
STATE OF NEW JERSEY, :

Plaintiff-Respondent, :

v. :

JEREMY ARRINGTON, :

Defendant-Appellant. :

SUPREME COURT OF NEW JERSEY

DOCKET NO. 090216 (A-43-24)

CRIMINAL ACTION

On Certification to the Superior Court of New Jersey, Appellate Division, whose opinion is reported at 480 N.J. Super. 428.

Sat Below:

Hon. Jack M. Sabatino, P.J.A.D.

Hon. Maritza Berdote Byrne, J.A.D.

Hon. Adam E. Jacobs, J.S.C. (t/a)

SUPPLEMENTAL BRIEF ON BEHALF OF
THE STATE OF NEW JERSEY

THEODORE N. STEPHENS II
ESSEX COUNTY PROSECUTOR
ATTORNEY FOR PLAINTIFF-RESPONDENT
VETERANS COURTHOUSE
NEWARK, NEW JERSEY 07102
(973) 621-4700 - Appellate@njecpo.org

Frank J. Ducoat
Attorney No. 000322007
Deputy Chief Assistant Prosecutor
Appellate Section

Of Counsel and on the Brief

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Preliminary Statement

The affirmative defense of insanity hinges on a “defect of reason” caused by a “disease of the mind.” It has long been known that a defendant seeking to advance this defense must establish those predicates using the only competent, reliable evidence on those subjects: expert testimony. Only a witness qualified to diagnose a “disease of the mind” can competently explain whether someone is suffering from one, and then give reliable testimony whether that “disease of the mind” in that individual caused such a “defect of reasoning” that the defendant did not know that what he was doing was wrong.

Here, defendant killed three people, including two children, and attempted to kill three more. When no doctor could say he was insane, he sought to pursue the defense anyway based on his own lay testimony alone. The trial judge ruled that he could not advance the defense in this way; an expert was required. The Appellate Division agreed and affirmed.

The lower courts were correct. While this is an issue of first impression for this Court, our courts, including this one, have long understood that insanity cases require expert testimony as to whether a “defect of reason” is caused by a “disease of the mind.” Such specialized testimony provides competent, qualified, and necessary insight into these essential elements and allows the fact-finder to differentiate between defendants who, because of a

“disease of the mind,” can choose between right and wrong, and those who cannot, the critical question in an insanity case. Some level of mental deficiency will not suffice; only a “defect of reason” caused by a “disease of the mind” will satisfy the statute.

To allow a defendant to introduce only lay testimony on such an esoteric medical issue would invite the jury to speculate about mental conditions, how they affect behavior, how they affect an ability to perceive right and wrong, and a whole host of other questions best left for those qualified to answer them. Simply put, if a defendant cannot put forth competent expert testimony as to his own insanity, he may not put that defense before the jury.

Expert testimony as to a defendant’s mental capacity is not just helpful to a fact-finder; it is necessary to its effective functioning. Mental health, and particularly its effects on behavior, is a highly specialized medical field well beyond the ken of the average person. Only through expert testimony can a defendant show a lack of responsibility due to a “defect of reason” caused by a “disease of the mind.” Because this defendant failed to do so, the trial court properly denied his request to advance the insanity defense, a decision the Appellate Division majority below correctly affirmed in all respects. This Court too should affirm that decision and hold that defendants must advance competent evidence from a qualified expert to advance the insanity defense.

Counterstatement of Procedural History

For purposes of this appeal, the State adopts defendant's Procedural History statement. See (Dsb3).¹

Counterstatement of Facts

When first responders arrived at 137 Hedden Terrace in Newark in the afternoon of Saturday, November 5, 2016, they found “chaos and confusion,” young, “very frightened” bloody children screaming, and what they would later describe as “a house of horrors.” (11T60-19 to 62-11, 128-23 to 131-24). Those who lived and told the undisputed story of what happened all identified defendant Jeremy Arrington as the person who a jury would later hold responsible for three murders, three attempted murders, and a slew of other offenses.

The details of what happened that day are set forth fully in the State's Appellate Division brief. See (Pb3 to 18). Suffice it to say here, four victims identified defendant—both shortly after the incident and later in court—as the person who shot and killed Syasia McBurroughs, fatally stabbed Ariel and Al-Jahon Whitehurst, attempted to kill Asia Whitehurst, Asiyah and Asaad Floyd, and terrorized Shyleea Ryan, Bilqis Karam, and Tyquannah McGee. (Pb15 n.

¹ “Dsb” refers to defendant's supplemental brief to this Court and “Pb” refers to the State's Appellate Division brief. The State otherwise adopts defendant's transcript designation codes. See (Dsb iii).

3). A search warrant uncovered defendant's vest and gloves he had on the day of the killings, which had blood on them, and the sweatpants he wore contained Ariel's and Al-Jahon's DNA. Police also found Asiyah's and Asia's DNA on defendant's gloves. And within two hours of fleeing the crime scene, defendant viewed several news articles online about the incident. See (Pb16) (and citations therein). Defendant would ultimately confess to his crimes in a thoroughly comprehensive statement about what happened that afternoon. See (Pb17 to 18) (and citations therein). His guilt, like his sanity, has never been in serious dispute.

The trial court did not allow defendant to assert the affirmative defense of insanity because he failed to put forth any competent proof that he was insane as that term is defined in N.J.S.A. 2C:4-1. Although the issue was discussed several times before trial,² at sentencing, the trial judge, the Honorable Ronald D. Wigler, J.S.C., summed up the issue well:

You [(referring to defense counsel)] spent your presentation primarily I guess criticizing the Court for not permitting you to use the affirmative defense of insanity. And you know all too well -- well, first of all, I am loathe to prevent any defendant from fully pursuing any viable defense that would be available to any defendant. That would be the last thing I would want to do is to prevent any defendant from pursuing a defense.

² This issue was also discussed at various times pretrial. See generally (2T3-15 to 4-21; 5T32-2 to 52-10; 7T22-16 to 23-13; 8T4-5 to 76-13; 9T72-12 to 104-24; 10T4-1 to 13-17).

And you may recall that I implored you to seek another doctor, I know there were two doctors, and I implored you to seek another doctor. I even, I think I ordered you to consult with members of the Public Defender's Office...and try to get yet another doctor to evaluate your client, which ultimately you did not -- you were not successful in trying to do that.

And as I've mentioned, the reason why is because insanity is an affirmative defense that a defendant must prove by a preponderance of the evidence that the defendant was laboring under such a defective reason of disease of the mind as to not know the nature and the quality of the act; or if the defendant did know it, that he didn't know what he was doing was wrong.

