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Jones v. United States

119 S. Ct. 2090 (1999)

I. Facts

Louis Jones, Jr. (“Jones”) kidnaped Private Tracie Joy McBride (“McBride”) at gunpoint from Goodfellow Air Force Base in San Angelo, Texas. Jones transported McBride to his house where he sexually assaulted her. Next, Jones drove McBride to a bridge just outside of San Angelo. Using a tire iron, Jones struck McBride in the head several times until she died. The blows proved so severe that large pieces of McBride’s skull were either missing or had been driven into her cranial cavity.¹

Jones was charged with kidnaping with death resulting to the victim in violation of 18 U.S.C. § 1201(a)(2).² Exercising its discretion under the Federal Death Penalty Act of 1994 (“FDPA”),³ the government sought the death penalty. Jones was subsequently tried, convicted, and sentenced in the United States District Court for the Northern District of Texas.⁴

Under the FDPA, the sentencing hearing is divided into an “eligibility” phase and a “selection” phase.⁵ Upon a requisite finding of intent, at least one of the sixteen statutory aggravating factors set forth at 18 U.S.C. § 3592(c) must be established beyond a reasonable doubt in order for a defendant to become death-eligible.⁶ The jury unanimously found beyond a reasonable doubt that two statutory aggravating factors existed—causing death during the commission of another crime and committing the offense in an especially heinous, cruel, and depraved manner.⁷ In addition to the two statutory aggravating factors on which the jury based the death eligibility determination, the jury found two non-statutory aggravating factors: victim vulnerability and victim impact.⁸

Once Jones became death eligible, the jury was required to decide whether he should be sentenced to death. This selection phase decision requires the jury to consider all of the aggravating and mitigating factors.

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1. Jones v. United States, 119 S. Ct. 2090, 2096 (1999).
 2. 18 U.S.C. § 1201 (1984).
 3. 18 U.S.C. § 3591-3598 (1999).
 4. Jones, 119 S. Ct. at 2096.
 5. *Id.* See 18 U.S.C. § 3593.
 6. Jones, 119 S. Ct. at 2096. See 18 U.S.C. § 3593(e).
 7. Jones, 119 S. Ct. at 2096.
 8. *Id.* at 2097 & n.2.

The jury then determines whether the aggravating factors outweigh the mitigating, or, if there are no mitigating factors, whether the aggravating factors alone are sufficient to impose a sentence of death. The jury found that the two statutory aggravating factors and the two non-statutory aggravating factors outweighed the twelve mitigating factors proposed by the defense and unanimously recommended a death sentence. Consistent with 18 U.S.C. § 3594, the district court imposed the death sentence in accordance with the jury's recommendation.⁹

On appeal, the United States Court of Appeals for the Fifth Circuit affirmed the district court's decision.¹⁰ The United States Supreme Court granted certiorari on the following issues: (1) whether Jones was entitled to an instruction as to the effect of jury deadlock; (2) whether there was a reasonable likelihood that the jury was led to believe that Jones would receive a court-imposed sentence less than life without parole if it failed to reach a unanimous sentence recommendation; and (3) whether the submission to the jury of two allegedly duplicative, vague, and overbroad non-statutory aggravating factors was harmless error.¹¹

II. Holding

The United States Supreme Court affirmed the Fifth Circuit's decision, holding the following: (1) the Eighth Amendment does not require that jurors be instructed as to the consequences of their failure to agree; (2) the instructions and verdict forms, taken in full context, were unambiguous and did not create a reasonable likelihood that the jury believed that a lack of unanimity would cause the district court to impose a sentence less than life; and (3) the non-statutory aggravating factors were constitutionally valid.¹²

III. Analysis / Application in Virginia

A. Entitlement to Instruction to the Jury on the Effect of Deadlock

Jones argued that the Eighth Amendment requires a jury instruction on the consequences of a jury's failure to reach an agreement.¹³ In the alternative, Jones contended that the United States Supreme Court should exercise its power over federal courts and require such an instruction to be issued.¹⁴

In order to pass constitutional muster under the Eighth Amendment, a capital sentencing scheme must do two things. First, it must perform a

9. *Id.*

10. *Id.* See *United States v. Jones*, 132 F.3d 232 (5th Cir. 1998).

11. *Jones*, 119 S. Ct. at 2096.

12. *Id.* at 2099, 2103-04, 2107-10 (concluding the only possible error was one of drafting, which was harmless).

