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Supreme Court of New Jersey
DOCKET NO. 090216

STATE OF NEW JERSEY, :	CRIMINAL ACTION
Plaintiff-Respondent, :	On Certification Granted from a Final Order of the Superior Court of New Jersey, Appellate Division.
v. :	
JEREMY ARRINGTON, :	Sat Below: Hon. Jack M. Sabatino, P.J.A.D. Hon. Maritza Berdote Byrne, J.A.D. Hon. Adam E. Jacobs, J.A.D.
Defendant-Petitioner. :	

AMICUS CURIAE BRIEF ON BEHALF OF
THE ATTORNEY GENERAL OF NEW JERSEY

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PRELIMINARY STATEMENT

Beyond doubt, as this Court has observed, "the variety and forms of mental disease are legion." But it is also true that "[n]ot every mental disease or defect has relevance to the mental states prescribed by the" Criminal Code, as this Court has held. The Legislature deliberately and quite appropriately included in the Code the elemental foundation for the presentation of any claim of insanity in opposition to a criminal charge. An insanity defense must be based on "such a defect of reason, from disease of the mind," that the defendant either did not know what she was doing, or, if she did, did not know that it was wrong. That is, some who suffer from mental illness may nonetheless possess the "moral blameworthiness" necessary for conviction under the Code, as this Court has recognized. That considered choice of the Legislature must be respected, as this Court has recognized time and again, on numerous issues, including matters directly relevant to the presentation of a claim of insanity.

Here, the Appellate Division correctly held that the presentation of an insanity defense requires expert medical testimony, because insanity can only arise from "disease of the mind." This disease must be diagnosed, and as a matter of New Jersey law, only a trained medical professional can make that diagnosis. In recognition of that reality, the Legislature mandated that a defendant intending to rely on this affirmative defense must notify the State of the intention to rely on such evidence as required by the Court Rules, which is before the Initial Case Disposition Conference takes place. Early notice is necessary so that the State may conduct its own investigation, which may be time-consuming, since it is likely to include a second diagnosis.

The Appellate Division's ruling was unsurprising. In a case involving the related issue of diminished capacity, this Court ruled that a defendant was not entitled to the relevant jury instruction—that the jury weigh whether the defendant's mental functioning rendered him incapable of acting with the required state of mind to commit the crime—in the absence of expert testimony of a diagnosis that connected a claimed mental disorder to the defendant's state of mind at the time of his crimes.

A defendant's inability to present the necessary medical testimony to advance an insanity defense does not, however, leave her without recourse to offer lay evidence of facts intended to prevent the State from meeting its burden to prove mens rea. Rather, such lay evidence, and relevant medical expert testimony, is admissible subject to the trial court's ordinary power to enforce the evidence rules, and the jury charge on the State's obligation to prove the requisite mental state beyond a reasonable doubt. Thus, a defendant who fails to produce the necessary medical evidence to support an insanity-defense charge is not denied a "complete" defense, and no constitutional issue is presented.

STATEMENT OF PROCEDURAL HISTORY AND FACTS

The Attorney General relies on the Counterstatement of Procedural History and Counterstatement of Facts set forth in the State's brief to the Appellate Division, as well as that set forth in the Appellate Division's opinion. The Attorney General would note certain particularly germane facts of procedural history and the crimes.

A. The testimony concerning defendant's crimes.

As the Appellate Division noted, this case stems from a home invasion where defendant tied up and tortured all, and killed some, of the inhabitants, most of whom were children, by stabbing and shooting them. Apparently, defendant was upset after he saw negative comments about him on a Facebook post. State v. Arrington, 480 N.J. Super. 428, 433 (App. Div. 2024), certif. granted, 260 N.J. 208 (2025).

Defendant had gained entry to the apartment of his victims by using a youngster known to the victims – who were "all women and kids" – to induce one of the victims to unlock both the building's front door and the apartment door. (14T157-8 to 11; 15T26-19 to 29-20; 15T75-11 to 23; 22T44-3 to 9).[1] Inside the apartment, defendant used gloves and a sweater to wipe things down,

[1] For transcript references, the Attorney General adopts the numbering convention of defendant's Appellate Division brief.

to conceal his identity, avoid apprehension, and hinder prosecution. (14T63-21 to 25; 14T92-10 to 22; 15T34-16 to 21). He herded all the victims into the rear bedroom, where he bound the arms of six people behind their backs, using strips of bedsheet that he cut up. (14T51-13 to 53-14; 14T56-1 to 14; 14T58-14 to 22; 14T59-14 to 62-5; 14T133-4 to 134-4; 14T135-17 to 136-1; 14T136-6 to 22; 14T138-7 to 19; 14T139-6 to 12; 14T140-24 to 141-12; 15T39-1 to 11; 19T24-6 to 10). Defendant collected the victims' phones, which he put into a pillow case, and then he stomped on the phones to damage them, and to prevent the victims "from calling for help." (14T57-20 to 58-10; 14T138-19 to 20; 14T139-13 to 140-5; 15T38-17 to 22; 19T27-19 to 28-1; 22T46-24 to 47-10). Before that, when one of the victims had received a phone call, defendant warned her that he would "kill her right on the spot" if she said anything that "made it seem suspicious." (15T37-15 to 38-15; 19T28-2 to 12).

After tying up all but one of the victims, and rendering their phones useless, defendant began to put the victims into different rooms. (14T65-9 to 67-8; 14T92-23 to 93-25). Defendant used "multiple" knives, either in his own hands, or that he placed in various victims' hands, to stab multiple people. (14T81-1 to 4; 14T82-3 to 17; 14T102-5 to 22; 14T144-24 to 146-16; 14T148-19 to 149-9; 15T43-15 to 24; 15T44-10 to 45-8; 15T45-18 to 46-7; 15T46-24 to 47-16; 19T48-4 to 10; 19T49-3 to 16; 19T51-3 to 52-14; 19T60-18 to 61-5).

Defendant forced S. R.,[2] who was only fourteen years old, to stab multiple people on his behalf, after he forced her to touch all of the knives' handles. (14T114-22 to 23; 14T146-23 to 147-21; 19T39-7 to 24; 19T43-12 to 16; 19T44-23 to 45-20; 19T46-24 to 48-3). Defendant also ordered S. R. to touch the doorknobs. (19T39-25 to 40-9).

One of the three murder victims, Syasia McBurroughs, age twenty-three, was not a target of defendant's wrath, but had the misfortune to be in the wrong place at the wrong time. (19T100-25 to 101-2; 22T53-4 to 5). Fearing that she might "snitch" on him, defendant executed the bound McBurroughs by shooting her through her head. (13T169-9 to 12; 13T173-3 to 15; 14T69-20 to 71-5; 19T34-11 to 15; 19T38-11 to 23). To muffle the gunshot, defendant put a pillowcase over her head before firing. (14T71-2; 19T38-19 to 23). He also turned on the television in that room before shooting McBurroughs. (14T74-2 to 6; 14T96-12 to 97-5).

Defendant and S. R., acting at his orders, turned on televisions in multiple rooms, and made the audio loud, to "drown out the noise." (12T120-11 to 16; 12T154-16 to 155-2; 12T158-17 to 19; 14T73-20 to 74-6; 14T96-12 to 97-5;

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[2] As the defendant's actions toward S. R. could have been prosecuted as Endangering the Welfare of a Child, under N.J.S.A. 2C:24-4(a)(2), the Attorney General is using her initials to protect her privacy, as required by N.J.S.A. 2A:82-46, and R. 1:38-3(c)(9). See Rule 1:36-3, cmt. 6.

