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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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KELLY *v.* SOUTH CAROLINA

CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

No. 00–9280. Argued November 26, 2001—Decided January 9, 2002

After convicting petitioner Kelly of murder and related crimes, a South Carolina jury was asked to determine whether any aggravating factors had been shown and, if so, to recommend a sentence of death or life imprisonment. At the sentencing proceeding, the prosecutor presented testimony that Kelly had made a knife while in prison and taken part in an escape attempt with plans to hold a female guard hostage. The prosecutor’s cross-examination of a psychologist brought out evidence of Kelly’s sadism at an early age and his current desires to kill anyone who irritated him. In his closing argument, the prosecutor spoke of Kelly as a “dangerous” “bloody” “butcher.” Relying on the holding of *Simmons v. South Carolina*, 512 U. S. 154—that when “a capital defendant’s future dangerousness is at issue, and the only sentencing alternative to death . . . is life imprisonment without possibility of parole, due process entitles the defendant ‘to inform the jury of [his] parole ineligibility,’ ” *Shafer v. South Carolina*, 532 U. S. 36, 39—defense counsel requested a jury instruction stating that Kelly would be ineligible for parole if he received a life sentence. The trial court refused, saying that the State’s evidence went to Kelly’s character and characteristics, not to future dangerousness. The jury recommended a death sentence. In affirming the sentence, the State Supreme Court held *Simmons* inapposite for two reasons: state law provided the jury with a third sentencing alternative, and future dangerousness was not at issue.

Held: Kelly was entitled to a jury instruction that he would be ineligible for parole under a life sentence. The State Supreme Court’s statement that *Simmons* is inapplicable under South Carolina’s new sentencing scheme because life without the possibility of parole is not the only legally available sentence alternative to death mistakes the relationship of *Simmons* to the state sentencing scheme. Although a

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murder defendant facing a possible death sentence can, under some circumstances, receive a sentence less than life imprisonment, under the state scheme a jury now makes a sentencing recommendation only if the jurors find an aggravating circumstance. When they do make a recommendation, their only alternatives are death or life without parole. Thus, the state court's reasoning is not to the point. The court also erred in ruling that Kelly's future dangerousness is not at issue. The evidence and argument cited by the court are flatly at odds with that conclusion. The court saw the evidence as going only to Kelly's behavior in prison, or to his proclivity to escape from it, and overlooked the fact that evidence of violent behavior in prison can raise a strong implication of generalized future dangerousness, *Simmons*, *supra*, at 171. A jury hearing evidence of a defendant's propensity for violence reasonably will conclude that he presents a risk of violent behavior, whether locked up or free, and whether free as a fugitive or as a parolee. Evidence of future dangerousness under *Simmons* is evidence with a tendency to prove dangerousness in the future; its relevance to that point does not disappear merely because it might support other inferences or be described in other terms. The prosecutor accentuated the clear inference of future dangerousness raised by the evidence and placed the case within the four corners of *Simmons*. Although his characterizations of butchery went to retribution, that did not make them any the less arguments that Kelly would be dangerous down the road. Thus was Kelly's jury, like its predecessor in *Simmons*, invited to infer "that petitioner is a vicious predator who would pose a continuing threat to the community." *Simmons*, *supra*, at 176. It is not dispositive that Kelly's jury did not ask the judge for further instruction on parole eligibility, whereas the *Simmons* and *Shafer* juries did. A trial judge's duty is to give instructions sufficient to explain the law, an obligation that exists independently of any question from the jurors or any other indication of perplexity on their part. Nor is there any reason to believe that Kelly's jury was better informed than *Simmons*'s or *Shafer*'s on the matter of parole eligibility. Pp. 5–11.

343 S. C. 350, 540 S. E. 2d 851, reversed and remanded.

SOUTER, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, GINSBURG, and BREYER, JJ., joined. REHNQUIST, C. J., filed a dissenting opinion, in which KENNEDY, J., joined. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined.