

# **Death Penalty – Only Juries Can Decide**

**TIMOTHY STUART RING, PETITIONER v. ARIZONA**

**No. 01-488**

**SUPREME COURT OF THE UNITED STATES**

*536 U.S. 584; 122 S. Ct. 2428; 153 L. Ed. 2d 556; 2002 U.S. LEXIS 4651; 70  
U.S.L.W. 4666; 2002 Cal. Daily Op. Service 5594; 2002 Daily Journal DAR 7047; 15  
Fla. L. Weekly Fed. S 464*

**April 22, 2002, Argued  
June 24, 2002, Decided**

LEXSEE 536 US 584

**TIMOTHY STUART RING, PETITIONER v. ARIZONA**

**No. 01-488**

**SUPREME COURT OF THE UNITED STATES**

*536 U.S. 584; 122 S. Ct. 2428; 153 L. Ed. 2d 556; 2002 U.S. LEXIS 4651; 70 U.S.L.W. 4666; 2002 Cal. Daily Op. Service 5594; 2002 Daily Journal DAR 7047; 15 Fla. L. Weekly Fed. S 464*

**April 22, 2002, Argued**

**June 24, 2002, Decided**

**NOTICE:**

The LEXIS pagination of this document is subject to change pending release of the final published version.

**SUBSEQUENT HISTORY:** Later proceeding at *State v. Ring*, 2002 Ariz. LEXIS 102 (Ariz., June 27, 2002)

On remand at *State v. Ring*, 2003 Ariz. LEXIS 29 (Ariz., Apr. 3, 2003)

**PRIOR HISTORY:** ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA. *State v. Ring*, 200 Ariz. 267, 25 P.3d 1139, 2001 Ariz. LEXIS 90 (Ariz., 2001)

**DISPOSITION:** Reversed and remanded.

**COUNSEL:** Andrew D. Hurwitz argued the cause for petitioner.

Janet Napolitano argued the cause for respondent.

**JUDGES:** GINSBURG, J., delivered the opinion of the Court, in which STEVENS, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. SCALIA, J., filed a concurring opinion, in which THOMAS, J., joined. KENNEDY, J., filed a concurring opinion. BREYER, J., filed an opinion concurring in the judgment. O'CONNOR, J., filed a dissenting opinion, in which REHNQUIST, C. J., joined.

**OPINION BY:** GINSBURG

**OPINION:** [\*2432] [\*\*\*563] [\*588]

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the Sixth Amendment right to a jury trial in capital prosecutions. In Arizona, following a jury adjudication of a defendant's guilt of first-degree murder, the trial judge, sitting alone, determines the presence or absence of the aggravating factors required by Arizona law for imposition of the death penalty.

In *Walton v. Arizona*, 497 U.S. 639, 111 L. Ed. 2d 511, 110 S. Ct. 3047 (1990), this Court held that Arizona's sentencing scheme was compatible with the Sixth Amendment because the additional facts found by the [\*\*\*564] judge qualified as sentencing considerations, not as "elements of the offense of capital murder." *Id.*, at 649. Ten years later, however, we decided *Apprendi v. New Jersey*, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000), which held that the Sixth Amendment does not permit a defendant to be "exposed . . . to a penalty [\*589] exceeding the maximum he would receive if punished according to the facts reflected in the jury verdict alone." *Id.*, at 483. This prescription governs, *Apprendi* determined, even if the State characterizes the additional findings made by the judge as "sentencing factors." *Id.*, at 492.

*Apprendi*'s reasoning is irreconcilable with *Walton*'s holding in this regard, and today we overrule *Walton* in relevant part. Capital defendants, no less than non-capital defendants, we conclude, are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment.

536 U.S. 584, \*; 122 S. Ct. 2428, \*\*;  
153 L. Ed. 2d 556, \*\*\*; 2002 U.S. LEXIS 4651

At the trial of petitioner Timothy Ring for murder, armed robbery, and related charges, the prosecutor presented evidence sufficient to permit the jury to find the facts here recounted. On November 28, 1994, a Wells Fargo armored van pulled up to the Dillard's department store at Arrowhead Mall in Glendale, Arizona. Tr. 57, 60-61 (Nov. 14, 1996). Courier Dave Moss left the van to pick up money inside the store. *Id.*, at 61, 73-74. When he returned, the van, and its driver, John Magoch, were gone. *Id.*, at 61-62.

Later that day, Maricopa County Sheriff's Deputies found the van -- its doors [\*\*2433] locked and its engine running -- in the parking lot of a church in Sun City, Arizona. *Id.*, at 99-100 (Nov. 13, 1996). Inside the vehicle they found Magoch, dead from a single gunshot to the head. *Id.*, at 101. According to Wells Fargo records, more than \$ 562,000 in cash and \$ 271,000 in checks were missing from the van. *Id.*, at 10 (Nov. 18, 1996).

Prompted by an informant's tip, Glendale police sought to determine whether Ring and his friend James Greenham were involved in the robbery. The police investigation revealed that the two had made several expensive cash purchases in December 1994 and early 1995. *E.g., id.*, at 153-156 (Nov. 14, 1996); *id.*, at 90-94 (Nov. 21, 1996). Wiretaps [\*590] were then placed on the telephones of Ring, Greenham, and a third suspect, William Ferguson. *Id.*, at 19-21 (Nov. 18, 1996).

In one recorded phone conversation, Ring told Ferguson that Ring might "cut off" Greenham because "he's too much of a risk": Greenham had indiscreetly flaunted a new truck in front of his ex-wife. State's Exh. 49A, pp. 11-12. Ring said he could cut off his associate because he held "both [Greenham's] and mine." *Id.*, at 11. The police engineered a local news broadcast about the robbery investigation; they included in the account several intentional inaccuracies. Tr. 3-5, 13-14 (Nov. 19, 1996). On hearing the broadcast report, Ring left a message on Greenham's answering machine to "remind me to talk to you tomorrow and tell you about what was on the news tonight. Very important, and also fairly good." State's Exh. 55A, p. 2.