14T148-1 to 12; 15T52-5 to 22; 19T35-11 to 36-17; 22T53-23 to 54-1). When a child who lived upstairs knocked at the apartment door, S. R. told him nobody could leave, as defendant ordered her to say. (14T62-18 to 63-10). Defendant also ordered a shower be turned on to conceal the screams of one of the children who was murdered. (15T51-12 to 24; 15T83-3 to 7).

When a child hidden in one of the apartment's closets called her sister for help, and the sister rang the doorbell from the street, defendant pointed his gun at Bilqis Karam, one of the victims, age twenty-two, and forced her to go to an apartment window, and told her to lie to the inquiring woman. (13T15-6 to 19-14; 13T23-7 to 24-7; 14T40-8 to 14; 14T76-24 to 79-8). And then, when police arrived in response to the 911 call placed by the inquiring woman, defendant first ordered Ms. Karam to tell the police she could not open the apartment door because her mother was not home. (11T58-22 to 60-11; 14T82-22 to 84-4). Because the police made clear that they were going to enter the apartment, defendant fled to the rear bedroom, and then jumped out the second-story window to escape. (11T60-12 to 14; 14T84-13 to 17; 19T54-18 to 55-3).

After he fled the "house of horrors" that he created, defendant stashed his gun, which was never recovered by police. (19T137-7 to 15; 20T190-4 to 16). Defendant hid at someone else's house, where he followed media reports of the carnage he had created. (15T94-9 to 96-12; 19T139-1 to 144-16; 20T5-15 to 6-

5). When police located him there the day after the murders, defendant initially claimed to be holding a hostage. (15T100-18 to 101-2; 19T135-13 to 24; 19T136-22 to 23).

After surrendering, defendant was transported to the Essex County Prosecutor's Office. When police began to read defendant his Miranda[3] warnings, defendant cut them off, telling them he knew his rights. (20T20-21 to 21-6). After he waived his constitutional rights, defendant made a number of admissions that the jury eventually heard at trial, including his apology for his "actions," which he made after being asked to apologize for killing the two children. (20T123-13 to 124-3).

The testimony suggested that defendant wanted to be captured, fearing that one or more vigilantes—from the public or while in jail—would try to avenge the murders, particularly those of the children. A detective spoke with defendant's brother on the day of the murders about the brother's "fear" for defendant's "safety." (19T126-15 to 127-21; 19T136-19 to 22; 20T123-1 to 5; 20T123-20 to 124-3). And when first questioned, defendant insisted on his right to counsel; only when police told him that he would be lodged in the jail, where he reasonably could fear vigilante action from other prisoners, did defendant relent and speak. (20T27-13 to 29-10).

[3] Miranda v. Arizona, 384 U.S. 436 (1966).

Within weeks after being arrested for the crimes leading to trial, defendant appeared before the same judge who handled the trial, and entered guilty pleas to two indictments other than the indictment leading to this trial. (1T).

B. Issues concerning the status of defendant's mental health.

All these conscious actions by defendant at and shortly after the date of his heinous crimes reflect his sanity. They further evidence why one of the two defense psychiatrists who examined defendant apparently concluded that he was legally sane. (10T9-16 to 21; 10T10-10 to 15).

For instance, the expert defendant first retained to opine on insanity, who had concluded he was insane, (10T10-10 to 12), also testified in the case on defendant's competency to face trial. (3T4-8 to 124-22). In finding defendant competent, the trial judge found that testimony to be "not as credible" as the testimony of the State's expert. (5T22-14 to 18). The judge gave detailed reasons for his finding, concluding that he had "tremendous concern with the credibility of" the defense expert. (5T22-19 to 28-17). Among his reasons, the trial judge noted that the record included a jail note which stated that defendant told a mental health counselor that defendant was "faking" mental illness. (5T32-2 to 8; see 8T17-4 to 8). The trial judge also noted that defendant appeared very rational while giving his nearly two-hour videotaped post-arrest statement, which the judge had watched, including "laugh[ing]" when the detectives began reading his Miranda rights. (5T27-19 to 28-14; 5T31-1 to 5).

At the pretrial conference over two years later, defense counsel reported that his efforts to get the expert to testify were unsuccessful, as the doctor had reported that he was no longer practicing medicine, and was unable to come to court to testify. (9T72-12 to 73-8; 9T79-7 to 10). The trial judge offered to make accommodations, but the judge and defense counsel also discussed the fact that counsel had already conferred with the Office of the Public Defender (OPD), which had decided against funding an examination of defendant by another doctor. (9T73-9 to 76-7; 9T79-11 to 24). OPD's decision, it was later revealed, was to decline to pay for defendant's examination by a third doctor. (10T9-15 to 12-7).

During discussion of the judge's voir dire questions to potential jurors at a prior conference, the State objected to instructing them on the issue of insanity, because defendant had not identified his expert witness, to which defendant responded by claiming the right to present the defense exclusively through cross-examination of the State's witnesses. (8T47-5 to 50-6). That led the trial judge to consider the need for expert testimony to present the insanity defense; to resolve the matter, he referred to the Model Criminal Jury Charge on Insanity, and focused on the language regarding "disease of the mind." (8T50-7 to 61-22). Then, the trial judge said that defendant might be able to present the defense through his own testimony, without an expert. (8T61-23 to 73-10). However, weeks later, the trial judge informed the parties that presentation of the insanity defense would require defendant to produce expert testimony. (9T78-12 to 80-21).

On appeal, defendant asserted the trial judge's ruling deprived him of his constitutional right to a complete defense, and to testify in his own defense. Arrington, 480 N.J. Super. at 436. The panel rejected that position, affirming the trial court's decision that presentation of the insanity defense required expert medical testimony. The panel explained that N.J.S.A. 2C:4-1 is predicated on evidencing that the defendant's "lack of reason" was caused by "disease of the mind." Id. at 439-44. The concurring judge would allow a defendant to advance an insanity defense without expert testimony "in those rare instances where expert testimony is unsolicited or unavailable." Id. at 445 (Jacobs, J., concurring).

Defendant filed a petition for certification, which this Court granted on March 19, 2025. The question presented was limited to "whether defendant can pursue an insanity defense without accompanying expert testimony from a qualified mental health professional." State v. Arrington, 260 N.J. 208, 208 (2025).

LEGAL ARGUMENT

POINT I

THE LEGISLATURE DELIBERATELY CHOSE TO BASE THE INSANITY DEFENSE ON EVIDENCE OF "DISEASE OF THE MIND," A SUBJECT THAT REQUIRES EXPERT MEDICAL TESTIMONY.

The question before this Court is: Whether a defendant is entitled to an insanity defense without producing expert medical testimony evidencing her "disease of the mind." As shown below, the answer to that question should emphatically be: No—evidencing "disease of the mind" producing a "lack of reason," N.J.S.A. 2C:4-1, requires the production of relevant expert testimony.

"The object of statutory interpretation is to effectuate the intent of the Legislature, as evidenced by the plain language of the statute, its legislative history and underlying policy, and concepts of reasonableness." State v. Courtney, 243 N.J. 77, 85 (2020). The court first must ask whether the statute "admits of a plain-meaning interpretation." State v. Hodde, 181 N.J. 375, 379 (2004). If the language is "susceptible to only one interpretation," then it should be applied as written, without "resort to extrinsic interpretive aids." Ibid. (internal quotation omitted). Yet, statutes must be construed "in concert with other legislative pronouncements on the same subject matter so as to give full effect to each constituent part of an overall legislative scheme." Ibid. On the other hand, if "two interpretations of the language are plausible," this Court "must effectuate legislative intent by resorting to extrinsic evidence." Id. at 379-80.

