No. 18-5660

In the Supreme Court of the United States

TODD JESSE GARTON,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTION PRESENTED

Whether petitioner—an in-custody defendant accused of murdering his wife and unborn child—had a constitutional right to wear his wedding ring during trial despite the trial court's concerns over jail security in this case.

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STATEMENT

1. Petitioner Todd Jesse Garton was charged in five counts with conspiracy to murder and the first-degree murder of his wife, Carole Garton, and her unborn child, and conspiracy to murder Dean Noyes, the husband of Lynn Noyes, a codefendant who was Garton's paramour. *Id.*[1]

Petitioner was in custody throughout his trial. Pet. App. A 14-15. At a pretrial hearing, defense counsel asked the trial judge to allow Garton to wear his wedding ring and a religious necklace during trial. *Id.* at 14. The judge said the request was "problematic" because inmates at the county jail are not allowed to wear jewelry. *Id.* The prosecutor opposed the request for security reasons, adding that Garton's request to wear his wedding ring was intended only to "persuade the jury that he has nothing to do with this murder, and that he's still bonded with his wife, whatever it is he's trying to convey subconsciously, or directly to the jury." *Id.* In response to the prosecutor's statement, the judge observed that, if Garton were not in custody, "I'm not sure there would be any way I could compel him to take off his wedding band, even though you may or may not ever get to ask him about why he's wearing it." *Id.* at 15. However, the judge expressed concern that keeping daily tabs on Garton's ring and necklace throughout a trial expected to last at least 50 court

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[1] Before trial, Lynn Noyes pleaded guilty to the murder of Carole Garton and conspiracy to murder Dean Noyes. Pet. App A 2. She testified extensively for the prosecution. RT 5033-5236, 5255-5299, 5330-5365, 5372-5419, 5436-5451, 5489-5529, 5599-5675, 5702-5737, 5755-5877, 5889-5914.

days "may be more of a burden than a busy Deputy Marshal should have to undertake." *Id.*

At a subsequent hearing, the judge said he had spoken with his marshal and was informed that the jail generally does not allow jewelry to be worn there, because any metal object can be turned into a weapon or used for barter, even if the original wearer does not so intend. Pet. App. A 15. Noting that Garton also would be wearing a tie and belt at trial, the judge explained that "[t]here [are] roughly at least a hundred opportunities for the busy Marshal to inadvertently miss one of the now four items, two of which are small and not readily visible, to be missed and find their way back to the jail." *Id.*

Defense counsel suggested that the marshals could be provided with a checklist to ensure that they would not miss any of the prohibited items; alternatively, counsel offered to take personal responsibility for the wedding ring. Pet. App. A 15. The judge rejected that idea, reasoning that "to follow your logic, counsel, we could say that every defendant who comes to court should be permitted to put on whatever jewelry he chooses, or she chooses, because every bailiff we have is certainly competent enough to have a checklist, and make sure that they are all removed and handed to counsel. That might be true, but it's inappropriate." RT 1078.

Counsel argued that Garton was being deprived of rights an out-of-custody defendant would have, asserting that "the fact that he does not have a wedding ring could well be interpreted by jurors as abandonment of his wife,

in some sense or another." Pet. App. A 15. The judge disagreed, reasoning that "there are a great many married men who have never worn wedding rings. It would really shock me to think that any juror would start making negative assumptions about a man whose wife died roughly two years ago because he isn't currently wearing a wedding ring, never having any knowledge about whether he ever wore a ring." *Id*. at 15-16. Accordingly, the judge denied Garton's request to wear the ring and the necklace. *Id*. at 16.

The evidence at trial showed that while Garton was married to Carole he began having an affair with Lynn Noyes, his ex-girlfriend, who was living with her husband, Dean Noyes, in Oregon. RT 5073-5080. In 1997, claiming that he was a paid assassin for an organization he called "The Company," Garton persuaded Dale Gordon to participate in a plot to murder Dean in exchange for $25,000. Pet. App. A 2. When Lynn Noyes told Garton to "go ahead and take him out," Garton also recruited Norman Daniels, to provide "support" for the plan in exchange for $1,000. *Id*. at 3. In February 1998, Garton, Daniels, and Gordon traveled to Portland with a cache of weapons. *Id*. at 4. They staked out a downtown Portland garage, hoping to shoot Dean as he got out of his car to walk to his office, but they failed to spot him. *Id*. They went to his house that night, planning to break in and kidnap him, but they were thwarted when the key provided by Lynn failed to open the front door. *Id*. at 5.