13. *Id.* at 2097-98.

14. *Id.* at 2098.

narrowing function as to the class of persons eligible to receive a death sentence, the "eligibility phase."¹⁵ Second, death sentences must be substantiated by individualized inquiry in what is known as the "selection phase."¹⁶ A valid individualized inquiry must permit a "broad inquiry" into "constitutionally relevant mitigating evidence."¹⁷

The United States Supreme Court concluded that an instruction on the consequences of deadlock has bearing on neither the eligibility phase nor the jury's consideration of evidence during the selection phase.¹⁸ Such an instruction speaks only to what happens when a jury is unable to fulfill its role in the sentencing process.¹⁹ Accordingly, the Court held that the Eighth Amendment does not require a jury to be instructed as to the effect of a lack of unanimity.²⁰

Likewise, the Court declined to exercise its supervisory powers to require the instruction.²¹ The Court pointed to the strong governmental interest in having the jury express the "conscience of the community on issues of life and death" that would be undermined by the issuance of the proposed instruction.²² The Court also noted that the FDPA itself does not require such an instruction.²³ Furthermore, the Court cited *Justus v. Commonwealth*²⁴ as being a particularly persuasive decision on the issue of requiring an instruction.²⁵ In *Justus*, the Supreme Court of Virginia admitted that, while an instruction on the consequences of the jury's failure to agree would be consistent with the law, such an instruction concerns merely a procedural matter and, therefore, its issuance is not required.²⁶

However, *Jones* does not completely foreclose the possibility of obtaining a jury instruction on the consequences of deadlock. Two recent non-capital cases decided in Virginia lend support to defendants seeking such an instruction. In *Batts v. Commonwealth*,²⁷ the Virginia Court of Appeals pointed out that the trial court's affirmative duty to provide juries with

15. *Id.* (citing *Buchanan v. Angelone*, 522 U.S. 269, 275 (1998)).

16. *Id.* (citing *Buchanan*, 522 U.S. at 275).

17. *Id.* (quoting *Buchanan*, 522 U.S. at 276) (internal quotation marks omitted).

18. *Id.* at 2099.

19. *Id.*

20. *Id.* at 2098-99.

21. *Id.* at 2099.

22. *Id.* (quoting *Lowenfield v. Phelps*, 484 U.S. 231, 238 (1998) (quoting *Witherspoon v. Illinois*, 391 U.S. 510, 519 (1968))).

23. *Id.* at 2099.

24. 266 S.E.2d 87 (Va. 1980).

25. *Jones*, 119 S.Ct. at 2099.

26. *Justus v. Commonwealth*, 266 S.E.2d 87, 92 (Va. 1980).

27. 515 S.E.2d 307 (Va. Ct. App. 1999).

correct statements of law is essential to a fair trial.²⁸ *Batts* goes on to state that the trial court also has an affirmative duty to instruct a jury on principles of law vital to a criminal defendant's case.²⁹ Furthermore, in *Newton v. Commonwealth*,³⁰ the Virginia Court of Appeals approved the granting of an instruction based entirely upon a procedural statute.³¹ *Batts* and *Newton* reflect the Court of Appeals's concern that jury instructions be accurate and directive as to matters of law affecting a defendant's case. Both cases offer a basis on which to assert that under Virginia law, an instruction on the consequences of deadlock is a correct statement of law necessary to a jury's sentencing determination and is proper notwithstanding the United States Supreme Court's decision in *Jones*.³²

B. Review of Jury Instructions

Based upon the instructions and the decision forms issued, Jones asserted that the jury was led to believe that its failure to reach a unanimous sentence recommendation would result in the court imposing a sentence less severe than life imprisonment.³³ Jones argued that (1) sentences cannot be based on materially untrue assumptions, (2) the jury is entitled to accurate sentencing information, and (3) jury confusion constitutes an arbitrary factor warranting reversal of his sentence under the Fourteenth Amendment Due Process Clause, the Eighth Amendment, and the FDPA.³⁴

1. Scope of Review

Because the Supreme Court determined that Jones had not properly presented and preserved his objection to the jury instructions and decision forms, the court limited its review to a plain error analysis.³⁵ The Court pointed to both statutory law³⁶ and case law³⁷ and firmly asserted that objections raised after the jury retires fail to preserve such objections.³⁸ Likewise, the court noted that proposing an instruction before the jury

28. *Batts v. Commonwealth*, 515 S.E.2d 307, 312 (Va. Ct. App. 1999).

