SUPREME COURT OF THE UNITED STATES

No. 08–559

E. K. MCDANIEL, WARDEN, ET AL., PETITIONERS *v.* TROY BROWN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[January 11, 2010]

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, concurring.

I join the *per curiam* because it correctly holds that the Ninth Circuit erred in departing from *Jackson*'s mandate that a federal habeas court confine its sufficiency-of-the-evidence analysis to "the evidence adduced at trial" and, specifically, to "'all of the evidence admitted by the trial court.'" *Ante*, at 11 (quoting *Lockhart* v. *Nelson*, 488 U. S. 33, 41 (1988)); see *Jackson* v. *Virginia*, 443 U. S. 307 (1979). I write separately because I disagree with the Court's decision to complicate its analysis with an extensive discussion of the Mueller Report. See *ante*, at 7–13. Defense counsel commissioned that report 11 years after respondent's trial. See *ante*, at 1. Accordingly, the report's attacks on the State's DNA testimony were not part of the trial evidence and have no place in the *Jackson* inquiry. See *Jackson*, *supra*, at 318; *Lockhart*, *supra*, at 40–42. That is all we need or should say about the report in deciding this case.

The Court's opinion demonstrates as much. The Court's lengthy discussion of the Mueller Report, see *ante*, at 7–10, is merely a predicate to asserting that "even if" the Court of Appeals could have considered the report in its *Jackson* analysis, the report "provided no warrant for entirely excluding the DNA evidence or Romero's testi-

mony from that court's consideration" because the report "did not contest that the DNA evidence matched Troy" or otherwise show that the State's DNA estimates were "unreliable," *ante,* at 12. Based on these observations, the Court concludes that the Mueller Report did not undermine the State's DNA tests as "powerful inculpatory evidence." *Ibid.* That is true, but even if the report had completely undermined the DNA evidence—which the Ninth Circuit may have mistakenly believed it did, see *Brown* v. *Farwell*, 525 F. 3d 787, 795–796 (2008)—the panel still would have erred in considering the report to resolve respondent's *Jackson* claim. The reason, as the Court reaffirms, is that *Jackson* claims must be decided solely on the evidence adduced at trial. See *ante*, at 11. Accordingly, the Court need not correct any erroneous impressions the Ninth Circuit may have had concerning the report's impact on the State's DNA evidence to resolve respondent's *Jackson* claim.* Because that is the only claim properly before us, I do not join the Court's dicta about how the Mueller Report's findings could affect a constitutional analysis to which we have long held such post-trial evidence does not apply. See *Jackson*, *supra,* at 318.

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*Correcting the Ninth Circuit's apparent misconception of the effects of the Mueller Report is the only plausible reason for the Court's decision to explain that the report would not have undermined the State's DNA results "even if" the Court of Appeals could have considered it in resolving respondent's *Jackson* claim. *Ante*, at 11–12. That discussion cannot properly be read to suggest either that there are circumstances in which post-trial evidence would "warrant" excluding DNA trial evidence from a *Jackson* analysis, *ante,* at 12, or that courts applying *Jackson* may consider post-trial evidence for any other purpose. Both points are squarely foreclosed by the precedents on which the Court relies in reversing the Ninth Circuit's judgment. See *ante*, at 1 (citing *Jackson*, v. *Virginia,* 443 U. S. 307, 324 (1979)); *ante,* at 11 (citing *Lockhart*, v. *Nelson,* 488 U. S. 33, 39 (1988)), respectively.