[\*\*\*565] After a detective left a note on Greenham's door asking him to call, Tr. 115-118 (Nov. 18, 1996), Ring told Ferguson that he was puzzled by the attention the police trained on Greenham. "His house is clean," Ring said; "mine, on the other hand, contains a very large bag." State's Exh. 70A, p. 7.

On February 14, 1995, police furnished a staged reenactment of the robbery to the local news, and again included deliberate inaccuracies. Tr. 5 (Nov. 19, 1996). Ferguson told Ring that he "laughed" when he saw the broadcast, and Ring called it "humorous." State's Exh.

80A, p. 3. Ferguson said he was "not real worried at all now"; Ring, however, said he was "slightly concerned" about the possibility that the police might eventually ask for hair samples. *Id.*, at 3-4.

Two days later, the police executed a search warrant at Ring's house, discovering a duffel bag in his garage containing more than \$ 271,000 in cash. Tr. 107-108, 111, 125 (Nov. 20, 1996). They also found a note with the number "575,995" on it, followed by the word "splits" and the letters "F," "Y," and "T." *Id.*, at 127-130. The prosecution asserted [\*591] that "F" was Ferguson, "Y" was "Yoda" (Greenham's nickname), and "T" was Timothy Ring. *Id.*, at 42 (Dec. 5, 1996).

Testifying in his own defense, Ring said the money seized at his house was startup capital for a construction company he and Greenham were planning to form. *Id.*, at 10-11 (Dec. 3, 1996). Ring testified that he made his share of the money as a confidential informant for the Federal Bureau of Investigation and as a bail bondsman and gunsmith. *Id.*, at 162, 166-167, 180 (Dec. 2, 1996). But an FBI agent testified that Ring had been paid only \$ 458, *id.*, at 47 (Nov. 20, 1996), and other evidence showed that Ring had made no more than \$ 8,800 as a bail bondsman, *id.*, at 48-51 (Nov. 21, 1996); *id.*, at 21 (Nov. 25, 1996).

The trial judge instructed the jury on alternative charges of premeditated murder and felony murder. The jury deadlocked on premeditated murder, with 6 of 12 jurors voting to acquit, but convicted Ring of felony murder occurring in the course of armed robbery. See *Ariz. Rev. Stat. Ann. § 13-1105(A)* and (B) (West 2001) ("A person commits first degree murder if . . . acting either alone or with one or more other persons the person [\*\*2434] commits or attempts to commit . . . [one of several enumerated felonies] . . . and in the course of and in furtherance of the offense or immediate flight from the offense, the person or another person causes the death of any person. . . . Homicide, as prescribed in [this provision] requires no specific mental state other than what is required for the commission of any of the enumerated felonies.").

As later summed up by the Arizona Supreme Court, "the evidence admitted at trial failed to prove, beyond a reasonable doubt, that [Ring] was a major participant in the armed robbery or that he actually murdered Magoch." *State v. Ring*, 200 Ariz. 267, 280, 25 P.3d 1139, 1152 (2001). Although clear evidence connected Ring to the robbery's proceeds, nothing submitted at trial put him at the scene of the robbery. See *ibid.* Furthermore, "for all we know from the trial evidence," the Arizona court stated, "[Ring] did not participate in, plan, or even expect the killing. This lack of evidence no doubt explains

536 U.S. 584, \*; 122 S. Ct. 2428, \*\*;  
153 L. Ed. 2d 556, \*\*\*; 2002 U.S. LEXIS 4651

[\*592] why the jury found [\*\*\*566] [Ring] guilty of felony, but not premeditated, murder." *Ibid.*

Under Arizona law, Ring could not be sentenced to death, the statutory maximum penalty for first-degree murder, unless further findings were made. The State's first-degree murder statute prescribes that the offense "is punishable by death or life imprisonment as provided by § 13-703." *Ariz. Rev. Stat. Ann. § 13-1105(C)* (West 2001). The cross-referenced section, § 13-703, directs the judge who presided at trial to "conduct a separate sentencing hearing to determine the existence or nonexistence of [certain enumerated] circumstances . . . for the purpose of determining the sentence to be imposed." § 13-703(C) (West Supp. 2001). The statute further instructs: "The hearing shall be conducted before the court alone. The court alone shall make all factual determinations required by this section or the constitution of the United States or this state." *Ibid.*

At the conclusion of the sentencing hearing, the judge is to determine the presence or absence of the enumerated "aggravating circumstances" n1 and any "mitigating circumstances." n2 [\*593] The State's law authorizes the judge to sentence the defendant to [\*\*2435] death only if there is at least one aggravating circumstance and "there are no mitigating circumstances sufficiently substantial to call for leniency." § 13-703(F).

n1 The aggravating circumstances, enumerated in *Ariz. Rev. Stat. Ann. § 13-703(G)* (West Supp. 2001), are:

"1. The defendant has been convicted of another offense in the United States for which under Arizona law a sentence of life imprisonment or death was imposable.

"2. The defendant was previously convicted of a serious offense, whether prepatory or completed.

"3. In the commission of the offense the defendant knowingly created a grave risk of death to another person or persons in addition to the person murdered during the commission of the offense.

"4. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"5. The defendant committed the offense as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value.

"6. The defendant committed the offense in an especially heinous, cruel or depraved manner.

"7. The defendant committed the offense while in the custody of or on authorized or unauthorized release from the state department of corrections, a law enforcement agency or a county or city jail.

"8. The defendant has been convicted of one or more other homicides, as defined in § 13-1101, which were committed during the commission of the offense.

"9. The defendant was an adult at the time the offense was committed or was tried as an adult and the murdered person was under fifteen years of age or was seventy years of age or older.

