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SUPREME COURT OF THE UNITED STATES

No. 91–1738

JERRY D. GILMORE, PETITIONER *v.* KEVIN TAYLOR

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[June 7, 1993]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.[1]

Respondent Kevin Taylor was convicted of murder by an Illinois jury and sentenced to 35 years' imprisonment. After his conviction and sentence became final, he sought federal habeas relief on the ground that the jury instructions given at his trial violated the Fourteenth Amendment's Due Process Clause. The Court of Appeals for the Seventh Circuit granted relief on the basis of its recent decision in *Falconer* v. *Lane,* 905 F. 2d 1129 (1990), which held that the Illinois pattern jury instructions on murder and voluntary manslaughter were unconstitutional because they allowed a jury to return a murder verdict without considering whether the defendant possessed a mental state that would support a voluntary-manslaughter verdict instead. We conclude that the rule announced in *Falconer* was not dictated by prior precedent, and is therefore "new" within the meaning of *Teague* v. *Lane*, 489 U. S. 288 (1989). Accordingly, the *Falconer* rule may not provide the basis for federal habeas relief in respondent's case.

Early one morning in September 1985, respondent

[1]JUSTICE SOUTER joins all but footnote 3 of this opinion.

became involved in a dispute with his former wife and her live-in boyfriend, Scott Siniscalchi, over custodial arrangements for his daughter. A fracas ensued between the three adults, during which respondent stabbed Siniscalchi seven times with a hunting knife. Siniscalchi died from these wounds, and respondent was arrested at his home later that morning.

Respondent was charged with murder. Ill. Rev. Stat., ch. 38, ¶9–1 (1985). At trial, he took the stand and admitted killing Siniscalchi, but claimed he was acting under a sudden and intense passion provoked by Siniscalchi, and was therefore only guilty of the lesser-included offense of voluntary manslaughter. ¶9–2. At the close of all the evidence, the trial judge found that there was sufficient evidence supporting respondent's "heat of passion" defense to require an instruction on voluntary manslaughter, and instructed the jury as follows:

> "To sustain the charge of murder, the State must prove the following propositions:
>
> "First: That the Defendant performed the acts which caused the death of Scott Siniscalchi; and
>
> "Second: That when the Defendant did so he intended to kill or do great bodily harm to Scott Siniscalchi; or he knew that his act would cause death or great bodily harm to Scott Siniscalchi; or he knew that his acts created a strong probability of death or great bodily harm to Scott Siniscalchi; or he was committing the offense of home invasion.
>
> "If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the Defendant guilty.
>
> "If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the Defendant not guilty.

. . . . .

> "To sustain the charge of voluntary manslaughter, the evidence must prove the following propositions:
>
> "First: That the Defendant performed the acts which caused the death of Scott Siniscalchi; and
>
> "Second: That when the Defendant did so he intended to kill or do great bodily harm to Scott Siniscalchi; or he knew that such acts would *[sic]* death or great bodily harm to Scott Siniscalchi; or he knew that such acts created a strong probability of death or great bodily harm to Scott Siniscalchi;
>
> "Third: That when the Defendant did so he acted under a sudden and intense passion, resulting from serious provocation by another.
>
> "If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the Defendant guilty.
>
> "If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the Defendant not guilty.
>
> "As stated previously, the Defendant is charged with committing the offense of murder and voluntary manslaughter. If you find the Defendant guilty, you must find him guilty of either offense; but not both. On the other hand, if you find the Defendant not guilty, you can find him not guilty on either or both offenses." App. 128–131.

These instructions were modeled after, and virtually identical to, the Illinois pattern jury instructions on murder and voluntary manslaughter, which were formally adopted in 1981, Illinois Pattern Jury Instructions—
Criminal §§7.02 and 7.04 (2d ed. 1981), but had been uniformly given by Illinois judges since 1961, when the State enacted the definitions of murder and vol-

untary manslaughter that governed until 1987. See Haddad, Allocation of Burdens in Murder-Voluntary Manslaughter Cases: An Affirmative Defense Approach, 59 Chi.-Kent L. Rev. 23 (1982).[2] Respondent did not object to the instructions. The jury returned a guilty verdict on the murder charge, and respondent was sentenced to 35 years' imprisonment.

