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BUCHANAN v. ANGELONE 118 S.Ct. 757 (1998) United States Supreme Court

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FACTS

On the afternoon of September 15, 1987, Douglas McArthur Buchanan, Jr. took a rifle to his father's house. Buchanan argued with his father about his natural mother's death from breast cancer. As the argument became more heated, Buchanan shot his father in the back of the head, killing him instantly. Following the shooting of his father, Buchanan remained at his father's house. When his two half-brothers returned from school, Buchanan shot them both. One died from the gunshot wound; Buchanan killed the other with a kitchen knife. Buchanan remained in his father's house, waiting for his stepmother to return from work. When she arrived, Buchanan stabbed her to death with a kitchen knife.[1]

Buchanan was convicted in the Circuit Court of Amherst County of the capital murder of more than one person as part of the same act or transaction.[2] At the penalty phase of Buchanan's trial, the prosecutor told the jury that he was seeking the death penalty on the basis of Virginia's "vileness" aggravator.[3] The prosecutor conceded that Buchanan had a troubled childhood, but informed the jury that it was its responsibility to weigh the factors in Buchanan's favor against the crime he committed.[4] Defense counsel, in his opening statement, outlined the mitigating evidence he would present and asked that, on the basis of that evidence, Buchanan not be sentenced to death.[5]

Over the next two days, the defense presented seven witnesses in mitigation. These witnesses recounted the early death of Buchanan's natural mother from breast cancer, his father's subsequent remarriage, and the attempts of Buchanan's father and stepmother to keep him from seeing his maternal relatives.[6] These factors, a psychiatrist testified, caused Buchanan to be under "extreme emotional disturbance at the time of the crime."[7] The prosecution presented a total of eight witnesses to prove the vileness aggravator[8] and contradict Buchanan's mitigation witnesses.[9]

In their closing arguments in the penalty phase, both the prosecutor and defense counsel discussed the existence of the mitigation evidence and the weight it should be given in the jury's deliberations. The prosecutor told the jury that "even if you find that there was vileness [ ] you do not have to return the death sentence."[10] This comment implicitly refers to the mitigating evidence presented by the defense. Defense counsel explained the concept of mitigation in general and the specific mitigating factors operative in Buchanan's case. Counsel discussed in detail Buchanan's lack of "prior criminal activity," his "extreme ... emotional disturbance at the time of the offense," his significantly reduced capacity to "appreciate the criminality of his conduct or to conform his conduct to the law's requirements," and Buchanan's "youth."[11]

Neither the prosecutor nor defense counsel objected to the jury being instructed using Virginia's pattern capital sentencing instruction[12] which did not make any mention

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[1] *Buchanan v. Commonwealth*, 238 Va. 389, 394-95, 384 S.E.2d 757, 760-61 (1989). *See also*, Case Summary of *Buchanan v. Angelone*, 103 F3d 344 (4th Cir. 1996), Cap. Def. J., Vol. 9, No. 2, p. 29.

[2] *Buchanan v. Angelone*, 118 S.Ct. 757, 759 (1998). See VA. CODE § 18.2-31(7) (1996).

[3] *Buchanan*, 118 S.Ct. at 759. *See* Va. Code § 19.2-264.3 (1995).

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Buchanan*, 118 S.Ct. at 759. "Extreme ... emotional disturbance" is one of the mitigating factors explicitly recognized by the Commonwealth of Virginia. Va. Code § 19.2-264.4(B)(ii) (1995).

[8] Under Virginia Code Section 19.2-264.4, the prosecution has the burden of proving either vileness or future dangerousness beyond a reasonable doubt.

[9] *Buchanan*, 118 S.Ct. at 759. Among the eight witnesses called by the prosecution were two mental health experts who agreed with the defense's expert regarding the factual events of Buchanan's life, but disagreed with their effect on his commission of the crimes. *Id.*

[10] *Id.*

[11] *Id.* Each of these mitigating factors is explicitly stated in Virginia Code Section 19.2- 264.4(B)(i), (ii), (iv), and (v), respectively. Also listed in the statute as mitigating factors are "(iii) [that] the victim was a participant in the defendant's conduct or consented to the act" and "(vi) mental retardation of the defendant." The statute makes clear, however, that mitigating evidence "shall not be limited to" the six factors listed. Mitigating evidence can include any evidence that is relevant and defense counsel should not feel constrained by the statute as to what types of evidence can be used in mitigation.