"10. The murdered person was an on duty peace officer who was killed in the course of performing his official duties and the defendant knew, or should have known, that the murdered person was a peace officer."

n2 The statute enumerates certain mitigating circumstances, but the enumeration is not exclusive. "The court shall consider as mitigating circumstances any factors proffered by the defendant or the state which are relevant in determining whether to impose a sentence less than death . . ." § 13-703(H).

Between Ring's trial and sentencing hearing, Greenham pleaded guilty to second-degree murder and armed robbery. He stipulated to a 27 1/2 year sentence and agreed to cooperate with the prosecution in the [\*\*\*567] cases against Ring and Ferguson. Tr. 35-37 (Oct. 9, 1997).

Called by the prosecution at Ring's sentencing hearing, Greenham testified that he, Ring, and Ferguson had been planning the robbery for several weeks before it occurred. According to Greenham, Ring "had I guess taken the role as leader because he laid out all the tactics." *Id.*, at 39. On the day of the robbery, Greenham said, the three watched the armored van pull up to the mall. *Id.*, at 45. When Magoch opened the door to smoke a cigarette, Ring shot him with a rifle equipped with a homemade silencer. *Id.*, at 42, 44-45. Greenham then pushed Magoch's body aside and drove the van away. *Id.*, at 45. At Ring's direction, Greenham drove to the church parking lot, where he and Ring transferred the money to Ring's truck. *Id.*, at 46, 48. Later, Greenham recalled, as the three robbers were dividing up the

536 U.S. 584, \*; 122 S. Ct. 2428, \*\*;  
153 L. Ed. 2d 556, \*\*\*; 2002 U.S. LEXIS 4651

money, [\*594] Ring upbraided him and Ferguson for "forgetting to congratulate [Ring] on [his] shot." *Id.*, at 60.

On cross-examination, Greenham acknowledged having previously told Ring's counsel that Ring had nothing to do with the planning or execution of the robbery. *Id.*, at 85-87. Greenham explained that he had made that prior statement only because Ring had threatened his life. *Id.*, at 87. Greenham also acknowledged that he was now testifying against Ring as "pay back" for the threats and for Ring's interference in Greenham's relationship with Greenham's ex-wife. *Id.*, at 90-92.

On October 29, 1997, the trial judge entered his "Special Verdict" sentencing Ring to death. Because Ring was convicted of felony murder, not premeditated murder, the judge recognized that Ring was eligible for the death penalty only if he was Magoch's actual killer or if he was "a major participant in the armed robbery that led to the killing and exhibited a reckless disregard or indifference for human life." App. to Pet. for Cert. 46a-47a; see *Enmund v. Florida*, 73 L. Ed. 2d 1140, 102 S. Ct. 3368, 458 U.S. 782 (1982) (Eighth Amendment requires finding that felony-murder defendant killed or attempted to kill); *Tison v. Arizona*, 481 U.S. 137, 158, 95 L. Ed. 2d 127, 107 S. Ct. 1676 (1987) (qualifying *Enmund*, and holding that Eighth Amendment permits execution of felony-murder defendant, who did not kill or attempt to kill, but who was a "major participant in the felony committed" and who demonstrated "reckless indifference to human life").

Citing Greenham's testimony at the sentencing hearing, the judge concluded that Ring "is the one who shot and killed Mr. Magoch." App. to Pet. for Cert. 47a. The judge also found that Ring was a major participant in the robbery and that armed robbery "is unquestionably a crime which carries with it a grave risk of death." *Ibid.*

The judge then turned to the determination of aggravating and mitigating circumstances. See § 13-703. He found two aggravating factors. First, the judge determined that Ring committed the offense in expectation of receiving something [\*595] of "pecuniary value," as described in § 13-703; "taking the cash from the armored car was the motive and reason for Mr. Magoch's murder and not just the result." App. to Pet. for Cert. 49a. Second, the judge found that the offense was committed "in an especially heinous, cruel or depraved manner." *Ibid.* In support of this [\*\*\*568] finding, he cited Ring's comment, as reported by Greenham at the sentencing hearing, expressing pride in his marksmanship. *Id.*, at 49a-50a. The judge found one nonstatutory mitigating factor: Ring's "minimal" criminal record. *Id.*, at [\*\*\*2436] 52a. In his judgment, that

mitigating circumstance did not "call for leniency"; he therefore sentenced Ring to death. *Id.*, at 53a.

On appeal, Ring argued that Arizona's capital sentencing scheme violates the Sixth and Fourteenth Amendments to the U.S. Constitution because it entrusts to a judge the finding of a fact raising the defendant's maximum penalty. See *Jones v. United States*, 526 U.S. 227, 143 L. Ed. 2d 311, 119 S. Ct. 1215 (1999); *Apprendi v. New Jersey*, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000). The State, in response, noted that this Court had upheld Arizona's system in *Walton v. Arizona*, 497 U.S. 639, 111 L. Ed. 2d 511, 110 S. Ct. 3047 (1990), and had stated in *Apprendi* that *Walton* remained good law.

Reviewing the death sentence, the Arizona Supreme Court made two preliminary observations. *Apprendi* and *Jones*, the Arizona high court said, "raise some question about the continued viability of *Walton*." 200 *Ariz. at 278*, 25 P. 3d, at 1150. The court then examined the *Apprendi* majority's interpretation of Arizona law and found it wanting. *Apprendi*, the Arizona court noted, described Arizona's sentencing system as one that "requires judges, after a jury verdict holding a defendant guilty of a capital crime, to find specific aggravating factors before imposing a sentence of death," and not as a system that "permits a judge to determine the existence of a factor which makes a crime a capital offense." 200 *Ariz. at 279*, 25 P.3d at 1151 (quoting *Apprendi*, 530 U.S. at 496-497). JUSTICE O'CONNOR's *Apprendi* dissent, the Arizona court noted, squarely rejected [\*596] the *Apprendi* majority's characterization of the Arizona sentencing scheme: "A defendant convicted of first-degree murder in Arizona cannot receive a death sentence unless a judge makes the factual determination that a statutory aggravating factor exists. Without that critical finding, the maximum sentence to which the defendant is exposed is life imprisonment, and not the death penalty." 200 *Ariz. at 279*, 25 P.3d at 1151 (quoting *Apprendi*, 530 U.S. at 538).

