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 Lumber Co.,* 200 U. S. 321, 337.

# SUPREME COURT OF THE UNITED STATES

Syllabus

## SOCHOR *v.* FLORIDA

CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 91–5843. Argued March 2, 1992—Decided June 8, 1992

After a Florida jury found petitioner Sochor guilty of capital murder, the jury was instructed at the penalty hearing on the possibility of finding four aggravating factors, including the State's ``heinousness'' and ``coldness'' factors. The jury was also charged with weighing any mitigating circumstances it might find against the aggravating ones in reaching an advisory verdict as to whether Sochor's sentence should be life imprisonment or death. The jury's recommendation of death was adopted by the trial court, which found all four aggravating circumstances defined in the jury instructions and no mitigating circumstances. The State Supreme Court held, among other things, that the question whether the jury instruction on the heinousness factor was unconstitutionally vague had been waived for failure to object. The court also held that the evidence failed to support the trial judge's finding of the coldness factor, but nevertheless affirmed the death sentence.

*Held:*

1.The application of the heinousness factor to Sochor did not result in reversible error. Pp.4–9.

(a)In a weighing State like Florida, Eighth Amendment error occurs when the sentencer weighs an ``invalid'' aggravating factor in reaching the decision to impose a death sentence. See *Clemons* v. *Mississippi,* 494 U.S. 738, 752. While federal law does not require the state appellate court reviewing such error to remand for resentencing, the court must, short of remand, either itself reweigh without the invalid aggravating factor or determine that weighing the invalid factor was harmless error. See, *e. g., Parker* v. *Dugger,* 498 U.S. ___, ___. P.4.

(b)This Court lacks jurisdiction to address Sochor's claim that the jury instruction on the heinousness factor was unconstitutionally vague. The State Supreme Court indicated with requisite clarity that its rejection of the claim was based on

an alternative state ground, see, *e. g., Michigan* v. *Long,* 463 U.S. 1032, 1041, and Sochor has said nothing to persuade the Court that this state ground is either not adequate or not independent, see *Herb* v. *Pitcairn,* 324 U.S. 117, 125–126. Pp.4–7.

# SOCHOR *v.* FLORIDA

## Syllabus

(c)No Eighth Amendment violation occurred when the trial judge weighed the heinousness factor. Although the State Supreme Court's recent decisions may have evinced inconsistent and overbroad constructions of the heinousness factor that leave trial judges without sufficient guidance in other factual situations, that court has consistently held that heinousness is properly found where, as here, the defendant strangled a conscious victim. Under *Walton* v. *Arizona,* 497 U.S. ___, ___, it must be presumed that the trial judge in the case at hand was familiar with this body of case law, which, at a minimum, gave the judge ``some guidance,'' *ibid.* This is all that the Eighth Amendment requires. Pp.7–9.

2.The application of the coldness factor to Sochor constituted Eighth Amendment error that went uncorrected in the State Supreme Court. Pp.9–12.

(a)Sochor's claim that an Eighth Amendment violation occurred when the jury ``weighed'' the coldness factor is rejected. Because, under Florida law, the jury does not reveal the aggravating factors on which it relies, it cannot be known whether the jury actually relied on the coldness factor here. This Court will not presume that a general verdict rests on a ground that the evidence does not support. *Griffin* v. *United States,* 502 U.S. ___, ___. Pp.9–10.

(b)However, Eighth Amendment error occurred when the trial judge weighed the coldness factor. In Florida, the judge is at least a constituent part of the ``sentencer'' for *Clemons* purposes, and there is no doubt that the judge ``weighed'' the coldness factor in this case. Nor is there any question that the factor was ``invalid'' for *Clemons* purposes, since the State Supreme Court found it to be unsupported by the evidence. See *Parker, supra,* at ___. Pp.10–11.

(c)The State Supreme Court did not cure the Eighth Amendment error. That court generally does not reweigh evidence independently. See, *e. g., Parker, supra,* at ___. Nor did that court support the death verdict by performing harmless-error analysis, since its opinion fails to mention ``harmless error'' and expressly refers to the quite different inquiry whether Sochor's sentence was proportional, and since only one of the four cases cited by the court contained explicit harmless-error language. Pp.11–12.

580 So.2d 595, vacated and remanded.

SOUTER, J., delivered the opinion of the Court, Part I of which was unanimous, Parts II–A and II–B of which were joined by REHNQUIST, C. J., and WHITE, O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., Part III–A of which was joined by REHNQUIST, C. J., and WHITE, O'CONNOR,

# SOCHOR *v.* FLORIDA

## Syllabus

KENNEDY, and THOMAS, JJ., Part III–B–1 of which was joined by REHNQUIST, C. J., and WHITE, BLACKMUN, STEVENS, O'CONNOR, KENNEDY, and THOMAS, JJ., and Parts III–B–2 and IV of which were joined by BLACKMUN, STEVENS, O'CONNOR, and KENNEDY, JJ. O'CONNOR, J., filed a concurring opinion. REHNQUIST, C. J., filed an opinion concurring in part and dissenting in part, in which WHITE and THOMAS, JJ., joined. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which BLACKMUN, J., joined. SCALIA, J., filed an opinion concurring in part and dissenting in part.