

In the Supreme Court of the United States

RAYMOND ANTHONY LEWIS,

Petitioner,

v.

RAUL MORALES, ACTING 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 denied a certificate of appealability for petitioner's claim of juror misconduct?

DIRECTLY RELATED PROCEEDINGS

Supreme Court of the United States:

Lewis v. California, No. 01-7693 (certiorari denied April 22, 2002).

United States Court of Appeals for the Ninth Circuit:

Lewis v. Andes, No. 19-99001 (opinion issued March 12, 2024; petition for rehearing denied August 6, 2024) (this case below).

United States District Court for the Eastern District of California:

Lewis v. Davis, No. 1:03-cv-06775-LJO-SAB (judgment entered August 20, 2018; motion to alter judgment dismissed in part and denied in part December 13, 2018) (this case below).

California Supreme Court:

People v. Lewis, No. S020032 (judgment affirmed August 2, 2001; rehearing denied September 19, 2001).

Lewis (Raymond) on H.C., No. S083842 (first state habeas petition denied October 15, 2003).

Lewis v. People, No. S144710 (request for publication of decision in No. F047350 denied September 20, 2006).

Lewis (Raymond Anthony) on H.C., No. S131322 (second state habeas petition denied July 21, 2010).

Lewis (Raymond Anthony) on H.C., No. S154015 (third state habeas petition denied July 21, 2010).

California Court of Appeal, Fifth District:

Lewis v. People, No. F047350 (petition for postconviction discovery, denied June 9, 2006).

Superior Court of the State of California, County of Fresno:

People v. Lewis, No. 0389385-6 (judgment entered March 29, 1991).

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STATEMENT

Petitioner Raymond Lewis was convicted and sentenced to death for the murder of Sandra Simms. Pet. App. 5a. His petition for a writ of certiorari concerns the denial of federal habeas relief on his juror misconduct claim.

1. a. At the guilt-phase of Lewis's case, the evidence showed that in June 1988, Sandra Simms, Lewis, and Lewis's girlfriend smoked cocaine together at Lewis's residence. Pet. App. 7a. Simms gave Lewis money to buy more drugs, and Lewis left to find a dealer. *Id.* Simms became concerned that Lewis had stolen her money, and went looking for him. *Id.* After Simms found Lewis, she set out with Lewis and Paul Pridgeon to buy more drugs. *Id.* While the three were walking down an alley, Lewis picked up a wooden two-by-four board and hit Simms on the head with it. *Id.* Simms fell to the ground, and Lewis struck her about six more times with the board. *Id.* Lewis then grabbed Simms's throat and strangled her to death. *Id.* He also ripped open her blouse and removed money from her bra. *Id.* Lewis told Pridgeon that he would kill him if he told anyone what Lewis had done, and the two men headed to Pridgeon's apartment to smoke more cocaine. *Id.*

The jury convicted Lewis of first-degree murder and robbery, and found true beyond a reasonable doubt the special circumstance that the murder was committed during a robbery. Pet. App. 9a-10a; *see* Cal. Penal Code § 190.2(a)(17)(A).

b. The prosecution's penalty-phase presentation centered on Lewis's prior criminal activity, including his involvement in a prior murder. *See* Pet.

App. 10a, 372a-373a. Prosecutors submitted evidence that when Lewis was 13 years old, he participated in the killing of A.Z. Rogers, who had taken Lewis into his home. *Id.* at 203a, 372a. Lewis and two friends poured gasoline into the car where Rogers was sleeping, and threw a lit match into the car. *Id.* at 372a. Rogers subsequently died from “smoke inhalation and second and third degree burns covering 95 percent of his body.” *Id.* The prosecution also submitted evidence of Lewis’s prior felony convictions for robbery, sale of PCP, and receiving stolen property. *Id.* at 372a-373a.

Lewis’s mitigation evidence included expert testimony regarding his mental health, his positive adjustment to incarceration, and his character. Pet. App. 373a. The mitigation testimony from Lewis’s family noted his then-recent conversion to Christianity. *Id.* Lewis’s sister “testified that she spoke to [Lewis] every week in jail, and believed that [he] had changed; that he talked about God and quoted from the Bible.” *Id.* The jury returned a verdict of death. *Id.* at 16a.