[12] *Buchanan*, 118 S.Ct. at 759. The complete instruction was as follows:

> [1] You have convicted the Defendant of an offense which may be punishable by death. You must decide whether the defendant should be sentenced to death or to life imprisonment.
> [2] Before the penalty can be fixed at death, the Commonwealth must prove beyond a reasonable doubt that his conduct in committing the murders of Douglas McArthur Buchanan, Sr., Christopher Donald Buchanan, Joel Jerry Buchanan and Geraldine Patterson Buchanan, or any one of them, was outrageously or wantonly vile, horrible or inhuman, in that it involved torture, depravity of mind or aggravated battery to the above four victims, or to any one of them.
> [3] If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the requirements of the preceding paragraph, then you may fix the punishment of the Defendant at death or if you believe from all

of mitigation evidence.[13] Defense counsel requested several additional jury instructions, including four instructions on particular statutory mitigating factors.[14] Each of these instructions stated, basically, that "if the jury found the factor to exist, 'then that is a fact that mitigates against imposing the death penalty, and [the jury] shall consider that fact in deciding whether to impose a sentence of death or life imprisonment.'"[15] Buchanan also proposed a more general mitigation instruction which stated that, "In addition to the mitigating factors specified in other instructions, [the jury] shall consider the circumstances surrounding the offense, the history and background of [Buchanan] and any other facts in mitigation of the offense."[16] The trial court refused to give any of these requested instructions.[17]

The jury returned with a unanimous verdict in favor of the death penalty[18] and the trial court sentenced Buchanan to death.[19] On direct appeal, the Supreme Court of Virginia affirmed Buchanan's conviction and sentence.[20] Buchanan subsequently filed a petition for a writ of habeas corpus in the United States District Court of the Western District of Virginia. The district court denied the petition. The United States Court of Appeals for the Fourth Circuit affirmed.[21] The Supreme Court of the United States granted Buchanan's petition for a writ of certiorari.[22]

HOLDING

The Supreme Court of the United States, in an opinion by Chief Justice Rehnquist, held that (1) the Eighth Amendment and Fourteenth Amendments to the United States Constitution do not require the jury in a capital sentencing proceeding to be instructed either on the concept of mitigating evidence generally or on particular statutory mitigating factors; [23] and (2) no reasonable likelihood existed that the jurors in the present case understood the instructions given by the trial court to preclude their consideration of relevant mitigating evidence.[24] Thus, the decision of the United States Court of Appeals for the Fourth Circuit was affirmed.

ANALYSIS/APPLICATION IN VIRGINIA

Buchanan contended that "the trial court violated his Eighth and Fourteenth Amendment rights to be free from arbitrary and capricious imposition of the death penalty when it failed to provide the jury with express guidance on the concept of mitigation, and to instruct the jury on particular statutorily defined mitigating factors."[25] In deciding Buchanan's claim, the Court focused first on the constitutionally required role of mitigation evidence in any decision to impose the death penalty. Next, the Court focused on whether the instruction given in the present case was such

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the evidence that the death penalty is not justified, then you shall fix the punishment at life imprisonment.

[4] If the Commonwealth has failed to prove beyond a reasonable doubt the requirements of the second paragraph in this instruction, then you shall fix the punishment of the defendant at life imprisonment.

[5] In order to return a sentence of death, all twelve jurors must unanimously agree on that sentence. *Id.* at 763-764.

The third paragraph of the instruction, especially the "from all the evidence" language, was pivotal in the Court's decision.

[13]In 1995 Virginia amended its pattern capital sentencing instructions to add an instruction on mitigating evidence. This instruction requires the jury to consider "any evidence presented of circumstances which do not justify or excuse the offense but which in fairness or mercy may extenuate or reduce the degree of moral culpability and punishment." Virginia Model Jury Instructions, Criminal, Instruction No. 34.127 (1993 and Supp. 1995). The basic model capital sentencing instruction, however, remains the same as the one given at Buchanan's trial. *See supra* note 12 and Virginia Model Jury Instructions, Criminal, Instruction No. 34.125 (1993 and Supp. 1995). Justice Breyer's statement in Buchanan that Virginia had amended its actual capital sentencing instruction was thus not entirely accurate. *Buchanan*, 118 S.Ct. at 765 (Breyer, J., dissenting). Not all compilers of jury instructions, however, have noted the Commonwealth's addition of the mitigating evidence instruction. *See* Instructions for Virginia and West Virginia, Fourth Edition, Vol. 2A, p. 105, § 24-181 Capital Murder (1996 and Supp. 1998) (instruction substantially identical to instruction given in note 12, *supra*, using "all the evidence" language and no mitigating evidence instruction).

