No. 23-937

In the Supreme Court of the United States

JOSHUA JAMES DUGGAR,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
NICOLE M. ARGENTIERI
Principal Deputy Assistant Attorney General
JOSHUA K. HANDELL
Attorney
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the district court's prospective guidance regarding the admissibility of certain testimony that a third party was responsible for the charged crime violated petitioner's constitutional right to present a complete defense.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes and rules:

Miscellaneous: Page

In the Supreme Court of the United States

No. 23-937

JOSHUA JAMES DUGGAR,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-14a) is reported at 76 F.4th 788. The opinion of the district court denying petitioner's posttrial motion for a judgment of acquittal (Pet. App. 27a-62a) is not published in the Federal Reporter but is available at 2022 WL 1647334.

JURISDICTION

The judgment of the court of appeals was entered on August 7, 2023. A petition for rehearing was denied on September 28, 2023 (Pet. App. 75a). On December 15, 2023, Justice Kavanaugh extended the time within which to file a petition for a writ of certiorari to and including February 25, 2024, and the petition was filed on

February 21, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Western District of Arkansas, petitioner was convicted of receiving child pornography, in violation of 18 U.S.C. 2252A(a)(2) and (b)(1). Pet. App. 15a. He was sentenced to 151 months in prison, to be followed by 20 years of supervised release. *Id.* at 17a. The court of appeals affirmed. *Id.* at 1a-14a.

1. In May 2019, law enforcement determined that an Internet Protocol (IP) address in Northwest Arkansas had shared a video containing child pornography. Pet. App. 30a. The video "depicted an adult male vaginally penetrating two prepubescent girls." *Ibid.* The next day, a user at the same IP address shared a file "contain[ing] 65 still images of a prepubescent girl posing nude and displaying her genitals for the camera" and "being locked in a dog kennel." *Ibid.* Law enforcement subsequently determined that the "IP address was registered to [petitioner] at his business, Wholesale Motorcars, in Springdale, Arkansas." *Id.* at 30a-31a.

On November 8, 2019, law enforcement executed a search warrant at Wholesale Motorcars. Pet. App. 2a; Presentence Investigation Report (PSR) ¶¶ 38-39. Two agents approached petitioner, who was the owner of the business, and informed him that they were there to execute a search warrant. *Ibid.* After petitioner agreed to speak to the agents, he asked them—without prompting—"Has somebody been downloading child pornography?" Pet. App. 2a; see PSR ¶ 39. In the course of the search, law enforcement seized an iPhone, an HP desktop computer, and an Apple MacBook. D. Ct. Doc. 77, at 110 (Nov. 9, 2021); Gov't C.A. Br. 3.

A government expert reviewed a forensic copy of petitioner's HP desktop and found that the computer had been outfitted with a password-protected, partitioned section running a Linux operating system. Pet. App. 31a; Gov't C.A. Br. 4. A program called "Covenant Eyes," which "monitor[s] the[ ] online usage" of individuals "who have pornography addictions," had been installed on the Windows side of the desktop but not the Linux side. D. Ct. Doc. 77, at 128; see Pet. App. 35a. Based on his examination of the seized devices, the government's expert created a timeline of petitioner's activity across five dates in May 2019:

- May 11, 2019: At 5:47 p.m., the Linux installation program was downloaded on the HP computer. At 5:58 p.m., petitioner's iPhone was used to take a photo at the car lot. Gov't Trial Ex. 85, at 1.
- May 13, 2019: At 1:52 p.m., the Linux partition was installed using the password "Intel 1988." Gov't C.A. Br. 4 (citation omitted). Petitioner had used variants of that password "ubiquitously" across "a number of different accounts" since at least 2014. *Ibid.* (citation omitted). At 3:06 p.m., petitioner's iPhone was used to take a photo at the car lot. Gov't Trial Ex. 85, at 1.
- May 14, 2019: At 4:14 p.m. and 4:20 p.m., petitioner's iPhone was used to take photos at the car lot. Gov't Trial Ex. 85, at 1. Between 5:05 and 5:38 p.m., child pornography was downloaded on the Linux section of petitioner's computer. At 5:49 p.m., petitioner's iPhone was used to send a text message stating, "At my carlot." *Ibid.* (citation omitted).