And the only way this Court ultimately determined that one can pursue an insanity defense is to put on some sort of expert, medical doctor, to be able to opine about your client's mental state. By someone else just getting on the stand and reciting how horrific the facts are here, they are horrific, but nobody would have been qualified to testify about a defect of your client's mind.

And in fact, as the prosecutor just indicated, perhaps one of the reasons why a doctor wasn't able to be secured was because your client was all too familiar with the criminal justice system, and he even acknowledged that he was [going to] fake mental illness so as to get over on all of us, to get over on the criminal justice system[, see (5T32-2 to 12)³]. But I have no doubt that will be for another day for a higher court to determine, whether or not I was right or not in not allowing you to pursue an insanity defense. [(24T73-21 to 75-13).]

³ Specifically, the motion court found: "The Court also does take note, which is very informative to this Court, is a note from the jail...which was dated December 27th, 2018, where it was noted that the defendant told a mental health counselor that he was faking [] mental illness so it would be in his records when he goes to Court." And, "[i]n that same note, there was a reference made that Mr. Arrington was also reading law books at the time, which again is contrary to what Dr. Sigafos[, his competency expert,] said regarding his mental IQ."

In a published opinion, the Appellate Division found that Judge Wigler was indeed right. Judge Sabatino wrote: “We concur with the trial court that such lay testimony by a defendant, untethered to admissible expert opinion substantiating the defendant’s ‘disease of the mind,’ is inadmissible under our Rules of Evidence and insufficient to advance an insanity defense under N.J.S.A. 2C:4-1.” State v. Arrington, 480 N.J. Super. 428, 432 (App. Div. 2024). The Appellate Division found this conclusion “supported by the history and text of the statute” as well the “the case law of most of the states that have addressed the issue under the M’Naghten test.” Ibid. Simply stated, the court held that “defendants must have expert opinion testimony to meet their burden of proving the defense of insanity[,]” and so it therefore “affirm[ed] the trial court’s ruling that disallowed defendant in this case from testifying about his alleged insane state of mind without calling such an expert.” Id. at 433.

One judge concurred in the result. He was of the opinion that when it comes to criminal insanity, “jurors have the capacity to know it when they see it[,]” and so “depart[ed] from the majority holding insofar as it mandates expert testimony in all cases where a defendant elects to advance an insanity defense.” Id. at 449, 445 (Jacobs, J.S.C., concurring).

This Court subsequently granted certification, limited to this issue. 260 N.J. 208 (2025); (Dsa1).

Legal Argument

Point I

Defendant put forth no competent evidence that he was “insane” as that term is defined by N.J.S.A. 2C:4-1, so the trial court properly refused to permit him to advance the affirmative defense of insanity.

The trial court did not allow defendant to assert the affirmative defense of insanity because he failed to put forth any competent proof that he was insane as that term is defined in N.J.S.A. 2C:4-1. Because the statute requires proof that the defendant “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[,]” competent evidence in the form of expert testimony was required to get that defense to the jury. Defendant’s failure to set forth any competent, reliable proof on that question properly led the trial judge to deny him use of that defense. Accordingly, this Court should affirm the judgment of the Appellate Division, which upheld that decision.

The Insanity Defense in New Jersey

Criminal defendants have a constitutional right “to ‘a meaningful opportunity to present a complete defense.’” State v. Chambers, 252 N.J. 561, 582 (2023) (citations omitted). While that right is “fundamental, a defendant’s

right to present a defense is not absolute.” State v. Jenewicz, 193 N.J. 440, 451 (2008). For example, the right to present a defense does not entitle a criminal defendant “to testify as he sees fit and tell the jury why he personally believes he was insane.... No case in our state has ever constitutionally required such monologues.” Arrington, 480 N.J. Super. at 443.

Nor does it give defendants the right to seek nullification; “A defendant has no entitlement to the luck of a lawless decisionmaker....” Strickland v. Washington, 466 U.S. 668, 695 (1984). Nor is he entitled, having “fail[ed] to present sufficient evidence to sustain his assigned burden of proof...to have the insanity question submitted to the jury in the hope that they will acquit him based on sympathy, caprice, or compromise.” Leach v. Kolb, 911 F.2d 1249, 1256-57 (7th Cir.), certif. denied, 498 U.S. 972 (1990). To this end, trial judges still play “an important role as gatekeepers” in our courts, State v. Olenowski, 253 N.J. 133, 154 (2023), and so an accused has no ““unfettered right to offer [evidence] that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence.”” Jenewicz, 193 N.J. at 451 (citation omitted). Our courts have long been free to “exclude evidence helpful to the defense if exclusion serves the interests of fairness and reliability.” State v. Budis, 125 N.J. 519, 531-32 (1991).

The law—both before and after the adoption of the Criminal Code—

presumes that all persons are sane. State v. Worlock, 117 N.J. 596, 601 (1990); State v. Cordasco, 2 N.J. 189, 196 (1949); State v. Molnar, 133 N.J.L. 327, 331 (E. & A. 1945). That presumption “persists until overcome.” State v. Fine, 110 N.J.L. 67, 72 (E. & A. 1933). “Underlying that presumption is the belief that people are capable of choosing between right and wrong.” Worlock, 117 N.J. at 601 (citing State v. Sikora, 44 N.J. 453, 470 (1965)). Those who are so capable are worthy of punishment, both as a means of deterrence and protecting public safety. Id. at 601-02.

For those who lack that capacity, the law provides the defense of insanity. Known at common law as the “M’Naghten rule,”⁴ the insanity defense is codified at N.J.S.A. 2C:4-1. It provides:

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.⁵

A “disease” is “a condition of the...body or of one of its parts that impairs normal functioning and is typically manifested by distinguishing signs and symptoms.” And a “mental disease” is

any of a broad range of medical conditions (such as major

⁴ From M’Naghten’s Case, 8 Eng. Rep. 718 (H.L. 1843). New Jersey adopted this test almost immediately. See Mackin v. State, 59 N.J.L. 495, 496-97 (E. & A. 1896) (citing State v. Spencer, 21 N.J.L. 96 (E. & A. 1846)).