Here, based on the plain language of N.J.S.A. 2C:4-1, its legislative history and underlying policy, and concepts of reasonableness, any affirmative defense of insanity requires a foundation of expert medical testimony that, at the time of the criminal conduct, the defendant "was laboring under such a defect of reason from disease of the mind," so as to be eligible to request a jury instruction that would permit the finder of fact to find her "not guilty of the crime charged by reason of insanity." Model Jury Charges (Criminal), "Insanity" (N.J.S.A. 2C:4-1) at 1-2 (approved Oct. 17, 1988).

A. The Statute's Plain Language Mandates Use of Expert Medical Testimony.

N.J.S.A. 2C:4-1 provides, in relevant part, that

> A person is not criminally responsible for conduct if at the time of such conduct he was laboring under such a defect of reason, from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know what he was doing was wrong. [Emphasis added].

The word "from" in the statute is pregnant with significance. "Among the dictionary definitions of 'from' is 'a function word to indicate the source or original or moving force of something: as . . . the place of origin, source, or derivation of a material or immaterial thing.'" National Ass'n of Clean Water

Agencies v. EPA, 734 F.3d 1115, 1125 (D.C. Cir. 2013) (quoting Webster's Third New International Dictionary 913 (1981) (ellipsis in original)); see Peconic Baykeeper, Inc. v. Suffolk County, 600 F.3d 180, 188-89 (2d Cir. 2010) (same) (quoting Webster's Third International Dictionary Unabridged 913 (2002)). While in certain scenarios a distinction between "proximate source" and "original source" might be determinative, see National Ass'n of Clean Water Agencies, 734 F.3d at 1125-26, nothing suggests that is true here. The source of the "defect of reason" equalling legal insanity must be from "disease of the mind," and nothing else.

Yet mental disease is not sufficient, standing alone, to constitute the insanity defense. Because "the variety and forms of mental disease are legion," "[n]ot every mental disease . . . has relevance to the mental states prescribed by the Code." State v. Breakiron, 108 N.J. 591, 618 n.10 (1987). "Mental illness does not in and of itself eliminate moral blameworthiness under the test for criminal insanity enshrined in the Code." State v. Singleton, 211 N.J. 157, 160 (2012). The defense exists "to determine who among the mentally ill should be held criminally responsible for their conduct." Id. at 173; see Clark v. Arizona, 548 U.S. 735, 754 n.24 (2006) ("Insanity standards are formulated to guide the factfinder to determine the blameworthiness of a mentally ill defendant."); State v. Cordasco, 2 N.J. 189, 195-97 (1949) (rejecting argument claims of insanity varying from "legal concept" of being capable of "distinguishing between right and wrong" at time of crime should be permitted); Cannel, New Jersey Criminal Code Annotated, cmt. 2 on N.J.S.A. 2C:4-1 (2024) ("The insanity defense is not available to all who are mentally deficient or deranged; legal insanity has a different meaning."), quoted in Arrington, 480 N.J. Super. at 438.

This statute limits its protection to those whose "disease of the mind" creates a "lack of reason" that prevents the defendant either from knowing that he performed the criminal act, or, if he did, from knowing that his performance of the act was wrong, a standard derived from M'Naghten's Case, 8 Eng. Rep. 718, 722 (1843).[4] Singleton, 211 N.J. at 174-75 & n.7; 2 The New Jersey Penal Code: Commentary § 2C:4-1, cmt. 2 at 96 (Criminal Law Revision Comm'n 1971) [hereinafter "Law Rev. Comm'n Commentary"]; see 2 Charles E. Torcia, Wharton's Criminal Law § 101 at 17 (15th ed. 1994) (describing distinction), quoted in United States v. Martin, 56 M.J. 97, 108 (C.A.A.F.), review denied, 56 M.J. 247 (C.A.A.F. 2001). The test has been stated as having two elements: (1) a disability (defect of reason from disease of the mind); and (2) the result (lack of knowledge). W. LaFave & A. Scott, Criminal Law § 37, at 275 (1972),

[4] A concise summary of the facts surrounding M'Naghten's Case can be found in United States v. Torniero, 735 F.2d 725, 728 (2d Cir. 1984), cert. denied, 469 U.S. 1110 (1985). The "M'Naghten" test," as it is commonly known, is based on nineteenth-century common law governing the insanity defense, and is presently codified in N.J.S.A. 2C:4-1. Arrington, 480 N.J. Super. at 417.

quoted in Hart v. State, 702 P.2d 651, 656-57 (Alaska Ct. App. 1985).

The affirmative defense of insanity cannot be proven without proving its first element, lack of reason "from" the "disease." Since the Code does not define "disease," State v. Baum, 224 N.J. 147, 161 (2016), it is appropriate to consult relevant dictionaries, as the Appellate Division did here. Arrington, 480 N.J. Super. at 440-41; see Wells-Reit II-80 Park Plaza, LLC v. Director, Div. of Taxation, 414 N.J. Super. 453, 464-65 (App. Div. 2010). For example, in State v. Smith, 251 N.J. 244 (2022), this Court rejected the argument that the word "non-transparent" used in N.J.S.A. 39:3-74 was impermissibly vague by quoting the "dictionary definition[s]" of "non-transparent" and "transparent." Id. at 265. As authority for relying on a dictionary meaning for interpreting words used in a statute, N.J.S.A. 1:1-1 provides that statutes shall be construed with their context, and by ordinarily giving words and phrases "their generally accepted meaning, according to the approved usage of the language." Ibid.

"Disease" has been defined by two well-known medical dictionaries as "a condition of abnormal vital function involving any structure, part, or system of an organism," and including "disorder of bodily functions, systems, or organs." Texas State Bd. of Examiners of Marriage & Family Therapists v. Texas Med. Ass'n, 511 S.W.3d 28, 38 (Tex. 2017) (quoting Mosby's Medical Dictionary (8th ed. 2009) and Stedman's Medical Dictionary 403 (1982)). This "condition of abnormal vital function" includes "mental illness," which Stedman's Medical Dictionary (28th ed. 2013) has defined to "encompass[] a variety of forms of 'diseases.'" Arrington, 480 N.J. Super. at 440-41.

To identify a "disease" is to "diagnose" it. Webster's Third New International Dictionary 622 (2002), quoted in Texas Med. Ass'n, 511 S.W.3d at 35 (collecting other, similar definitions). In New Jersey, a person is deemed to practice medicine if they diagnose any human disease. N.J.S.A. 45:9-18, cited in State v. Jeannotte-Rodriguez, 469 N.J. Super. 69, 96 (App. Div. 2021); see Arrington, 480 N.J. Super. at 441 (noting that "laypersons generally are not qualified to make diagnoses of diseases").

This Court has recognized more than once that testimony identifying "disease of the mind" is a "diagnosis." For example, in State v. Pitts, 116 N.J. 580 (1989), a case involving the related "diminished capacity" statute, N.J.S.A. 2C:4-2, this Court described the testimony of the defendant's psychiatric expert on defendant's "mood disorder" as a "diagnosis" of his "mental condition" three times. Id. at 607-09. On another occasion, this Court has spoken of a "diagnosis" from the defendant's psychiatrist that required the reversal of a conviction for failure to give the correct jury instruction on diminished capacity. State v. Moore, 122 N.J. 420, 425-27, 430-37 (1991).

