Capital Defense Journal

Volume 12 | Issue 2 Article 7

Spring 3-1-2000

Weeks v. Angelone 120 S. Ct. 727 (2000)

Weeks v. Angelone
120 S. Ct. 727 (2000)

I. Facts

On the evening of February 23, 1993, Lonnie Weeks, Jr. ("Weeks"), was riding as a passenger in a stolen car driven by his uncle, Lewis J. Dukes, Jr. ("Dukes"). The two men were traveling from Washington, D.C., to Richmond, Virginia, on Interstate 95 when they passed the marked car of Virginia State Trooper Jose Cavazos. The trooper immediately turned on his emergency lights and stopped the two men for a speeding violation. After complying with the trooper's request to step out of the car, Weeks fired at the trooper with a nine millimeter semiautomatic pistol. Two of the hollow-point bullets hit the trooper, and he died minutes later. Weeks was arrested the following morning at a nearby motel. Shortly after his arrest, Weeks confessed to shooting the trooper.[1]

In October 1993, Weeks was tried before a jury in Prince William County, Virginia. After the jury found Weeks guilty of capital murder, a two-day sentencing phase followed. During the sentencing phase, the prosecution attempted to prove both the future dangerousness and the vileness aggravators. Weeks's attorneys presented ten witnesses, including Weeks himself, in mitigation.[2]

The jury recommended the death sentence after finding the vileness aggravating factor. The trial judge adopted the jury's recommendation and sentenced Weeks to death. Weeks's subsequent appeals to the Supreme Court of Virginia and the United States Supreme Court were denied. After exhausting state habeas proceedings, Weeks petitioned the United States District Court for the Eastern District of Virginia for habeas corpus relief; the district court dismissed the petition. Weeks then filed an application for

---

1. Weeks v. Commonwealth, 450 S.E.2d 379, 382-83 (Va. 1994).

2. Weeks v. Angelone, 120 S. Ct. 727, 730 (2000). The mitigating evidence presented by Weeks's attorneys showed that Weeks lived in a poor community and was raised by his grandmother due to his mother's drug addiction. During high school Weeks was a star athlete who stayed out of trouble. *Id.* at 740 n.9 (Stevens, J., dissenting). Weeks's athletic talents led to a basketball scholarship to Mount Olive College. He accepted the scholarship and briefly attended college. Weeks left both college and basketball behind when his girlfriend became pregnant, and he decided to stay and help her raise their newborn son. *See* Frank J. Murray, *Appeal Rejected for Killer of Cop[/]Clemency Request Given to Gilmore*, WASH. TIMES, Jan. 20, 2000, at A7. Shortly afterwards, Weeks began to associate with a bad crowd. Weeks testified during the sentencing phase and expressed to the jury in his own words his extreme remorse. *Weeks*, 120 S. Ct at 740 n.9 (Stevens, J., dissenting).

a certificate of appealability with the United States Court of Appeals for the Fourth Circuit. The court of appeals rejected all of Weeks's claims.[3] Two hours before Weeks was scheduled to die by lethal injection, the United States Supreme Court stayed his execution.[4] The Court granted certiorari to determine whether sentencing instructions given in response to a jury question were confusing.[5]

II. Holding

Chief Justice Rehnquist delivered the five to four opinion of the Court affirming the Fourth Circuit's conclusion that the jury instructions at sentencing did not prevent the jury from considering relevant mitigating evidence.[6]

III. Analysis / Application in Virginia

A. Sentencing Instruction Accepted as Adequate Response to Jury Question

During its deliberations, the jury submitted two questions to the court. The second question sparked the controversy which brought Weeks's case before the United States Supreme Court.[7] In its entirety, the question read as follows:

> 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?[8]

Rather than providing a simple yes or no answer to the jury's question, the judge directed the jury to reread the portion of Sentencing Instruction #2 which read as follows:

> If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt either of the two alternatives, and as to that

---

3. Weeks v. Angelone, 176 F.3d 249, 256-57 (4th Cir. 1999) (citing Weeks v. Commonwealth, 450 S.E.2d 379 (Va. 1994); Weeks v. Virginia, 516 U.S. 829 (1995)). For a detailed discussion of the claims raised by Weeks in his appeal to the Fourth Circuit, see Heather L. Necklaus, Case Note, 12 CAP. DEF. J. 241 (1999) (analyzing Weeks v. Angelone, 176 F.3d 249 (4th Cir. 1999)).

4. Josh White, *Supreme Court Stays Execution*, WASH. POST, Sept. 2, 1999, at B1.

5. *Weeks*, 120 S. Ct. at 729.

6. *Id.*

7. *Id.* at 730. In its first question to the court, the jury asked: "Does the sentence of life imprisonment in the State of Virginia have the possibility of parole, and if so, under [sic] what conditions must be met to receive parole?" The judge responded that "[y]ou 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." *Id.* (quoting App. to Pet. for Cert. 90) (internal quotation marks omitted). Weeks's attorneys objected to the judge's response. *Id.*

8. *Id.* (quoting App. 91) (internal quotation marks omitted).