2. After the verdict, Lewis moved to set aside the penalty verdict, or alternatively, to hold an evidentiary hearing regarding allegations of juror misconduct, pursuant to *People v. Hedgecock*, 51 Cal. 3d 395 (1990). Pet. App. 391a; C.A. E.R. 2062-2076.¹ That case, which concerns the admissibility of jurors’ deliberative statements under the California Evidence Code, does not

¹ After petitioner filed his initial briefs and excerpts of record, the court of appeals ordered him to file corrected versions. See C.A. Dkt. 61. All citations in this brief are to the corrected versions.

address any federal or state constitutional rights, and Lewis did not otherwise assert any constitutional claim. *See Hedgecock*, 51 Cal. 3d at 415-421.

In support of his motion, Lewis submitted a declaration from juror Jeffrey E., who stated that the jurors “held hands and prayed at the beginning of deliberations at both the guilt and penalty phases.” C.A. E.R. 2065. Jeffrey E. also stated that at the penalty phase:

The second time we voted Paul W[.], our jury foreman, asked why people were having a difficult time making a decision. Sally B[.] said she needed some time to make the right decision, knew what was right but was having difficulty in voting. Paul said he did not know if it would help her, but what had helped him make his decision was that [Lewis] had been exposed to Jesus Christ and if that was in fact true [Lewis] would have “everlasting life” regardless of what happened to him. Sometime after that we reach[ed] a verdict.

Id.

In further support of his motion, Lewis attached two letters that he alleged were written by Paul W. and sent to Lewis’s counsel after the trial. In the first, Paul W. asked for an opportunity to meet with Lewis and discuss “what [he] intends to do with his life while he still has time to live.” C.A. E.R. 2069. In the second, Paul W. wrote that counsel would have “real inner peace” and “purpose in life” by having a “personal relationship with God.” *Id.* at 2071 (underlining omitted). The letter urged both Lewis and his counsel to read a book that Paul W. enclosed titled “Born Again,” which he explained is “not about religion but relationship.” *Id.*; *see id.* at 2073.

The trial court denied the motion. Pet. App. 397a; *see* C.A. E.R. 2128-2132. Quoting *Hedgecock*, 51 Cal. 3d at 418-419, the trial court explained that

California Evidence Code § 1150(a) generally prohibits admission of jurors' testimony describing their own mental processes and testimony concerning statements made during deliberations to challenge a jury's verdict. C.A. E.R. 2130. The court concluded that "all of the evidence [Lewis] wanted to offer" was subject to that prohibition. *Id.* It further held that Lewis had not established that any exception applied, such as where "a statement by a juror during deliberations [is] itself an act of misconduct," or where a defendant "come[s] forward with evidence demonstrating a strong possibility that prejudicial misconduct has occurred," necessitating a hearing. *Id.* at 2130-2132 (quoting *Hedgecock*, 51 Cal. 3d at 419). The trial court subsequently denied Lewis's oral motion for reconsideration. Pet. App. 391a.

3. On direct appeal, the California Supreme Court unanimously affirmed Lewis's conviction and sentence. Pet. App. 370a-396a.

This time, Lewis framed his jury-misconduct claim in federal constitutional terms. The court rejected Lewis's arguments that the trial court had violated his "Sixth and Fourteenth Amendment rights to due process and trial by jury," and his "Eighth and Fourteenth Amendment rights to a reliable, individualized capital sentencing determination" by refusing to set aside the penalty verdict or hold an evidentiary hearing. Pet. App. 393a; *see id.* at 391a-393a. It held that the trial court correctly determined that Lewis's evidence was inadmissible. *Id.* at 392a. The court reasoned that "[t]he exchange between Sally B. and Paul W. clearly involved their decisionmaking processes."