Later, in State v. Galloway, 133 N.J. 631 (1993), this Court characterized the relevant evidence in both Moore and Pitts as diagnoses, while stating that in a case involving N.J.S.A. 2C:4-2, "the determination that a condition constitutes a mental disease or defect is one to be made in each case by the jury after the court has determined that the evidence of the condition in question is relevant and sufficiently accepted within the psychiatric community to be found reliable for courtroom use." Id. at 643-45 (emphasis added). The Galloway Court held the testimony of a psychiatrist and a psychologist about defendant's "primary diagnosis" and his "secondary diagnosis" rendered the withdrawal of the diminished capacity jury instruction from the jury's consideration reversible error. Id. at 647-50.[5]

As the above case law demonstrates, because evidence identifying the relevant "disease of the mind" is a diagnosis, expert medical testimony is required. See State v. J.T., 455 N.J. Super. 176, 214-15 (App. Div.) (noting that psychiatry is "a field of medicine," and holding that psychiatric testimony was "necessary" to assist the jury to determine whether defendant met the definition of insanity in N.J.S.A. 2C:4-1), certif. denied, 235 N.J. 466, certif. denied, 235 N.J. 467 (2018); State v. Hines, 303 N.J. Super. 311, 313-14, 317-23 (App. Div. 1997) (noting that the "American Psychiatric Association has developed a

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[5] Why the psychologist was called "Doctor" was not addressed in Galloway. 133 N.J. at 647-50. The distinction between a psychiatrist and a psychologist, and the significance of that distinction, is discussed in Point I(B), infra.

detailed set of criteria for diagnosing" Post-traumatic Stress Disorder, and ruling expert testimony regarding the condition was admissible to support claim of self-defense, or to attack mens rea); see also Viscik v. Fowler Equip. Co., 173 N.J. 1, 16 (2002) (in lawsuit under Law Against Discrimination (LAD), holding that when "the existence of a handicap is not readily apparent, expert medical evidence is required"); Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 577, 597 (1988) (in lawsuit under LAD, holding that "expert medical testimony" is required to establish "diagnos[is]" of alcoholism, due to "complexity of the many diagnostic procedures involved"). And as the United States Supreme Court has noted, "[u]nlike lay witnesses, who can merely describe symptoms they believe might be relevant to the defendant's mental state, psychiatrists can identify the 'elusive and often deceptive' symptoms of insanity." Ake v. Oklahoma, 470 U.S. 68, 80 (1985) (emphasis added; internal quotation omitted).

Although "any licensed physician is qualified as a matter of law to express an opinion as to mental disease," "it is generally recognized that psychiatry is a medical specialty entitling opinions within its purview by its practitioners to more weight than those of general practitioners." State v. Kelly, 118 N.J. Super. 38, 53 (App. Div.), certif. denied, 60 N.J. 350 (1972). It is natural to expect that a psychiatrist will testify on the issue of insanity. However, even if a defendant produces a medical doctor who is not a psychiatrist, he is still producing an expert witness. Kelly, 118 N.J. Super. at 51-54 (discussing testimony of defendant's expert neurologist). But this Court would be entitled to go further and hold that the statute requires psychiatric testimony, because the Legislature has expressed its intention to restrict determination of the sanity issue to psychiatrists, as discussed in Point I(B), infra.

The plain words of N.J.S.A. 2C:4-1 mandate that a defendant must present expert medical testimony, preferably psychiatric testimony, to earn entitlement to a jury instruction on the affirmative defense of insanity. See Kelly, 118 N.J. Super. at 53-54 (noting that trial judge's questioning that revealed to jury judge's skepticism of neurologist's qualification to opine credibly on defendant's sanity did not prejudice defendant, who "adduced the testimony of two psychiatrists of substantially higher qualifications" to support insanity defense). Since the statute's literal words are clear, this should be "the starting and ending point of the [Court's] analysis." In re Plan for the Abolition of the Council on Affordable Housing, 214 N.J. 444, 468 (2013).

B. The Legislative History of N.J.S.A. 2C:4-1 and Related Statutes Confirm That Psychiatric Testimony Is Necessary.

If the words of N.J.S.A. 2C:4-1 are "unclear or ambiguous, or if the Legislature's intention is otherwise uncertain, resort may be had to extrinsic aids" to assist this Court to implement the "Legislature's will." State ex rel. K.O., 217 N.J. 83, 92 (2014). But such resort must maintain the overarching "duty" of this Court, "to discern and implement the legislative intent" behind the statute. Id. at 93. Here, extrinsic aids uniformly confirm the Legislature's intent to require expert medical testimony, if not expert psychiatric testimony, to entitle a defendant to an insanity defense, and if raised before a jury, a corresponding instruction.

The Legislature fine-tuned the insanity defense by limiting it to "defect of reason, from disease of the mind." N.J.S.A. 2C:4-1. The Commission had proposed that individuals not be held responsible for otherwise criminal conduct "as a result of mental disease or defect." 1 The New Jersey Penal Code: Final Report § 2C:4-1, at 35 (Criminal Law Revision Comm'n 1971) [hereinafter "Law Rev. Comm'n Report"]. But the Commission's language concerning "defect" was not disregarded. Instead, it appeared elsewhere.

As enacted, N.J.S.A. 2C:4-2 states that evidence a defendant "suffered from a mental disease or defect" is admissible whenever relevant to prove defendant lacked the state of mind that is an element of the offense. "This provision concerns a wide range of mental conditions, so long as the condition is one that interferes with the formation of the mental state required for conviction of the offense." Cannel, New Jersey Criminal Code Annotated, cmt. 2 to N.J.S.A 2C:4-2 at 162 (2024); see Law Rev. Comm'n Commentary, § 2C:4-1 at 98 cmt. 9 (stating intention that term "defect" "should include congenital and traumatic mental conditions as well as disease"). For example, a learning-disabled individual might raise the defense if charged with a crime of violence. State v. Rivera, 205 N.J. 472, 487 (2011) (quoting State v. Delibero, 149 N.J. 90, 98 (1997)); see State v. Harris, 181 N.J. 391, 430 (2004) (defendant presented claims of both "mental retardation and mental illness" in proceeding seeking to bar his execution),[6] cert. denied, 545 U.S. 1145 (2005). In other words, the insanity defense was made available to a smaller subclass of persons deemed not responsible for otherwise criminal conduct, and only those whose impairment resulted from "disease of the mind."

Other statutes in Chapter 4 of the Code provide powerful support for the view that the Legislature mandated expert medical testimony to provide the foundation for any assertion of insanity under N.J.S.A. 2C:4-1. First, any defendant who intends to rely on the insanity defense is required to serve notice on the State before the Initial Case Disposition Conference. N.J.S.A. 2C:4-3(a); see R. 3:12-1; see also State v. Gorthy, 226 N.J. 516, 533 (2016) (noting that these obligations confirm that the issue "must be affirmatively invoked by the defendant if it is to play a role at trial"). This advance notice is necessary since the State may need to investigate or otherwise meet the defense, such as by

[6] Today, the term "mental retardation" is disfavored, and "intellectual disability" is the preferred term to refer to those persons whose IQ score is abnormally low. See Hall v. Florida, 572 U.S. 701, 704-05 (2014).

hiring its own medical expert. See State v. Harper, 229 N.J. 228, 241-42 (2017) (discussing the "settled procedures" that apply to all defenses listed in Rule 3:12-1, and the various remedies available for failure to deliver necessary pretrial notice); State v. Bradshaw, 195 N.J. 493, 507-08 (2008) (holding that consideration of proper sanction for breach of notice-of-alibi violation should include whether court should declare continuance or mistrial to permit State to investigate); cf. State v. Obstein, 52 N.J. 516, 528 (1968) (in pre-Code case, noting that in event defendant tendering insanity defense refuses to submit to examination by State psychiatrist before trial, court may declare recess in proceedings to permit defendant to comply) (dictum), overruled on other grounds, State v. Engel, 99 N.J. 453, 473 (1985).