Meanwhile, in October 1997, Carole discovered that she was pregnant. Pet. App. A 5. Garton told people that children were "pains," said that he did

not want the baby, and falsely asserted that the baby was not his. *Id.* at 5-6; RT 7549. A few months later, Garton and Carole obtained a $125,000 insurance policy on Carole's life with Garton listed as the primary beneficiary. *Id.* at A 6.

In early April 1998, Garton secured Daniels's agreement to commit another killing on behalf of The Company. Pet. App. A 6. After helping Daniels purchase a semiautomatic handgun for the job, Garton handed Daniels a "hit package," which called for Daniels to murder Carole within a certain timeframe, or be killed himself. *Id.* at 6-7. In May 1998, Daniels entered Carole's bedroom while she was alone and fired five bullets into her body, killing her and her unborn child. *Id.* at 8.

After Daniels was arrested, he placed a pretextual phone call to Garton at the behest of the police. RT 4657. In that call, which was tape-recorded, Garton promised to assist Daniels in his defense and to see that Daniels would be paid for the killing. Pet. App. A 9-10. Garton later invited Lynn to Carole's memorial service. RT 5390. On the eve of the service they spent the night together at the home of Garton's parents, and he slept in her motel room the following night. *Id.* at 5380, 5383-5384, 5387-5388.

Testifying in his own defense, Garton denied any involvement in the murder of his wife or the plot to kill Dean. Pet. App. A 10. Defense witnesses described Garton as happily married and eager to become a father. RT 8004, 8045-8047, 8699-8700. The defense introduced into evidence a pocket watch

that Garton carried "every day," containing a photograph of Carole on the inside cover. RT 8668-8669.

The jury found Garton guilty as charged. Pet. App. A 1. It also found, as a special circumstance making each murder punishable by death, that Garton had committed multiple murders and had done so for financial gain. *Id.* The jury returned a verdict of death. *Id*.

2. On direct appeal the California Supreme Court overturned the conspiracy count involving Dean Noyes, because any attempt to kill him had occurred in Oregon, but affirmed the judgment in all other respects. Pet. App. A 27-38, 51. Rejecting Garton's claim that he was entitled to wear his wedding ring during the trial, the court explained that jail security concerns were legitimate and that the trial court's ruling did not infringe on any of Garton's constitutional rights. *Id.* at 14-20.

ARGUMENT

Garton contends that, by denying his request to wear his wedding ring during trial, the trial court violated his constitutional rights to wear civilian attire during trial and to present evidence in his own defense. Pet. 12. He reasons that "[t]he absence of a wedding ring served as a constant reminder throughout the trial that petitioner might have participated in the alleged plots to kill because, as the prosecutor argued, he did not love his wife." *Id.* at 13. He further argues that, under a standard instruction given to his jury on witness credibility, "any juror who believed petitioner's failure to wear a

wedding ring showed his abandonment of his wife was permitted to decide he did not love her, and to discount his entire testimony and find him guilty solely because he was not wearing a wedding ring." *Id.* at 10.

Garton's novel theories have virtually no support in this Court's precedents or those of other courts. He identifies no conflict among the lower courts on any issue relating to an in-custody defendant's right to wear symbolic accessories as part of his civilian attire, or on whether wearing such accessories is a part of a witness's demeanor that the jury may consider in assessing the witness's credibility. He raises, instead, a fact-bound claim unlikely to arise in all but the rarest of cases.

It is true that a criminal defendant has a constitutional right not to be forced to wear jail attire during trial. *Estelle v. Williams*, 425 U.S. 501-504-506 (1976). That right, part of the right to a fair trial under the Due Process Clause of the Fourteenth Amendment, is designed to prevent the possible erosion of the presumption of innocence that could result from jurors being constantly reminded that the defendant is in custody. *Id*. at 504-505. Garton fails to cite, and the State has been unable to find, any case holding that an in-custody defendant has a particular right to wear symbolic jewelry or any other accessory.

Garton argues that, because he was on trial for murdering his wife, the absence of a wedding ring could have prejudiced him in the eyes of some jurors, particularly women. Pet. 9-10. While the tradition of wearing a wedding ring

might be "deeply ingrained in American culture" (Pet. 9), as the trial court found it is hardly universal (Pet. App. A 15-16). It is also unclear what any given juror might or might not infer from the current wearing of a wedding ring two years after the death of a former spouse. In any event, there is no reason to think that the presence or absence of a wedding ring (or a religious necklace) as part of the defendant's attire would have any effect on a jury's ability to understand and apply the presumption of innocence.