Id. “Sally B.’s statement evinced her struggle and difficulty when deciding whether to sentence defendant to death,” and “Paul W.’s statement described how he came to reconcile his decision to vote for the death penalty.” *Id.*

The court acknowledged that California law allows evidence of a deliberative statement where “the statement itself amounts to juror misconduct.” Pet. App. 392a. It reasoned, however, that Paul W.’s statement did not “constitute[] misconduct,” because he “did not improperly refer to an extraneous source” to persuade Sally B., *id.*, but “merely shared with Sally B. his personal religious view.” *Id.* at 393a. Moreover, the court reasoned, the record did not “suggest[] the jurors disregarded the law or the court’s instructions, and instead imposed a higher or different law.” *Id.* Rather, “[t]he fact that some jurors expressed their religious beliefs or held hands and prayed during deliberations may have reflected their need to reconcile the difficult decision—possibly sentencing a person to death—with their religious beliefs and personal views.” *Id.* Lewis contended that Paul W.’s reference to “everlasting life” contradicted the court’s instruction that “‘life without the possibility of parole’ means that the defendant will remain in prison the rest of his natural life,” and “death penalty” means “the defendant will be executed by the State of California.” *Id.* at 392a n.9, 393a. The court rejected that argument, reasoning that Paul W. “did not dispute” the court’s instructions, but “was referring to *spiritual* everlasting life, a commonly understood expression of religious belief and faith.” *Id.* at 393a.

4. Lewis filed a petition for a writ of certiorari, which this Court denied. *Lewis v. California*, 535 U.S. 1019 (2002) (No. 01-7693).

5. Lewis filed two state habeas petitions in the California Supreme Court, which the court summarily denied. Pet. App. 16a. In Lewis's third state habeas petition, he sought relief based on Paul W.'s remarks, arguing that the jury "committed prejudicial misconduct during penalty deliberations, in violation of *Remmer v. United States* [347 U.S. 227 (1954)]." C.A. F.E.R. 306. In addition to claiming violations of the Sixth, Eighth, and Fourteenth Amendments, as he had on direct appeal, Lewis added that the trial court also violated his rights under the First and Fifth Amendments. *Id.* The California Supreme Court summarily denied the claim both "on the merits" and "to the extent" it was procedurally defaulted. C.A. E.R. 361 (citing *In re Dixon*, 41 Cal. 2d 756, 759 (1953)).

6. On the same day that Lewis filed his second state habeas petition, he filed a habeas petition in federal district court, raising several claims. Pet. App. 41a, 45a. After the California Supreme Court denied Lewis's second and third state habeas petitions, he filed an amended federal petition. *Id.* at 45a. The district court denied the petition. *Id.* at 40a-369a.

As to Lewis's juror misconduct claim, the court determined that the state court reasonably concluded that Paul W's statements "reflect[ed] his personal religious views and deliberative process rather than extrinsic information forbidden to jurors." Pet. App. 73a-74a; *see id.* at 66a-79a. It reasoned that

Lewis had not shown that “by virtue of Paul W.’s statements, the jury impermissibly relied upon an extra-judicial material or a religious code of conduct contrary to their instruction ‘to decide all questions of fact in this case from the evidence received in this trial and not from any other source.’” *Id.* at 73a. The district court denied a certificate of appealability as to the claim. *Id.* at 368a.

7. The court of appeals denied a certificate of appealability on the juror misconduct claim. Pet. App. 36a-39a. With respect to that claim, the court concluded that Lewis had not shown that “reasonable jurists could find the district court’s assessment of the California Supreme Court’s decision ‘debatable or wrong.’” *Id.* at 37a (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). With respect to Lewis’s other claims, the court affirmed the denial of habeas relief. *Id.* at 39a.

Lewis filed a petition for rehearing en banc. The petition was denied, with no judge requesting a vote. Pet. App. 1a.

ARGUMENT

The court of appeals correctly denied Lewis’s request for a certificate of appealability on his juror misconduct claim. Lewis’s argument that the jurors committed misconduct by discussing their religious views at the penalty phase does not establish any debatable issue concerning the denial of a constitutional right, and the state court decision did not rest on an unreasonable determination of the facts. The denial does not create any conflict of authority and Lewis offers no other persuasive reason for further review.

1. a. A certificate of appealability may issue only if a petitioner has made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). That standard requires a petitioner to demonstrate “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right.” *Slack*, 529 U.S. at 478. When a claim was adjudicated by a state court on the merits, the determination must be made by viewing the petitioner’s claims through the deferential scheme established by Section 2254(d). *See Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003).