- May 15, 2019: At 11:15 a.m., petitioner's iPhone was used to send a text message stating, "Im at my car lot now." Gov't Trial Ex. 85, at 1 (citation omitted). Twenty minutes later, child pornography was downloaded on the Linux section of petitioner's computer. At 5:08 p.m., petitioner's iPhone was used to send a message stating, "I'm here at the car lot." *Ibid.* (citation omitted). Additional child pornography was downloaded between 5:22 and 5:41 p.m. At 5:58 p.m., petitioner's iPhone was used to send a message stating, "still have customers here." *Id.* at 2 (citation omitted).
- May 16, 2019: At 11:21 a.m., child pornography was downloaded on the Linux section of petitioner's computer. Gov't Trial Ex. 85, at 2. Fourteen minutes later, petitioner's iPhone was used to take a photo in his office at the car lot. *Ibid.*

2. In April 2021, a grand jury in the Western District of Arkansas indicted petitioner on one count of receiving child pornography, in violation of 18 U.S.C. 2252A(a)(2) and (b)(1), and one count of possessing child pornography, in violation of 18 U.S.C. 2252A(a)(5)(B) and (b)(2). Indictment 1-2.

a. Petitioner did not contest that child pornography had been recovered from his computer. Rather, in his pretrial filings, petitioner pointed to three other people who might have been responsible. See, *e.g.*, D. Ct. Doc. 40, at 3-4 (Aug. 20, 2021); D. Ct. Doc. 67, at 1-2 (Nov. 3, 2021). In response, the government moved to exclude "unsubstantiated third-party guilt evidence," unless petitioner could set "forth an actual, non-speculative nexus between the alleged perpetrator and the charged offenses." D. Ct. Doc. 67, at 1, 5.

The district court denied the government's motion. Pet. App. 70a. The court reasoned that "[i]t is the Government's burden to prove that [petitioner] committed the crimes set forth in the indictment beyond a reasonable doubt, and [petitioner] is entitled to create reasonable doubt in the jury's minds by pointing the finger at others who may have possibly committed the crimes." *Ibid.* At the same time, the court cautioned that its ruling "does not mean the Court will permit the defense to present speculative testimony or make purely speculative arguments to the jury." *Id.* at 70a n.1.

b. At trial, the government called its forensic expert to testify about his examination of the devices seized from petitioner's car lot. See D. Ct. Doc. 126, at 23 (Jan. 16, 2022). Pertinent to petitioner's theory of third-party guilt, the government's expert testified that he "did [not] find any evidence that this computer had been remotely accessed," *id.* at 295, and explained that the Linux partition of the computer (which contained all of the child pornography) had been installed on May 13 by someone physically present, see D. Ct. Doc. 125, at 230 (Jan. 16, 2022); D. Ct. Doc. 126, at 27.

The defense case centered on the possibility that petitioner's computer had been accessed remotely. Petitioner's forensic expert testified that, while "[t]he evidence doesn't exist" to establish that the computer had been remotely accessed during the relevant period, D. Ct. Doc. 128, at 72 (Jan. 16, 2022), she could not "rule out remote access," D. Ct. Doc. 127, at 217 (Jan. 16, 2022). Petitioner's expert agreed, however, that the Linux partition was installed by someone physically present at the lot on May 13. D. Ct. Doc. 128, at 22-25.

During trial, petitioner posited an alternative perpetrator in addition to the three he had suggested earlier:

Caleb Williams, a former Wholesale Motorcars employee who had been convicted of aggravated sexual abuse of a 16-year-old when he was 23 years old. See D. Ct. Doc. 124, at 51-52 (Jan. 16, 2022); see also Illinois, *Sex Offender Registry* (May 20, 2024), https://isp.illinois.gov/Sor/Details/X20A0793. Based on the uncontroverted testimony about the need for in-person installation of the Linux partition, the government sought to clarify that Williams's testimony would be irrelevant unless petitioner could "establish" that he was present on the lot at least on "May 13th." Pet. App. 144a. The district court explained that it would "not allow speculative testimony" but that it did not yet know "what [Williams's] knowledge was." *Id.* at 145a.

The defense then proffered the testimony it expected to elicit from Williams, including that Williams previously worked at the car lot and that he sent a text message to petitioner on May 7 saying that he "[s]hould be able to help you a couple days this week * * * watch the lot." Pet. App. 146a; see *id.* at 145a-146a. The government responded that it had evidence showing that Williams was not at the lot on the date the Linux partition was installed or the dates when child pornography was downloaded, but rather was visiting his mother in Illinois. *Id.* at 149a.