[14]*Buchanan*, 118 S.Ct. at 760. Defense counsel requested instructions on the following statutory mitigating factors: absence of prior criminal activity; extreme mental or emotional disturbance; significantly impaired capacity to appreciate the criminality of his conduct or conform his conduct to the requirements of law; and youth. *Id. See* Va. Code § 19.2-264.4(B)(i), (ii), (iv), and (v) (1995).

[15]*Buchanan*, 118 S.Ct. at 760.

[16]*Id.*

[17]*Id.*

[18]The verdict form signed by the foreperson of the jury stated, in pre-printed type, that the jurors had "considered the evidence in mitigation of the offense" and had nevertheless unanimously fixed Buchanan's punishment at death. Va. Code § 19.2-264.4(D)(1) (1995). Although the majority of the Court found this fact to be an indication that the jury had considered the mitigating evidence, in reality this pre-printed form was probably the last thing the jury looked at prior to informing the court of its decision. As Justice Breyer pointed out during the oral argument of this case, by the time the foreperson of the jury read this statement on the verdict form, the jury had already made its sentencing decision. *See,* Transcript of Oral Argument in *Buchanan v. Angelone,* 1997 WL 695654 (U.S. Oral Arg. Nov. 3, 1997).

[19]*Buchanan,* 118 S.Ct. at 760.

[20]*Buchanan v. Commonwealth,* 238 Va. 389, 384 S.E.2d 757 (1989), *cert. denied sub nom., Buchanan v. Virginia,* 493 U.S. 1063 (1990).

[21]*Buchanan v. Angelone,* 103 F.3d 344 (4th Cir. 1996). *See also* Case Summary of *Buchanan v. Angelone,* Cap. Def. J., Vol. 9, No. 2, p. 29.

[22]*Buchanan v. Angelone,* 103 F.3d 344 (4th Cir. 1996), *cert. granted,* 520 U.S. ___ (1997).

[23]*Buchanan v. Angelone,* 118 S.Ct. 757, 763 (1998).

[24]*Buchanan,* 118 S.Ct. at 763.

[25]*Id.* at 761. In making its decision, the majority of the Court focused on the latter aspect of Buchanan's claim regarding the failure to instruct on the statutory mitigating factors. The dissenters, however, focused on the former aspect, the need to instruct on the concept of mitigation generally.

that there was no reasonable likelihood that the jurors understood the instructions given by the trial court to preclude their consideration of relevant mitigating evidence.

I. The Constitutional Role of Evidence in Mitigation

The penalty phase of every capital murder prosecution is divided into two different aspects: the "eligibility phase" and the "selection phase."[26] During the eligibility phase in Virginia, the Commonwealth has the burden of proving either vileness or future dangerousness beyond a reasonable doubt so that the jury may "narrow[ ] the class of defendants eligible for the death penalty."[27] If the prosecution carries its burden in the eligibility phase, then the jury moves on to the selection phase. In the selection phase, the jury considers the aggravating evidence presented by the Commonwealth and the mitigating evidence presented by the defense and, after weighing this evidence, determines whether or not to impose the death penalty.[28] Only the selection phase is at issue in this case because it is only in the selection phase that mitigating evidence has any relevance.

