SUPREME COURT OF THE UNITED STATES

No. 92–5129

JOHN SULLIVAN, PETITIONER *v.* LOUISIANA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

[June 1, 1993]

JUSTICE SCALIA delivered the opinion of the Court.

The question presented is whether a constitutionally deficient reasonable-doubt instruction may be harmless error.

Petitioner was charged with first-degree murder in the course of committing an armed robbery at a New Orleans bar. His alleged accomplice in the crime, a convicted felon named Michael Hillhouse, testifying at the trial pursuant to a grant of immunity, identified petitioner as the murderer. Although several other people were in the bar at the time of the robbery, only one testified at trial. This witness, who had been unable to identify either Hillhouse or petitioner at a physical lineup, testified that they committed the robbery, and that she saw petitioner hold a gun to the victim's head. There was other circumstantial evidence supporting the conclusion that petitioner was the triggerman. 596 So. 2d 177, 180–181 (La. 1992). In closing argument, defense counsel argued that there was reasonable doubt as to both the identity of the murderer and his intent.

In his instructions to the jury, the trial judge gave a definition of "reasonable doubt" that was, as the State conceded below, essentially identical to the one held unconstitutional in *Cage* v. *Louisiana*, 498 U. S. 39 (1990)

(per curiam). See 596 So. 2d, at 185, and n. 3. The jury found petitioner guilty of first-degree murder and subsequently recommended that he be sentenced to death. The trial court agreed. On direct appeal, the Supreme Court of Louisiana held, consistent with its opinion on remand from our decision in *Cage*, *State* v. *Cage*, 583 So. 2d 1125, cert. denied, 502 U. S. —— (1991), that the erroneous instruction was harmless beyond a reasonable doubt. 596 So. 2d, at 186. It therefore upheld the conviction, though remanding for a new sentencing hearing because of ineffectiveness of counsel in the sentencing phase. We granted certiorari, 506 U. S. —— (1992).

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . ." In *Duncan* v. *Louisiana*, 391 U. S. 145, 149 (1968), we found this right to trial by jury in serious criminal cases to be "fundamental to the American scheme of justice," and therefore applicable in state proceedings. The right includes, of course, as its most important element, the right to have the jury, rather than the judge, reach the requisite finding of "guilty." See *Sparf and Hansen* v. *United States*, 156 U. S. 51, 105–106 (1895). Thus, although a judge may direct a verdict for the defendant if the evidence is legally insufficient to establish guilt, he may not direct a verdict for the State, no matter how overwhelming the evidence. *Ibid.* See also *United States* v. *Martin Linen Supply Co.*, 430 U. S. 564, 572–573 (1977); *Carpenters* v. *United States*, 330 U. S. 395, 410 (1947).

What the factfinder must determine to return a verdict of guilty is prescribed by the Due Process Clause. The prosecution bears the burden of proving all elements of the offense charged, see, *e.g.*, *Patterson* v. *New York*, 432 U. S. 197, 210 (1977);

Leland v. *Oregon*, 343 U. S. 790, 795 (1952), and must persuade the factfinder "beyond a reasonable doubt" of the facts necessary to establish each of those elements, see, *e.g.*, *In re Winship*, 397 U. S. 358, 364 (1970); *Cool* v. *United States*, 409 U. S. 100, 104 (1972) *(per curiam)*. This beyond-a-reasonable-doubt requirement, which was adhered to by virtually all common-law jurisdictions, applies in state as well as federal proceedings. *Winship*, *supra*.

It is self-evident, we think, that the Fifth Amendment requirement of proof beyond a reasonable doubt and the Sixth Amendment requirement of a jury verdict are interrelated. It would not satisfy the Sixth Amendment to have a jury determine that the defendant is *probably* guilty, and then leave it up to the judge to determine (as *Winship* requires) whether he is guilty beyond a reasonable doubt. In other words, the jury verdict required by the Sixth Amendment is a jury verdict of guilty beyond a reasonable doubt. Our *per curiam* opinion in *Cage*, which we accept as controlling, held that an instruction of the sort given here does not produce such a verdict.[1] Petitioner's Sixth Amendment right to jury trial was therefore denied.

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[1]The State has argued in this Court that the *Cage* standard for review of jury instructions, which looked to whether a jury "could have" applied the instructions in a manner inconsistent with the Constitution, was contradicted in *Boyde* v. *California*, 494 U. S. 370, 380 (1990), and disapproved in *Estelle* v. *McGuire*, 502 U. S. ——, —— , n. 4 (1991). In view of the question presented and the State's failure to raise this issue below, we do not consider whether the instruction given here would survive review under the *Boyde* standard. See *Granfinanciera, S.A.* v. *Nordberg*, 492 U. S. 33, 38–39 (1989); *Washington* v. *Confederated Bands and Tribes of Yakima Indian Nation*, 439 U. S. 463, 476, n. 20 (1979).

In *Chapman* v. *California*, 386 U. S. 18 (1967), we rejected the view that all federal constitutional errors in the course of a criminal trial require reversal. We held that the Fifth Amendment violation of prosecutorial comment upon the defendant's failure to testify would not require reversal of the conviction if the State could show "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *Id.*, at 24. The *Chapman* standard recognizes that "certain constitutional errors, no less than other errors, may have been `harmless' in terms of their effect on the factfinding process at trial." *Delaware* v. *Van Arsdall*, 475 U. S. 673, 681 (1986). Although most constitutional errors have been held amenable to harmless-error analysis, see *Arizona* v. *Fulminante*, 499 U. S. ——, —— (1991) (slip op., at 5) (opinion of REHNQUIST, C. J., for the Court) (collecting examples), some will always invalidate the conviction. *Id.*, at —— (slip op., at 8) (citing, *inter alia*, *Gideon* v. *Wainwright*, 372 U. S. 335 (1963) (total deprivation of the right to counsel); *Tumey* v. *Ohio*, 273 U. S. 510 (1927) (trial by a biased judge); *McKaskle* v. *Wiggins*, 465 U. S. 168 (1984) (right to self-representation)). The question in the present case is to which category the present error belongs.

