

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 99–5746

LONNIE WEEKS, JR., PETITIONER v. RONALD J. ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS

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

[January 19, 2000]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

This case presents the question whether the Constitution is violated when a trial judge directs a capital jury’s attention to a specific paragraph of a constitutionally sufficient instruction in response to a question regarding the proper consideration of mitigating circumstances. We hold that it is not and that habeas relief is barred by 28 U. S. C. §2254(d) (1994 ed., Supp. III).

Petitioner Lonnie Weeks, Jr., was riding from Washington, D. C., to Richmond, Virginia, as a passenger in a car driven by his uncle, Lewis Dukes. Petitioner had stolen the vehicle in a home burglary earlier in the month. The two sped past the marked car of Virginia State Trooper Jose Cavazos, who was monitoring traffic. Trooper Cavazos activated his emergency lights and took chase. After passing other vehicles on the highway shoulder, Dukes stopped on an exit ramp. Trooper Cavazos approached the driver’s side of the stolen vehicle on foot. Upon the trooper’s request, Dukes alighted and stood near the rear of the car. Trooper Cavazos, still standing near

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the driver's side, asked petitioner to step out as well. As Weeks stepped out on the passenger's side, he carried a 9-millimeter semiautomatic pistol loaded with hollow-point bullets. Petitioner proceeded to fire six bullets at the trooper, two of which entered his body near the right and left shoulder straps of his protective vest, and four of which entered his forearms and left wrist. Trooper Cavazos died within minutes.

Petitioner was arrested the next morning. During routine questioning about his physical and mental state by classification officers, petitioner confessed, indicating that he was considering suicide because he shot the trooper. Petitioner also voluntarily wrote a letter to a jail officer admitting the killing and expressing remorse.

Petitioner was tried in the Circuit Court for Prince William County, Virginia, in October 1993. After the jury had found him guilty of capital murder, a 2-day penalty phase followed. In this proceeding the prosecution sought to prove two aggravating circumstances: that Weeks "would commit criminal acts of violence that would constitute a continuing serious threat to society" and that his conduct was "outrageously or wantonly vile, horrible or inhuman, in that it involved depravity of mind or aggravated battery." App. 192. During the penalty phase, the defense presented 10 witnesses, including petitioner, in mitigation.

The jury retired at 10:40 a.m. on the second day to begin deliberations. At around noon, the judge informed counsel that the jury had asked the following question:

"Does the sentence of life imprisonment in the State of Virginia have the possibility of parole, and if so, under what conditions must be met to receive parole?" App. to Pet. for Cert. 90.

The judge responded to the jury's question as follows:

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“You should impose such punishment as you feel is just under the evidence, and within the instructions of the Court. You are not to concern yourselves with what may happen afterwards.” *Ibid.*

The prosecution agreed with the judge’s response and defense counsel objected. At 12:40 p.m., court reconvened and the judge told the jurors that there would be a one-hour luncheon recess and that they could go to lunch or continue deliberations, as a juror had apparently informed the bailiff that they might be interested in working through lunch. At 12:45 p.m., the jury retired from the courtroom. At 3:15 p.m., the judge informed counsel that he had received the following written question from the jury:

“If we believe that Lonnie Weeks, Jr. is guilty of at least 1 of the alternatives, then is it our duty as a jury to issue the death penalty? Or must we decide (even though he is guilty of one of the alternatives) whether or not to issue the death penalty, or one of the life sentences? What is the Rule? Please clarify?” *Id.*, at 91 (emphasis in original).

The judge wrote the following response: “See second paragraph of Instruction #2 (Beginning with If you find from).” *Ibid.* The judge explained to counsel his answer to the jury’s question:

“In instruction number 2 that was given to them, in the second paragraph, it reads, If you find from the evidence that the Commonwealth has proved, beyond a reasonable doubt, either of the two alternatives, and as to that alternative, you are unanimous, then you may fix the punishment of the defendant at death, or if you believe from all the evidence that the death penalty is not justified, then you shall fix the punishment of the defendant at imprisonment for life, or im-

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prisonment for life with a fine not to exceed \$100,000.’
“I don’t believe I can answer the question any clearer than the instruction, so what I have done is referred them to the second paragraph of instruction number 2, and I told them beginning with, ‘if you find from, et cetera, et cetera, for them to read that paragraph.’” App. 222–223.