These two phases, according to the Court, are treated differently under the Constitution. It is only in the eligibility phase, for instance, that the Court has "stressed the need for channeling and limiting the jury's discretion to ensure that the death penalty is a proportionate punishment and therefore not arbitrary or capricious in its imposition."[29] In the selection phase, however, there needs to be a "broad inquiry into all relevant mitigating evidence to allow an individualized determination."[30] In the selection phase, the jury "may not be precluded from considering, and may not refuse to consider, any constitutionally mitigating evidence."[31]

The States, however, are free to "shape and structure the jury's consideration of mitigation so long as [they do] not preclude the jury from giving effect to any relevant mitigating evidence."[32] Thus, a state may fashion jury instructions relevant to the selection phase of a capital sentencing proceeding free from any Court-imposed constitutionally required provisions.[33] If subsequently challenged, the instructions are constitutionally sufficient so long as there is not "'a reasonable likelihood that the jury [ ] applied the challenged instruction in such a way that prevents the consideration of constitutionally relevant evidence.'"[34]

II. Was There a Reasonable Probability that the Jury Applied the Virginia Pattern Instruction in a Such a Way That It Was Prevented From Considering Constitutionally Relevant Mitigating Evidence?

The Virginia Model Jury Instruction given at Buchanan's trial was not such that there was a "reasonable likelihood that the jury [ ] applied the challenged instruction in a way that prevent[ed] the consideration of constitutionally relevant evidence."[35] The Court based this determination on the fact that within paragraph three of the instruction was the direction to the jury to consider "all the evidence" in making its determination.[36] Thus, the Court reasoned, the instruction sufficiently directed the jury to consider the mitigating evidence.[37] This Court, however, looked to one phrase in the entire instruction in order to conclude that the instruction was constitutionally valid.[38] When read in its entirety, the instruction is very confusing and seems to refer only to the evidence relating to vileness. Paragraph two of the instruction refers only to the aggravator. The first phrase of paragraph three, "[i]f you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the requirements of [paragraph two], then you may fix the punishment of the Defendant at death," likewise refers only to the aggravator. Next comes the language keyed on by the majority: "or if you

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[26] *Id.* (citing *Tuilaepa v. California,* 512 U.S. 967 (1994)).

[27] *Id. See* Va. Code § 19.2-264.4(A) (1995).

[28] *Buchanan,* 118 S.Ct. at 761.

[29] *Id.*

[30] *Id.* (citing *Tuilaepa,* 512 U.S. at 971-73; *Romano v. Oklahoma,* 512 U.S. 1, 6-7 (1994); & *McCleskey v. Kemp,* 481 U.S. 279, 304-306 (1987))

[31] *Id.* (citing *Penry v. Lynaugh,* 492 U.S. 302, 317-318 (1989); *Eddings v. Oklahoma,* 455 U.S. 104, 113-114 (1982); & *Lockett v. Ohio,* 438 U.S. 586, 604 (1978)).

[32] *Buchanan,* 118 S.Ct. at 761 (citing *Johnson v. Texas,* 509 U.S. 350, 362 (1993); *Penry,* 492 U.S. at 326; & *Franklin v. Lynaugh,* 487 U.S. 164, 181 (1988)).

[33] This includes both a requirement that a State must instruct on specific mitigating factors and a requirement that mitigation be mentioned in some fashion in any of the instructions. This latter point is an area in which the dissent and majority differ. The majority opinion states in a footnote that Buchanan's claim that the Virginia instruction should have at a bare minimum used the word "mitigation" was waived due to his "belated attempt to adopt [it] at oral argument." *Id.* at 762 n.4. In fact, this issue, and whether or not it was waived, was the focus of the oral argument in this case. The dissent discusses this issue and concludes that all the state pattern instructions that the Court had heretofore permitted in capital cases "explicitly mention the jury's consideration of mitigating evidence" and that the mention of mitigation in Virginia's instruction would have made it much less constitutionally offensive. *Id.* at 765 (Breyer, J., dissenting).

[34] *Buchanan,* 118 S.Ct. at 761 (quoting *Boyde v. California,* 494 U.S. 370, 380 (1990)). To this point, there is no significant dispute between the majority opinion and the dissent. The majority opinion clearly states the importance of mitigating evidence to a proper imposition of the death penalty. It is in the application of the Boyde test that the rift between the majority and dissent is apparent.

[35] *Id.* (quoting Boyde, 494 U.S. at 380).

[36] *Id.* at 762. *See supra,* note 12.