After reciting this Court's divergent constructions of Arizona law in *Apprendi*, the Arizona Supreme Court described how capital sentencing in fact works in the State. The Arizona high court concluded that "the present case is precisely as described in Justice O'Connor's dissent [in *Apprendi*] -- Defendant's death sentence required the judge's factual findings." 200 *Ariz. at 279*, 25 P.3d at 1151. Although it agreed with the *Apprendi* dissent's reading of Arizona law, the Arizona court understood that it was bound by the Supremacy Clause to apply *Walton*, which this Court had not overruled. It therefore rejected Ring's constitutional attack on the State's capital murder judicial sentencing system. 200 *Ariz. at 280*, 25 P.3d at 1152.

536 U.S. 584, \*; 122 S. Ct. 2428, \*\*;  
153 L. Ed. 2d 556, \*\*\*; 2002 U.S. LEXIS 4651

The court agreed with Ring that the evidence was insufficient to support the aggravating circumstance of depravity, *id.*, at 281-282, 25 P.3d at 1153-1154, but it upheld the trial court's finding on the aggravating [\*\*\*569] factor of pecuniary gain. The Arizona Supreme Court then reweighed that remaining factor against the sole mitigating circumstance (Ring's lack of a serious criminal record), and affirmed the death sentence. *Id.*, at 282-284, 25 P.3d at 1154-1156.

We granted Ring's petition for a writ of certiorari, *Ring v. Arizona*, 534 U.S. 1103, 151 L. Ed. 2d 738, 122 S. Ct. 865 (2002), to allay uncertainty in the lower courts caused by the manifest tension between *Walton* and the reasoning of *Apprendi*. See, e.g., *United States v. Promise*, 255 F.3d 150, 159-160 (CA4 2001) (en banc) (calling the continued authority of *Walton* in light of *Apprendi* "perplexing"); *Hoffman v. Arave*, 236 F.3d 523, 542 (CA9 2001) ("*Apprendi* may [\*597] raise some doubt about *Walton*."); *People v. Kaczmarek*, 318 Ill. App. 3d 340, 351-352, 741 N.E.2d 1131, 1142, 251 Ill. Dec. 953 (2000) ("While it appears *Apprendi* extends greater constitutional protections to [\*\*\*2437] noncapital, rather than capital, defendants, the Court has endorsed this precise principle, and we are in no position to secondguess that decision here."). We now reverse the judgment of the Arizona Supreme Court.

## II

Based solely on the jury's verdict finding Ring guilty of first-degree felony murder, the maximum punishment he could have received was life imprisonment. See 200 *Ariz.*, at 279, 25 P.3d at 1151 (citing *Ariz. Rev. Stat. § 13-703*). The question presented is whether that aggravating factor may be found by the judge, as Arizona law specifies, or whether the Sixth Amendment's jury trial guarantee, n3 made applicable to the States by the Fourteenth Amendment, requires that the aggravating factor determination be entrusted to the jury. n4

n3 "In all criminal prosecutions, the accused shall enjoy the right to a . . . trial, by an impartial jury . . ."

\*\*\*

[\*598]

As earlier indicated, see *supra* at 588, 595-596, this is not the first time we have considered the constitutionality of Arizona's capital sentencing system. In *Walton v. Arizona*, 497 U.S. 639 (1990), [\*\*\*570] we upheld Arizona's scheme against a charge that it violated the Sixth Amendment. The Court had previously

denied a Sixth Amendment challenge to Florida's capital sentencing system, in which the jury recommends a sentence but makes no explicit findings on aggravating circumstances; we so ruled, *Walton* noted, on the ground that "the Sixth Amendment does not require that the specific findings authorizing the imposition of the sentence of death be made by the jury." *Id.*, at 648 (quoting *Hildwin v. Florida*, 490 U.S. 638, 640-641, 104 L. Ed. 2d 728, 109 S. Ct. 2055 (1989) (*per curiam*)). *Walton* found unavailing the attempts by the defendant-petitioner in that case to distinguish Florida's capital sentencing system from Arizona's. In neither State, according to *Walton*, were the aggravating factors "elements of the offense"; in both States, they ranked as "sentencing considerations" guiding the choice between life and death. 497 U.S. at 648 (internal quotation marks omitted).

\*\*\*

*Walton* was revisited in *Jones v. United States*, 526 U.S. 227, 143 L. Ed. 2d 311, 119 S. Ct. 1215, (1999). In that case, we construed the federal carjacking statute, 18 U.S.C. § 2119 (1994 ed. and Supp. V), which, at the time of the criminal conduct at issue, provided that a person possessing a firearm who "takes a motor vehicle . . . from the person or presence of another by force and violence or by intimidation . . . shall -- (1) be . . . imprisoned not more than 15 years . . ., (2) if serious bodily injury . . . results, be . . . imprisoned not more than 25 years . . ., and (3) if death results, be . . . imprisoned for any number of years up to life . . ." The question presented in *Jones* was whether the statute "defined three distinct offenses or a single crime with a choice of three maximum penalties, two of them dependent on sentencing factors exempt from the requirements of charge and jury verdict." 526 U.S. at 229.

The carjacking statute, we recognized, was "susceptible of [both] constructions"; we adopted the one that avoided "grave and doubtful constitutional questions." *Id.*, at 239 (quoting *United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408, 53 L. Ed. 836, 29 S. Ct. 527 (1909)). Section 2119, we held, established three separate offenses. Therefore, the facts -- causation of serious bodily injury or death -- necessary to trigger the escalating maximum penalties fell within the jury's province to decide. See *Jones*, 526 U.S. at 251-252.