Chapman itself suggests the answer. Consistent with the jury-trial guarantee, the question it instructs the reviewing court to consider is not what effect the constitutional error might generally be expected to have upon a reasonable jury, but rather what effect it had upon the guilty verdict in the case at hand. See *Chapman*, *supra*, at 24 (analyzing effect of error on "verdict obtained"). Harmless-error review looks, we have said, to the basis on which "the jury *actually rested* its verdict." *Yates* v. *Evatt*, 500 U. S. ——, —— (1991) (emphasis added). The inquiry, in other words, is not whether, in a trial that occurred without the error, a guilty verdict would surely have been

rendered, but whether the guilty verdict actually rendered in *this* trial was surely unattributable to the error. That must be so, because to hypothesize a guilty verdict that was never in fact rendered—no matter how inescapable the findings to support that verdict might be—would violate the jury-trial guarantee. See *Rose* v. *Clark*, 478 U. S. 570, 578 (1986); *id.*, at 593 (BLACKMUN, J., dissenting); *Pope* v. *Illinois*, 481 U. S. 497, 509–510 (1987) (STEVENS, J., dissenting).

Once the proper role of an appellate court engaged in the *Chapman* inquiry is understood, the illogic of harmless-error review in the present case becomes evident. Since, for the reasons described above, there has been no jury verdict within the meaning of the Sixth Amendment, the entire premise of *Chapman* review is simply absent. There being no jury verdict of guilty-beyond-a-reasonable-doubt, the question whether the *same* verdict of guilty-beyond-a-reasonable-doubt would have been rendered absent the constitutional error is utterly meaningless. There is no *object*, so to speak, upon which harmless-error scrutiny can operate. The most an appellate court can conclude is that a jury *would surely have found* petitioner guilty beyond a reasonable doubt—not that the jury's actual finding of guilty beyond a reasonable doubt *would surely not have been different* absent the constitutional error. That is not enough. See *Yates*, *supra*, at —— - —— (slip op., at 3–4) (SCALIA, J., concurring in part and concurring in judgment). The Sixth Amendment requires more than appellate speculation about a hypothetical jury's action, or else directed verdicts for the State would be sustainable on appeal; it requires an actual jury finding of guilty. See *Bollenbach* v. *United States*, 326 U. S. 607, 614 (1946).

Insofar as the possibility of harmless-error review is concerned, the jury-instruction error in this case is quite different from the jury-instruction error of

erecting a presumption regarding an element of the offense. A mandatory presumption—for example, the presumption that a person intends the ordinary consequences of his voluntary acts—violates the Fourteenth Amendment, because it may relieve the State of its burden of proving all elements of the offense. *Sandstrom* v. *Montana*, 442 U. S. 510 (1979); *Francis* v. *Franklin*, 471 U. S. 307 (1985). But "[w]hen a jury is instructed to presume malice from predicate facts, it still must find the existence of those facts beyond a reasonable doubt." *Rose* v. *Clark*, 478 U. S. 570, 580 (1986). And when the latter facts "are so closely related to the ultimate fact to be presumed that no rational jury could find those facts without also finding that ultimate fact, making those findings is functionally equivalent to finding the element required to be presumed." *Carella* v. *California*, 491 U. S. 263, 271 (1989) (SCALIA, J., concurring in judgment). See also *Pope*, *supra*, at 504 (SCALIA, J., concurring). A reviewing court may thus be able to conclude that the presumption played no significant role in the finding of guilt beyond a reasonable doubt. *Yates*, *supra*, at —— - —— (slip op., at 11–13). But the essential connection to a "beyond-a-reasonable-doubt" factual finding cannot be made where the instructional error consists of a misdescription of the burden of proof, which vitiates *all* the jury's findings. A reviewing court can only engage in pure speculation—its view of what a reasonable jury would have done. And when it does that, "the wrong entity judge[s] the defendant guilty." *Rose*, *supra*, at 578.

Another mode of analysis leads to the same conclusion that harmless-error analysis does not apply: In *Fulminante*, we distinguished between, on the one hand, "structural defects in the constitution of the trial mechanism, which defy analysis by `harmless-error' standards," and, on the other hand, trial errors which occur "during the presentation of

the case to the jury, and which may therefore be quantitatively assessed in the context of other evidence presented." *Fulminante*, *supra*, at ——, —— (slip op., at 6, 8). Denial of the right to a jury verdict of guilt beyond a reasonable doubt is certainly an error of the former sort, the jury guarantee being a "basic protectio[n]" whose precise effects are unmeasurable, but without which a criminal trial cannot reliably serve its function, *Rose*, *supra*, at 577. The right to trial by jury reflects, we have said, "a profound judgment about the way in which law should be enforced and justice administered." *Duncan* v. *Louisiana*, 391 U. S., at 155. The deprivation of that right, with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as "structural error."

The judgment of the Supreme Court of Louisiana is reversed, and the case is remanded for proceedings not inconsistent with this opinion.

It is so ordered.