As the concurrence below noted, the Appellate Division has held that enforcement of the notice requirement does not offend due process, including the principle of fundamental fairness under our State Constitution. Arrington, 480 N.J. Super. at 453 (Jacobs, J., concurring) (citing State v. Burnett, 198 N.J. Super. 53, 57-58 (App. Div. 1984), certif. denied, 101 N.J. 269 (1985)). "The salutary purpose" of the statute and rule "is to avoid surprise at trial by the sudden introduction of a factual claim which cannot be investigated without requiring a substantial continuance." Burnett, 198 N.J. Super. at 57-58; accord, Williams v. Florida, 399 U.S. 78, 80-86 (1970) (rejecting argument that State's notice-of-alibi rule compelled defendant to be witness against himself, or otherwise violated right to due process, and noting defendant's concession State would be entitled to continuance at trial if surprised by alibi witness).

Yet another "significant departure from the Commission proposal" by the Legislature concerned N.J.S.A. 2C:4-5, which addresses a criminal defendant's mental fitness to proceed. Cannel, New Jersey Criminal Code Annotated, cmt. 1 to N.J.S.A. 2C:4-5 (2024). The Legislature limited the court's power to appoint "at least one qualified psychiatrist"[7] to examine and report to the court on a defendant – including on motion of the prosecutor, or on its own motion, if necessary – to the issue of competency to stand trial only. State v. Szatmari, 163 N.J. Super. 418, 423 (Law Div. 1978). The Commission had recommended that, on motion by the prosecutor or by the court, a "court-appointed psychiatrist" must examine a defendant, and report to the Court, on the issue of defendant's sanity, too, when that was an issue in the case. Ibid.; see Law Rev. Comm'n Report, § 2C:4-5, at 36-37. The Commentary states explicitly that the section proposed was intended to "establish[] a procedure for a psychiatric examination with respect to any issue which may arise upon which testimony of

[7] "This section was amended by L. 1997, c. 77, §1 to allow examination by licensed psychologists." Cannel, New Jersey Criminal Code Annotated, cmt. 1 to N.J.S.A. 2C:4-5 (2024). A psychiatrist has a medical degree, but a psychologist does not. In re Commitment of W.W., 245 N.J. 438, 453 (2021).

the defendant's psychiatric condition may be relevant." Law Rev. Comm'n Commentary, § 2C:4-5 at 102 cmt. 1. In other words, the Commission expressed the belief that the insanity defense required psychiatric testimony.

By removing the court's authority to investigate a defendant's sanity on motion by the prosecutor, or on its own motion, the Legislature placed the issue of raising the defense solely within the defendant's control, consistent with Obstein. 52 N.J. at 525-27; see Gorthy, 226 N.J. at 520-22 (holding that a defendant found to be competent has unilateral authority to decide whether to assert insanity defense, however "unwise" others may judge that decision to be). Since pretrial notice to the State of claim to the defense was required, no prejudice accrued from this change. But the Legislature's decision to alter the proposed N.J.S.A. 2C:4-5 nowhere hinted at any intention to remove from the insanity defense the requirement that it be founded on expert medical testimony.

A significant indication of the importance the Legislature specifically placed on psychiatric testimony is contained in the 1997 amendments by which the Legislature expanded a number of statutes in Chapter 4 to include psychologists along with psychiatrists. See N.J.S.A. 2C:4-5; N.J.S.A. 2C:4-6; N.J.S.A. 2C:4-10. Before the amendments passed, the Assembly Judiciary Committee deleted two sections of the original proposal, which would have similarly expanded N.J.S.A. 2C:4-8 and N.J.S.A. 2C:4-9. A. 1654 (L. 1997, c.

77) (AGa1-9). The accompanying statement from the Assembly Judiciary Committee could not be clearer:

> The committee amendments delete sections 3 and 4 of the bill which would have permitted licensed psychologists to examine persons acquitted by reason of insanity and persons committed by reason of insanity. Currently only psychiatrists perform these examinations. This practice would remain unchanged.
>
> [Assembly Jud. Comm. Statement to A. 1654 (May 20, 1996) (AGa8) (emphasis added)]

As only a psychiatrist, a medical professional, may conduct the examination that may lead to the institutionalization of a person acquitted by reason of insanity, N.J.S.A. 2C:4-8, and as only a psychiatrist may conduct the examination that leads to the release of an individual who has been committed, N.J.S.A. 2C:4-9, it makes perfect sense that the Legislature also decreed that an individual seeking to be acquitted by reason of insanity must base that affirmative defense on psychiatric testimony. See State ex rel. K.O., 217 N.J. at 96 (noting that "contemporaneous expressions of intent by the Legislature that . . . amended the legislation in question" are indicative of legislative intent, and may be considered in construction of statute).

Each of these steps makes clear the Legislature's intent that an insanity defense can only be presented at trial with the testimony of a medical professional. Further, based on the 1997 amendments to Chapter 4 of the Code, this Court may choose to construe N.J.S.A. 2C:4-1 to require not just expert medical testimony, but specifically expert psychiatric testimony. "The purpose of construction is to bring the operation of the statute within the apparent intention of the Legislature." Nagy v. Ford Motor Co., 6 N.J. 341, 350 (1951). "This task is often assisted by interpreting a statute consistently with the overall statutory scheme in which it is found." Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 554 (2009); see State ex rel. K.O., 217 N.J. at 95 (noting that it "is a guiding principle in achieving the goal of fulfilling the legislative intent underlying a statute that a provision be considered in light of its surrounding statutory provisions"). Construing N.J.S.A. 2C:4-1 to require psychiatric testimony, and not just any medical testimony, would align the statute fully with N.J.S.A. 2C:4-8 and N.J.S.A. 2C:4-9.

Opposing the clear statement of legislative intent requiring at least medical expert testimony to merit the insanity jury instruction, defendant relies on a civil case interpreting the word "insanity" for purposes of tolling a statute of limitations under the LAD. Estate of Nicholas v. Ocean Plaza Ass'n, Inc., 388 N.J. Super. 571, 575, 581-83 (App. Div. 2006). For that purpose, the Appellate Division ruled that "a person's insanity" could be "established under N.J.R.E. 701, through the testimony of laypersons, without the presentation of expert testimony." Id. at 582. The contention that the holding of Estate of

Nicholas should be imported into criminal law should be rejected.

N.J.S.A. 1:1-1 directs that words and phrases "shall be read and construed with their context," and should not be read in a way that is "inconsistent with the manifest intent of the legislature." As Estate of Nicholas notes, LAD "is to be construed liberally." 388 N.J. Super. at 587. By permitting the plaintiff to invoke a tolling provision and avoid summary judgment, the Appellate Division advanced the goal of liberally construing LAD. Its ruling was critical to the suit's continuation because no psychiatric evaluation could be performed, as the plaintiff was deceased. Id. at 577.