That standard is demanding. The California Supreme Court summarily denied Lewis’s juror misconduct claim on the merits. *See* C.A. E.R. 361. As a result, a federal habeas court may only grant relief upon a showing that the state court’s adjudication of that claim (1) was “contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States”; or (2) was “based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d).

Under Section 2254(d)(1), “clearly established law” requires Supreme Court precedent that “squarely addresses the issue” before the state court. *Wright v. Van Patten*, 552 U.S. 120, 125-126 (2008) (per curiam). “Clearly established Federal law” refers to “the holdings” of “this Court’s decisions” at the time of the relevant state court adjudication. *Lockyer v. Andrade*, 538 U.S. 63, 71-72 (2003). A decision is “contrary to” clearly established federal law “if

the state court applie[d] a rule that contradicts” governing law, or “if the state court confronts a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from [this Court’s] precedent.” *Williams v. Taylor*, 529 U.S. 362, 405-406 (2000). The state court decision must be “so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.” *Harrington v. Richter*, 562 U.S. 86, 103 (2011). And where, as here, the court denies relief in a summary order, the reviewing court must consider “what arguments or theories . . . could have supported[] the state court’s decision,” and evaluate “whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with” this Court’s precedents. *Id.* at 102.

b. The court of appeals correctly applied these principles. Lewis seeks review of his claim that the affidavit from Jeffrey E. required the trial court to investigate whether the jury’s deliberations were tainted by improper extraneous evidence. *See* Pet. 15. But in refusing to delve into the jury’s internal deliberations, the courts below followed a well-established principle: as this Court has stated, “long-recognized and very substantial concerns support the protection of jury deliberations from intrusive inquiry.” *Tanner v. United States*, 483 U.S. 107, 127 (1987). It is “near-universal” law that the admission of juror testimony to impeach a jury verdict is forbidden, except in

situations where an “external influence” is “alleged to have affected the jury.” *Id.* at 117; *see, e.g.*, Fed. R. Evid. 606(b); Cal. Evid. Code § 1150(a).

Lewis contends that the clearly established federal law relevant to his claim was articulated in *Mattox v. United States*, 146 U.S. 140 (1892), *Remmer v. United States*, 350 U.S. 377 (1956), and related cases. *See, e.g.*, Pet. 14, 38. He argues that that line of precedent establishes his “entitle[ment] to a presumption that the jury was prejudiced against him by the introduction of extra-record evidence” and “to a hearing at which the burden will be on the State to show that the misconduct was harmless.” *Id.* at 26 (citing *Remmer*, 347 U.S. at 229). But none of those cases supports his claim—and certainly not in a way that could allow relief under Section 2254.

In *Mattox*, this Court considered the effect that two non-juror statements about a case had on a jury’s deliberations. A bailiff told jurors that the defendant, on trial for murder, had committed additional murders that they had not heard about in court. *See* 146 U.S. at 142. And a newspaper article was “introduced into the jury room” during the jury’s deliberations. *Id.* at 143. The article assessed the prosecution’s case as “very strong” and suggested that “the jury would not last an hour before they would return a verdict.” *Id.* at 151. This Court reversed the defendant’s conviction, explaining that “[p]rivate communications, possibly prejudicial, between jurors and third persons . . . are absolutely forbidden, and invalidate the verdict, at least unless their harmlessness is made to appear.” *Id.* at 150.

Similarly, in *Remmer*, an outsider approached a juror, offering information that the defendant might pay a bribe in exchange for a favorable outcome. 350 U.S. at 380-382. After the juror reported the interaction to the judge, FBI agents interviewed the juror about the conversation while the trial was still ongoing. *Id.* at 380-381. This Court reversed the resulting conviction, reasoning that the juror had been subject to “extraneous influences to which no juror should be subjected.” *Id.* at 382. And this Court’s decision in *Parker v. Gladden*, 385 U.S. 363 (1966), *see* Pet. 17, similarly concerned an external source’s comment to jurors about the case. *See Parker*, 385 U.S. at 364 (bailiff’s statement to jurors that defendant was a “wicked fellow” and was “guilty” violated defendant’s right to confrontation and cross examination).