[37] *Id.*

[38] As a matter of both state and federal law, a reviewing court must review the trial court's instructions as a whole and not in artificial isolation. *See e.g., Murphy v. Holland,* 776 F.2d 470 (4th Cir. 1985), *cert. granted, vacated,* 475 U.S. 1138, *on remand,* 845 F.2d 83, *cert. denied,* 488 U.S. 908 (stating that a reviewing court must review the trial court's instructions as a whole and not in artificial isolation); *United States v. Fleming,* 739 F.2d 945 (4th Cir. 1984) (same); *Wright v. Commonwealth,* 109 Va. 847, 65 S.E. 19 (1909) (same).

believe from all the evidence that the death penalty is not justified, then you shall fix the punishment at life imprisonment." Paragraph four also refers only to the aggravator. This juxtaposition of paragraphs and phrases, most of which refer only to the aggravator, may lead to a potential misunderstanding of the instruction.[39]

The dissent reasoned that the instruction, when read in its entirety as the jury would have received it, could reasonably be read to say, "If you find the defendant eligible for death, you may impose the death penalty, but if you find (on the basis of 'all the evidence') that death penalty is not 'justified,' which is to say that the defendant is not eligible for the death penalty, then you must impose life imprisonment."[40] The dissent went on to say that "[w]ithout any further explanation, the jury might well believe that whether death is, or is not, 'justified' turns on the presence or absence of Paragraph 2's aggravating circumstances [ ]—not upon the defendant's mitigating evidence ... ."[41]

The majority concluded that even if the instruction was deficient for not pointing out the existence of the mitigating evidence presented at trial, the jury was more than aware of this evidence. The dissent stated, however, that "the *presentation* of evidence does not tell the jury that the evidence presented is relevant and can be taken into account—particularly in the context of an instruction that seems to exclude the evidence from the universe of relevant considerations."[42]

After this case, defense counsel in Virginia should continue to object to the use of Virginia Model Criminal Instruction 34.125 as vague, confusing, and insufficient to adequately guide the discretion of the jury. If this objection is overruled, counsel should insist that Virginia Model Criminal Instruction 34.127, or a similar general mitigating evidence instruction, be used as well. Virginia Model Criminal Instruction 34.127 explicitly requires the jury to consider "any evidence presented of circumstances which do not justify or excuse the offense but which in fairness or mercy may extenuate or reduce the degree of moral culpability and punishment."[43] Further, defense counsel should continue requesting specific instructions on the statutory mitigating factors relevant in their case. The *Buchanan* Court only held that giving an instruction on mitigating evidence is not constitutionally required. Trial judges, however, are not prohibited from giving such instructions and may, in their discretion, choose to do so in any case.

Summary and analysis by:
Brian S. Clarke

[39] *Buchanan*, 118 S.Ct. at 764 (Breyer, J., dissenting).
[40] *Id.* (Breyer, J., dissenting).
[41] *Id.* (Breyer, J., dissenting).
[42] *Id.* at 766 (Breyer, J., dissenting) (emphasis in original).
[43] Virginia Model Jury Instructions, Criminal, Instruction No. 34.127 (1993 & Supp. 1995) & *Buchanan*, 118 S.Ct. at 765-66 (Breyer, J., dissenting).

LAMBRIX v. SINGLETARY

117 S.Ct. 1517 (1997)
United States Supreme Court

FACTS

Cary Michael Lambrix was convicted in Florida state court on two counts of first-degree murder for the 1983 killing of a man and woman who, after meeting Lambrix and his girlfriend at a local tavern, had returned to his trailer for dinner.[1] In the sentencing phase of the trial, the trial court instructed the jury on five aggravating circumstances.[2] One such instruction involved the "especially heinous, atrocious, or cruel" (HAC) aggravator.[3] The jury issued an advisory sentence of death for each count of murder, and the trial court sentenced Lambrix to death on both counts after finding five aggravating factors with respect to the murder of one of the victims, four aggravating factors with respect to the murder of the other victim, and no mitigating factors with respect to either murder. The Florida Supreme Court upheld Lambrix's convictions and sentences on direct appeal.[4]

Lambrix made multiple attempts to obtain collateral relief, all of which were subsequently denied. He next sought a writ of habeas corpus in the United States District Court for the Southern District of Florida, which rejected all of his claims. He appealed the decision to the United States Court of Appeals, Eleventh Circuit.[5] While that appeal was pending, the

[1] *Lambrix v. Singletary*, 117 S.Ct. 1517, 1521 (1997).
[2] *Lambrix*, 117 S.Ct. at 1524.
[3] *Id.* at 1521.
[4] *Id.*
[5] *Id.*