Respondent unsuccessfully challenged his conviction on appeal, then filed a petition for state postconviction relief. The Circuit Court dismissed the petition. But while respondent's appeal was pending, the Illinois Supreme Court invalidated the Illinois pattern jury instructions on murder and voluntary manslaughter. *People* v. *Reddick*, 123 Ill. 2d 184, 526 N. E. 2d 141 (1988). According to the Supreme Court, under Illinois law, the instructions should have placed on the prosecution the burden of *disproving* beyond a reasonable doubt that the defendant possessed a mitigating mental state. *Id.*, at 197, 526 N. E. 2d, at 146. Respondent sought to take advantage of *Reddick* on appeal, but the Court of Appeals affirmed the denial of postconviction relief on the ground that *Reddick* did not involve constitutional error, the only type of error that would support the grant of relief. *People* v. *Taylor*, 181 Ill. App. 3d 538, 536 N. E. 2d 1312 (1989). The Illinois Supreme Court denied respondent's request for leave to appeal.

Having exhausted his state remedies, respondent sought federal habeas relief, attacking his conviction

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[2]Effective July 1, 1987, the offense of voluntary manslaughter was reclassified as second-degree murder and the burden of proof as to the existence of a mitigating mental state was expressly placed on the defendant. Ill. Rev. Stat., ch. 38, ¶9–2 (1987). The Illinois pattern jury instructions were rewritten accordingly. 1 Illinois Pattern Jury Instructions—Criminal §7.02B (3d ed. 1992, Supp. 1993).

on the ground that the jury instructions given at his trial violated due process. Eleven days later, the Court of Appeals for the Seventh Circuit held as much in *Falconer* v. *Lane*, 905 F. 2d 1129 (1990). The defect identified by the *Falconer* court was quite different from that identified in *Reddick:* Because the murder instructions preceded the voluntary-manslaughter instructions, but did not expressly direct the jury that it could not return a murder conviction if it found that the defendant possessed a mitigating mental state, it was possible for a jury to find that a defendant was guilty of murder without even considering whether he was entitled to a voluntary-manslaughter conviction instead. 905 F. 2d, at 1136. "Explicit misdirection on this scale," the Seventh Circuit held, "violates the constitutional guarantee of due process." *Id.*, at 1137. In reaching this conclusion, the Court of Appeals placed principal reliance on *Cupp* v. *Naughten*, 414 U. S. 141 (1973).

At respondent's federal habeas proceeding, the State conceded that the jury instructions given at respondent's trial were unconstitutional under *Falconer*, but argued that the rule announced in *Falconer* was "new" within the meaning of *Teague* v. *Lane*, 489 U. S. 288 (1989), and therefore could not form the basis for federal habeas relief. The District Court agreed, but the Court of Appeals reversed. 954 F. 2d 441 (1992). Although the Seventh Circuit now thought *Cupp* was "too general to have compelled *Falconer* within the meaning of *Teague*," 954 F. 2d, at 452, it concluded that *Boyde* v. *California*, 494 U. S. 370 (1990), and *Connecticut* v. *Johnson*, 460 U. S. 73 (1983) (plurality opinion), were "specific enough to have compelled" the result reached in *Falconer*, 954 F. 2d, at 453. Accordingly, the Court of Appeals held that the rule announced in *Falconer* was not "new" within the meaning of *Teague*, and that *Teague* therefore did not bar the retroactive application of *Falconer* in respondent's case. *Id.*, at 453. We

granted certiorari, 506 U. S. —— (1992), and now reverse.