⁵ All emphases herein are added unless otherwise noted.

depression, schizophrenia, obsessive compulsive disorder, or panic disorder) that are marked primarily by sufficient disorganization of personality, mind, or emotions to impair normal psychological functioning and cause marked distress or disability and that are typically associated with a disruption in normal thinking, feeling, mood, behavior, interpersonal interactions, or daily functioning....⁶

“Insanity is an affirmative defense which must be proved by a preponderance of the evidence.” N.J.S.A. 2C:4-1. That burden is on the defendant. Molnar, 133 N.J.L. at 331; State v. J.T., 455 N.J. Super. 176, 213-214 (App. Div.), certif. denied, 235 N.J. 466, 467 (2018). Setting forth proof of the accused’s “mental condition” is critical to advancing the defense. See State v. Maioni, 78 N.J.L. 339, 342 (E. & A. 1909) (“[T]he failure by the defendant to prove the existence of such a mental condition at the time of committing the act charged against him, leaves the case before the jury in the same situation as if the defence had not been set up at all....”).

“The insanity defense is not available to all who are mentally deficient or deranged; legal insanity has a different meaning.” Cannel, N.J. Criminal Code Annotated, comment 2 on N.J.S.A. 2C:4-1 (2025); see also State v. Singleton, 211 N.J. 157, 160, 173 (2012) (“Mental illness does not in and of itself eliminate moral blameworthiness under the test for criminal insanity

⁶ Both from Merriam-Webster’s Online Dictionary (2025) available at: <https://www.merriam-webster.com/dictionary> (last accessed June 27, 2025); see also Arrington, 480 N.J. Super. at 440-41 (quoting Black’s Law Dictionary (12th ed. 2024) and Stedman’s Medical Dictionary (28th ed. 2013)).

enshrined in the Code.... The insanity defense exists in criminal law not to identify the mentally ill, but rather to determine who among the mentally ill should be held criminally responsible for their conduct.”); Cordasco, 2 N.J. at 196 (“Insanity varying from this legal concept will not suffice as a defense....”). For example, defendants who kill because of an “irresistible impulse” or “emotional insanity” due to “some defective or perverted moral sense” are not entitled to the defense. Cordasco, 2 N.J. at 196-97.

Instead, the statute specifically requires that the defendant’s inability to distinguish between right and wrong at the time of the offense be due to a “defect of reason” caused by a “disease of the mind....” See State v. Lucas, 30 N.J. 37, 70 (1959) (a pre-Code case recognizing a causation requirement in the M’Naghten rule). That phrase is as old as M’Naghten itself. See Worlock, 117 N.J. at 603 (quoting M’Naghten, 8 Eng. Rep. at 722). As this Court has recognized, the defense “is essentially one of cognitive impairment.” Ibid. It is designed to “determine whether the defendant had sufficient mental capacity to understand what he was doing when he committed the crime.” Ibid.; see also J.T., 455 N.J. Super. at 216 (“Defendant’s burden of proof under the insanity defense required her to convince the jury that the greater weight of credible evidence showed that she was not mentally capable of distinguishing right from wrong when she committed these horrific crimes.”).

Expert testimony is required to establish a “defect of reason” caused by a “disease of the mind.”

Given that the insanity defense hinges on a defendant’s suffering from a “disease of the mind” that affects “cognitive impairment” and “mental capacity,” it logically follows that expert testimony is required. Under N.J.R.E. 702, “[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.” See State v. Kelly, 97 N.J. 178, 208 (1984) (summarizing the three basic requirements for the admission of expert testimony, including that “the intended testimony must concern a subject matter that is beyond the ken of the average juror....”).

While N.J.R.E. 702 is “primarily permissive,” certain situations exist “in which expert testimony must be adduced in support of a proposition and absent such testimony the proposition will be rejected as a matter of law.” Biunno, Weissbard & Zegas, N.J. Rules of Evidence, comment 2.3 on N.J.R.E. 702 (2024-25) (emphasis in original). “In general, expert testimony is required when ‘a subject is so esoteric that jurors of common judgment and experience cannot form a valid conclusion.’” Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 450, 591 (1993) (citation omitted). Or, more simply, “[e]xpert testimony

is required when the issue is beyond the ‘common knowledge of lay persons.’”

Froom v. Perel, 377 N.J. Super. 298, 318 (App. Div.) (citation omitted), certif. denied, 185 N.J. 267 (2005).

The leading evidence treatise in New Jersey explains:

While the thrust of this Rule is permissive, the identical policy embodied here—concern that a lay jury will need assistance in making determinations in areas of specialized knowledge—also informs certain statutory and common law requirements that expert testimony must be presented in specific kinds of cases to prove technical matters outside the scope of the average juror’s knowledge and experience. In a sense, the expert testimony in such cases is deemed so critical that it goes beyond what is deemed merely “helpful” to the jury and becomes “necessary” to the trier of fact’s proper functioning. In these areas of substantive law, the party with the burden of establishing a proposition must proffer competent expert testimony or suffer the loss of its cause. [Biunno, Weissbard & Zegas, ante, at comment 2.1 (last emphasis added).]

Scientific or medical requirements, including “any claim of mental illness affecting behavior[.]” id. at comment 2.3, fall into this category.

For example, in J.T., the Appellate Division, although addressing the specifics of the State’s expert’s testimony, had little difficulty concluding that

there is no question that expert psychiatric testimony was properly admitted under N.J.R.E. 702 because psychiatry, as a field of medicine, is beyond the ken of the average juror. Psychiatric testimony was necessary to assist the jury in determining whether, at the time she took her husband’s life, defendant was “laboring under such a defect of reason, from disease of the mind as not to know the nature and quality of the act...or if [defendant] did know it, that [she] did not know that what [she] was doing was wrong.” [455 N.J. Super. at 214-15 (quoting N.J.S.A. 2C:4-1).]

When the defendant in State v. Hines wanted to rely on Post-Traumatic Stress Disorder in support of her claim of self-defense, the Appellate Division found that such psychiatric evidence concerned a subject matter beyond the ken of the average juror and required expert testimony “to explain the nature of the disorder and its consequences.” 303 N.J. Super. 311, 318-22 (App. Div. 1997). This Court reached a similar conclusion regarding “battered woman’s syndrome” in Kelly. See 97 N.J. at 187.

Similarly, in Mullarney v. Bd. of Review, an unemployment compensation claimant, fired for using a pilfered narcotics patch to attempt to commit suicide, wanted to prove he left his job because “his mental illness so affected his judgment that he was incapable of realizing that the unauthorized taking of the narcotic patch was illegal, could jeopardize his license, and, consequently, his employment.” 343 N.J. Super. 401, 408 (App. Div. 2001). “That contention is so esoteric[,]” the court found, “that a fact-finder of common judgment and experience cannot form a valid judgment on the contention without the assistance of expert testimony.” Ibid.

