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# SUPREME COURT OF THE UNITED STATES

Syllabus

## VICTOR v. NEBRASKA

CERTIORARI TO THE SUPREME COURT OF NEBRASKA  
No. 92-8894. Argued January 18, 1994—Decided March 22, 1994<sup>1</sup>

The government must prove beyond a reasonable doubt every element of a charged offense. *In re Winship*, 397 U. S. 358. In upholding the first degree murder convictions and death sentences of petitioners Sandoval and Victor, the Supreme Courts of California and Nebraska, respectively, rejected contentions that due process was violated by the pattern jury instructions defining “reasonable doubt” that were given in both cases.

*Held:* Taken as a whole, the instructions in question correctly conveyed the concept of reasonable doubt, and there is no reasonable likelihood that the jurors understood the instructions to allow convictions based on proof insufficient to meet the *Winship* standard. Pp. 1-20.

(a) The Constitution does not dictate that any particular form of words be used in advising the jury of the government’s burden of proof, so long as “taken as a whole, the instructions correctly convey the concept of reasonable doubt,” *Holland v. United States*, 348 U. S. 121, 140. In invalidating a charge declaring, among other things, that a reasonable doubt “must be such . . . as would give rise to a grave uncertainty,” “is an actual substantial doubt,” and requires “a moral certainty,” the Court, in *Cage v. Louisiana*, 498 U. S. 39, 40, observed that a reasonable juror could have interpreted the instruction to allow a finding of guilt based on a degree of proof below that which is constitutionally required. However, in *Estelle v. McGuire*, 502 U. S. \_\_\_, \_\_\_, and n. 4, the Court made clear that

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<sup>1</sup>Together with No. 92-9049, *Sandoval v. California*, on certiorari to the Supreme Court of California.

the proper inquiry is not whether the instruction ``could have'' been applied unconstitutionally, but whether there is a reasonable likelihood that the jury *did* so apply it. Pp. 1-3.

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(b) The instructions given in Sandoval's case defined reasonable doubt as, among other things, "not a mere possible doubt," but one "depending on moral evidence," such that the jurors could not say they felt an abiding conviction, "to a moral certainty," of the truth of the charge. Pp. 3-6.

(c) Sandoval's objection to the charge's use of the 19th century phrases "moral evidence" and "moral certainty" is rejected. Although the former phrase is not a mainstay of the modern lexicon, its meaning today is consistent with its original meaning: evidence based on the general observation of people, rather than on what is demonstrable. Its use here is unproblematic because the instructions given correctly pointed the jurors' attention to the facts of the case before them, not (as Sandoval contends) the ethics or morality of his criminal acts. For example, in the instruction declaring that "everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt," moral evidence can only mean empirical evidence offered to prove matters relating to human affairs—the proof introduced at trial. Similarly, whereas "moral certainty," standing alone, might not be recognized by modern jurors as a synonym for "proof beyond a reasonable doubt," its use in conjunction with the abiding conviction language must be viewed as having impressed upon the jury the need to reach the subjective state of near certitude of guilt, see *Jackson v. Virginia*, 443 U. S. 307, 315, and thus as not having invited conviction on less than the constitutionally required proof. Moreover, in contrast to the situation in *Cage*, there is no reasonable likelihood that the jury here would have understood moral certainty to be disassociated from the evidence in the case, since the instruction explicitly told the jurors, among other things, that their conclusion had to be based upon such evidence. Accordingly, although this Court does not condone the use of the antiquated "moral certainty" phrase, its use in the context of the instructions as a whole cannot be said to have rendered those instructions unconstitutional. Pp. 6-14.

(d) Sandoval's objection to the portion of the charge declaring that a reasonable doubt is "not a mere possible doubt" is also rejected. That the instruction properly uses "possible" in the sense of fanciful is made clear by the fact that it also notes that everything "is open to some possible or imaginary doubt." P. 14.

(e) The instructions given in Victor's case defined reasonable doubt as, among other things, a doubt that will not permit an abiding conviction, "to a moral certainty," of the accused's guilt, and an "actual and substantial doubt" that is not excluded by the "strong probabilities of the case." Pp. 14-16.

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(f) Victor's primary argument—that equating a reasonable doubt with a “substantial doubt” overstated the degree of doubt necessary for acquittal—is rejected. Any ambiguity is removed by reading the phrase in question in context: The Victor charge immediately distinguished an “actual and substantial doubt” from one “arising from mere possibility, from bare imagination, or from fanciful conjecture,” and thereby informed the jury that a reasonable doubt is something more than a speculative one, which is an unexceptionable proposition. *Cage, supra*, at 41, distinguished. Moreover, the instruction defined a reasonable doubt alternatively as a doubt that would cause a reasonable person to hesitate to act, a formulation which this Court has repeatedly approved and which gives a common-sense benchmark for just how substantial a reasonable doubt must be. Pp. 16–18.

(g) The inclusion of the “moral certainty” phrase in the Victor charge did not render the instruction unconstitutional. In contrast to the situation in *Cage*, a sufficient context to lend meaning to the phrase was provided by the rest of the Victor charge, which equated a doubt sufficient to preclude moral certainty with a doubt that would cause a reasonable person to hesitate to act, and told the jurors that they must have an abiding conviction of Victor's guilt, must be convinced of such guilt “after full, fair, and impartial consideration of all the evidence,” should be governed solely by that evidence in determining factual issues, and should not indulge in speculation, conjectures, or unsupported inferences. Pp. 18–19.

(h) The reference to “strong probabilities” in the Victor charge does not unconstitutionally understate the government's burden, since the charge also informs the jury that the probabilities must be strong enough to prove guilt beyond a reasonable doubt. See *Dunbar v. United States*, 156 U. S. 185, 199. P. 19.

No. 92–8894, 242 Neb. 306, 494 N. W. 2d 565, and No. 92–9049, 4 Cal. 4th 155, modified, 4 Cal. 4th 928a, 841 P. 2d 862, affirmed.

O'CONNOR, J., delivered the opinion for a unanimous Court with respect to Part II, and the opinion of the Court with respect to Parts I, III, and IV, in which REHNQUIST, C. J., and STEVENS, SCALIA, KENNEDY, and THOMAS, JJ., joined, and in Parts III–B and IV of which GINSBURG, J., joined. KENNEDY, J., filed a concurring opinion. GINSBURG, J., filed an opinion concurring in part and concurring in the judgment. BLACKMUN, J., filed an opinion concurring in part and dissenting in part, in all but Part II of which SOUTER, J., joined.