N.J.S.A. 2C:4-1 has a completely different goal, to limit the universe of criminal defendants who have the opportunity to avoid criminal responsibility. Thus, the context of Estate of Nicholas and the manifest intent of the Legislature in creating the insanity defense warrant rejecting the importation of the holding of that civil case into the Criminal Code.

This Court recently rejected an argument that a definition contained in one chapter of one Title be imported into a different chapter of the same Title. In Goyco v. Progressive Insurance Company, 257 N.J. 313 (2024), this Court was urged to apply the definition of "vehicle" in the Motor Vehicle and Traffic Laws of Title 39 to the No-Fault Act, also in Title 39. Id. at 316, 322. This Court declined the invitation, for two reasons.

First, noting "the diverse subjects of regulations covered by Title 39," this Court held that "a definition from one chapter cannot simply be imported into another chapter of Title 39." Id. at 322-23. Second, this Court relied on the "instruct[ion]" provided by the Legislature in N.J.S.A. 1:1-1 on statutory interpretation to "interpret a statute by giving each word its 'generally accepted meaning' unless a 'different meaning is expressly indicated,'" to carry out "the manifest intent of the legislature." Id. at 324-25 (quoting N.J.S.A. 1:1-1).

The same logic applied in Goyco mandates rejection of defendant's argument concerning Estate of Nicholas, as discussed above. LAD and the Criminal Code have differing purposes, and "disease" has a generally accepted meaning.

Similarly, the many pre-Code cases defendant cites in support of his argument should be rejected precisely because they are pre-Code. "The Legislature may overrule or modify judicial determination of a common law duty by enacting a pertinent statute." Kubert v. Best, 432 N.J. Super. 495, 507 n.5 (App. Div. 2013); see State v. Hampton, 61 N.J. 250, 272-73 (1972) (noting that Legislature changed common law element of kidnapping by statute); accord, Rivers v. Roadway Express, 511 U.S. 298, 304-05 (1994) (acknowledging Congress's power to "legislatively overrule" a decision of the Court).

Here, such a result should not be surprising. It is natural and to be expected that the Legislature will consider and respond to advances in science through updated legislation. See State v. Tischio, 107 N.J. 504, 516-17 (1987) (noting 1983 amendment to driving while impaired statute "eliminating the necessity for expert testimony at trial"), appeal dismissed, 484 U.S. 1038 (1988); State ex rel. L.R., 382 N.J. Super. 605, 616 (App. Div. 2006) (noting Legislature's establishment of DNA database and databank), certif. denied, 189 N.J. 642 (2007); State v. Peterson, 364 N.J. Super. 387, 390 (App. Div. 2003) (noting Legislature's enactment of law enabling currently imprisoned individuals to obtain DNA testing of evidence "probative of guilt or innocence"); McGovern v. Van Riper, 137 N.J. Eq. 24, 31 (Ch. 1945) (discussing Legislature's establishment of collection of fingerprints), aff'd, 137 N.J. Eq. 548 (E. & A. 1946). That is what happened when the Legislature enacted the Code, and particularly N.J.S.A. 2C:4-1 and related statutes. Cf. Martin, 56 M.J. at 108 (M'Nagthen test "reflected a trend away from the medieval and renaissance requirement" for insanity defense).

Once the foundation of expert medical testimony is presented, of course, a defendant is free to present whatever anecdotal lay testimony the trial court decides is relevant, probative, and non-cumulative to corroborate and bolster the expert's testimony, including the defendant's own testimony, pursuant to N.J.R.E. 403. Singleton, 211 N.J. at 162 (noting that in addition to his expert in forensic psychology, defendant presented testimony from five family members, and a friend, plus his own).[8] But lay testimony cannot serve as a substitute for a diagnosis which can only be rendered by a medical expert to establish an insanity defense as enacted by the Legislature in N.J.S.A. 2C:4-1.

C. Concepts of Reasonableness Support the Requirement of Expert Medical, If Not Psychiatric, Testimony to Advance an Insanity Defense.

Undoubtedly, the Legislature meant to limit the cases in which insanity could be presented to the jury for its consideration. Singleton, 211 N.J. at 160. It would be wholly antithetical to the Legislature's expressed intent to allow a defendant to offer lay testimony concerning "disease of the mind" without tethering it to expert medical testimony. Defendants unable to procure an expert opinion to their liking would instead simply put forward witnesses to say perhaps that they acted in "crazy" ways, or would so testify themselves. The jury would have very little guidance, even if the State presented expert testimony of its own, especially since the jury would be instructed that it had the power to

[8] As the profession of the witness who provided the necessary medical expert testimony was not at issue in Singleton, and was only noted in passing, that discussion was "obiter" dictum that is entitled to "little weight," and is certainly not binding on this Court. In re A.D., 441 N.J. Super. 403, 422-23 (App. Div. 2015), aff'd o.b., 227 N.J. 626 (2017); State v. Ruiz, 399 N.J. Super. 86, 105-06 (App. Div. 2008); see also State v. Sorensen, 439 N.J. Super. 471, 486-91 (App. Div. 2015) (holding that a "terse comment" not included within legal discussion of an opinion of this Court was not meant to contravene statutory standard "mandated" by the Legislature).

reject expert testimony. Model Jury Charges (Criminal), "Expert Testimony" at 1 (rev. Nov. 10, 2003). The facts of a case, such as this one, might be so heinous that the jury – or even a single juror – concludes that the defendant must have been "insane" to have committed the charged crimes, thereby sparing a defendant from a justified conviction for murder. See Ake, 470 U.S. at 90 (Rehnquist, C.J., dissenting) ("The evidence of the brutal murders perpetrated on the victims, and of the month-long crime spree following the murders, would not seem to raise any question of sanity unless one were to adopt the dubious doctrine that no one in his right mind would commit a murder.")

Moreover, since a defendant found not guilty by reason of insanity is not necessarily committed to a mental institution, N.J.S.A. 2C:4-8(b)(1); Model Jury Charges (Criminal), "Insanity (N.J.S.A. 2C:4-1)" at 5 (approved Oct. 17, 1988), it is very likely that more defendants – especially more charged with the most brutal, vicious crimes of violence – would interject the insanity defense into their cases. And it is entirely possible that some defendants, who have been proven guilty beyond a reasonable doubt, would escape punishment entirely and be returned to society, without any supervision. N.J.S.A. 2C:4-8(b)(1); Model Jury Charges (Criminal), "Insanity (N.J.S.A. 2C:4-1)" at 1 (jury instructed to consider insanity only if it has found all the elements of the crime proven against the defendant).

That appears to have been the strategy defendant sought to pursue here. Defendant took multiple steps during and immediately after his crime that evidenced his sanity. His deliberate, rational actions appear to have led one of the psychiatrists he consulted to conclude that defendant was legally sane. A jury verdict that defendant was not guilty by reason of insanity (based on his own lay testimony concerning his mental state) may very well have led to defendant's return to the community he terrorized so violently that his own brother pleaded with police to take him into custody before vigilantes killed him, or to another neighborhood that might be uninformed of the potential murderer in its midst. Unlike Megan's Law and sex offenders, there is no requirement of notification to a community when a person once deemed insane has been released into the community. Compare In re V.L., 441 N.J. Super. 425, 426-27 (App. Div. 2015) (describing Megan's Law's community notification provisions) with State v. Ortiz, 193 N.J. 278, 288-90 (2008) (noting that under N.J.S.A. 2C:4-8(b)(1), if court determines that defendant found not guilty by reason of insanity can be released "without danger to the community or himself without supervision," an unconditional release "shall be ordered," the matter is ended, and "the defendant is discharged").