Mullarney cited State v. Jones, where the defense in a strangulation case wanted to argue that because the victim’s hyoid bone and larynx were still intact, the jurors could infer that the force necessary to break it was not present and thus acquit him. 308 N.J. Super. 174, 187 (App. Div.), certif. denied, 156

N.J. 380 (1998). But such an argument required expert testimony, as the Appellate Division concluded:

The importance or non-importance of an intact hyoid bone, and how that reflects upon the pressure used to strangle someone and correspondingly upon the aggressor's state of mind, is a matter that is "esoteric" and is an issue upon which jurors of common judgment and experience could not form a valid judgment without expert testimony. [*Ibid.*]

See also State v. Doruguzzi, 334 N.J. Super. 530, 533, 538-39, 546 (App. Div. 2000) (holding expert testimony is required for the State to rely on the horizontal gaze nystagmus test; "[N]ystagmus is a scientific term probably not familiar to most persons. The relationship of nystagmus to the consumption of alcohol or drugs is a scientific principle. The manifestation under different circumstances is also a scientific theory that would not be known by the average person.").

In competency proceedings, expert evidence is required to establish a defendant is not mentally fit to proceed. See State v. Martini, 144 N.J. 603, 617 (1996). That evidence must include, among other things, "a diagnosis of the mental condition of the defendant" and "an opinion as to the defendant's capacity to understand the proceedings against him and to assist in his own defense." N.J.S.A. 2C:4-5b(2) and (3). "[A] determination of competency cannot be sustained in the absence of sufficient supporting evidence." State v. Purnell, 394 N.J. Super. 28, 50 (App. Div. 2007).

It is not only unhelpful to make medical diagnoses as a lay person, but, as several New Jersey statutes and regulations make clear, it is also unlawful. As Judge Sabatino summarized below: “[U]nder our professional licensing standards in Title 45 and associated New Jersey regulations, laypersons generally are not qualified to make diagnoses of diseases, whether they be physical or mental. It is unlawful for persons to engage in such professional practices without a license.” Arrington, 480 N.J. Super. at 441, 441 n. 4 (citing, among others, N.J.S.A. 45:9-6 (prohibiting the practice of medicine or surgery without a license); N.J.S.A. 45:14B-5 (prohibiting the unlicensed practice of psychology)). Practicing medicine includes diagnosing “any human disease,” N.J.S.A. 45:9-18, and so it would therefore be odd indeed if a layperson could diagnose a “defect of reason, from disease of the mind” from a witness chair without the proper expertise but then could be arrested for doing so elsewhere. See State v. Jeannotte-Rodriguez, 469 N.J. Super. 69, 96 (App. Div. 2021) (“[T]here are some things that are black or white. For example, we assume it ‘reasonably clear’ that medical assistants may not prescribe medicine or diagnose illness (as opposed to other health care professionals who are licensed and specifically authorized to do so).”).

Additionally, while of course not a “binding statement of law,” State v. O’Donnell, 255 N.J. 60, 79 (2023), the model jury charge on N.J.S.A. 2C:4-1,

in effect in its present language since 1988, presumes jurors will “have heard from witnesses who have testified for the defense and for the State” as to defendant’s medical condition. Model Jury Charges (Criminal), “Insanity” (rev. 10/17/88). That charge “implicitly presumes the jurors will have heard testimony from one or more experts on the defendant’s mental condition.” Arrington, 480 N.J. Super. at 442-43 (quoting the model charge, which refers, “among other things, to ‘a conflict of medical testimony’ that the jurors must resolve”). Without “guidance from such an expert to help them understand the processes of the human mind, jurors assessing a defendant’s sanity could founder on the shoals of speculation and misunderstanding.” Id. at 442.

New Jersey courts have long understood that expert testimony is necessary to advance the insanity defense.

Before the Appellate Division’s published opinion below, no New Jersey case had expressly decided the issue presented in this appeal. But even before that opinion, courts of this State—including this one—have long handled insanity cases with the understanding that expert medical testimony as to defendant’s mental state is a prerequisite to advancing the defense.

For example, in State v. Whitlow, this Court recognized that “[w]hen a defendant charged with crime pleads mental incapacity to stand trial or innocence by reason of insanity, obviously expert medical opinion is necessary

both for the defendant and for the State.” 45 N.J. 3, 10 (1965). While the Court remarked that lay testimony on the subject “might be admissible,” it rightly recognized that “it is unlikely in the extreme that exclusive reliance would ever be placed on it.” Ibid. Read together, while lay testimony on the issue “might be admissible,” expert testimony is still be “necessary.”

Indeed, “[i]n the usual situation when counsel advises the State or the court of his client’s mental incapacity for trial or for criminal responsibility, it may be assumed that defense psychiatrists have already examined defendant and furnished an expert opinion supporting the statement.” Ibid.; see also id. at 18 (noting “that under our present practice a defendant who interposes the defense of insanity has a private examination and interview with his chosen psychiatrist.”); State v. Obstein, 52 N.J. 516, 527 n. 1 (1968) (noting that after the State presents its case-in-chief, “[t]hen defendant goes forward with his proof of insanity, which ordinarily exposes his discussion with his own psychiatrists about the circumstances of the criminal event. After the defense has fully developed its insanity case,” then the State rebuts that expert testimony with “testimony from the State’s doctors....”), over’d o.g., State v. Engle, 99 N.J. 453, 473 (1985). The Whitlow Court went on to observe: “It is obvious, even to the layman, that in all probability a psychiatrist would require [both a] physical examination of a defendant in order to reach a conclusion of

his sanity or insanity [and a] psychiatric interview[,]" the latter being "the basic diagnostic tool" in insanity cases. 45 N.J. at 15.

Similarly, in Worlock, this Court said that the insanity defense "is a legal standard incorporating moral considerations often established by medical testimony.... Generally, the determination of a defendant's ability to distinguish between right and wrong depends on psychiatric testimony." 117 N.J. at 606. The testimony is vital, the Court explained, because it "provides insight into a defendant's mental condition and enables the fact-finder to differentiate defendants who can choose between right and wrong from those who cannot." Ibid. And our "courts have generally admitted any credible medical testimony on the insanity defense[,]" so long as the witness is qualified. Ibid.; see State v. Zola, 112 N.J. 384, 422 (1988) (finding psychiatric social workers unqualified to testify as to psychiatric diagnoses).

Most other jurisdictions agree: Insanity requires a showing of mental illness, which can only be established through expert testimony.