> 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.[9]

Weeks's counsel objected to the judge's response and urged that the judge explain to the jury that even if the jurors found the vileness or future dangerousness factor, that they could still impose a life sentence or a life sentence plus a fine.[10] After deliberating for more than two hours, the jury returned with a finding of vileness and a recommendation of death.[11]

Weeks argued that the effect of the jury instruction was to preclude the jury from considering mitigating evidence.[12] In challenging the judge's response to the jury's question, Weeks relied on *Bollenbach v. United States*.[13] Although the Court acknowledged that *Bollenbach* resembled the case before it in that both cases involved a jury question answered by an instruction from the judge, the Court distinguished *Bollenbach* as involving an instruction that was clearly erroneous.[14] In addition to *Bollenbach*, Weeks relied on *Eddings v. Oklahoma*,[15] a capital case arising out of a bench trial.[16] In *Eddings*, the Court reversed the death sentence because, by refusing to consider mitigating evidence, "it was as if the trial judge had instructed a jury to disregard the mitigating evidence Eddings proffered on his behalf."[17] The majority distinguished *Bollenbach* and *Eddings* from Weeks's case by pointing to its decision in *Buchanan v. Angelone*.[18] In *Buchanan*, the Court considered the sentencing instruction at issue in *Weeks* and upheld the instruction against Eighth and Fourteenth Amendment challenges.[19] In addition to the sentencing instruction upheld in *Buchanan*, the trial judge in Weeks's case gave a separate instruction on mitigating evidence in which the

---

9. *Id.* at 730 n.1 (quoting App. 192-93) (internal quotation marks omitted).

10. *Id.* at 731 (quoting App. 223).

11. *Id.* After the verdict was read, the jurors were polled; all responded that they supported the verdict. *Id.* The trial transcript states that, as the jurors were polled, "a majority of the jury members [were] in tears." *Id.* at 740 (Stevens, J., dissenting) (quoting App. 225) (alteration in original) (internal quotation marks omitted). In his dissent, Justice Stevens noted that in his twenty-four years on the Court, he could not recall having seen a comparable notation in the transcript of any capital sentencing proceeding. *Id.*

12. Weeks v. Angelone, 176 F.3d 249, 258 (4th Cir. 1999).

13. 326 U.S. 607 (1946).

14. *Weeks*, 120 S. Ct. at 731 (citing Bollenbach v. United States, 326 U.S. 607, 611 (1946)).

15. 455 U.S. 104 (1982).

16. *Weeks*, 120 S. Ct. at 731 (citing Eddings v. Oklahoma, 455 U.S. 104 (1982)).

17. *Id.* (quoting Eddings v. Oklahoma, 455 U.S. 104, 114 (1982) (internal quotation marks omitted)).

18. 522 U.S. 269 (1998).

19. Buchanan v. Angelone, 522 U.S. 269, 275-77 (1998).

judge instructed the jurors that "[y]ou must consider a mitigating circumstance if you find there is evidence to support it."[20]

The Court measured Weeks's claim against the standard established in *Boyde v. California*.[21] *Boyde* held that where a jury instruction is ambiguous, the proper inquiry is "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."[22] In *Buchanan*, the Court concluded that the Virginia pattern instruction did not prevent the jury from considering mitigating evidence.[23] In both *Buchanan* and in the present case, the Court stressed the "*may* fix the punishment of the defendant at death" versus the "*shall* fix the punishment of the defendant at life imprisonment" (or life imprisonment plus a fine) language of the instruction.[24] The Court concluded that because the instruction itself was constitutionally adequate, the judge's response to the jury's question was also adequate.[25] In explaining how it got from step one to step two, the majority offered only the following two broad principles: (1) "[a] jury is presumed to follow its instructions;" and (2) "a jury is presumed to understand a judge's answer to

---

20. *Weeks*, 120 S. Ct. at 732 (quoting App. to Pet. for Cert. 195) (internal quotation marks omitted). The instruction was entitled "EVIDENCE IN MITIGATION" and read as follows:

> 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 732 n.2 (quoting App. 195). Even though the Court itself framed the jury question at issue here as one concerning "the proper consideration of mitigating circumstances," the trial judge did not direct the jury to reconsider the "EVIDENCE IN MITIGATION" instruction in his response to their question, nor did the Court comment on his failure to do so. *Id.* at 729.

21. 494 U.S. 370, 377-78 (1990) (holding that the Eighth Amendment requires that the jury be allowed to consider all relevant mitigating evidence offered during the sentencing phase in a capital case).

22. Boyde v. California, 494 U.S. 370, 380 (1990) (emphasis added). In his appeal to the Fourth Circuit, Weeks argued that the jury instruction violated *Boyde*. Weeks v. Angelone, 176 F.3d 249, 258 (4th Cir. 1999).

23. *Buchanan*, 522 U.S. at 277.