29. *Id.* (quoting *Jiminez v. Commonwealth*, 402 S.E.2d 678, 681 (Va. 1991)).

30. 512 S.E.2d 846 (Va. Ct. App. 1999).

31. *Newton v. Commonwealth*, 512 S.E.2d 846, 857 (Va. Ct. App. 1999).

32. Section 19.2-264.4 of the Virginia Code provides that the court will impose a sentence of life imprisonment in the event of a jury's failure to reach unanimity in sentencing. VA. CODE ANN. § 19.2-264.4 (Michie 1999).

33. *Jones*, 119 S.Ct. at 2100.

34. *Id.*

35. *Id.* at 2102.

36. See FED. R. CRIM. P. 30.; FED. R. CRIM. P. 1, 54(a); 18 U.S.C. § 3595(c)(2)(C) (1999).

37. See *Singer v. United States*, 380 U.S. 24, 38 (1965); *Lopez v. United States*, 373 U.S. 427, 436 (1963).

38. *Jones*, 119 S. Ct. at 2101.

retires does not present a proper objection to the instructions actually issued.³⁹

Jones also advanced the argument that the FDPA creates an exception that requires review of death sentences imposed under an arbitrary factor, thus entitling him to a resentencing despite his having defaulted the claim.⁴⁰ The Court, asserting that the FDPA exhibited clear legislative intent to impose a timely objection requirement, rejected Jones's reading of the FDPA as overbroad.⁴¹

2. Plain Error Review

In review for plain error, relief is justified upon a finding of error that is plain and affects substantial rights.⁴² The Court uses plain error review sparingly, reserving it to correct only errors said to "seriously affect the fairness, integrity, or public reputation of judicial proceedings."⁴³

Jones's argument failed to clear even the first hurdle as the Court found that no error had occurred.⁴⁴ Rejecting a request for the lenient standard set forth in *Andres v. United States*,⁴⁵ the Court reaffirmed *Boyd v. California*⁴⁶ as establishing the single standard for reviewing whether jury instructions were applied unconstitutionally. The *Boyd* standard asks whether a reasonable likelihood existed that the jury applied the disputed instruction in violation of the United States Constitution.⁴⁷

The Court concluded that there was no reasonable likelihood that the jury misapplied the instructions because the district court did not expressly inform the jury that it would impose a lesser sentence in the case of deadlock. Nor did the district court expressly require the jury to choose the verdict form that recommended a lesser sentence in the event it failed to reach an agreement.⁴⁸ The Court did concede that the verdict forms standing alone could have led the jury to believe that a lack of unanimity would result in a sentence less than life.⁴⁹ However, the Court concluded that any

39. *Id.*

40. *Id.* at 2102.

41. *Id.*

42. *Id.* (citing *Johnson v. United States*, 520 U.S. 461, 467 (1997) (quoting *United States v. Olano*, 507 U.S. 725, 732 (1993))).

43. *Id.* (quoting *Olano*, 507 U.S. at 732) (internal quotation marks omitted).

44. *Id.* at 2103-04.

45. 333 U.S. 740 (1948).

46. 494 U.S. 370 (1990).

47. *Boyd v. California*, 494 U.S. 370, 380 (1990).

48. *Jones*, 119 S.Ct. at 2104.

49. *Id.*

confusion caused by the forms was alleviated when considered in the full context of the jury instructions.⁵⁰

Somewhat alarming was the Court's determination that even if an error had occurred, Jones would have been unable to prove that his substantial rights were affected. Because the district court warned the jury not to be concerned with the effect of a lesser sentence recommendation, a presumption arose that the jurors followed those instructions.⁵¹ The Court went further to state that Jones could not have shown that any confusion had been detrimental since the effect of the confusion was uncertain.⁵² The Court arrived at this conclusion notwithstanding two juror affidavits prepared post-sentence; the Court, citing procedural deficiencies, refused to review them.⁵³ These actions seem to leave defense attorneys at a loss as to what evidence can ever defeat a presumption that jurors followed instructions.