The United States Supreme Court also believes that expert testimony is indispensable to advance the insanity defense. Four decades ago, in Ake v. Oklahoma, the Court remarked that it would "surely be remiss to ignore the extraordinarily enhanced role of psychiatry in criminal law today." 470 U.S. 68, 85 (1985). The Court held that expert testimony is so important to use of

an insanity defense that the government must provide indigents access to such an expert when the defendant's sanity at the time of the offense is likely to be a significant issue at trial. Id. at 74, 83. In reaching that conclusion, Justice Marshall wrote for the Court that "the assistance of a psychiatrist may well be crucial to the defendant's ability to marshal his defense." Id. at 80. The reasons are obvious, but worth detailing here:

In this role, psychiatrists gather facts, through professional examination, interviews, and elsewhere, that they will share with the judge or jury; they analyze the information gathered and from it draw plausible conclusions about the defendant's mental condition, and about the effects of any disorder on behavior; and they offer opinions about how the defendant's mental condition might have affected his behavior at the time in question. They know the probative questions to ask of the opposing party's psychiatrists and how to interpret their answers. [Ibid.]

Lay witnesses, on the other hand, "can merely describe the symptoms they believe might be relevant to the defendant's mental state...." Ibid. It is only an expert psychiatrist who

can identify the "elusive and often deceptive" symptoms of insanity, and tell the jury why their observations are relevant. Further, where permitted by evidentiary rules, psychiatrists can translate a medical diagnosis into language that will assist the trier of fact, and therefore offer evidence in a form that has meaning for the task at hand. Through this process of investigation, interpretation, and testimony, psychiatrists ideally assist lay jurors, who generally have no training in psychiatric matters, to make a sensible and educated determination about the mental condition of the defendant at the time of the offense. [Id. at 80-81 (citation omitted).]

And while juries remain the “ultimate factfinders” on the issue of legal insanity in a given case, to answer the determinative question before them, “they must resolve differences in opinion within the psychiatric profession on the basis of the evidence offered by each party.” Id. at 81. These concepts “inevitably are complex and foreign,” and expert testimony is “crucial and a virtual necessity if an insanity plea is to have any chance of success.” Ibid. (cleaned up). Again, the reason is obvious:

[O]rganizing a defendant’s mental history, examination results and behavior, and other information, interpreting it in light of their expertise, and then laying out their investigative and analytic process to the jury, the psychiatrists for each party enable the jury to make its most accurate determination of the truth on the issue before them. [Ibid.]

More recently, in Kahler v. Kansas, the Court, considering whether the United States Constitution requires a single insanity test—it held it doesn’t—observed:

Defining the precise relationship between criminal culpability and mental illness involves examining the workings of the brain, the purposes of the criminal law, the ideas of free will and responsibility. It is a project demanding hard choices among values, in a context replete with uncertainty, even at a single moment in time. And it is a project, if any is, that should be open to revision over time, as new medical knowledge emerges and as legal and moral norms evolve. [589 U.S. 271, 296 (2020).]

See also id. at 297 (Breyer, J., dissenting) (summarizing insanity as requiring a showing of “mental illness”) (original emphasis).

Most state courts agree that expert testimony is required to advance an insanity defense. For example, in Commonwealth v. Fortune, the defendant sought to assert the insanity defense through his own testimony, lay witness testimony, and the expert opinion of a doctor who concluded defendant suffered from a mental disease (paranoid schizophrenia) but not that he was “insane” as that term is defined by Pennsylvania law.⁷ 302 A.3d 780 (Pa. Super. Ct. 2023). The trial court denied the request, concluding that, “as a matter of law,” defendant could not establish the defense “without presenting expert testimony concluding that [he] was legally insane.” Id. at 783.

The appellate court agreed. It found that “[l]ay witnesses may not offer an opinion about an accused’s ‘mental capacity in relation to the ultimate determination to be made by the jury’...” Id. at 787 (quoting Commonwealth v. Knight, 364 A.2d 902, 909-10 (Pa. 1976)). To allow such subjective testimony would tempt the jury “to conflate mental illness with legal insanity when confronted with a parade of non-expert lay witness testimony regarding [defendant]’s mental state.” Ibid. As such, the court held that “a defendant must present expert testimony finding him M’Naghten insane before he can introduce lay testimony in support of his insanity defense.” Ibid. Because the defendant “failed to provide a qualified witness to provide a factual basis to

⁷ Pennsylvania also follows the M’Naghten test. See 18 Pa.S.C.A. § 315(b).

allow the jury to find [defendant] was legally insane, the trial court did not err in precluding [him] from raising” insanity. Id. at 788.

Fortune cited White v. Commonwealth, a Virginia case where the defendant’s proposed expert, Dr. Skinner, could not opine that defendant met the definition of legal insanity, but the defendant nevertheless wanted him to testify to provide “an opinion as to the rationale behind the defendant’s action.” 616 S.E.2d 49, 53 (Va. Ct. App. 2005), aff’d, 636 S.E.2d 353 (Va. 2006). The court held that the trial judge properly prohibited such testimony because such lay “evidence did not establish a prima facie showing that [the defendant] met the M’Naghten test.” Ibid. It explained:

[W]hen applied to an affirmative issue such as the defense of insanity[, a] prima facie case exists when the evidence constitutes the threshold quantum that permits a jury to find the affirmative defense existed in fact. It is that essential quantity of evidence necessary to raise the defense and allow the jury to consider the issue.

The evidence in this case failed to raise an issue of insanity. Unless Skinner’s testimony is treated as a qualified opinion, the defendant has no evidence that he suffered from a mental disease and did not know right from wrong. No qualified witness testified that the defendant labored under a defect of reason from a disease of the mind so that he did not know the nature and consequences of his act, or if he did know, that his act was wrong.

While lay witnesses may testify to the attitude and demeanor of the defendant, lay witnesses cannot express an opinion as to the existence of a particular mental disease or condition.

In Mullis [v. Commonwealth], 351 S.E.2d [919,] 925 [(Va.

Ct. App. 1987)], a lay witness was not permitted to explain the defendant's actions by testifying that he was "paranoid" because this might suggest to the jury that the defendant had been diagnosed "paranoid." In this case, no expert evidence supported the insanity defense, and the only qualified testimony stated the opposite. The other witnesses could only recite observed behavior. The recital of the defendant's behavior did not provide any factual basis from which a jury could find the defendant was suffering from a mental disorder or disease that prevented him from distinguishing right from wrong. [*Id.* at 53-54 (cleaned up).]

In People v. Moore, the defendant sought a jury charge that would have let the jury excuse his conduct if it found he suffered from a mental disease, defect, or disorder. 117 Cal. Rptr. 2d 715, 721-22 (Ct. App. 2002). The defendant never produced expert testimony on that issue, so the trial court denied his request. Ibid. The appellate court affirmed, explaining that defendant's doctor "did not examine, test, or evaluate defendant, nor did he opine defendant was suffering from a mental disease, mental defect, or mental disorder when defendant stabbed the victim[.]" so the trial court was right to not give the requested instruction. Id. at 723. The court explained:

Mental illness or mental defect is a medical diagnosis. Expert medical testimony is necessary to establish a defendant suffered from a mental disease, mental defect, or mental disorder because jurors cannot make such a determination from common experience....