24. *Weeks*, 120 S. Ct at 730 n.1 (emphasis added), 732 (quoting *Buchanan*, 522 U.S. at 277).

25. *Id.* at 732-33.

its question."[26] The Court noted that after the jury received the judge's response, it had before it the text of the instruction itself, the additional instruction on mitigation, and its own recollection of defense counsel's closing arguments for guidance.[27] However, the judge did not redirect the jury to the mitigation instruction or reiterate the point made by Weeks's attorney during his closing. Either of these actions would have been more responsive to the jury's question than the one provided by the trial judge.

The majority concluded that, at best, Weeks had only demonstrated a "slight possibility" that the jury thought it was prevented from considering mitigating evidence.[28] Because this fell short of the "reasonable likelihood" standard established by *Boyd*, the Court affirmed Weeks's death sentence. In dissent, Justice Stevens found that the record established a "virtual certainty" that the jury was confused and did not understand that it could find an aggravating circumstance and still impose a life sentence.[29] A recent study found that forty-one percent of mock jurors presented with the sentencing instruction at issue here misinterpreted its meaning.[30]

---

26. *Id.* at 733 (citing Richardson v. Marsh, 481 U.S. 200, 211 (1987); Armstrong v. Toler, 24 U.S. (11 Wheat.) 258, 279 (1826)).

27. *Id.* at 734. In closing arguments, Weeks's attorney explained to the jury that it could find both future dangerousness and vileness and still not sentence Weeks to death. *Id.*

28. *Id.*

29. *Id.* at 735 (Stevens, J., dissenting).

30. *Death Penalty: A Faulty Ruling[/]Jurors Deserve to Understand the Rules*, VIRGINIAN PILOT & LEDGER STAR, Jan. 24, 2000, at B10. The study will be published this spring in the Cornell Law Review. *Id.* In Virginia, the pattern instruction has been amended since Weeks's jury trial to ensure that the jury knows it may consider mitigating evidence. The relevant portion of the current instruction reads as follows:

> If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt both of these circumstances, then you may fix the punishment of the defendant at death. But if you nevertheless believe from all the evidence, including evidence in mitigation, that the death penalty is not justified, then you shall fix the punishment of the defendant at:
>
> (1) Imprisonment for life; or
>
> (2) Imprisonment for life and a fine of a specific amount, but not more than $100,000.00.
>
> If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt either of these circumstances, then you may fix the punishment of the defendant at death. But if you nevertheless believe from all the evidence, **including evidence in mitigation**, that the death penalty is not justified, then you shall fix the punishment of the defendant at:
>
> (1) Imprisonment for life; or
>
> (2) Imprisonment for life 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 these circumstances, then you shall fix the punishment of the defendant at:
>
> (1) Imprisonment for life; or
>
> (2) Imprisonment for life and a fine of a specific amount, but not more

B. More Negative Consequences to the Page and Space Limitations of Appellate Briefs

On direct appeal to the Supreme Court of Virginia, Weeks presented forty-seven assignments of error.[31] Weeks's objection to the judge's response was assignment number forty-four.[32] The Court took special notice of this fact and concluded that Weeks's attorneys must not have considered the judge's answer to be a "serious flaw" because they did not include it in their oral argument to set aside the sentence after the verdict was received.[33] The Court found that the "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."[34] If courts begin to gauge a petitioner's claims on the basis of the order in which they are briefed, then the appellate process will be reduced to a guessing game in which petitioners are forced to forgo legitimate claims in favor of one or two claims that may or may not have the greatest chance on appeal. Focusing on only one or two claims to the exclusion of other valid claims can be a dangerous practice in capital cases. To preserve claims for review and to protect them from procedural default, claims must be included within the page and space limitations imposed by courts.

Rule 5:26 of the Rules of the Supreme Court of Virginia imposes a fifty-page limit on all opening briefs submitted to that court.[35] Weeks originally filed a ninety-page brief in which he raised forty-seven errors, but the Supreme Court of Virginia denied his motion for leave to file a brief exceeding the fifty-page limit.[36] Weeks therefore reduced his original brief by forty pages to fit it within the established page limitations. It makes sense to present assignments of error in the order in which they appear in the trial transcript. Using chronological order makes it easier for the court to follow. It would be confusing and illogical to make the objection to the sentencing instruction the first of forty-seven assignments of error. By focusing on the order in which Weeks presented his claims, the Court ignored both logic and the rigid space limitations imposed by the Supreme Court of Virginia.

Heather L. Necklaus

---

than $100,000.00.

Any decision you make regarding punishment must be unanimous.

VA. MODEL JURY INSTR. No. 33.122 (Michie 1998) (emphasis added).

31. Weeks v. Commonwealth, 450 S.E.2d 379, 383 (Va. 1994).
32. *Weeks*, 120 S. Ct. at 731.
33. *Id.* at 734.
34. *Id.*
35. VA. SUP. CT. R. 5:26.
36. Weeks v. Angelone, 176 F.3d 249, 270-71 (4th Cir. 1999).

Denial of Certiorari