C. *Constitutional Validity of Non-Statutory Aggravating Factors*

In addition to the requisite statutory factors on which Jones's death sentence was substantiated, the jury also found two non-statutory aggravating factors based on victim impact and victim vulnerability evidence.⁵⁴ Jones contended that the non-statutory factors submitted to the jury were impermissibly duplicative, vague, and overbroad in violation of the Eighth Amendment.⁵⁵ The Fifth Circuit agreed with Jones, but found that the error was harmless beyond a reasonable doubt.⁵⁶ Four Supreme Court Justices did not find the non-statutory aggravating factors duplicative, vague or overbroad, and therefore upheld them as constitutionally valid.⁵⁷ The Court identified the only potential error to be one of drafting, which it found to be harmless.⁵⁸

1. *Duplicative Factors Analysis*

The Fifth Circuit concluded that the non-statutory aggravating factors were duplicative because the plain meaning of the term "personal character-

50. *Id.*

51. *Id.* at 2105.

52. *Id.*

53. *Id.* at 2104 n.11.

54. *Id.* at 2097.

55. *Id.* at 2105.

56. *Id.* See *Jones*, 132 F.3d at 250-252.

57. *Jones*, 119 S.Ct at 2107-08.

58. *Id.* at 2109-10. The Court opined that, assuming the nonstatutory aggravating factors were poorly written, the prosecution's argument served to clarify any confusion and, had the factors been drafted more precisely, the jury would have still reached the same conclusion. *Id.*

istics" used in 3(C) of the Special Findings Form also encompassed the traits which the jury considered in 3(B).⁵⁹ The court ruled that the duplication led to double counting of aggravating factors which skewed the weighing process and resulted in a risk of an arbitrary death sentence.⁶⁰

The United States Supreme Court disagreed. The Court has never held, and refused to hold in *Jones*, that duplicative factors are necessarily constitutionally invalid.⁶¹ Instead, the Court asserted that the weighing process is skewed when the jury has considered an invalid factor.⁶² The Court further dismissed the Fifth Circuit's "double counting" theory by declaring that the phrase "personal characteristics" is more naturally read as referring to the victim's character and personality, as opposed to physical characteristics.⁶³ The evidence of the victim's vulnerability and uniqueness, the Court reasoned, was relevant to different aggravating factors.⁶⁴ Furthermore, any risk of skewing was eradicated by the government's urging to the jury that the evidence went to two entirely different areas, as well as the trial court's instruction that factors should be weighed qualitatively rather than quantitatively.⁶⁵

2. Vagueness Analysis

The Fifth Circuit found that the non-statutory aggravating factors were unconstitutionally vague, as they were ill-defined and failed to guide or limit jury discretion.⁶⁶ Again, the Supreme Court disagreed.⁶⁷ When examining eligibility and selection factors for vagueness, the detection of bias or capriciousness controls.⁶⁸ The Court's self-described deferential review deems an aggravating factor constitutional so long as its core meaning is comprehensi-

59. The non-statutory aggravating factors found on the Special Findings Form read:

3(B). Tracie Joy McBride's young age, her slight stature, her background, and her unfamiliarity with San Angelo, Texas.

3(C). Tracie Joy McBride's personal characteristics and the effect of the instant offense on Tracie Joy McBride's family constitute an aggravating factor of the offense.

Id. at 2107.

60. *Id.* at 2106-07.

61. *Id.* at 2107.

62. *Id.* See *Stringer v. Black*, 503 U.S. 222, 232 (1992) (stating that consideration of an invalid factor skews the weighing process).

63. *Jones*, 119 S. Ct. at 2107.

64. *Id.*

65. *Id.*

66. *Id.* See *Jones*, 132 F.3d at 251.

67. *Jones*, 119 S. Ct. at 2107.

68. *Id.* at 2107-08 (citing *Tuilaepa v. California*, 512 U.S. 967, 973 (1994)).

ble to juries.⁶⁹ Here, the court found that the factors were clearly defined and easily understood by the jury.⁷⁰

3. *Overbroad Analysis*

An aggravating factor may be overbroad where the sentencing jury fairly concludes that an aggravating circumstance could apply to every death eligible defendant.⁷¹ Despite acknowledging that victim vulnerability and victim impact are relevant in every murder case, the Court concluded that in any particular case, the evidence is inherently individualized and highly relevant to the selection phase decision.⁷² The Court found that such was true in this case because the factors directed the jury to evidence specific to the case.⁷³

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69. *Id.* at 2108.

70. *Id.*

71. *Id.* (citing *Arave v. Creech*, 507 U.S. 463, 474 (1993)).

72. *Id.* See *Tuilaepa*, 512 U.S. at 976.

73. *Jones*, 119 S. Ct. at 2108.