Without expert medical testimony establishing that defendant was suffering from a mental disease, defect, or disorder at the time of the commission of the crime, there was no evidentiary or legal basis for the trial court to [give the charge]. [*Ibid.* (cleaned up; second emphasis added).]

See also Conservatorship of Torres, 226 Cal. Rptr. 142, 143-44 (Ct. App. 1986) (“Although a juror might know whether a person was able to take care of his basic needs a juror cannot determine from common experience whether that inability results from a mental disorder or from some other reason.”).

In Doyle v. State, the defendant wanted his sister, a lay witness, to testify about his psychological problems to support his insanity defense. 785 P.2d 317, 322 (Okla. Crim. App. 1989). The appellate court upheld the trial judge’s ruling barring such questioning, noting that while a lay witness could testify as to whether a person’s actions seemed rational, “a lay witness is not permitted to give an opinion calling for a medical diagnosis.” Ibid. “The question put to the witness called for a medical diagnosis which [defendant’s sister] was unable to give.” Ibid. Notably, the court found no prejudice given that the defendant also called “a licensed drug and alcohol counselor, a [corrections] psychologist...and a psychiatrist, all of whom testified... concerning his mental capacity.” Id. at 323.

The defendant in State v. Davis claimed insanity, and wanted Orsban, a nurse from the jail who observed him there, to testify he believed defendant appeared to be psychotic. 506 S.E.2d 455, 470-71, 477 (N.C. 1998), cert. denied, 526 U.S. 1161 (1999). The Supreme Court of North Carolina found no error barring the defense testimony:

The question posed by defense counsel called for Orsban, a lay witness, to make a psychiatric diagnosis of defendant's mental condition. Orsban was not an expert witness, and no foundation had been laid to show that he had the expertise to make such a psychiatric diagnosis. While it may have been appropriate for Orsban to make a general observation that defendant appeared to be "mentally disturbed" upon admission to jail, it was beyond Orsban's ability as a lay witness to make a specific psychiatric diagnosis of defendant's being "psychotic." [*Id.* at 471.]

See also State v. Raine, 829 S.W.2d 506, 510-11 (Mo. Ct. App. 1992) (finding lay witnesses testifying about defendant's behavior was permissible if relevant, but not whether he "had a mental disease or defect"; "the [lay] witnesses' conclusions that Raine suffered from a mental disease or defect were inadmissible").⁸

⁸ Admittedly, some states have suggested otherwise. Arizona seems to permit lay testimony alone. See State v. Bay, 722 P.2d 280, 284 (Ariz. 1986). But even there, the lay witness must have sufficient knowledge of the defendant's "history," that is "history of mental illness or prior hospitalization for mental illness." *Id.* at 284, 283. Courts have recognized that this will be the rare case. See State v. McMurtrey, 664 P.2d 637, 644 (Ariz.) ("[I]t is difficult to imagine how a defendant could place his or her sanity in issue...without expert testimony as to the defendant's state of mind at the time of the crime"), cert. denied, 464 U.S. 858 (1983).

At least one Ohio decision agrees with Bay, but it too requires any proffered lay testimony be competent on the issue of defendant's "disease or other defect of the mind...." State v. Reynolds, 550 N.E.2d 490, 496 (Ohio Ct. App. 1988) (lay testimony that defendant regularly took two antipsychotic drugs and was off of them at the time of the crimes); see also State v. House, 2014-OH-138, P9 (Ohio Ct. App. 2014) (distinguishing Reynolds on that basis).

In Washington, while some older cases have language that suggests lay testimony may be enough, like State v. Odell, 227 P.2d 710 (Wash. 1951), later cases have clarified that such lay testimony is only admissible "to

Federal cases also support the State's position. In United States v. Turner, the Eleventh Circuit Court of Appeals found that although the trial judge should not have allowed the government to call its own expert as to the defendant's sanity, no plain error occurred because the defendant's lay testimony and his own behavior was insufficient to prove insanity. 61 F.4th 866, 889-93 (11th Cir. 2023). The court explained why:

supplement expert testimony if the proper foundational requirements are met...." State v. Stumpf, 827 P.2d 294, 297 (Wash. App. 1992); see also State v. McDonald, 571 P.2d 930, 937 (Wash. 1977) (noting one with "a clinical background and close contact over a period of time with the defendant could qualify one to testify regarding the defendant's sanity."), over'd o.g., State v. Sommerville, 760 P.2d 932, 936 (Wash. 1988). Even in Odell defendant called "an expert in mental diseases" and his own physician as witnesses in his defense. 227 P.2d at 713.

The concurring judge below pointed to Georgia's statute in support of his position, but as the majority correctly recognized, "Georgia's insanity standard is less rigorous than" ours. See Arrington, 480 N.J. Super. at 444 n. 5) (citing Ga. Code Ann. § 16-3-2, which requires only a lack of "mental capacity to distinguish between right and wrong in relation to such act, omission, or negligence[,] not "a defect of reason, from disease of the mind"). Defendant does not rely on Georgia law to support his position, but even cases from that jurisdiction support the State's position, not defendant's. See, e.g., Ellis v. State, 309 S.E.2d 924, 926 (Ga. Ct. App. 1983) (holding that only a qualified expert could testify that the defendant suffered from "paranoia" and observing that "[s]ince paranoia is a medical term relating to a mental disorder, only a qualified expert such as a psychiatrist, psychologist or medical doctor would be competent to diagnose and define such a mental disorder."

Defendant does rely on New Hampshire case law, (Dsb14-15), but that state acknowledges its own insanity defense is "unique" and "there is no test [in the statute] for determining whether a defendant is insane." State v. Fichera, 903 A.2d 1030, 1035 (N.H. 2006) (citation omitted); accord N.H. Rev. Stat. Ann. 628.2, I ("A person who is insane at the time he acts is not criminally responsible for his conduct. Any distinction between a statutory and common law defense of insanity is hereby abolished....").

[T]o establish a legally sufficient insanity defense, Turner had to prove that on November 8, 2018, he had a severe⁹ mental disease or defect capable of causing him to possess the firearms even though he knew that he could not do so.... He introduced nothing to prove his defense other than [his girlfriend] Mary Walker's [lay] testimony and his behavior. And Dr. Barnette did not diagnose him with a qualifying "severe mental disease or defect" under [the statute]. To find that he established his defense, the jury would have had to speculate that he had a severe mental disease or defect and that it in fact caused his wrongful conduct. And the law would not allow the jury to do that. [*Id.* at 893 (citation omitted).]