The prosecution stated that the judge’s solution was appropriate. Defense counsel disagreed, and stated:

“Your Honor, we would ask that Your Honor instruct

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¹Instruction No.2, in its entirety, read:

“You have convicted the defendant of an offense which may be punished by death. You must decide whether the defendant shall be sentenced to death or to imprisonment for life or to imprisonment for life and a fine of a specific amount, but not more than \$100,000.00. Before the penalty can be fixed at death, the Commonwealth must prove beyond a reasonable doubt at least one of the following two alternatives:

“1. That, after consideration of his history and background, there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society; or

“2. That his conduct in committing the offense was outrageously or wantonly vile, horrible or inhuman, in that it involved depravity of mind or aggravated battery to the victim beyond the minimum necessary to accomplish the act of murder.

“If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt either of the two alternatives, and as to that alternative you are unanimous, then you may fix the punishment of the defendant at death or if you believe from all the evidence that the death penalty is not justified, then you shall fix the punishment of the defendant at life imprisonment or imprisonment for live [*sic*] and a fine of a specific amount, but not more than \$100,000.00.

“If the Commonwealth has failed to prove beyond a reasonable doubt at least one of the alternatives, then you shall fix the punishment of the defendant at life imprisonment or imprisonment for live [*sic*] and a fine of a specific amount, but not more than \$100,000.00.” App. 192–193.

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the jury that even if they find one or both of the mitigating factors— I’m sorry, the factors that have been proved beyond a reasonable doubt, that they still may impose a life sentence, or a life sentence plus a fine.” *Id.*, at 223.

Defense counsel asked that his objection be noted.

More than two hours later, the jury returned. The clerk read its verdict:

“[W]e the jury, on the issue joined, having found the defendant Lonnie Weeks, Jr., guilty of capital murder, and having unanimously found that his conduct in committing the offense is outrageously or wantonly vile, horrible or inhumane, in that it involved depravity of mind and or aggravated battery, *and having considered the evidence in mitigation of the offense*, unanimously fix his punishment at death” *Id.*, at 225 (emphasis added).

The jurors were polled and all responded affirmatively that the foregoing was their verdict in the case.

Petitioner presented 47 assignments of error in his direct appeal to the Virginia Supreme Court, and the assignment of error respecting the judge’s answering the jury’s question about mitigating circumstances was number 44. The Virginia Supreme Court affirmed petitioner’s conviction and sentence, holding that the claims petitioner advances here lack merit. 248 Va. 460, 465–466, 476–477, 450 S. E. 2d 379, 383, 390 (1994), cert. denied, 516 U. S. 829 (1995). The Virginia Supreme Court dismissed petitioner’s state habeas petition as jurisdictionally barred on timeliness grounds. The District Court denied petitioner’s request for federal habeas relief, and the Court of Appeals for the Fourth Circuit denied a certificate of appealability and dismissed his petition. 176 F. 3d 249 (1999). We granted certiorari, 527 U. S. ____ (1999), and now affirm.

Petitioner relies heavily on our decisions in *Bollenbach*

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v. *United States*, 326 U. S. 607 (1946), and *Eddings v. Oklahoma*, 455 U. S. 104 (1982). *Bollenbach* involved a supplemental instruction by the trial court following an inquiry from the jury— in that respect it is like the present case— but the instruction given by the trial court in *Bollenbach* was palpably erroneous. 326 U. S., at 611. In this respect it is quite unlike the present case. *Eddings* arose out of a bench trial in a capital case, and this Court reversed a sentence of death because the trial judge had refused to consider mitigating evidence: “[I]t was as if the trial judge had instructed a jury to disregard the mitigating evidence Eddings proffered on his behalf.” 455 U. S., at 114.

Here the trial judge gave no such instruction. On the contrary, he gave the instruction that we upheld in *Buchanan v. Angelone*, 522 U. S. 269 (1998), as being sufficient to allow the jury to consider mitigating evidence. And in addition, he gave a specific instruction on mitigating evidence— an instruction that was not given in *Buchanan*— in which he told the jury that “[y]ou must consider a mitigating circumstance if you find there is evidence to support it.”² Even the dissenters in *Buchanan*

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²That instruction was titled “EVIDENCE IN MITIGATION” and stated in full:

“Mitigation evidence is not evidence offered as an excuse for the crime of which you have found defendant guilty. Rather, it is any evidence which in fairness may serve as a basis for a sentence less than death. The law requires your consideration of more than the bare facts of the crime.

“Mitigating circumstances may include, but not be limited to, any facts relating to defendant’s age, character, education, environment, life and background, or any aspect of the crime itself which might be considered extenuating or tend to reduce his moral culpability or make him less deserving of the extreme punishment of death.

“You must consider a mitigating circumstance if you find there is evidence to support it. The weight which you accord a particular mitigating circumstance is a matter of your judgment.” *Id.*, at 195.