In light of the parties' respective proffers, the district court stated that it would "not allow Caleb Williams to be associated with so-called alternative perpetrator evidence." Pet. App. 151a. But it then clarified that petitioner could call Williams to "establish background of who he is and what his connection is"; "discuss the dates of his employment"; "ask him whether or not he has knowledge or recollection of being present on the car lot on or about May 13 through May 16"; and

"inquire if he ever remoted in to the office machine, and if so, the time periods in which he would have remoted in." *Id.* at 152a-153a.

The district court then further explained that if the questioning "establishe[d] that [Williams] was present or that he had remoted in, then we can take this one step further and [defense counsel] can ask these other questions." Pet. App. 153a. The court noted, however, that "assuming" Williams testified that he "wasn't present on the lot" and had "never remoted in, * * * the primary purpose or objective of calling the witness will have failed," and the court would not allow the defense to introduce Williams's prior conviction for a sex crime. *Ibid.* The court explained that, in those circumstances, introducing the conviction would run the risk "of confusing the issues." *Ibid.*

Petitioner rested without calling Williams. Pet. App. 154a. The jury found petitioner guilty on both counts. *Id.* at 81a-82a. The district court determined that the possession charge was a lesser-included offense of the receipt charge. It therefore dismissed it without prejudice and entered judgment on the receipt offense. *Id.* at 15a-16a, 25a-26a.

c. In a posttrial motion for a judgment of acquittal or a new trial, petitioner contended that the court had unduly limited Williams's testimony and "effectively precluded [him] from presenting a necessary defense witness" in violation of the Constitution. D. Ct. Doc. 131, at 11 (Jan. 19, 2022).

The district court denied the motion. Pet. App. 27a-62a. The court noted that it had "expressly permitted [petitioner]'s counsel to call Mr. Williams to the stand"; "suggested asking him preliminary questions to establish a 'background of who he is and what his connection

is' to [the] case"; and "reserved ruling on whether defense counsel would be permitted to take his questions a step farther and suggest Mr. Williams may have committed these crimes," since that presentation would require "an appropriate foundation." *Id.* at 49a (citation and emphases omitted).

The court observed that defense counsel had "made the strategic decision *not* to call Mr. Williams to the stand because: (1) they knew they could not lay a non-speculative foundation for his testimony, and (2) any such attempt to do so would invite the Government's proffered rebuttal testimony." Pet. App. 51a. "Since the defense chose not to call Mr. Williams to the stand at all," the court "surmise[d that] the only reason for calling him was to reveal his sex offense conviction to the jury." *Id.* at 51a-52a. And the court observed that "[w]ithout proof of a non-speculative nexus between Mr. Williams and the offense conduct in this case, the jury's knowledge of his sex offense conviction was of little probative value and would have misl[e]d the jury and likely created the danger of unfair prejudice—all [of] which are legitimate grounds to exclude this evidence under Rule 403." *Id.* at 52a.

3. The court of appeals affirmed. Pet. App. 1a-14a. As relevant here, the court rejected petitioner's argument that "the district court's decision to stop [petitioner] from asking about [Williams's] prior sex-offense conviction deprived him of his right to present a complete defense." *Id.* at 3a.

The court of appeals "recognized that [petitioner] should have an opportunity 'to create reasonable doubt' by 'call[ing]' the former employee to testify and asking whether he was 'present on the car lot' when the downloads occurred." Pet. App. 4a (second set of brackets in

original). But the court observed that "[t]he right to present a complete defense * * * does not trump a district court's discretion to keep out confusing or misleading evidence, even if it would be helpful to the defense." *Id.* at 5a; see *ibid.* (discussing *Holmes* v. *South Carolina*, 547 U.S. 319 (2006)).

The court of appeals explained that in this case, the limitation on the introduction of Williams's conviction was designed "to prevent confusion"—namely, that "the jury might think" Williams committed the crime at issue "*because* he was a sex offender, even though the conviction was only potentially admissible as impeachment evidence." Pet. App. 4a. And the court observed that because "the district court had 'unquestionably constitutional' discretion to exclude the conviction under Federal Rule of Evidence 403, * * * [i]t necessarily follows that the court's application of this 'well-established rule[ ]' could not have violated" petitioner's rights. *Id.* at 5a (citations omitted; second set of brackets in original).