In United States v. Keen, the Ninth Circuit Court of Appeals found that the trial court properly prohibited the defendant's use of the insanity defense when there was no expert testimony on the issue. 96 F.3d 425, 430-31, amended and reh'g denied, 104 F.3d 1111 (9th Cir. 1996). Keen's proposed evidence was similar to Arrington's here:

We do not have an M.D. or a psychologist to testify as an expert. We do have the defendant's family, who observed him during the relevant time period, and they could testify as to what they personally saw, the behavior that he was engaging in, and the things that he said to them...to show the jury that a person exhibiting this type of symptom, behavior and statements, must have some serious mental disease or defect. [*Id.* at 431.]

The District Court had denied this request, concluding that

Lay testimony can only lead to an impermissible finding, that [the jury] might speculate that [the defendant] might be insane. And you can't argue that he is insane from that standpoint of view.... Unless someone summarizes all of this testimony, and can give a medical opinion, or scientific expert can give such a medical

⁹ Federal law requires a defendant to show the "mental disease or defect" was "severe." 18 U.S.C.A. §17(a).

opinion, then this testimony can only lead to impermissible inference. [Id. at 430.]

Without “reaching the question of whether lay opinion alone can ever support a finding of insanity,” the Court of Appeals affirmed the District Court’s decision because the defense’s lay proffer failed to establish that any “condition” defendant may have been suffering had an effect on his ability to appreciate the nature of his actions. Id. at 431.

In United States v. Sanchez-Ramirez, the government moved pretrial to bar the defendant from asserting insanity at trial where defendant argued that his testimony alone would be enough allow him to do so. 432 F. Supp. 2d 145, 146 (D. Me. 2006). Defendant said he was “suffering from command auditory hallucinations,” which he said resulted in his “inability to appreciate the nature and quality or wrongfulness of” his acts. Ibid. The court recognized that the need for expert testimony is twofold: “not merely to prove the existence of a severe mental disease or defect, but also to prove that this condition caused the defendant to be unable to appreciate the nature and quality or wrongfulness of his acts....” Id. at 148. The court therefore found defendant’s proffer insufficient. Id. at 148-49. Defendant’s testimony alone about his own mental condition, the court found,

would require a jury to speculate about the cause of these symptoms, whether they represent a physical or mental condition, whether that condition fits the definition of mental disease or

defect, if so, whether the disease or defect can be deemed severe, and whether his mental state was caused by the severe mental disease or defect.

In sum, he cannot satisfy his significant burden of proof...simply by telling the jury it is so. Without an expert to testify about what is a mental disease or defect and what is severe, he cannot satisfy this requirement, since such matters are “not within the experience of ordinary jurors. Without expert testimony on causation, he cannot sustain his burden on the second element for the same reason. [*Id.* at 149 (cleaned up)]¹⁰.]

Defendant’s failure to produce any competent proof that he was “insane” properly led the trial court to deny him use of that defense.

Defendant put forth no competent proof that he was laboring under a “defect of reason” caused by a “disease of the mind.” To advance the affirmative defense of insanity as defined in N.J.S.A. 2C:4-1, he was required to do so, and to do so through expert testimony. His own lay testimony as to what happened that day, no matter how bad or even irrational it was, and why he acted the way he did, would not have been sufficient to meet the statutory requirements of the defense. To allow him to introduce only lay testimony on such an esoteric medical issue would have invited the jury to speculate about mental conditions, how they affect behavior, and how they affect an ability to perceive right and wrong, just to name a few issues.

¹⁰ The defendant would go on to call an expert at his trial. See United States v. Sanchez-Ramirez, 570 F.3d 75, 79 (1st Cir.), cert. denied, 558 U.S. 1005 (2009).

Rather, only a competent, qualified expert, who, after having personally examined defendant's cognitive abilities in light of his or her own expertise, could have explained what a disease of the mind is, how it affected defendant's behavior that day, and what affect it had on his ability to distinguish between right and wrong. Such testimony was "so critical that it goes beyond what is deemed merely 'helpful' to the jury and becomes 'necessary' to the trier of fact's proper functioning." Biunno, Weissbard & Zegas, ante, at comment 2.1. Expert testimony alone would have provided competent, qualified insight into the defendant's mental condition and allowed the jury to differentiate between defendants who can choose between right and wrong and those who cannot, the critical question in an insanity case. Our courts have long recognized that some level of mental deficiency will not suffice; only a "defect of reason" caused by a "disease of the mind" will satisfy the statute. And only an expert could provide the proof necessary to show defendant met that standard.

Defendant counters that the statute contains no express requirement for medical or expert testimony, (Dsb20), which of course is true. But such a conclusion was obvious to the Code's drafters when it included "scientific, technical, or other specialized" phrases like "defect of reason" and "disease of the mind." N.J.R.E. 702; N.J.S.A. 2C:4-1. Defendant's reading would effectively write those phrases out of the Code, an untenable result. See Acoli

v. N.J. State Parole Bd., 224 N.J. 213, 231 (2016) (“[S]tatutory construction abhors an interpretation that would render meaningless words within a statute.”). Surely a lay person could not opine on whether a defendant’s ability to reason was defective as a result of a “disease of the mind.” If a statute required a party to show that they suffered from a “disease of the heart,” it would be quite clear that only the testimony of a qualified cardiologist would do. The same holds true for mental diseases; only a qualified mental health expert would establish the statutory predicates.

The cases defendant relies upon do not compel the result he seeks either. (Dsb17-18). While it is true that in State v. Morehous, decided in 1922, the Court observed that “[l]ay witnesses on insanity may give their opinion of a person’s sanity or insanity provided such opinions are based on facts within the knowledge of the witness and stated[,]” 97 N.J.L. 285, 294 (E. & A. 1922), that line must be rejected as mere dicta, and in no way controlling on the issue now before this Court. There, a defense witness was asked about his opinion as to the defendant’s “mental condition or his sanity[.]” Ibid. The trial court never should have allowed the question in the first place—an issue not raised on appeal—but, once it did, the reviewing court found the objection was properly overruled because the witness knew no facts upon which to base that opinion. Ibid. Of course, witnesses cannot give any sort of opinion testimony

when they have no basis to do so, but the more important point is that Morehous's dicta crumbles under the more persuasive weight of the more recent caselaw discussed above, and even two other cases defendant cites, Risden and Scelfo. (Dsb18-20).