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said that the ambiguity that they found in the instruction there given would have been cleared up by “some mention of mitigating evidence anywhere in the instructions.” *Id.*, at 283.

In *Buchanan*, we considered whether the Eighth Amendment required that a capital jury be instructed on particular mitigating factors. Buchanan’s jury was given precisely the same Virginia pattern capital instruction that was given to Weeks’ jury. See *id.*, at 272, and n. 1. We noted that our cases have established that the sentencer may not be precluded from considering, and may not refuse to consider, any constitutionally relevant mitigating evidence, and that the State may structure the jury’s consideration of mitigation so long as it does not preclude the jury from giving effect to it. *Id.*, at 276. We further noted that the “standard for determining whether jury instructions satisfy these principles was whether there is a reasonable likelihood that the jury has applied the challenged instruction in a way that prevents the consideration of constitutionally relevant evidence.” *Ibid.* (quoting *Boyde v. California*, 494 U. S. 370, 380 (1990)). But, we stated that we have never held that the State must structure in a particular way the manner in which juries consider mitigating evidence. 522 U. S., at 276. We concluded that the Virginia pattern jury instruction at issue there, and again at issue here, did not violate those principles:

“The instruction did not foreclose the jury’s consideration of any mitigating evidence. By directing the jury to base its decision on ‘all the evidence,’ the instruction afforded jurors an opportunity to consider mitigating evidence. The instruction informed the jurors that if they found the aggravating factor proved beyond a reasonable doubt then they ‘may fix’ the penalty at death, but directed that if they believed that

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all the evidence justified a lesser sentence than they 'shall' impose a life sentence. The jury was thus allowed to impose a life sentence even if it found the aggravating factor proved." *Id.*, at 277.

But, as noted above, the jury in this case also received an explicit direction to consider mitigating evidence— an instruction that was not given to the jury in *Buchanan*. Thus, so far as the adequacy of the jury instructions is concerned, their sufficiency here follows *a fortiori* from *Buchanan*.³

Given that petitioner's jury was adequately instructed, and given that the trial judge responded to the jury's question by directing its attention to the precise paragraph of the constitutionally adequate instruction that answers its inquiry, the question becomes whether the

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³ JUSTICE STEVENS attempts to distinguish the instruction given here from that given in *Buchanan v. Angelone*, 522 U. S. 269, 272, n.1 (1998), on the basis that the first paragraph of "Weeks' instructions contain a longer description" of the aggravating circumstances. *Post*, at 2–3. The first paragraph is longer here because the prosecution in *Buchanan* sought to prove only one aggravating circumstance. See 522 U. S., at 271. The mere addition of the description of another aggravating circumstance in the first paragraph, however, does not at all affect the second clause of the second paragraph of the instruction— the clause that JUSTICE STEVENS finds "ambiguous." *Post*, at 4.

More importantly, JUSTICE STEVENS, after stating that his "point is best made by quoting the instruction itself," *post*, at 3, fails to quote the third paragraph of the instruction. *Ibid.* That paragraph expressly applies when the jury finds that the prosecution failed to prove either aggravating circumstance. Specifically, it instructs that if the jury finds no aggravating circumstances, then it must impose a life sentence. See n. 1, *supra*. The third paragraph stands in contrast to the second paragraph, which expressly applies when the jury finds that the prosecution proved one or both of the aggravating circumstances. The second paragraph offers the jury the option of imposing whichever sentence— death or life imprisonment— it feels is justified in that situation. The existence of the third paragraph makes the function of the second paragraph even clearer.

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Constitution requires anything more. We hold that it does not.

A jury is presumed to follow its instructions. *Richardson v. Marsh*, 481 U. S. 200, 211 (1987). Similarly, a jury is presumed to understand a judge's answer to its question. See, e.g., *Armstrong v. Toler*, 11 Wheat. 258, 279 (1826) (opinion of Marshall, C. J.). Weeks' jury did not inform the court that after reading the relevant paragraph of the instruction, it still did not understand its role. See *ibid.* ("Had the jury desired further information, they might, and probably would, have signified their desire to the court. The utmost willingness was manifested to gratify them, and it may fairly be presumed that they had nothing further to ask"). To presume otherwise would require reversal every time a jury inquires about a matter of constitutional significance, regardless of the judge's answer.