D. Denying a Defendant an Insanity Defense Does Not Deny a Complete Defense.

A defendant unable to present expert medical testimony is not precluded from offering relevant lay testimony for the purpose of challenging the State's effort to prove she had the requisite mens rea for the charged crime(s). Such evidence may be presented, subject to the trial judge's usual powers under N.J.R.E. 403.

For example, in State v. Sexton, 311 N.J. Super. 70 (App. Div. 1998), the then fifteen-year-old defendant was charged with murder based on the discharge of a gun, "resulting in the death of his friend." Id. at 73. Defense counsel announced that "diminished capacity" would not be asserted by defendant, which led the trial judge to bar defendant and his mother from testifying to defendant's "placement in a special education class." Id. at 88.

On appeal, the panel reversed defendant's conviction for reckless manslaughter. Id. at 75. In doing so, it addressed the issue of the testimony of mother and child. Because evidence "of defendant's mental ability" was potentially "relevant to the presence or absence of the requisite reckless state of mind," and to "the jury's evaluation of defendant's demeanor and credibility as a witness," on retrial, the trial judge should reconsider admission of their testimony, along with any other lay and expert testimony regarding defendant's "mental ability," under N.J.R.E. 403. Id. at 88.

Also, a defendant who fails to present an insanity defense is not precluded from offering an expert's relevant testimony in support of any other defense, including that the State failed to meet its burden of proof. For example, in State v. Kotter, 271 N.J. Super. 214 (App. Div. 1994), the trial court properly precluded defendant's psychologist from testifying in support of a "diminished capacity" defense, which was not applicable to the charged crime. Id. at 218-25. Nevertheless, the psychologist was permitted to testify to assist defendant to contest the requisite mens rea, subject to usual limitations under N.J.R.E. 403. Id. at 225-26 & n.7.

Indeed here, defense counsel used cross-examination and closing argument to make two principal arguments. First, defendant characterized his post-arrest statement as the "most telling" aspect of the State's case, and urged the jury to disregard it, on the ground that it was made under duress, and in violation of his right to counsel. (22T23-12 to 24-8; 22T24-12 to 20). Second, he argued the third-party guilt of S. R. (15T77-6 to 79-5; 19T80-19 to 82-4; 22T26-1 to 27-6; 22T28-25 to 29-13; 22T30-17 to 31-2).

To advance the second argument, defense counsel cross-examined the three Medical Examiners and a DNA expert, and then argued that defendant could not be convicted of the children's murders, from stab wounds, or McBurroughs's murder, from the gun shot and stab wounds, because no witness could say whether defendant administered the fatal stab wound(s), or S. R. did, and no witness could say how some of the victims' DNA got on defendant's clothes. (17T52-14 to 55-3; 17T92-19 to 94-24; 18T32-5 to 33-9; 18T37-4 to 38-7; 18T166-8 to 168-19; 22T29-14 to 30-13; 22T32-22 to 33-1).

It is thus clear that defendant was not left without a defense by the trial judge's ruling. His right to a "complete" defense does not include "entitlement to the luck of a lawless decisionmaker." Strickland v. Washington, 466 U.S. 668, 694-95 (1984); see Leach v. Kolb, 911 F.2d 1249, 1256-57 (7th Cir.) (holding that "when a defendant fails to present sufficient evidence to sustain his assigned burden of proof under state law, he clearly has no right to have the insanity question submitted to the jury in the hope that they will acquit him based on sympathy, caprice, or compromise"), cert. denied, 498 U.S. 972 (1990).

It is thus clear, based on both the plain meaning and the Legislature's intent, that N.J.S.A. 2C:4-1 requires expert medical testimony to raise an insanity defense. Nor does such a requirement bar a defendant who is unable to present such testimony from having a complete defense to the charges.

POINT II

REQURING EXPERT MEDICAL TESTIMONY TO ESTABLISH AN INSANITY DEFENSE DOES NOT RAISE A CONSTITUTIONAL ISSUE.

In Clark v. Arizona, 548 U.S. 735 (2006), the United State Supreme Court rejected the argument that the Due Process Clause of the federal Constitution required Arizona to adopt the M'Naghten test for insanity. Id. at 748-49, 752-56. After comprehensively reviewing relevant enactments of the various states and the federal government, the Court concluded that "four traditional strains" of insanity laws "variously combined to yield a diversity of American standards." Id. at 749-52. "With this varied background, it is clear that no particular formulation has evolved into a baseline for due process, and that the insanity rule, like the conceptualization of criminal offenses, is substantially open to state choice." Id. at 752.

Clark represented the second time the Supreme Court rejected a due process challenge to a state's law on the insanity defense. Kahler v. Kansas, 589 U.S. 271, 279-82 (2020) (discussing Clark and Leland v. Oregon, 343 U.S. 790, 800-01 (1952) (rejecting due process challenge to state's adoption of M'Naghten test over a different rule)). The Court explained in Kahler that the creation of doctrines of criminal responsibility "involves balancing and rebalancing over time complex and oft-competing ideas about 'social policy' and 'moral culpability' – about the criminal law's 'practical effectiveness' and its 'ethical foundations.'" 589 U.S. at 280 (quoting Powell v. Texas, 392 U.S. 514, 538, 545, 548 (1968)). And "[n]owhere has the Court hewed more closely to that view than in addressing the contours of the insanity defense." Ibid. "Nothing could be less fruitful than for this Court to be impelled into defining some sort of insanity test in constitutional terms." Powell, 392 U.S. at 536, quoted with approval in Kahler, 589 U.S. at 281. And so the Court in Kahler for a third time rejected an attempt to "constitutionaliz[e]" state criminal laws governing the insanity defense. 589 U.S. at 293-97.

Even more particularly, both Kahler and Clark dealt with the treatment of the use of psychiatric testimony in criminal proceedings, under the laws of Kansas and Arizona, respectively. 589 U.S. at 284-85. Whereas Kansas permitted "psychiatric and other evidence of mental illness" to defend oneself, Arizona law excluded "psychiatric testimony" to show a defendant lacked the relevant mens rea. Ibid. That the Supreme Court reached the same result from the opposing circumstances in Kahler and Clark leads to the conclusion that New Jersey's requirement of medical expert testimony to present the affirmative defense of insanity raises no concern under the Due Process Clause.

Nothing "in the Due Process Clause bars States from making changes in their criminal law that have the effect of making it easier for the prosecution to obtain convictions." McMillan v. Pennsylvania, 477 U.S. 79, 89 n.5 (1986), overruled on other grounds, Alleyne v. United States, 570 U.S. 99, 106, 113-16 (2013). While New Jersey's requirement under Title 2C that an insanity defense be founded on expert medical testimony does not alter the State's burden to prove a crime, the logic of McMillan means that the Due Process Clause is not offended by making it harder for a defendant to prove an affirmative defense, such as insanity. Thus, defendant's reliance on pre-Code cases for the proposition he is entitled to an insanity instruction without producing expert medical testimony is unavailing.

Nor does the requirement that a defendant provide expert medical evidence to entitle herself to an instruction on the insanity defense violate concepts of fundamental fairness that exist under our State Constitution's guarantee of due process. See State v. Melvin, 248 N.J. 321, 347-49 (2021) (explaining doctrine). This Court has applied the doctrine of fundamental fairness "'sparingly' and only where the 'interests involved are especially compelling'; if a defendant would be subject '"to oppression, harassment, or egregious deprivation,"' it is [to] be applied." State v. Saavedra, 222 N.J. 39, 67 (2015) (internal citation omitted). Enforcement of considered legislative choice falls far short of the limited circumstances in which the doctrine has been applied. Compare Melvin, 248 N.J. at 349-52 (applying fundamental fairness doctrine to hold that sentencing court's use of acquitted conduct was an impermissible "absurdity" that "nullified" the jury's verdicts) and State v. Njango, 247 N.J. 533, 537 (2021) (applying doctrine to require that excess prison time served be used to reduce post-incarceration period of parole supervision) with State v. Ramseur, 106 N.J. 123, 267, 270 n.62, 318 n.81 (1987) (ruling that it is not violative of fundamental fairness to reject argument of a defendant who asserts diminished-capacity defense, and foregoes insanity defense that nonetheless was included in jury instructions, that he should go last in closing arguments during penalty phase of capital prosecution).

Defendant's invocation of his rights under the Sixth Amendment do not lead to a contrary result. Obviously, "the fundamental right of an accused to present a defense is protected not only by the Federal Constitution but also by Article I, paragraph 1 of the New Jersey Constitution." State v. Jenewicz, 193 N.J. 440, 451 (2008) (per curiam). Nevertheless, that right "is not absolute." Ibid. Most particularly, a defendant "does not have an unfettered right to offer [evidence] that is incompetent . . . or otherwise inadmissible under standard rules of evidence." Ibid. (ellipsis added) (quoting Montana v. Egelhoff, 518 U.S. 37, 42 (1996)); accord, State v. Davis, 1 A.3d 76, 94 (Conn. 2010) (ruling that evidence properly precluded as irrelevant does not raise a Sixth Amendment issue under either right of confrontation, or right to present defense); State v.

Jones, 375 P.3d 279, 282 (Idaho 2016) (holding that right to present complete defense does not include right to present irrelevant evidence).

Cases focused on the constitutional right of confrontation, which is part of the guarantee of a "complete defense," State v. Budis, 125 N.J. 519, 531 (1991) (quoting Crane v. Kentucky, 476 U.S. 683, 690 (1986)), have recognized the same point—that the constitutional right is not unfettered. "States may exclude evidence helpful to the defense if exclusion serves the interests of fairness and reliability." Budis, 125 N.J. at 531-32 (citing Crane, 476 U.S. at 690). Thus, cross-examination may be curtailed for "confusion of the issues" or because it is only "marginally relevant," among other grounds. Id. at 532 (quoting Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986)).

Such was the case in Budis. In defending against allegations he twice committed aggravated sexual assault against his cousin's nine-year-old daughter, Budis sought to introduce evidence that the victim had been sexually abused by her stepfather a year earlier. 125 N.J. at 524. This Court engaged in a lengthy analysis of that evidence under N.J.R.E. 403, as applied through the Rape Shield Law. Id. at 532-40. As a result, the Court ordered the evidence admissible at the defendant's retrial, should that occur, subject to a number of restrictions: cross-examination of the victim would be "confine[d]" "to her recollection of the occurrence;" the defense would be prohibited from trying to show that the victim's prior victimization "enhanced the likelihood that she initiated the encounters with defendant;" and the trial judge should deliver a limiting instruction to the jury. Id. at 540.

That the defendant's right to present a defense is subject to constraint is most evident in caselaw regarding her right to represent herself. The trial judge must be satisfied that the defendant knowingly and intelligently waives the right to representation by counsel. State v. Crisafi, 128 N.J. 499, 509-510 (1992). In making the necessary record, the trial judge "should inform the defendants that they must conduct their defense in accordance with the relevant rules of criminal procedure and evidence." Id. at 512.

In sum, the State may enforce the law's requirement that a defendant claiming insanity support it with a diagnosis she suffers from "disease of the mind" that only a medical expert may provide without offending either the Federal or the State Constitution.

POINT III

ANY CHANGE IN THE LAW IN THIS AREA MUST BE MADE BY THE LEGISLATURE.

Finally, the elimination of the requirement that an insanity defense be supported by expert medical testimony must come from the Legislature. Defendant's argument that he be permitted to present the defense without expert testimony, and the position of the concurring judge below that such a proceeding should not be "categorically" prohibited, Arrington, 480 N.J. Super. at 445 (Jacobs, J., concurring), entail policy choices that are reserved to the Legislature. Regardless of the merit of such a position "were it being made to a legislative body that was formulating a new criminal code," this Court must "deal with our Code as it comes to us." Ramseur, 106 N.J. at 269, quoted with approval in Breakiron, 108 N.J. at 609.

"The power to declare what shall be deemed a crime . . . is committed by the people of the State to the legislative and not to the judicial branch of government." Hampton, 61 N.J. at 273; see State v. Smith, 58 N.J. 202, 211 (1971) (holding that ordinarily "the Legislature is in a better position than the courts to know the area in which an evil should be met and to make a decision as to the means of meeting it"); see also Singleton, 211 N.J. at 188-94 (Patterson, J., concurring) (urging rejection of "deific command" aspect of insanity defense on the grounds that the Legislature did not endorse it, and the principle of stare decisis did not require its continuing application); accord, Miller v. Alabama, 567 U.S. 460, 493 (2012) (Roberts, C.J., dissenting) (objecting that sentencing issue before the Court "presents grave and challenging questions of morality and social policy" that are not for the Court to resolve). In the area of criminal responsibility, this reservation of power to the Legislature is perhaps even more deserving of respect than in other matters, as "the science of psychiatry . . . is an ever-advancing science, whose distinctions do not seek precisely to mirror those of the law." Kansas v. Crane, 534 U.S. 407, 413 (2002).

The Legislature is the body to consider, for example, whether to change New Jersey statutory law, and follow Arizona and Ohio in permitting a defendant to present an insanity defense without presenting expert medical testimony. See Arrington, 480 N.J. Super. at 443-44. For now, the decisions of courts of those states are not controlling in New Jersey or in this Court.

It is worth noting that the Arizona case was based on a statute that is worded differently from N.J.S.A. 2C:4-1. State v. Bay, 722 P.2d 280, 284 (Ariz. 1986) (citing Ariz. Rev. Stat. § 13-502 (2024)). Similarly, the Ohio case applied a common-law rule, worded differently from N.J.S.A. 2C:4-1, that has been superseded by an Ohio statute that is also worded unlike N.J.S.A. 2C:4-1, although it is narrower than the prior common-law rule. State v. Reynolds, 550 N.E.2d 490, 495 (Ohio Ct. App. 1988) (citing State v. Staten, 247 N.E.2d 293, 299 (1969), superseded by statute as stated in State v. Swiger, C.A. No. 26556, 2013 Ohio App. LEXIS 3625, at *7-*8 (Ohio Ct. App. Aug. 14, 2013)[9], appeal not accepted, 999 N.E.2d 696 (2013)). Thus, any change to the statutory requirements for asserting an insanity defense must come from the Legislature.

[9] A copy of this unreported decision is included in the State's Appendix, as required by R. 1:36-3. (AGa10-21).

CONCLUSION

The Attorney General urges this Court to rule that a defendant is not entitled to present the affirmative defense of insanity without expert medical testimony, and further urges the Court to rule that such testimony must come from a psychiatrist.

Respectfully submitted,

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