The court of appeals noted that the district court had "mentioned 'the strength of the prosecution's case' as a factor weighing against the admission of alternative-perpetrator evidence." Pet. App. 5a. The court of appeals made clear that "this statement was wrong," but found that "any error was harmless," since "[t]he district court later clarified that it had actually 'relied on' the weaknesses in [petitioner's] evidence and the risk of confusion." *Id.* at 6a.

ARGUMENT

Petitioner renews his contention (Pet. 25-30) that the district court's evidentiary rulings violated his constitutional right to present a complete defense. He further asserts (Pet. 17-22) that the decision below conflicts

with the decisions of the Ninth Circuit. The decision below is correct and does not conflict with any decision of this Court or another court of appeals. In any event, this case would be a poor vehicle for answering the question presented. No further review is warranted.

1. The district court permissibly exercised its discretion in requiring petitioner to lay a foundation connecting Williams to the charged offense before arguing to the jury that he was the perpetrator, and in indicating that petitioner would not be allowed to introduce evidence of Williams's prior conviction in certain circumstances. In doing so, it did not violate petitioner's constitutional right to present a defense.

a. In *Holmes* v. *South Carolina*, 547 U.S. 319 (2006), the Court struck down a state rule that excluded evidence of third-party guilt "[i]f the prosecution's case is strong enough," even when the evidence of third-party guilt, "if viewed independently, would have great probative value and even if it would not pose an undue risk of harassment, prejudice, or confusion of the issues." *Id.* at 329. The Court explained that, although rulemakers "have broad latitude under the Constitution to establish rules excluding evidence from criminal trials," defendants are entitled to "a meaningful opportunity to present a complete defense." *Id.* at 324 (citations omitted). That "right is abridged by evidence rules that infringe upon a weighty interest of the accused and are arbitrary or disproportionate to the purposes they are designed to serve." *Ibid.* (brackets, citation, and internal quotation marks omitted).

The Court emphasized, however, that "well-established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion

of the issues, or potential to mislead the jury." *Holmes*, 547 U.S. at 326 (citing, *e.g.*, Fed. R. Evid. 403). And it observed that "[a] specific application of this principle is found in rules regulating the admission of evidence proffered by criminal defendants to show that someone else committed the crime with which they are charged." *Id.* at 327.

As an example of such "widely accepted" rules, the Court cited a treatise explaining that third-party guilt evidence "'may be excluded where it does not sufficiently connect the other person to the crime, as, for example, where the evidence is speculative or remote.'" *Holmes*, 547 U.S. at 327 (citation omitted). But the Court found that, unlike various other third-party guilt rules, the rule at issue in *Holmes* was "arbitrary" because it did not account for "the probative value or the potential adverse effects of admitting the defense evidence of third-party guilt." *Id.* at 329, 331.

b. Contrary to petitioner's suggestion (Pet. 28) that the courts below "plainly violate[d] this Court's precedent in *Holmes*," they in fact faithfully adhered to it. The court of appeals recognized that, while petitioner was entitled to "'a meaningful opportunity to present a complete defense,'" that right did "not trump [the] district court's discretion to keep out confusing or misleading evidence, even if it would be helpful to the defense," Pet. App. 3a, 5a (citation omitted), and it determined that the district court had not gone too far in this case.

Consistent with those principles, the district court was within its discretion to suggest that petitioner would not be allowed to impeach Williams with his sex-offense conviction in certain circumstances, Pet. App. 153a, in light of the risk that "the jury might think" Williams committed the charged offense "*because* he was a

sex offender," *id.* at 4a. And although the court signaled that it would not permit "'speculative' testimony" that Williams was responsible for the charged conduct, *ibid.*, it expressly permitted petitioner to call Williams and attempt to lay a foundation for his theory of third-party guilt, *id.* at 152a-153a—an offer that petitioner declined, see p. 16, *infra*.

Petitioner does not address *Holmes*'s approval of rules that exclude evidence of third-party guilt where that evidence "does not sufficiently connect the other person to the crime." *Holmes*, 547 U.S. at 327 (citation omitted). Nor does petitioner engage with *Holmes*'s basic framework, which endorses ordinary rules of evidence like the one in this case unless they "infringe upon a weighty interest of the accused and are arbitrary or disproportionate to the purposes they are designed to serve." *Id.* at 324 (brackets, citation, and internal quotation marks omitted). Instead, petitioner asserts (Pet. 28-29) that the district court mistakenly adopted the state rule that *Holmes* rejected, by focusing on the strength of the prosecution's case. But the courts below made clear that they were not flouting *Holmes*.

The district court initially cited the wrong passage from *Holmes*. See Pet. App. 121a, 151a. The court subsequently clarified that it had "inadvertently read the wrong passage into the record during the sidebar conference." *Id.* at 50a. And it emphasized that, "immediately after reading the *Holmes* passage, [it] read from two other leading cases, * * * both of which correctly recited the legal standard the Court relied on." *Ibid.* (citations omitted); see *id.* at 152a. The court of appeals then recognized that although the district court's initial statements were "wrong, any error was harmless," given that the "district court later clarified that it had

actually 'relied on' the weaknesses in [petitioner's] evidence and the risk of confusion." *Id.* at 6a.

At a minimum, therefore, nothing in the court of appeals' decision endorses an incorrect understanding of *Holmes*. At most, petitioner could show an isolated, case-specific error by the district court—one that was later disavowed by both the district court and the court of appeals. Any such error here would not warrant this Court's review. See Sup. Ct. R. 10; Stephen M. Shapiro et al., *Supreme Court Practice* § 5.12(c)(3), at 5-45 (11th ed. 2019) (observing that "error correction * * * is outside the mainstream of the Court's functions and * * * not among the 'compelling reasons' * * * that govern the grant of certiorari").

Petitioner additionally argues (Pet. 26) that the evidence he "sought to present to the jury in this case was anything but speculative." But as the district court explained, "[t]he defense had no evidence that Mr. Williams was in Arkansas on May 13 or anytime thereafter"—the period of culpable conduct. Pet. App. 51a. Petitioner also fails to address the prejudice and confusion that would likely stem from the introduction of Williams's prior conviction, see *id.* at 4a, which the district court observed to be the principal goal of calling Williams to the stand, see *id.* at 51a-52a.

Regardless, this Court ordinarily does not grant certiorari "to review evidence and discuss specific facts." *United States* v. *Johnston*, 268 U.S. 220, 227 (1925). Indeed, "under what [the Court] ha[s] called the 'two-court rule,' th[at] policy has been applied with particular rigor when," as here, the "district court and court of appeals are in agreement as to what conclusion the record requires." *Kyles* v. *Whitley*, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting); see, *e.g.*, *Graver Tank &*

Mfg. Co. v. *Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949).

2. Petitioner asserts (Pet. 17-22) that the circuits are divided on the question presented. He contends (Pet. 17-19) that while the First, Second, Fourth, Fifth, Eighth, and Tenth Circuits have recognized that purely speculative evidence of third-party guilt may be excluded in some circumstances, the Ninth Circuit categorically admits such evidence so long as it meets the minimal threshold of relevance. Petitioner misunderstands the Ninth Circuit's precedent.

Petitioner principally relies (Pet. 17-18) on *United States* v. *Espinoza*, 880 F.3d 506 (9th Cir. 2018), which reversed a district court's exclusion of third-party guilt evidence. *Id.* at 509. But *Espinoza* involved a claim under the Federal Rules of Evidence, not the Constitution, and the Ninth Circuit expressly distinguished constitutional cases as requiring a different analysis. See *id.* at 512-514; see also *Perry* v. *Rushen*, 713 F.2d 1447, 1451 n.2 (9th Cir. 1983) (rejecting the notion "that Rule 403 is identical to the due process line or that every error in applying such a rule results in a constitutional violation"), cert. denied, 469 U.S. 838 (1984). The court never even cited *Holmes*, which sets forth the framework for assessing constitutional claims like those in this case.

Moreover, although the Ninth Circuit stated in *Espinoza* that "[e]ven if the defense theory is purely speculative, * * * the evidence would be relevant," 880 F.3d at 517 (citation omitted), it recognized that even relevant evidence is inadmissible if "barred by another evidentiary rule," *id.* at 511. The court accordingly assessed whether the "probative value" of the evidence in that case was "outweighed by any risk of prejudice to

the government." *Id.* at 515. That is the same inquiry that the courts below undertook. See Pet. App. 4a (noting that district court's ruling was designed "to prevent confusion").

