

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

**WEEKS v. ANGELONE, DIRECTOR, VIRGINIA
DEPARTMENT OF CORRECTIONS**

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT

No. 99–5746. Argued December 6, 1999– Decided January 19, 2000

After a Virginia jury found petitioner Weeks guilty of capital murder, the prosecution sought to prove two aggravating circumstances in the penalty phase, and the defense presented 10 witnesses in mitigation. During deliberations, the jurors sent the trial judge a note asking whether, if they believed Weeks guilty of at least one of the aggravating circumstances, it was their duty to issue the death penalty, or whether they must decide whether to issue the death penalty or a life sentence. The judge responded by directing them to a paragraph in their instructions stating: “If you find from the evidence that the Commonwealth has proved, beyond a reasonable doubt, either of the two [aggravating circumstances], and as to that alternative, you are unanimous, then you may fix the punishment . . . at death, or if you believe from all the evidence that the death penalty is not justified, then you shall fix the punishment . . . at [life] imprisonment.” Over two hours later, the jury returned its verdict, which read: “[H]aving unanimously found that [Weeks] conduct in committing the offense [satisfied one of the aggravating circumstances], and having considered the evidence in mitigation . . . , [we] unanimously fix his punishment at death.” The jurors were polled and all responded affirmatively that the foregoing was their verdict. In his direct appeal to the Virginia Supreme Court, Weeks’ assignment of error respecting the judge’s answering the jury’s question about mitigating circumstances was number 44. That court affirmed Weeks’ conviction and sentence on direct appeal and later dismissed his state habeas petition. The Federal District Court denied him federal habeas relief, and the Fourth Circuit denied a certificate of appealability and dismissed his petition.

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Held:

1. The Constitution is not violated when a trial judge directs a capital jury's attention to a specific paragraph of a constitutionally sufficient instruction in response to a question regarding the proper consideration of mitigating evidence. Weeks misplaces his reliance on *Bollenbach v. United States*, 326 U. S. 607, 611, and *Eddings v. Oklahoma*, 455 U. S. 104, 114, both of which are inapposite in this case. Here, the trial judge gave precisely the same Virginia capital instruction that was upheld in *Buchanan v. Angelone*, 522 U. S. 269, 277, as being sufficient to allow the jury to consider mitigating evidence. The judge also gave a specific instruction on mitigating evidence that was not given in *Buchanan*. The Constitution does not require anything more, as a jury is presumed both to follow its instructions, *Richardson v. Marsh*, 481 U. S. 200, 211, and to understand a judge's answer to its question, see, e.g., *Armstrong v. Toler*, 11 Wheat. 258, 279. To presume otherwise would require reversal every time a jury inquires about a matter of constitutional significance, regardless of the judge's answer. Here, the presumption gains additional support from empirical factors, including that each of the jurors affirmed the verdict in open court, they deliberated for more than two hours after receiving the judge's answer to their question, and defense counsel specifically explained to them during closing argument that they could find both aggravating factors proven and still not sentence petitioner to death. At best, Weeks has demonstrated only that there exists a slight *possibility* that the jury considered itself precluded from considering mitigating evidence. Such a demonstration is insufficient to prove a constitutional violation under *Boyd v. California*, 494 U. S. 370, 380, which requires the showing of a reasonable *likelihood* that the jury felt so restrained. It also appears that Weeks' attorney did not view the judge's answer to the jury's question as a serious flaw in the trial at that time, since he made an oral motion to set aside the death sentence and did not even mention this incident. And the low priority and space which counsel assigned to the point on direct appeal suggests that the present emphasis was an afterthought. Pp. 5–11.

2. Federal habeas relief is barred by 28 U. S. C. §2254(d). For the foregoing reasons, it follows *a fortiori* that the adjudication of the State Supreme Court's affirmance of Weeks' sentence and conviction was neither "contrary to," nor involved an "unreasonable application of," any of this Court's decisions as the statute requires. Pp. 11–12.

176 F. 3d 249, affirmed.

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