

## Syllabus

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**

## Syllabus

**HOPKINS, WARDEN v. REEVES****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE EIGHTH CIRCUIT**

No. 96–1693. Argued February 23, 1998– Decided June 8, 1998

Respondent was indicted on two counts of felony murder under Nebraska law. The Nebraska first-degree murder statute defines felony murder as murder committed in the perpetration of certain enumerated felonies, including, as relevant here, sexual assault and attempt to commit sexual assault in the first degree. Under Nebraska law, intent to kill is conclusively presumed if the State proves intent to commit the underlying felony. A felony murder conviction makes a defendant eligible for the death penalty, which in Nebraska is imposed judicially, not by the trial jury. The trial court refused respondent's request to instruct the jury on second-degree murder and manslaughter on the ground that the State Supreme Court consistently has held that these crimes are not lesser included offenses of felony murder. Respondent's jury then convicted him on both felony murder counts, and a three-judge panel sentenced him to death. After exhausting his state remedies, respondent filed a federal habeas corpus petition, claiming, *inter alia*, that the trial court's failure to give the requested instructions was unconstitutional under *Beck v. Alabama*, 447 U. S. 625, in which this Court invalidated an Alabama law that prohibited lesser included offense instructions in capital cases, when lesser included offenses to the charged crime existed under state law and such instructions were generally given in noncapital cases. The District Court granted relief on an unrelated due process claim, which the Eighth Circuit rejected. However, the Eighth Circuit also held that, in failing to give the requested instructions, the trial court had committed the same constitutional error as that in *Beck*.

*Held:* *Beck* does not require state trial courts to instruct juries on offenses that are not lesser included offenses of the charged crime under state law. Pp. 5–12.

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(a) *Beck* is distinguishable from this case in two critical respects: The Alabama statute prohibited instructions on offenses that state law clearly recognized as lesser included offenses of the charged crime, and it did so only in capital cases. Alabama thus erected an artificial barrier that restricted its juries to a choice between conviction for a capital offense and acquittal. By contrast, when the Nebraska trial court declined to give the requested instructions, it merely followed the State Supreme Court's 100-year-old rule that second-degree murder and manslaughter are not lesser included offenses of felony murder. The trial court neither created an artificial barrier for the jury nor treated capital and noncapital cases differently. By ignoring these distinctions, the Eighth Circuit limited the State's prerogative to structure its criminal law more severely than does the rule in *Beck*, for it required in effect that States create lesser included offenses to all capital crimes when no such offense exists under state law. Pp. 5–8.

(b) The Eighth Circuit again overlooked significant distinctions between this case and *Beck* when it found that there was a distortion of the factfinding process because respondent's jury had been forced into an all-or-nothing choice between capital murder and innocence. The fact that Beck's jury was told that if it convicted him of the charged offense it must impose the death penalty threatened to make the issue at trial whether he should be executed or not, and not whether he was guilty beyond a reasonable doubt. The distortion of the trial process carried over to sentencing because an Alabama jury unwilling to acquit had no choice but to impose death. These factors are not present here. Respondent's jury did not impose sentence, and the sentencing panel's alternative to death was not setting respondent free, but rather sentencing him to life imprisonment. Moreover, respondent's proposed instructions would have introduced another kind of distortion at trial, for they would have allowed the jury to find beyond a reasonable doubt elements that the State, having assumed the obligation of proving only one crime, had not attempted to prove and indeed had ignored during trial. Pp. 8–10.

(c) The requirement of *Tison v. Arizona*, 481 U. S. 137, and *Enmund v. Florida*, 458 U. S. 782, that a culpable mental state with respect to the killing be proved before the death penalty may be imposed for felony murder does not affect the showing that a State must make at a defendant's felony murder trial, so long as the requirement is satisfied at some point thereafter, such as at sentencing or on appeal. *Cabana v. Bullock*, 474 U. S. 376, 385, 392. As such, these cases cannot override state law determinations of when instructions on lesser included offenses are permissible and when they are not. Respondent's argument that the Nebraska Supreme Court's long-

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standing interpretation that felony murder has no lesser included homicide offenses is arbitrary is without merit. That contention is certainly strained with respect to the crime of second-degree murder, which requires proof of intent to kill, while felony murder does not; respondent did not present such a challenge with respect to manslaughter to the Nebraska Supreme Court, and therefore that claim is not considered here. Pp. 10–12.

102 F. 3d 977, reversed.

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