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## BOYDE v. CALIFORNIA 110 S. Ct. 1190, 108 L.Ed.2d 316 (1990)

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## BOYDE v. CALIFORNIA

110 S. Ct. 1190, 108 L.Ed.2d 316 (1990)  
United States Supreme Court

## FACTS

On January 15, 1981, Richard Boyde robbed a 7-Eleven clerk of thirty-three dollars in Riverside, California. Boyde forced the clerk into a waiting car and took him to a nearby orange grove. While the clerk begged for his life, Boyde fatally shot him in the back of the head and in the forehead. The jury found Boyde guilty of robbery, kidnapping, and murder.

At the penalty phase of the murder trial, the judge, pursuant to the California Jury Instructions, instructed the jurors to consider 11 statutory factors to guide their discretion on whether life in prison or death would be the appropriate penalty. The eleventh factor, a catchall phrase, served as the foundation for much of the appeal. The eleventh factor instructed the jury to consider, "[a]ny other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime." 1 California Jury Instructions, Criminal (4th ed. 1979). Once all mitigating and aggravating evidence has been introduced, the jury weighs the evidence. The jury instructions state that if the jury finds that the aggravating circumstances outweigh the mitigating circumstances, then the jury shall impose a sentence of death. However, if the jury finds that the mitigating circumstances outweigh the aggravating circumstances, then the jury shall impose a sentence of life. While not explicitly informed, every juror is free to assign whatever moral value he or she deems appropriate to each of the factors.

After hearing six days of penalty trial testimony, the jury returned a verdict imposing a sentence of death. The court denied Boyde's motion to reduce the sentence.

The Supreme Court of California affirmed the sentence, rejecting Boyde's argument that the eleventh factor precluded the jury from considering mitigating evidence of the defendant's background and character. The court emphasized that the judge instructed the jury to consider all evidence introduced during the trial. While the court agreed that the "shall impose" language in the jury instructions could be misinterpreted, it decided that in this case the jury was adequately informed.

## HOLDING

The United States Supreme Court granted certiorari and affirmed the lower court's holding. Specifically, the Court held that: (1) the mandatory instruction "shall impose" did not prevent the jury from making an individual assessment of the appropriateness of the death penalty as required by the eighth amendment; (2) a "reasonable likelihood" was the appropriate standard of review to determine if jury instructions were ambiguous enough to be subject to erroneous interpretation; and (3) there was no reasonable likelihood that the jury misinterpreted the jury instructions so as to preclude consideration of the defendant's background and character as mitigating evidence.

## ANALYSIS/APPLICATION IN VIRGINIA

The Court first rejected Boyde's claim that the "shall impose" language in the jury instructions foreclosed the jury from determining whether the "absolute weight" of the aggravating factors warranted the death penalty. In this 5-4 decision, the Court held that the safety valve of allowing the jury to impose life even if it finds that the aggravating circumstances outweigh the mitigating circumstances is not a constitutional requirement.

This follows the reasoning employed in *Blystone v. Pennsylvania*, 110 S. Ct. 1078, 1196 (1990), where the Court reiterated that the eighth amendment requirement of individualized sentencing is satisfied if the jury can consider and give effect to the mitigating evidence. Assessment of the severity of the aggravating factor is not required. *Blystone* 110 S. Ct. at 1196 (See case summary of *Blystone v. Commonwealth*, *Capital Defense Digest*, this issue). From the decisions in *Blystone* and *Boyde*, the next logical argument for the capital defense attorney will be to address whether the present instructions allow the jury to give effect to the mitigating evidence.

In holding that there is no constitutional requirement that the jury have unfettered sentencing discretion which allows it to impose life even if the aggravating circumstances outweigh the mitigating circumstances, the Court implied that it may permit states to go even further in limiting the jury's discretion. It noted that a state is free to structure the consideration of mitigating evidence to achieve a more rational and equitable administration of death sentences.

Before the Court could entertain Boyde's second argument, it had to establish the standard of review for ambiguous jury instructions which could lead to erroneous interpretation of the law and subsequent misapplication by the jury. The Court has applied several standards of review in the past, ranging from what a reasonable juror could have understood the instructions to mean to a substantial possibility that the jury may have rested its verdict on improper interpretations of the jury instructions. While suggesting that there may not be substantial differences between these standards of review, the Court determined that the proper standard is "whether there is a reasonable likelihood that the jury has applied the challenged jury instructions in a way that prevents the consideration of constitutionally relevant evidence." *Boyde*, 110 S. Ct. at 1190. The Court decided that reviewing how the jury would understand instructions rather than how an individual, hypothetical juror would react to the instructions best served the concerns of finality and accuracy.

In dissent, Justice Marshall, writing for Justices Brennan, Blackmun and Stevens, argued that under the majority's standard of reasonable likelihood, Boyde's death sentence would be upheld even if the jury reasonably could have believed that it could not have considered mitigating evidence of the defendant's character and background.

In applying the reasonable likelihood standard to Boyde's argument that the eleventh factor, the catchall phrase, prohibited the jury from considering and giving effect to non-crime related mitigation, the Court highlighted the fact that the defense introduced four hundred pages of evidence pertaining to the defendant's background and character. Furthermore, the Court emphasized that two of the other ten statutory factors listed for jury consideration required an examination of past conduct. When the Court considered the eleventh factor of the jury instruction with all the other instructions, it concluded that it was improbable that the jury understood the instructions to preclude consideration of non-crime related evidence.

The Court reached this conclusion even though the prosecutor made statements at trial that reinforced the improper interpretation of the eleventh factor. In his closing argument, the prosecutor made suggestions which had the effect of minimizing the relevance of defendant's background and character. In response to this concern, the Court stated that closing arguments are not viewed as definitions of the law in the manner that jury instructions are perceived. Furthermore, the prosecutor did not suggest that the defendant's background and character were irrelevant, but only urged the jury that aside from his background and character, the defendant should still be held responsible for his actions.

The Court's relaxed standard of review is part of a series of holdings that highlight the increased importance of the trial itself. Capital defendants in Virginia are no less worthy than Boyde of six days of mitigation testimony. Such presentation in Virginia often consumes less than a day. Furthermore, Virginia trial courts are not even required to provide capital juries as much information about the meaning and scope of mitigation as is contained in California's catchall phrase. It is the duty of counsel to inform the jury through evidence, argument, and

proposed jury instructions (a) that it may consider non-crime related evidence and base a sentence of life on that evidence and (b) that in Virginia the jury may fix punishment at life even if satisfied that both aggravating factors have been proven.

Summary and analysis by:  
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## McKOY v. NORTH CAROLINA

110 S. Ct. 1227, 108 L.Ed.2d 369 (1990)  
United States Supreme Court

### FACTS

The Superior Court of Stanly County, North Carolina, convicted Dock McKoy of the first-degree murder of a deputy sheriff and sentenced him to death in accordance with N.C. Gen. Stat. § 15A-2000 (1988). McKoy appealed his sentence to the North Carolina Supreme Court, basing his constitutional challenge of North Carolina's sentencing procedures on *Mills v. Maryland*, 486 U.S. 367 (1989). See case summary of *Mills v. Maryland*, *Capital Defense Digest*, Vol. 1, No. 1, p. 11 (1988). In *Mills*, the United States Supreme Court reversed a death sentence imposed under Maryland's capital punishment statute because the sentencing scheme could have precluded a jury from considering any mitigating evidence unless all 12 jurors agreed on the existence of a particular mitigating circumstance. *McKoy v. North Carolina*, 110 S. Ct. 1227 (1990). The North Carolina Supreme Court affirmed both McKoy's conviction and sentence. The United States Supreme Court granted certiorari. *Id.*

### NORTH CAROLINA'S SENTENCING SCHEME

In the sentencing phase of McKoy's trial, the trial court instructed the jury, both orally and in a written verdict form, to determine unanimously four issues which would ultimately be used in the determination of the sentence. The instructions with Issue One required that the jury indicate "yes" to every aggravating circumstance listed that it had found unanimously from the evidence and beyond a reasonable doubt and "no" as to all circumstances not so found. The jury found as aggravating circumstances that McKoy previously had been convicted of a felony involving violence and that the instant murder was committed against a deputy sheriff while engaged in the performance of his official duties.