As the court of appeals recognized, Lewis was not entitled to a certificate of appealability under Section 2253(c)(2) because he could not establish a substantial showing of a possibility of relief under Section 2254(d) based on these precedents. *See* Pet. App. 37a-38a. Lewis did not allege that jurors were exposed to any *outside* source’s comments on anything at all—let alone on his guilt or poor character, or whether he deserved the death penalty. As the district court reasoned, Paul W’s comments about ““what had helped him make his decision,”” *id.* at 67a, “reasonably could be seen to reflect his personal religious views and deliberative process rather than extrinsic information forbidden to jurors.” *Id.* at 74a. Indeed, Lewis’s petition concedes that “Paul W.’s religious beliefs” and “the fact . . . [that] Paul W. and possibly other jurors

consulted their own religious beliefs” in deciding an appropriate sentence “may well be ‘internal’ factors.” Pet. 19. As a result, the “clearly established” federal law pertaining to external factors under *Mattox*, *Remmer*, and *Parker* could provide no reasonable possibility of relief.

Further, while Lewis argues that religious beliefs should themselves count as extraneous (Pet. 17-18), he does not cite any authority establishing that jurors may not consult their religious beliefs during deliberations. See *White v. Woodall*, 572 U.S. 415, 426 (2014) (Section 2254(d)(1) “does not require state courts to *extend* . . . precedent or license federal courts to treat the failure to do so as error”).² As the state court explained, “[t]hat jurors may consider their religious beliefs during penalty deliberations is . . . to be expected,” particularly “facing the awesome decision of whether to impose the sentence of death on a fellow citizen.” Pet. App. 392a. Indeed, during closing argument, Lewis’s counsel encouraged jurors to consult their religious beliefs, reminding them of the biblical admonition that “thou shall not kill” and telling them that “they would have to reconcile a death penalty verdict with their own God.” *Id.* at 73a.

c. Lewis’s counterarguments are not persuasive. He contends that *Remmer* “clearly” established that the trial court was required to “treat the

² Lewis also relies on *Smith v. Phillips*, 455 U.S. 209 (1982). Pet. 17, 25-26. But that case is even farther from this one. It involved allegations of bias based on a juror’s failure to disclose a job application to the prosecutor’s office. *Phillips* at 212-214. Lewis makes no allegation of bias here.

extraneous influence”—meaning, Paul W.’s reference to religious beliefs—“as presumptively prejudicial” and grant him an evidentiary hearing. Pet. 25. But as explained above, the state courts reasonably concluded that Paul W.’s comments were “deliberative” rather than “improper extrinsic evidence.” Pet. App. 74a. And even if Paul W.’s comments could somehow count as extraneous, this Court’s precedents do not clearly establish a presumed prejudice rule for *any* extraneous influence. *See, e.g., United States v. Olano*, 507 U.S. 725, 739 (1993) (“There *may* be cases where an intrusion should be deemed prejudicial” (emphasis added)); *Phillips*, 455 U.S. at 215-216 (“[T]he remedy for allegations of juror partiality is a hearing in which the defendant has the opportunity to prove actual bias.”) (citing *Remmer*, 347 U.S. at 229-230). *Remmer* only found a presumption appropriate on the record before it, on facts that markedly differ from those here.

Lewis also contends that the court of appeals “refused” to address his arguments that Paul W.’s statements “showed religious discrimination in the jury room” under clearly established federal law. Pet. 13; *see id.* at 19 (“Paul W. improperly inserted . . . argument into the deliberations that, solely by reason of Mr. Lewis’s religion, the decision whether to preserve Mr. Lewis’s life should be . . . less significant” (underlining omitted)). But Lewis did not properly present such a claim, either to the state courts or in federal habeas proceedings. On direct appeal, Lewis argued that the jurors’ exchange violated his “rights to due process and trial by jury,” and to a “reliable, individualized

sentencing determination.” Pet. App. 393a. And while he cited the First Amendment (without reference to freedom of religion) in his third state habeas petition, *see* C.A. F.E.R. 306-311, the California Supreme Court denied any such claim as procedurally defaulted due to his failure to raise it on direct appeal. C.A. E.R. 361 (citing *In re Dixon*, 41 Cal. 2d 756, 759 (1953)). Lewis did not contest that ruling in his federal habeas proceedings—he did not assert any religious discrimination claim in his federal habeas petition at all. C.A. E.R. 1317-1319.