The retroactivity of *Falconer* under *Teague* and its progeny is the only question before us in this case. Subject to two narrow exceptions, a case that is decided after a defendant's conviction and sentence become final may not provide the basis for federal habeas relief if it announces a "new rule." *Graham* v. *Collins*, 506 U. S. ——, —— (1993) (slip op., at 5); *Stringer* v. *Black*, 503 U. S. ——, —— (1992) (slip op., at 4); *Teague*, *supra*, at 305–311 (plurality opinion). Though we have offered various formulations of what constitutes a new rule, put "meaningfully for the majority of cases, a decision announces a new rule `if the result was not *dictated* by precedent existing at the time the defendant's conviction became final.'" *Butler* v. *McKellar*, 494 U. S. 407, 412 (1990) (quoting *Teague*, *supra*, at 301 (emphasis in original)); see also *Graham*, *supra*, at ——, (slip op., at 5); *Sawyer* v. *Smith*, 497 U. S. 227, 234 (1990); *Saffle* v. *Parks*, 494 U. S. 484, 488 (1990); *Penry* v. *Lynaugh*, 492 U. S. 302, 329 (1989). "The `new rule' principle . . . validates reasonable, good-faith interpretations of existing precedents made by state courts," 494 U. S., at 414, and thus effectuates the States' interest in the finality of criminal convictions and fosters comity between federal and state courts.

We begin our analysis with the actual flaw found by the *Falconer* court in the challenged jury instructions. It was not that they somehow lessened the State's burden of proof below that constitutionally required by cases such as *In re Winship*, 397 U. S. 358 (1970); nor was it that the instructions affirmatively misstated applicable state law. (The Court of Appeals in no way relied upon *People* v. *Reddick*, *supra*, which the Illinois Supreme Court had subsequently held was subject to prospective application only. *People* v. *Flowers*, 138 Ill. 2d 218, 561 N. E. 2d 674 (1990).) Rather, the flaw identified by the *Falconer* court was

that when the jury instructions were read consecutively, with the elements of murder set forth before the elements of voluntary manslaughter, a juror could conclude that the defendant was guilty of murder after applying the elements of that offense without continuing on to decide whether the elements of voluntary manslaughter were also made out, so as to justify returning a verdict on that lesser offense instead.

In concluding that this defect violated due process, the *Falconer* court relied on *Cupp* v. *Naughten*, *supra*. That case involved a due process challenge to a jury instruction that witnesses are presumed to tell the truth, which the defendant claimed had the effect of shifting the burden of proof on his innocence. Because the jury had been explicitly instructed on the defendant's presumption of innocence as well as the State's burden of proving guilt beyond a reasonable doubt, we held that the instruction did not amount to a constitutional violation. See 414 U. S., at 149.

We think *Cupp* is an unlikely progenitor of the rule announced in *Falconer*, a view now shared by the Seventh Circuit. The cases following *Cupp* in the *Winship* line establish that States must prove guilt beyond a reasonable doubt with respect to every element of the offense charged, but that they may place on defendants the burden of proving affirmative defenses. See *Martin* v. *Ohio*, 480 U. S. 228 (1987); *Patterson* v. *New York*, 432 U. S. 197 (1977). The State argues that these later cases support the proposition that any error committed in instructing a jury with respect to an affirmative defense, which does not lessen the State's *Winship* burden in proving every element of the offense charged beyond a reasonable doubt, is one wholly of state law. Cf. *Engle* v. *Isaac*, 456 U. S. 107, 119–121, and n. 21 (1982) (challenge to correctness of self-defense instructions under state law provides no basis for federal habeas relief). We need not address this

contention other than to say that cases like *Patterson* and *Martin* make it crystal clear that *Cupp* does not compel the result reached in *Falconer*.