\*\*\*

536 U.S. 584, \*; 122 S. Ct. 2428, \*\*;  
153 L. Ed. 2d 556, \*\*\*; 2002 U.S. LEXIS 4651

One year after *Jones*, the Court decided *Apprendi v. New Jersey*, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000). The defendant-petitioner in that case was convicted of, *inter alia*, second-degree possession of a firearm, an offense carrying a maximum penalty of ten years under New Jersey law. See *id.*, at 469-470. On the prosecutor's motion, the sentencing judge found by a preponderance of the evidence that Apprendi's crime had been motivated by racial animus. That finding triggered application of New Jersey's "hate crime enhancement," which doubled Apprendi's maximum authorized sentence. The judge sentenced Apprendi to 12 years in prison, 2 years over the maximum that would have applied but for the enhancement. [\*602]

We held that Apprendi's sentence violated his right to "a jury determination that [he] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." *Id.*, at 477 (quoting *United States v. Gaudin*, 515 U.S. 506, 510, 132 L. Ed. 2d 444, 115 S. Ct. 2310 (1995)). That right attached not only to Apprendi's weapons offense but also to the "hate crime" aggravating circumstance. New Jersey, the Court observed, "threatened Apprendi with certain pains if he unlawfully possessed a weapon and with additional pains if he selected his victims with a purpose to intimidate them because of their race." *Apprendi*, 530 U.S. at 476. "Merely using the label 'sentence enhancement' to describe the [second act] surely does not provide a principled basis for treating [the two acts] differently." *Ibid.*

The dispositive question, we said, "is one not of form, but of effect." *Id.*, at 494. If a State makes an increase in a defendant's authorized punishment contingent on the finding of a fact, that fact -- no matter how the State labels it -- must be found by a jury beyond a reasonable doubt. See *id.*, at 482-483. A defendant may not be "exposed . . . [\*2440] to a penalty *exceeding* the maximum he would receive if punished according to the facts reflected in the jury verdict alone." *Id.*, at 483; see also *id.*, at 499 (SCALIA, J., concurring) ("All the facts which must exist in order to subject the defendant to a legally prescribed punishment *must* be found by the jury.").

*Walton* could be reconciled with *Apprendi*, the Court finally asserted. [\*\*\*573] The key distinction, according to the *Apprendi* Court, was that a conviction of first-degree murder in Arizona carried a maximum sentence of death. "Once a jury has found the defendant guilty of all the elements of an offense which carries as its maximum penalty the sentence of death, it may be left to the judge to decide whether that maximum penalty, rather than a lesser one, ought to be imposed." 530 U.S. at 497 (emphasis deleted) (quoting [\*603] *Almendarez-Torres v. United States*, 523 U.S. 224, 257, n. 2, 140 L.

*Ed. 2d 350, 118 S. Ct. 1219 (1998)* (SCALIA, J., dissenting)).

The *Apprendi* dissenters called the Court's distinction of *Walton* "baffling." 530 U.S. at 538 (opinion of O'CONNOR, J.). The Court claimed that "the jury makes all of the findings necessary to expose the defendant to a death sentence." *Ibid.* That, the dissent said, was "demonstrably untrue," for a "defendant convicted of first-degree murder in Arizona cannot receive a death sentence unless a judge makes the factual determination that a statutory aggravating factor exists. Without that critical finding, the maximum sentence to which the defendant is exposed is life imprisonment, and not the death penalty." *Ibid.* *Walton*, the *Apprendi* dissenters insisted, if properly followed, would have required the Court to uphold Apprendi's sentence. "If a State can remove from the jury a factual determination that makes the difference between life and death, as *Walton* holds that it can, it is inconceivable why a State cannot do the same with respect to a factual determination that results in only a 10-year increase in the maximum sentence to which a defendant is exposed." 530 U.S. at 537 (opinion of O'CONNOR, J.).

The Arizona Supreme Court, as we earlier recounted, see *supra*, at 595-596, found the *Apprendi* majority's portrayal of Arizona's capital sentencing law incorrect, and the description in JUSTICE O'CONNOR's dissent precisely right: "Defendant's death sentence required the judge's factual findings." 200 *Ariz. at 279, 25 P.3d at 1151*. Recognizing that the Arizona court's construction of the State's own law is authoritative, see *Mullaney v. Wilbur*, 421 U.S. 684, 691, 44 L. Ed. 2d 508, 95 S. Ct. 1881 (1975), we are persuaded that *Walton*, in relevant part, cannot survive the reasoning of *Apprendi*.

In an effort to reconcile its capital sentencing system with the Sixth Amendment as interpreted by *Apprendi*, Arizona first restates the *Apprendi* majority's portrayal of Arizona's system: Ring was convicted of first-degree murder, for which Arizona law specifies "death or life imprisonment" as the [\*604] only sentencing options, see *Ariz. Rev. Stat. Ann. § 13-1105(C)* (West 2001); Ring was therefore sentenced within the range of punishment authorized by the jury verdict. See Brief for Respondent 9-19. This argument overlooks *Apprendi*'s instruction that "the relevant inquiry is one not of form, but of effect." 530 U.S. at 494. In effect, "the required finding [of an aggravated circumstance] exposed [Ring] to a greater punishment than that authorized by the jury's guilty verdict." *Ibid.*; see 200 *Ariz. at 279, 25 P.3d at 1151*. The Arizona first-degree murder statute "authorizes a maximum penalty of death only in a formal [\*\*\*574] sense," *Apprendi*, 530 U.S. at 541 (O'CONNOR, J., dissenting), for it explicitly cross-references the statutory provision requiring the finding of

536 U.S. 584, \*; 122 S. Ct. 2428, \*\*;  
153 L. Ed. 2d 556, \*\*\*; 2002 U.S. LEXIS 4651

an aggravating circumstance before imposition of the death penalty. See § 13-1105(C) [\*\*2441] ("First degree murder is a class 1 felony and is punishable by death or life imprisonment *as provided by § 13-703.*" (emphasis added)). If Arizona prevailed on its opening argument, *Apprendi* would be reduced to a "meaningless and formalistic" rule of statutory drafting. See *530 U.S. at 541* (O'CONNOR, J., dissenting).