The court of appeals acknowledged that Lewis’s federal appellate briefing, if “[c]onstrued broadly,” might raise such a claim. Pet. App. 38a. But even if so, the court reasoned, Lewis “cit[ed] no authority” in support of it. *Id.* And while Lewis now argues in a footnote that the court of appeals did not discuss certain cases he had cited in his brief, Pet. 13 n.1; *see* C.A. Pet. Br. at 108-113, none of those cases could clearly establish, for purposes of Section 2254, that the jurors’ conduct here required invalidating his conviction. Lewis relies on civil cases that did not address jury deliberations at all. *See, e.g., Masterpiece Cakeshop, Ltd. v. Colorado Civ. Rts. Comm’n*, 584 U.S. 617 (2018); *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687 (1994); *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993).

Finally, Lewis cites several cases addressing exceptions to the no-impeachment rule in cases of racial discrimination. *See* Pet. 13 n.1 (citing *Pena-Rodriguez v. Colorado*, 580 U.S. 206 (2017)); *id.* at 22 (citing *Tharpe v.*

Sellers, 583 U.S. 33, 34-35 (2018) (per curiam)). But those cases long post-date the state court’s decision on his juror misconduct arguments. Under Section 2254(d), state-court decisions must be “measured against this Court’s precedents as of the time the state court renders its decision” and “cannot be held unreasonable only in light of later decided cases.” *Brown v. Davenport*, 596 U.S. 118, 136 (2022) (internal quotation marks omitted). Those cases also do not address remotely comparable facts. *See, e.g., Tharpe*, 583 U.S. at 34 (affidavit noting juror’s racist comments, including his questioning whether “black people even have souls,” provided “a strong factual basis” for petitioner’s discrimination claim).

2. Petitioner argues, in the alternative, that he was entitled to relief under Section 2254(d)(2), because the state court adjudication was “based on an unreasonable determination of the facts in light of the evidence” presented at the State court proceeding. *See* Pet. 27-30 (uppercase omitted). That is also incorrect.

a. The standard for habeas relief under Section 2254(d)(2) is no less deferential than that under Section 2254(d)(1). Under Section 2254(d)(2), the state court’s factual findings are “presumed correct.” *Rice v. Collins*, 546 U.S. 333, 338-339 (2006). Those findings may not be determined unreasonable merely because a federal court “would have reached a different conclusion in the first instance.” *Wood v. Allen*, 558 U.S. 290, 301 (2010).

As an initial matter, it is far from clear what findings of fact Lewis could contest. In deciding Lewis's post-sentencing motion, the trial court did not rest its decision on any conclusion that Jeffrey E.'s affidavit about jury deliberations or defense counsel's representation about the letters was false. Instead, that court simply concluded that the allegations were not the kind that could be legally admitted. On direct appeal, the California Supreme Court likewise assumed the truth of the representations included in Lewis's submitted evidence, but concluded they did not suggest juror misconduct. *Id.* at 391a-393a. And on state habeas, the California Supreme Court denied relief in a summary order. Those state court decisions stand for the proposition that even if the communications at issue happened as Lewis alleged that they did, they did not amount to a violation of Lewis's constitutional rights. And as the federal courts correctly determined, that conclusion was not unreasonable under this Court's clearly established precedents. *See* Pet. App. 37a-38a, 77a-79a.

b. Lewis's arguments pursuant to Section 2254(d)(2) are, in any event, unconvincing. He compares his case to *Brumfield v. Cain*, 576 U.S. 305 (2015), which concerned a capital defendant's request for an *Atkins* hearing on whether he had an intellectual disability that should preclude execution. Pet. 28-30; *see Atkins v. Virginia*, 536 U.S. 304 (2002). But in *Brumfield*, this Court determined that the state court drew unsupported inferences from expert testimony, ignored competing evidence, and made "no determination" at all on

a key argument supporting the denial of a hearing. *Id.* at 314-315, 320, 323. By contrast, here, Lewis does not identify any contested factual issues that were resolved against him in the state courts, let alone in a debatable manner.