In its decision in the present case, the Court of Appeals offered two additional cases which it believed *did* dictate the result in *Falconer*. The first is *Boyde* v. *California*, *supra*. There, we clarified the standard for reviewing on federal habeas a claim that ambiguous jury instructions impermissibly restricted the jury's consideration of "constitutionally relevant evidence." 494 U. S., at 380. Although *Boyde* was decided after respondent's conviction and sentence became final, it did not work a change in the law favoring criminal defendants, and therefore may be considered in our *Teague* analysis. See *Lockhart* v. *Fretwell*, 506 U. S. ——, —— (1993) (slip op., at 7–8). Nevertheless, *Boyde* was a capital case, with respect to which we have held that the Eighth Amendment requires a greater degree of accuracy and fact finding than would be true in a noncapital case. See *Herrera* v. *Collins*, 506 U. S. ——, —— (1993) (slip op., at 7); *Beck* v. *Alabama*, 447 U. S. 625 (1980). Outside of the capital context, we have never said that the possibility of a jury misapplying state law gives rise to federal constitutional error. To the contrary, we have held that instructions that contain errors of state law may not form the basis for federal habeas relief. *Estelle* v. *McGuire*, 502 U. S. —— (1991).

Moreover, under the standard fashioned in *Boyde* the relevant 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." 494 U. S., at 380. In *Boyde*, the petitioner argued that the trial court's instruction on California's "catch-all" factor for determining whether a defendant should be sentenced to death restricted the jury's consideration of certain mitigating evidence. Since "[t]he Eighth Amendment requires that the jury be able to consider

and give effect to all relevant mitigating evidence," *id.*, at 377–378, this evidence was plainly constitutionally relevant. In this case, by contrast, petitioner argues that the challenged instructions prevented the jury from considering evidence of his affirmative defense. But in a noncapital case such as this there is no counterpart to the Eighth Amendment's doctrine of "constitutionally relevant evidence" in capital cases.

The Court of Appeals also relied on the plurality opinion in *Connecticut* v. *Johnson*, 460 U. S. 73 (1983). That case dealt with the question whether an instruction that violates due process under *Sandstrom* v. *Montana*, 442 U. S. 510 (1979), may be subject to harmless-error analysis. But in the course of deciding this question, the plurality discussed the nature of *Sandstrom* error, and it is this discussion on which the Court of Appeals relied below. *Sandstrom* is a lineal descendant of *Winship;* it simply held that an instruction which creates a presumption of fact violates due process if it relieves the State of its burden of proving all of the elements of the offense charged beyond a reasonable doubt. The Court of Appeals read the *Johnson* plurality's discussion of *Sandstrom* as establishing the "due process principle" that instructions are unconstitutional if they lead "the jury to ignore *exculpatory evidence* in finding the defendant guilty of murder beyond a reasonable doubt." 954 F. 2d, at 453 (emphasis added). But neither *Sandstrom* nor *Johnson* can be stretched that far beyond *Winship*. The most that can be said of the instructions given at respondent's trial is that they created a risk that the jury would fail to consider evidence that related to an affirmative defense, with respect to which *Winship*'s due process guarantee does not apply. See *Martin* v. *Ohio*, *supra; Patterson* v. *New York*, *supra*.

Respondent offers a separate (but related) rationale he claims is supported by our cases and also compels

the Seventh Circuit's ruling in *Falconer:* viz., the jury instructions given at his trial interfered with his fundamental right to present a defense. We have previously stated that "the Constitution guarantees criminal defendants `a meaningful opportunity to present a complete defense.'" *Crane* v. *Kentucky*, 476 U. S. 683, 690 (1986) (quoting *California* v. *Trombetta*, 467 U. S. 479, 485 (1984)). But the cases in which we have invoked this principle dealt with the exclusion of evidence, see, *e.g.*, *Crane* v. *Kentucky*, *supra; Chambers* v. *Mississippi*, 410 U. S. 284 (1973), or the testimony of defense witnesses, see, *e.g.*, *Webb* v. *Texas*, 409 U. S. 95 (1972) *(per curiam); Washington* v. *Texas*, 388 U. S. 14 (1967). None of them involved restrictions imposed on a defendant's ability to present an affirmative defense. Drawing on these cases, respondent argues that the right to present a defense includes the right to have the jury consider it, and that confusing instructions on state law which prevent a jury from considering an affirmative defense therefore violate due process.[3]

