse* and *Edmond* on the constitutionality of roadblocks and thus this Court should deny certiorari on petitioner's Fourth Amendment claim. *See* Br. Opp. at 15. The lower court's decision here is far from "routine" and materially conflicts with other jurisdictions' interpretation of the Fourth Amendment. For example, the Supreme Court of Georgia in *Williams v. State*, 750 S.E.2d 355 (Ga. 2013) and the District Court of Appeal of Florida in *Davis v. State*, 788 So.2d 1064 (Fla. Dist. Ct. App. 2001), both recognized that the underlying purpose of the respective roadblocks in those cases violated *Edmond*.

The roadblock in *Williams* was proffered as a "sobriety and license checkpoint." 750 S.E.2d at 885. However, the Supreme Court of Georgia found the roadblock

unconstitutional under *Edmond* because the state failed to prove the checkpoint had a primary purpose other than general crime control. *Id.* at 888. Likewise, the District Court of Appeal of Florida held the "driver's license checkpoint" in *Davis* violated the Fourth Amendment based on *Edmond* because its primary purpose was "'to detect evidence of ordinary criminal wrongdoing.'" 788 So.2d at 1065-66 quoting *Edmond*, 531 U.S. at 38.

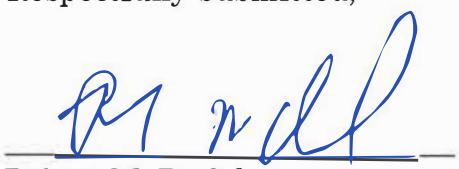
The state court in petitioner's case conversely held the general crime prevention roadblock conducted by two bored officers in Mississippi was "precisely the type of checkpoint suggested by the Supreme Court in *Prouse* and *Edmond*." App. A16. The decision in *Jones* puts South Carolina in conflict with the states recognizing that *Edmond* places limits on roadblocks.

Petitioner's case demonstrates how far afield from *Edmond* and the Fourth Amendment police and state courts are venturing. If checkpoints like the one in this case are allowed, then Americans will have little protection from suspicionless stops and police intrusion into their daily lives.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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This 2nd day of February, 2024.