The real issue is that Lewis’s submissions to the trial court—which the state courts considered in full—do not support the narrative he now presents in his petition. For instance, Lewis asserts that Paul W. delivered his comments “following [his] expression of frustration that the jury was taking too long to agree upon a verdict” (Pet. 18, *id.* at 34); that he “was openly growing impatient with the others” (*id.* at 1); and that he made his comments “with the stated purpose of encouraging” (*id.* at 14), “urg[ing]” (*id.* at 26), and “‘helping’ . . . jurors vote for death” (*id.* at 34). But Jeffrey E.’s affidavit nowhere states that Paul W. had expressed any frustration or impatience with the jury’s progress or that he encouraged other jurors to vote for a death sentence. *See* Pet. App. 66a-67a. It also does not describe any “deadlock” between the jurors (Pet. 14, 20, 38) or describe the chronology of the subsequent jury voting following Paul W.’s statements. As the district court noted, the record “reasonably could suggest that juror Sally B[.] had made up her mind how she would vote even before Paul W. offered his personal religious observation.” *Id.* at 77a. And while Lewis might disagree with state court’s conclusion that his evidence did not suggest juror misconduct, that disagreement does not provide a plausible basis for relief under Section 2254(d)(2).

3. Finally, to the extent Lewis implies that the decision below conflicts with decisions of other lower courts, that is incorrect. *See* Pet. 23-24. As an initial matter, many of the decisions Lewis cites either predate AEDPA's 1996 enactment or were decided on direct appeal, and thus did not apply Section 2254(d)'s standards.³

In any event, the proposition that Lewis takes from those cases is not at issue here. Lewis notes that whether evidence is extraneous depends on the “nature of the allegation” and not “rigid distinction[s]” based “only on whether the event took place inside or outside the jury room,” Pet. 23 (quoting *Tanner*, 483 U.S. at 117-118). But the lower courts did not reject Lewis's claim because the challenged comments were made inside the jury room, but because of their non-extraneous nature: they concerned jurors' personal beliefs. And the cases Lewis cites concerned types of factual information that, unlike the information in this case, fell clearly within the scope of *Mattox* and *Remmer*. *See, e.g., United States ex rel. Owen*, 435 F.2d at 815, 821 (affirming grant of habeas relief where some jurors told other jurors that that they “knew all about” the defendant and his prior unfavorable conduct); *United States v. Humphrey*, 208 F.3d 1190, 1200 (10th Cir. 2000) (remanding for hearing where a juror told

³ *See United States v. Davis*, 177 F.3d 552 (6th Cir. 1999); *Hard v. Burlington N. R.R.*, 812 F.2d 482 (9th Cir. 1986); *United States v. Perkins*, 748 F.2d 1519 (11th Cir. 1984); *United States v. Howard*, 506 F.2d 865 (5th Cir. 1975); *Mottram v. Murch*, 458 F.2d 626 (1st Cir. 1972); *United States ex rel. Owen v. McMann*, 435 F.2d 813 (2d Cir. 1970).

others about the defendant's poor reputation in the community); *United States v. Herndon*, 156 F.3d 629, 630 (6th Cir. 1998) (hearing required where juror "recalled during jury deliberations that he may have had prior business dealings with [the defendant]"); *United States v. Swinton*, 75 F.3d 374, 380-382 (8th Cir. 1996) (hearing required where juror stated during deliberations that the defendant "had a criminal record," where "no evidence introduced at the trial contained any mention of [a] prior conviction"); *Lawson v. Borg*, 60 F.3d 608, 610 n.2, 613 (9th Cir. 1995) (affirming grant of habeas relief where juror stated "that he had talked to several people" about the defendant and "they all said [he] was very violent"). None of those cases provides any reason to believe that another circuit would reach a different result on these facts.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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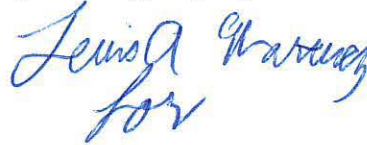
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