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[3]Respondent also relies on *Cool* v. *United States*, 409 U. S. 100 (1972) *(per curiam)*. That case involved a due process challenge to an instruction that the jury should disregard defense testimony unless it believed beyond a reasonable doubt that the testimony was true. Relying on *In re Winship*, 397 U. S. 358 (1970), and *Washington* v. *Texas*, 388 U. S. 14 (1967), we held that this instruction required reversal of the defendant's conviction because it "place[d] an improper burden on the defense and allow[ed] the jury to convict despite its failure to find guilt beyond a reasonable doubt." 409 U. S., at 102–103. This, in turn, we emphasized, contravened *Winship*'s command that the State must prove guilt beyond a reasonable doubt. *Id*., at 104. *Cool* is a progeny of the *Winship* line of cases, and therefore provides no predicate under *Teague* for the rule announced in

But such an expansive reading of our cases would make a nullity of the rule reaffirmed in *Estelle* v. *McGuire*, *supra*, that instructional errors of state law generally may not form the basis for federal habeas relief. And the level of generality at which respondent invokes this line of cases is far too great to provide any meaningful guidance for purposes of our *Teague* inquiry. See *Saffle* v. *Parks*, 494 U. S., at 491.

For the foregoing reasons, we disagree with the Seventh Circuit and respondent that our precedent foreordained the result in *Falconer*, and therefore hold that the rule announced in *Falconer* is "new" within the meaning of *Teague*.[4] All that remains to be decided is whether this rule falls into one of *Teague*'s exceptions, under which a new rule may be given retroactive effect on collateral review. The first exception applies to those rules that "plac[e] certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe." *Teague* v. *Lane*, 489 U. S., at 307 (plurality opinion) (internal quotation marks omitted).

Falconer.

[4]Strongly fortifying this conclusion is the fact that the instructions deemed unconstitutional in *Falconer* were modeled after, and virtually identical to, the Illinois pattern jury instructions on murder and voluntary manslaughter, which were formally adopted in 1981—five years before respondent's trial—but had been uniformly given by Illinois judges since 1961. As we have stated, the purpose of *Teague*'s "new rule" principle is to "validat[e] reasonable, good-faith interpretations of existing precedents made by state courts." *Butler* v. *McKellar*, 494 U. S. 407, 414 (1990). The existence of such an institutionalized state practice over a period of years is strong evidence of the reasonableness of the interpretations given existing precedent by state courts.

This exception is clearly inapplicable here, since the rule announced in *Falconer* does not "decriminalize" any class of conduct. See *Saffle* v. *Parks*, *supra*, at 495. *Teague*'s second exception permits the retroactive application of "`watershed rules of criminal procedure' implicating the fundamental fairness and accuracy of the criminal proceeding." 494 U. S., at 495 (quoting *Teague*, *supra*, at 311). This exception is also inapplicable. Although the *Falconer* court expressed concern that the jury might have been confused by the instructions in question, we cannot say that its holding falls into that "small core of rules requiring `observance of those procedures that . . . are implicit in the concept of ordered liberty.'" *Graham* v. *Collins*, 506 U. S., at —— (slip op. at 16–17) (quoting *Teague*, *supra*, at 311 (internal quotation marks

omitted)).[5]

Because the rule announced in *Falconer* is "new" within the meaning of *Teague*, and does not fall into one of *Teague*'s exceptions, it cannot provide the basis for federal habeas relief in respondent's case. The judgment of the Court of Appeals is therefore

Reversed.

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[5]JUSTICE BLACKMUN in dissent would elevate the instructional defect contained in the Illinois pattern jury instructions on murder and voluntary manslaughter not merely to the level of a federal constitutional violation, but to one that is so fundamental as to come within *Teague*'s second exception. He reaches this result by combining several different constitutional principles—the prohibition against *ex post facto* laws, the right to a fair trial, and the right to remain silent—into an unrecognizable constitutional stew.