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CAGE v. LOUISIANA 111 S. Ct. 328 (1990)

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CAGE v. LOUISIANA

111 S. Ct. 328 (1990)
United States Supreme Court

FACTS

On April 16, 1986, Tommy Cage attacked two college students wearing medallions on gold chains. When one of the students attempted to flee, Cage shot him in the lower back with a .38 caliber gun. The jury found that Cage then fatally shot the victim in the head, took the medallion, and ran into a nearby housing project. As a result, the Louisiana trial court convicted Cage of first-degree murder and sentenced him to death.

On appeal to the Supreme Court of Louisiana, Cage argued that the reasonable doubt instruction used in the guilt phase of his trial was constitutionally defective under the United States Supreme Court opinion *In re Winship*, 397 U.S. 358 (1970) (holding that the accused is protected against conviction under the fourteenth amendment except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged). The instruction Cage challenged stated in relevant part:

If you entertain a reasonable doubt as to any fact or element necessary to constitute the defendant's guilt, it is your duty to give him the benefit of that doubt and return a verdict of not guilty. Even where the evidence demonstrates a probability of guilt, if it does not establish such guilt beyond a reasonable doubt, you must acquit the accused. This doubt, however, must be a reasonable one; that is one that is founded upon a real tangible substantial basis and not upon mere caprice and conjecture. *It must be such doubt as would give rise to a grave uncertainty*, raised in your mind by reasons of the unsatisfactory character of the evidence or lack thereof. A reasonable doubt is not a mere possible doubt. *It is an actual substantial doubt*. It is a doubt that a reasonable man can seriously entertain. What is required is not an absolute or mathematical certainty, but a *moral certainty*. *State v. Cage*, 554 So.2d 39, 41 (La. 1989) (emphasis added).

The Supreme Court of Louisiana concluded that "taking the charge as a whole, reasonable persons of ordinary intelligence would understand the definition of 'reasonable doubt.'" *Id.* The United States Supreme Court granted Cage's petition for a writ of certiorari, and in a *per curiam* opinion, vacated Cage's sentence and remanded the case to the Supreme Court of Louisiana.

HOLDING

The Supreme Court held that the wording of the jury instruction could lead a reasonable juror to find guilt based on a degree of proof lower than that required by the Due Process Clause. The Court

reasoned that "the words 'substantial' and 'grave,' as they are commonly understood, suggest a higher degree of doubt than is required for acquittal under the reasonable doubt standard." *Cage v. Louisiana*, 111 S. Ct. 328, 329-330 (1990). When those words are considered with the requirement that the defendant be found guilty by a "moral certainty," as opposed to an evidentiary certainty, jurors could easily find the defendant in this case guilty.

ANALYSIS/APPLICATION IN VIRGINIA

In this case the Court returned to a previously employed standard of review for ambiguous jury instructions: A standard different from the one only recently announced in *Boyde v. California*, 110 S. Ct. 1190 (1990). See case summary of *Boyde v. California*, Capital Defense Digest, Vol. 3, No. 1, p. 11, (1990). The *Cage* Court held that when reviewing an ambiguous jury instruction, the Court should consider "how reasonable jurors could have understood the charge as a whole." *Cage*, 111 S. Ct. at 329. This standard is consistent with the approach previously established in *Francis v. Franklin*, 471 U.S. 307 (1985). Conversely, the *Boyde* Court had framed the question as "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 1196.

The Virginia Supreme Court, when reviewing challenged jury instructions, has also engaged in the "taking the charge as a whole" analysis which the Louisiana Supreme Court utilized in upholding Cage's conviction. For example, the Virginia Supreme Court has said that even though a challenged instruction was not artfully drawn, "we are of the opinion that, read as a whole, it fairly expounds the thrust of the statute." *M. Smith v. Commonwealth*, 219 Va. 455, 480, 248 S.E.2d 135, 150 (1978), *Pope v. Commonwealth*, 234 Va. 114, 360 S.E.2d 352 (1987), *Turner v. Commonwealth*, 234 Va. 543, 364 S.E.2d 483 (1988), *Buchanan v. Commonwealth*, 238 Va. 389, 384 S.E.2d 757 (1989), *Spencer v. Commonwealth*, 238 Va. 275, 384 S.E.2d 785 (1989). This standard response, that the instruction "read as a whole" is fair, did not prevail in the *Cage* decision.

The former *Boyde* standard of review, that examined the likely manner in which the jury as a whole applied the challenged instruction, made it more difficult for the defendant to obtain relief. Thus, the U.S. Supreme Court's apparent return to a "reasonable juror" evaluation standard may indicate that the Court will be more willing to examine potentially unconstitutional jury instructions.

Summary and analysis by:
Ginger M. Jonas

GASKINS v. MCKELLAR

916 F.2d 941 (1990)
United States Court of Appeals, Fourth Circuit

FACTS

Donald Henry Gaskins, who was serving ten life sentences, nine of which were for murder, was convicted and sentenced to death for the capital murder of fellow death row inmate Rudolph Tyner. Gaskins appealed to the South Carolina Supreme Court which affirmed both his conviction and sentence. *State v. Gaskins*, 284 S.C. 105, 326

S.E.2d 132 (1985), *cert. denied*, 471 U.S. 1120 (1985). Gaskins' subsequent efforts to obtain state post-conviction relief also failed. See *Gaskins v. State*, No. 85-CP-40-3466, Letter Order (S.C. Jan. 7, 1987), *cert. denied*, 482 U.S. 909 (1987).

Gaskins sought federal review under 28 U.S.C. §2254 (1990) in the United States District Court for the District of South Carolina. The district court denied the writ without an evidentiary hearing. Gaskins