Arizona also supports the distinction relied upon in *Walton* between elements of an offense and sentencing factors. See *supra*, at 11-12; Tr. of Oral Arg. 28-29. As to elevation of the maximum punishment, however, *Apprendi* renders the argument untenable; n5 *Apprendi* repeatedly instructs [\*605] in that context that the characterization of a fact or circumstance as an "element" or a "sentencing factor" is not determinative of the question "who decides," judge or jury. See, e.g., *530 U.S. at 492* (noting New Jersey's contention that "the required finding of biased purpose is not an 'element' of a distinct hate crime offense, but rather the traditional 'sentencing factor' of motive," and calling this argument "nothing more than a disagreement with the rule we apply today"); *id.*, at 494, n. 19 ("When the term 'sentence enhancement' is used to describe an increase beyond the maximum authorized statutory sentence, it is the functional equivalent of an element of a greater offense than the one covered by the jury's guilty verdict."); *id.*, at 495 ("Merely because the state legislature placed its hate crime sentence enhancer within the sentencing provisions of the criminal code does not mean that the finding of a biased purpose to intimidate is not an essential element of the offense." (internal quotation marks omitted)); see also *id.*, at 501 (THOMAS, J., concurring) ("If the legislature defines some core crime and then provides for increasing the punishment of that crime upon a finding of some aggravating fact[,] . . . the core crime and the aggravating fact together constitute an aggravated crime, just as much as grand larceny is an aggravated form of petit larceny. The aggravating fact is an element of the aggravated crime.").

n5 In *Harris v. United States*, *ante*, p. , 536 U.S. 545, 2002 U.S. LEXIS 4652, 153 L. Ed. 2d 524, 122 S. Ct. 2406 (2002) a majority of the Court concludes that the distinction between elements and sentencing factors continues to be meaningful as to facts increasing the minimum sentence. See *ante*, at 20 (plurality opinion) ("The factual finding in *Apprendi* extended the power of the judge, allowing him or her to impose a punishment exceeding what was authorized by the jury. [A] finding [that triggers a mandatory minimum sentence] restrains the judge's power, limiting his or her choices within the authorized

range. It is quite consistent to maintain that the former type of fact must be submitted to the jury while the latter need not be."); *ante*, at 1 (BREYER, J., concurring in part and concurring in judgment) ("The Sixth Amendment permits judges to apply sentencing factors -- whether those factors lead to a sentence beyond the statutory maximum (as in *Apprendi*) or the application of a mandatory minimum (as here).")

Even if facts increasing punishment beyond the maximum authorized by a guilty verdict standing alone ordinarily must be found by a [\*\*\*575] jury, Arizona further urges, aggravating circumstances necessary to trigger a death sentence may nonetheless be reserved for judicial determination. As Arizona's counsel maintained at oral argument, there is no doubt that [\*606] "death is different." Tr. of Oral Arg. 43. States have constructed elaborate sentencing procedures in death cases, Arizona emphasizes, because of constraints we have said the Eighth Amendment places on capital sentencing. Brief for Respondent 21-25 (citing *Furman v. Georgia*, 408 U.S. 238, 33 L. Ed. 2d 346, 92 S. Ct. 2726 (1972) (*per curiam*)); see also *Maynard v. Cartwright*, 486 U.S. 356, 362, 100 L. Ed. 2d 372, 108 S. Ct. 1853 (1988) ("Since *Furman*, our cases have insisted that the channeling and limiting of the sentencer's discretion in imposing the death penalty is a fundamental constitutional requirement for sufficiently minimizing the risk of wholly arbitrary and capricious action."); *Apprendi*, [\*\*2442] 530 U.S. at 522-523 (THOMAS, J., concurring) ("In the area of capital punishment, unlike any other area, we have imposed special constraints on a legislature's ability to determine what facts shall lead to what punishment -- we have restricted the legislature's ability to define crimes.").

Apart from the Eighth Amendment provenance of aggravating factors, Arizona presents "no specific reason for excepting capital defendants from the constitutional protections . . . extended to defendants generally, and none is readily apparent." *Id.*, at 539 (O'CONNOR, J., dissenting). The notion "that the Eighth Amendment's restriction on a state legislature's ability to define capital crimes should be compensated for by permitting States more leeway under the Fifth and Sixth Amendments in proving an aggravating fact necessary to a capital sentence . . . is without precedent in our constitutional jurisprudence." *Ibid.*

In various settings, we have interpreted the Constitution to require the addition of an element or elements to the definition of a criminal offense in order to narrow its scope. See, e.g., *United States v. Lopez*, 514 U.S. 549, 561-562, 131 L. Ed. 2d 626, 115 S. Ct. 1624

536 U.S. 584, \*, 122 S. Ct. 2428, \*\*;  
153 L. Ed. 2d 556, \*\*\*; 2002 U.S. LEXIS 4651

(1995) (suggesting that addition to federal gun possession statute of "express jurisdictional element" requiring connection between weapon and interstate commerce would render statute constitutional under Commerce Clause); *Brandenburg* [\*607] v. *Ohio*, 395 U.S. 444, 447, 23 L. Ed. 2d 430, 89 S. Ct. 1827, 48 *Ohio Op. 2d* 320 (1969) (*per curiam*) (First Amendment prohibits States from "proscribing advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action"); *Lambert v. California*, 355 U.S. 225, 229, 2 L. Ed. 2d 228, 78 S. Ct. 240 (1957) (Due Process Clause of Fourteenth Amendment requires "actual knowledge of the duty to register or proof of the probability of such knowledge" before ex-felon may be convicted of failing to register presence in municipality). If a legislature responded to one of these decisions by adding the element we held constitutionally required, surely the Sixth Amendment guarantee would apply to that element. We see no reason to differentiate capital crimes from all others in this regard.