Issue Two similarly required the jury to agree unanimously on the existence of every mitigating circumstance listed and to indicate its decision by marking "yes" or "no" on the verdict form. The jury found as mitigating that McKoy's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was impaired. The jury also found that his borderline intellectual abilities were mitigating. However, the jury did not unanimously agree on the existence of several other mitigating factors raised by the defendant and he was therefore denied consideration of them.

Because the jury found the existence of mitigating circumstances, it was instructed to proceed to Issue Three which required the jury to decide unanimously whether the mitigating circumstances unanimously found in Issue Two were insufficient to outweigh the aggravating circumstances found by the jury in Issue One. The jury answered "yes" to this question and so proceeded to the final Issue.

Issue Four asked whether the jury unanimously found beyond a reasonable doubt that the aggravating circumstances found by the jury were sufficiently substantial to warrant the imposition of the death penalty when weighed against the mitigating circumstances found by the jury. Again, the jury answered "yes." In accordance with the verdict

form and instructions, the jury subsequently made a binding recommendation of death.

In ruling on McKoy's direct appeal of his sentence, the North Carolina Supreme Court rejected McKoy's challenge which was based on *Mills. Id.* at 1228. The court distinguished North Carolina's sentencing scheme from the Maryland scheme, the subject of *Mills. State v. McKoy*, 372 S.E.2d 12 (N.C. 1988). Maryland's scheme, declared invalid by the Supreme Court, required the jury to impose the death penalty if it found at least one aggravating circumstance and no mitigating circumstances or, alternatively, if it unanimously agreed that the mitigating circumstances did not outweigh the aggravating factors. *Id.* at 33. The North Carolina Supreme Court emphasized that Issue 4 allowed a jury to return a recommendation of life imprisonment if it felt that the aggravating circumstances did not call for the death penalty, even if the jury found aggravating factors and no mitigating factors. *Id.*

### HOLDING

The Supreme Court found that North Carolina's sentencing scheme impermissibly limited the jurors' consideration of mitigating evidence. *McKoy*, 110 S. Ct. at 1228. The unanimity requirement is a violation of the eighth amendment protection against cruel and unusual punishment because it allows one juror to prevent others from giving effect to evidence that the juror might believe suggests a sentence less than death. Both Issues Three and Four restrict the jury's consideration of mitigating factors to those found unanimously under Issue Two. *Id.* at 1233. The Court emphasized that, in contrast to the narrowly defined standards on which a sentencer may rely to impose the death penalty, the Constitution strictly limits a State's ability to narrow the sentencer's discretion to consider relevant evidence that might persuade it to decline to impose the death penalty. *Id.* at 1234 (citing *Penry v. Lynaugh*, 109 S. Ct. 2934 (1989)).

*Mills* and *McKoy* require that each juror be permitted to consider any evidence in mitigation of the offense. See *Skipper v. South Carolina*, 476 U.S. 1 (1986), *Eddings v. Oklahoma*, 455 U.S. 104 (1982), and *Lockett v. Ohio*, 438 U.S. 586 (1978) (death penalty schemes must allow consideration of any aspect of the defendant's character or record and any circumstances that the defendant offers as a basis for a sentence less than death). Additionally, *Mills* and *McKoy* require that each juror be permitted to give effect to mitigating evidence when deciding the ultimate question of life or death. *McKoy*, 110 S. Ct. at 1233.

The High Court vacated McKoy's death sentence and remanded the case to the North Carolina Supreme Court for resentencing.

### ANALYSIS/APPLICATION IN VIRGINIA

*McKoy* is not directly applicable to Virginia because Virginia's sentencing scheme does not formally require jurors to weigh the mitigating circumstances against the aggravating circumstances to determine