Here the presumption gains additional support from several empirical factors. First and foremost, each of the jurors affirmed in open court the verdict which included a finding that they had "considered the evidence in mitigation of the offense."⁴ App. 225. It is also significant, we think, that the jurors deliberated for more than two hours after receiving the judge's answer to their question. Over 4½ hours after the jury retired to begin deliberations, the jury asked the question at issue. Again, the question was:

"If we believe that Lonnie Weeks, Jr. is guilty of at least 1 of the alternatives, then is it our duty as a jury

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⁴ JUSTICE STEVENS' arguments concerning the lack of a jury verdict form stating that the jury finds one or both aggravating circumstances and sentences the petitioner to life imprisonment miss the mark. The life sentence verdict forms do not suggest that a prerequisite for their use is that the jury found no aggravating circumstances. See *post*, at 10, n. 8. In any event, the claim here is that the trial judge's response to the jury's question was constitutionally insufficient, not that the jury verdict forms were unconstitutionally ambiguous.

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to issue the death penalty? Or must we decide (even though he is guilty of one of the alternatives) whether or not to issue the death penalty, or one of the life sentences? What is the Rule? Please clarify?" App. to Pet. for Cert. 91 (emphasis in original).

The question indicates that at that time it was asked, the jury had determined that the prosecution had proved one of the two aggravating factors beyond a reasonable doubt. More than two hours passed between the judge directing the jury's attention to the appropriate paragraph of the instruction that answered its question and the jury returning its verdict. We cannot, of course, know for *certain* what transpired during those two hours. But the most likely explanation is that the jury was doing exactly what it was instructed to do: that is, weighing the mitigating circumstances against the aggravating circumstance that it found to be proved beyond a reasonable doubt. If, after the judge's response to its question, the jury thought that it was required to give the death penalty upon finding of an aggravating circumstance, it is unlikely that the jury would have consumed two more hours in deliberation. This particular jury demonstrated that it was not too shy to ask questions, suggesting that it would have asked another if it felt the judge's response unsatisfactory. Finally, defense counsel specifically explained to the jury during closing argument that it could find both aggravating factors proven and still not sentence Weeks to death. Thus, once the jury received the judge's response to its question, it had not only the text of the instruction we approved in *Buchanan*, but also the additional instruction on mitigation, see n. 2, *supra*, and its own recollection of defense counsel's closing argument for guidance. At best, petitioner has demonstrated only that there exists a slight *possibility* that the jury considered itself precluded from considering mitigating evidence. Such a demonstration is

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insufficient to prove a constitutional violation under *Boyde*, which requires the showing of a reasonable *likelihood* that the jury felt so restrained.⁵ See 494 U. S., at 380.

It also appears that petitioner’s attorneys did not view the judge’s answer to the jury’s question as a serious flaw in the trial at that time. Petitioner’s attorney made an oral motion to set aside the sentence after the verdict of death was received, and did not even mention this incident in his motion. And the low priority and space which his counsel assigned to the point on his appeal to the Supreme Court of Virginia suggests that the present emphasis has some of the earmarks of an afterthought.

Because petitioner seeks a federal writ of habeas corpus from a state sentence, we must determine whether 28 U. S. C. §2254(d) precludes such relief. The Court of Appeals below held that it did. 176 F. 3d, at 261. We agree. Section 2254(d) prohibits federal habeas relief on

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⁵JUSTICE STEVENS states that the record establishes a “virtual certainty” that the jury did not understand that it could find an aggravating circumstance and still impose a life sentence. *Post*, at 2. In view of the different conclusion reached not only by this Court, but by the Virginia trial judge, seven justices of the Supreme Court of Virginia, a federal habeas district judge, and three judges of the Court of Appeals for the Fourth Circuit, this statement can only be described as extravagant hyperbole.

The dissent also interprets the evidence of the jurors being in tears at the time of the verdict as resulting from having performed what they thought to be their “duty under the law” despite their “strong desire” to impose the life sentence. *Post*, at 12. It is difficult enough to speculate with confidence about the deliberations of jurors in a case such as this, and still more difficult to speculate about their emotions at the time they render a verdict. But if we were to join in this speculation, it is every bit as plausible— if not more so— to think that the reason that jurors were in tears was because they had just been through an exhausting, soul-searching process that led to a conclusion that petitioner, despite the mitigating evidence he presented, still deserved the death sentence.

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any claim “adjudicated on the merits in State court proceedings,” unless that adjudication resulted in a decision that was “contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.” 28 U. S. C. §§2254(d) and (1) (1994 ed., Supp. III). For the reasons stated above, it follows *a fortiori* that the adjudication of the Supreme Court of Virginia affirming petitioner’s conviction and sentence was neither “contrary to,” nor did it involve an “unreasonable application of,” any of our decisions.

The judgment of the Court of Appeals is

Affirmed.