Arizona suggests that judicial authority over the finding of aggravating [\*\*\*576] factors "may . . . be a better way to guarantee against the arbitrary imposition of the death penalty." Tr. of Oral Arg. 32. The Sixth Amendment jury trial right, however, does not turn on the relative rationality, fairness, or efficiency of potential factfinders. Entrusting to a judge the finding of facts necessary to support a death sentence might be

"an admirably fair and efficient scheme of criminal justice designed for a society that is prepared to leave criminal justice to the State. . . . The founders of the American Republic were not prepared to leave it to the State, which is why the jury-trial guarantee was one of the least controversial provisions of the Bill of Rights. It has never been efficient; but it has always been free." *Apprendi*, 530 U.S. at 498 (SCALIA, J., concurring).

In any event, the superiority of judicial factfinding in capital cases is far from evident. Unlike Arizona, the great majority of States responded to this Court's Eighth Amendment decisions requiring the presence of aggravating circumstances [\*608] in capital cases by entrusting those determinations to the jury. n6

n6 Of the 38 States with capital punishment, 29 generally commit sentencing decisions to juries. See *Ark. Code Ann.* § 5-4-602 (1993); *Cal. Penal Code Ann.* § 190.3 (West 1999); *Conn. Gen. Stat.* § 53a-46a (2001); *Ga. Code Ann.* § 17-10-31.1 (Supp. 1996); *Ill. Comp. Stat. Ann.*, ch. 720, § 5/9-1(d) (West 1993); *Kan. Stat. Ann.* § 21-4624(b) (1995); *Ky. Rev. Stat. Ann.* §

532.025(1)(b) (1993); *La. Code Crim. Proc. Ann.*, Art. § 905.1 (West 1997); *Md. Ann. Code, Art. 27, § 413(b)* (1996); *Miss. Code Ann.* § 99-19-101 (1973-2000); *Mo. Rev. Stat.* § § 565.030, 565.032 (1999 and Supp. 2002); *Nev. Rev. Stat. Ann.* § 175.552 (Michie 2001); *N. H. Rev. Stat. Ann.* § 630:5 (II) (1996); *N. J. Stat. Ann.* § 2C:11-3(c) (Supp. 2001); *N. M. Stat. Ann.* § 31-20A-1 (2000); *N. Y. Crim. Proc. Law* § 400.27 (McKinney Supp. 2001-2002); *N. C. Gen. Stat.* § 15A-2000 (1999); *Ohio Rev. Code Ann.* § 2929.03 (West 1997); *Okla. Stat., Tit. 21, § 701.10(A)* (Supp. 2001); *Ore. Rev. Stat. Ann.* § 163.150 (1997); *42 Pa. Cons. Stat.* § 9711 (Supp. 2001); *S. C. Code Ann.* § 16-3-20(B) (1985); *S. D. Codified Laws* § 23A-27A-2 (1998); *Tenn. Code Ann.* § 39-13-204 (Supp. 2000); *Tex. Code Crim. Proc. Ann.*, Art. 37.071 (Vernon Supp. 2001); *Utah Code Ann.* § 76-3-207 (Supp. 2001); *Va. Code Ann.* § 19.2-264.3 (2000); *Wash. Rev. Code* § 10.95.050 (1990); *Wyo. Stat. Ann.* § 6-2-102 (2001).

Other than Arizona, only four States commit both capital sentencing factfinding and the ultimate sentencing decision entirely to judges. See *Colo. Rev. Stat.* § 16-11-103 (2001) (three-judge panel); *Idaho Code* § 19-2515 (Supp. 2001); *Mont. Code Ann.* § 46-18-301 (1997); *Neb. Rev. Stat.* § 29-2520 (1995).

Four States have hybrid systems, in which the jury renders an advisory verdict but the judge makes the ultimate sentencing determinations. See *Ala. Code* § § 13A-5-46, 13A-5-47 (1994); *Del. Code Ann., Tit. 11, § 4209* (1995); *Fla. Stat. Ann.* § 921.141 (West 2001); *Ind. Code Ann.* § 35-50-2-9 (Supp. 2001).

Although "the doctrine of stare decisis is of fundamental importance to the rule of [\*\*\*2443] law[,] . . . our precedents are not sacrosanct." *Patterson v. McLean Credit Union*, 491 U.S. 164, 172, 105 L. Ed. 2d 132, 109 S. Ct. 2363 (1989) (quoting *Welch v. Texas Dept. of Highways and Public Transp.*, 483 U.S. 468, 494, 97 L. Ed. 2d 389, 107 S. Ct. 2941 (1987)). "We have overruled prior decisions where the necessity and propriety of doing so has been established." 491 U.S. at 172. We are satisfied that this is such a case.

[\*609] For the reasons stated, we hold that *Walton* and *Apprendi* are irreconcilable; our Sixth Amendment jurisprudence cannot be home to both. Accordingly, we overrule *Walton* to the extent that it allows a sentencing judge, sitting without a [\*\*\*577] jury, to find an

536 U.S. 584, \*; 122 S. Ct. 2428, \*\*;  
153 L. Ed. 2d 556, \*\*\*; 2002 U.S. LEXIS 4651

aggravating circumstance necessary for imposition of the death penalty. See 497 U.S. at 647-649. Because Arizona's enumerated aggravating factors operate as "the functional equivalent of an element of a greater offense," *Apprendi*, 530 U.S. at 494, n. 19, the Sixth Amendment requires that they be found by a jury.

\* \* \*

"The guarantees of jury trial in the Federal and State Constitutions reflect a profound judgment about the way in which law should be enforced and justice administered. . . . If the defendant preferred the common-sense judgment of a jury to the more tutored but perhaps less sympathetic reaction of the single judge, he was to have it." *Duncan v. Louisiana*, 391 U.S. 145, 155-156, 20 L. Ed. 2d 491, 88 S. Ct. 1444, 45 Ohio Op. 2d 198 (1968).