Garton also claims that the trial court's ruling prevented him from presenting "crucial evidence" of his "demeanor," which the jury could have considered in evaluating his credibility as a witness. Pet. 8-9. In rejecting that claim, the California Supreme Court accepted the proposition that "[a]lthough jewelry is not typically part of a witness's demeanor relevant to his or her credibility, a wedding ring conveys specific meaning, and its presence or absence may be relevant to credibility determinations in some cases." Pet. App. A 18-19. Still, the court concluded that in this case the trial court did not abuse its discretion in prohibiting Garton from wearing his wedding ring during trial, because its probative value in the context here was "slight." *Id.* at 19. Similarly, the court held that the ruling did not violate Garton's constitutional right to present a complete defense, given that he was allowed to present all other types of evidence regarding his relationship with Carole. *Id.* at 19-20.

Even if we assume that a testifying defendant has a legitimate interest in trying to signal unstated information to the jury, this Court has repeatedly stated that a defendant's right to present evidence is subject to "reasonable restrictions." *United States v. Scheffer*, 523 U.S. 303, 308 (1998); *see also Montana v. Egelhoff*, 518 U.S. 37, 42 (1996) ("the proposition that the Due Process Clause guarantees the right to introduce all relevant evidence is simply indefensible"); *Taylor v. Illinois*, 484 U.S. 400, 411 (1988) (a defendant's interest in presenting evidence may have to "bow to accommodate other legitimate interests in the criminal trial process"). The restriction imposed here satisfies that standard.

The California Supreme Court correctly noted that in this case the trial court "reasonably weighed the security concerns of Garton wearing his wedding ring against the ring's slight probative value." Pet. App. A 19 (citing Cal. Evidence Code § 352). The court further observed that the trial court's ruling did not prevent Garton from presenting "a variety of evidence on the topic of his relationship with Carole." *Id*. at 19. *See United States v. Shaffer,* 523 U.S. at 316-317 (evidentiary rule prohibiting defendant from introducing polygraph evidence to boost his credibility as a witness did not abridge his right to present a defense where he was broadly allowed to introduce factual evidence relevant to the charges). Garton "testified to their relationship himself, as did several other defense witnesses." Pet. App. A 19. The defense also introduced a pocket watch that Garton carried and that contained a photo

of Carole on the inside cover. RT 8668-8669. In closing argument, defense counsel highlighted a portion of Garton's videotaped interview with detectives in which Garton, while left alone, pulled out the watch and looked at Carole's picture. RT 10332-10333. The courts below correctly concluded that refusing to allow Garton to wear a wedding ring while on the witness stand two years later did not materially impair his ability to present his defense.

As the California Supreme Court noted, the trial judge's ruling did not place any limits on Garton's testimony or prevent him from introducing any factual evidence in support of his defense. Nor did it prevent him from calling any witness. At most, the judge prevented Garton from positing an inference based on the voluntary wearing of a piece of jewelry to bolster his credibility in claiming that he had nothing to do with his wife's death. Excluding such attenuated credibility evidence does not implicate any of the due process concerns identified in this Court's prior cases. Garton had no constitutional right to use a prop in telling his story to the jury.

Finally, there is no reasonable possibility that the verdict in this case would have been different if only the trial court had allowed Garton to wear his wedding ring at trial. The jury heard evidence that Garton was having an affair with Lynn in the months leading up to Carole's death, and indeed that he consorted with her even on the evenings before and after Carole's memorial service. Pet. App. A 3-4; RT 5383-5384, 5387-5388. Two months before Carole was killed, she was approved for a life insurance policy of $125,000, with

Garton listed as primary beneficiary. *Id.* at 6. Other evidence—including testimony from several witnesses, computer records, and various items of physical evidence—showed that Garton masterminded Carole's murder by convincing his co-defendant Daniels to join a fictional assassination company and to kill Carole as his first assignment. *Id.* at 6-9. When Garton spoke with Daniels after Daniels was arrested, he expressed no grief or remorse; rather, he assured Daniels that Daniels would be paid for the killing and assisted in his defense. *Id.* at 9-10. In light of this evidence, any error in preventing Garton from wearing a wedding ring was harmless beyond a reasonable doubt. *See Chapman v. California,* 386 U.S. 18, 24 (1967).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted

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September 18, 2018

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CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the Brief in Opposition to the Petition for Writ of Certiorari contains 2,546 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 18, 2018
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