Petitioner similarly errs in his invocation (Pet. 18-19) of the Ninth Circuit's decision in *United States* v. *Vallejo*, 237 F.3d 1008 (2001). Like *Espinoza*, *Vallejo* was applying the Federal Rules of Evidence, not the Constitution. See *id.* at 1022-1024. The decision did not cite or discuss the framework for assessing whether an evidentiary rule violates a defendant's constitutional right to present a complete defense. Nor did the court hold that all evidence of third-party guilt must be admitted if relevant. Instead, the court found that, in the particular factual circumstances of that case, "the danger of unfair prejudice did not substantially outweigh [the evidence's] probative value." *Id.* at 1024.

The Ninth Circuit's broader body of caselaw confirms that its approach is consistent with the decision below. In *Perry* v. *Rushen*, the Ninth Circuit rejected a constitutional challenge to the exclusion of third-party guilt evidence, explaining that "[w]hile [the defendant's] evidence is not actually irrelevant, it is sufficiently collateral and lacking in probity on the issue of identity that its exclusion did not violate" the Constitution. 713 F.2d at 1455. Similarly, in *United States* v. *Wells*, 879 F.3d 900 (2018), the Ninth Circuit affirmed the exclusion of third-party guilt evidence, explaining that a defendant must "show some logical connection" to the facts of a case. *Id.* at 937.

3. In any event, even if the question presented otherwise merited the Court's consideration, this case would be a poor vehicle for resolving it, for two reasons.

First, the district court expressly permitted petitioner to call Williams as a witness and establish a foundation for his alternative-perpetrator theory. The court made clear that petitioner could "call Mr. Williams"; "establish background of who he is and what his connection is"; "ask him whether or not he has knowledge or recollection of being present on the car lot on or about May 13 through May 16"; and "inquire if he ever remoted in to the office machine." Pet. App. 152a-153a. The court further indicated that, based on Williams's answers, it would then decide whether "we can take this one step further," though the court "wouldn't have enough information to make an analysis * * * until" it heard the answers. *Id.* at 153a.

Petitioner, however, did not call Williams. Pet. App. 154a. It is thus unclear what ruling by the district court petitioner believes violated his right to present a complete defense. He was not barred from eliciting testimony from Williams or even from arguing to the jury that Williams was the culprit. See *id.* at 51a (determining that petitioner "made the strategic decision *not* to call Mr. Williams"). At most, the district court precluded petitioner from impeaching Williams with his prior conviction in the event that he denied being present on the lot or remoting in to the computer. See *id.* at 153a. But as the district court later clarified, because "the defense elected not to call Mr. Williams, [it] never had the opportunity to apply Rule 403," and thus "never definitively ruled on whether Mr. Williams could be impeached with his prior conviction." *Id.* at 52a n.10. And because the prior conviction would have been admissible for impeachment purposes only, *id.* at 4a, petitioner cannot show that its exclusion alone violated his

constitutional right to present a complete defense, and he makes no effort to do so.

Second, any error in the lower courts' adjudication of the question presented was harmless beyond a reasonable doubt in light of the abundant evidence establishing that petitioner, not Williams, committed the charged offense. See Fed. R. Crim. P. 52(a). There is no dispute that child pornography was downloaded to the computer at petitioner's business. See Pet. App. 29a-30a. And as the district court observed, "[t]he coup de grâce" in establishing petitioner's guilt was the government's "timeline summarizing 50 or 60 exhibits of forensic evidence recovered from" petitioner's devices. *Id.* at 36a. That evidence "place[d petitioner] at the car lot on May 13, 2019, during the local installation of the Linux partition and operating system, and during May 14-16, 2019, at the times child pornography was downloaded to the HP desktop." *Ibid.*; see pp. 3-4, *supra*.

In contrast, no evidence—proffered or admitted—placed Williams at the car lot on any of the relevant dates, including the date on which the Linux partition was installed, which both parties' forensic experts agreed must have been accomplished in person. See Pet. App. 51a. To the contrary, "the only proffered evidence was that Mr. Williams was not present in Arkansas on May 13-16." *Ibid.* And even petitioner's expert could point to no affirmative evidence of remote access. See *id.* at 41a n.8.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
NICOLE M. ARGENTIERI
Principal Deputy Assistant Attorney General
JOSHUA K. HANDELL
Attorney

MAY 2024