The right to trial by jury guaranteed by the Sixth Amendment would be senselessly diminished if it encompassed the factfinding necessary to increase a defendant's sentence by two years, but not the factfinding necessary to put him to death. We hold that the Sixth Amendment applies to both. The judgment of the Arizona Supreme Court is therefore reversed, and the case is remanded for further proceedings not inconsistent with this opinion. n7

n7 We do not reach the State's assertion that any error was harmless because a pecuniary gain finding was implicit in the jury's guilty verdict. See *Neder v. United States*, 527 U.S. 1, 25, 144 L. Ed. 2d 35, 119 S. Ct. 1827 (1999) (this Court ordinarily leaves it to lower courts to pass on the harmlessness of error in the first instance).

It is so ordered.

\* \* \* \*

**DISSENT BY: O'CONNOR**

**DISSENT:**

JUSTICE O'CONNOR, with whom the CHIEF JUSTICE joins, dissenting.

I understand why the Court holds that the reasoning of *Apprendi v. New Jersey*, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000), is irreconcilable with *Walton v. Arizona*, 497 U.S. 639, 111 L. Ed. 2d 511, 110 S. Ct. 3047 (1990). Yet in choosing which to overrule, I would choose *Apprendi*, not *Walton*.

[\*\*2449] I continue to believe, for the reasons I articulated in my dissent in *Apprendi*, that the decision in *Apprendi* was a serious mistake. As I argued in that dissent, *Apprendi*'s rule that any fact that increases the maximum penalty must be treated as an element of the crime is not required by the Constitution, by history, or by our prior cases. See 530 U.S. at 524-552. Indeed, the rule directly contradicts several of our prior cases. See *id.*, at 531-539 (explaining that the rule conflicts with *Patterson v. New York*, 432 U.S. 197, 53 L. Ed. 2d 281, 97 S. Ct. 2319 (1977), *Almendarez-Torres v. United States*, 523 U.S. 224, 140 L. Ed. 2d 350, 118 S. Ct. 1219 (1998), and *Walton*, *supra*). And it ignores the "significant history in this country of . . . discretionary sentencing by judges." 530 U.S. at 544 (O'CONNOR, J., dissenting). The Court has failed, both in *Apprendi* and in the decision announced today, to "offer any meaningful justification for deviating from years of cases both suggesting and holding that application of the 'increase in the maximum penalty' rule is not required by the Constitution." *Id.*, at 539.

Not only was the decision in *Apprendi* [\*\*\*584] unjustified in my view, but it has also had a severely destabilizing effect on our criminal justice system. I predicted in my dissent that the decision would "unleash a flood of petitions by convicted defendants seeking to invalidate their sentences in whole or [\*620] in part on the authority of [*Apprendi*]." *Id.*, at 551. As of May 31, 2002, less than two years after *Apprendi* was announced, the United States Courts of Appeals had decided approximately 1,802 criminal appeals in which defendants challenged their sentences, and in some cases even their convictions, under *Apprendi*. n1 These federal appeals are likely only the tip of the iceberg, as federal criminal prosecutions represent a tiny fraction of the total number of criminal prosecutions nationwide. See *ibid.* (O'CONNOR, J., dissenting) ("In 1998 . . . federal criminal prosecutions represented only about 0.4% of the total number of criminal prosecutions in federal and state courts"). The number of second or successive habeas corpus petitions filed in the federal courts also increased by 77% in 2001, a phenomenon the Administrative Office of the United States Courts attributes to prisoners bringing *Apprendi* claims. Administrative Office of the U.S. Courts, 2001 Judicial Business 17. This Court has been similarly overwhelmed by the aftershocks of *Apprendi*. A survey of the petitions for certiorari we received in the past year indicates that 18% raised *Apprendi*-related claims. n2 It is simply beyond dispute that *Apprendi* threw countless criminal sentences into doubt and thereby caused an enormous increase in the workload of an already overburdened judiciary.

536 U.S. 584, \*; 122 S. Ct. 2428, \*\*;  
153 L. Ed. 2d 556, \*\*\*; 2002 U.S. LEXIS 4651

n1 This data was obtained from a Westlaw search conducted May 31, 2002, in the United States Courts of Appeals database using the following search terms: "'Apprendi v. New Jersey' & Title['U.S.' or 'United States'].'"

n2 Specific counts are on file with the Clerk of the Court.

The decision today is only going to add to these already serious effects. The Court effectively declares five States' capital sentencing schemes unconstitutional. See *ante*, at 21, n. 5 (identifying Colorado, Idaho, Montana, and Nebraska as having sentencing schemes like Arizona's). There are 168 prisoners on death row in these States, Criminal Justice Project of the NAACP Legal Defense and Educational Fund, Inc., Death Row U.S.A. (Spring 2002), each of whom [\*621] is now likely to challenge his or her death sentence. I believe many of these challenges will ultimately be unsuccessful, either because the prisoners will be unable to satisfy the

standards of harmless error or plain error review, or because, having completed their direct appeals, they will be barred from taking advantage of today's holding on federal [\*\*2450] collateral review. See 28 U.S.C. § 2244(b)(2)(A), 2254(d)(1); *Teague v. Lane*, 489 U.S. 288, 103 L. Ed. 2d 334, 109 S. Ct. 1060 (1989). Nonetheless, the need to evaluate these claims will greatly burden the courts in these five States. In addition, I fear that the prisoners on death row in Alabama, Delaware, Florida, and Indiana, which the Court identifies as having hybrid sentencing schemes in which the jury renders an advisory verdict but the judge makes the ultimate sentencing determination, see *ante*, at 21, n. 6, may also seize on today's decision [\*\*\*585] to challenge their sentences. There are 529 prisoners on death row in these States. Criminal Justice Project, *supra*.

By expanding on *Apprendi*, the Court today exacerbates the harm done in that case. Consistent with my dissent, I would overrule *Apprendi* rather than *Walton*.