In State v. Risden, the defendant presented expert testimony as to her insanity: "In support of the claim of 'temporary' insanity defendant called a single psychiatrist....he saw her on seven occasions[, and h]is final diagnosis...was depressive reaction, which he characterized as a type of mental disease." 56 N.J. 27, 33-34 (1970), aff'g as mod. 106 N.J. Super. 226 (App. Div. 1969). The Court noted that after a claim of insanity "has been made and supported by testimony," the State may use that expert testimony "on cross-examination of a defendant or of defense psychiatrists with respect to statements made by the defendant to a State's examining psychiatrist on the issue of mental capacity." Id. at 36.

To be sure, this Court did observe that the trial court should have allowed lay witnesses to testify as to "defendant's physical appearance and her mental and emotional attitude and reactions within minutes before, at the time of, and after the shooting." Id. at 40. Indeed, "[l]ay-witness opinion of the type described requires no expertise." Ibid. But the defendant had already set forth competent expert testimony establishing that she suffered from a "mental

disease[,]” and while such lay testimony about what witnesses saw defendant do and what they heard her say was relevant to the defendant’s mental or emotional state, ibid., Risden in no way endorses defendant’s view that this lay testimony alone would have been sufficient to get the question of insanity before the jury.

Nor does State v. Scelfo, 58 N.J. Super. 472 (App. Div. 1959), certif. denied, 31 N.J. 555 (1960). There, the defendant claimed insanity and offered among other evidence the testimony from a Dr. Collins, “a well-known psychiatrist.” Id. at 476. Dr. Collins testified that he had met with defendant on many occasions, and that defendant had been diagnosed with a “mental illness” known as “‘schizophrenic reaction, chronic undifferentiated type,’ a condition which is also known as *dementia praecox*.” Id. at 476-77.¹¹ Both Dr. Collins and another expert “testified unequivocally that during [the crime] Scelfo was unaware of the nature and quality of his acts and did not understand the difference between right and wrong. Thus the opinions were in accord with the M’Naghten rule.” Id. at 478. Defendant thus did present expert testimony on the issue of his insanity.

The Appellate Division in Scelfo went on to observe that when determining mental capacity, “the jury is entitled to consider the conduct of the

¹¹ The panel initially referred to this testimony as “lay testimony,” id. at 476, but later clarified that this was “medical” and “expert” testimony, id. at 477.

accused as it appeared to lay observers at the time of the crime.” Id. at 477-78.

Again, the State does not disagree. Lay testimony is certainly permissible on the question of defendant’s actions, statements, and character at the time of the offense, and such testimony could be used by a jury to buttress or discredit the testimony of either side’s expert. As the majority noted below:

We do not foreclose defendants offering lay evidence—including their own testimony if they waive self-incrimination rights—to provide facts that may inform the testifying experts’ opinions and the jurors’ knowledge of the record. For instance, laypersons with personal knowledge under N.J.R.E. 602 who know or have observed the defendant might recount peculiar behaviors they have witnessed. But where, as here, a defendant wants to take the stand and present an amateur self-diagnosis of mental illness without an expert, that is a bridge too far in the absence of a revision of the statute. [Arrington, 480 N.J. Super. at 443.]

Finally, Estate of Nicholas v. Ocean Plaza Condo. Ass’n, Inc., 388 N.J. Super. 571 (App. Div. 2006), is easily distinguishable. There, the court addressed N.J.S.A. 2A:14-21, a tolling provision in the Law Against Discrimination (“LAD”) that is applicable if the plaintiff has “a mental disability that prevents the person from understanding his legal rights or commencing a legal action at the time the cause of action or right or title accrues....” In addressing this differently-worded statute, this Court noted that “‘insanity’ has many meanings, for, one may be insane for one purpose and sane for another.” Kyle v. Green Acres at Verona, Inc., 44 N.J. 100, 113 (1965). LAD does not require the plaintiff to show a “defect of reason” caused

by a “disease of the mind,” only “a mental disability.” As noted earlier, “[t]he insanity defense is not available to all who are mentally deficient or deranged; legal insanity has a different meaning.” Cannel, ante. “Mental illness does not in and of itself eliminate moral blameworthiness under the test for criminal insanity enshrined in the Code....” Singleton, 211 N.J. at 160.

Finally, barring insanity for lack of supporting evidence did not bar him from testifying. Contra (Dsb37-39). Criminal defendants, like all witnesses, can only testify about what they have firsthand knowledge of, or are otherwise qualified to testify about. See generally N.J.R.E. 602, 701; State v. Sanchez, 247 N.J. 450, 466-67 (2021). But here, defendant was not qualified to testify as to whether 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.” N.J.S.A. 2C:4-1. He certainly could have testified about “his own mental state” and “his own account of what happened during the crime.” (Dsb38).¹² Accord

¹² As for any “prior diagnoses,” (Dsb38), or “history of mental illness,” (Dsb43), those would only be relevant if defendant could connect them to his sanity “at the time of such conduct[,]” which is the relevant time frame under N.J.S.A. 2C:4-1; accord Worlock, 117 N.J. at 603 (“when he committed the crime”); Maioni, 78 N.J.L. at 342 (“at the time of committing the act charged”); J.T., 455 N.J. Super. at 216 (“when she committed these horrific crimes”). For the same reason, allowing “jurors to directly observe a defendant’s demeanor” at trial, often years after the crime, is no substitute for

Jenewicz, 193 N.J. at 451. He also could have sought to walk back his damning confession or try to explain away the victims' DNA on his pants and gloves. But defendant was not a doctor or some other qualified mental health professional, so he was unfit to have competently testified that he suffered from some "disease of the mind" that caused a "defect of reason" that could lead the jury to conclude he was statutorily insane. See Mullis, 351 S.E.2d at 925 ("[T]he witness was a layman, not a doctor, and could therefore not draw a medical conclusion.... Lay witnesses cannot express an opinion as to the existence of a particular mental disease or condition."). Defendant was free to testify, but his testimony, like that of any other witness, had to be relevant and competent. Jenewicz, 193 N.J. at 451; Budis, 125 N.J. at 531-32. It would have been neither as to N.J.S.A. 2C:4-1 insanity.

competent, relevant testimony about a defendant's sanity at the time of the crime. Arrington, 480 N.J. Super. at 448 (Jacobs, J.S.C., concurring).

Defendant could not have testified as a lay witness "about how chronic use of PCP or other drugs fundamentally changed the way he perceives the world such that he did not realize what he was doing at the time of this offense or did not realize that it was wrong." (Dsb43-44); contra State v. Winder, 200 N.J. 231, 257 (2009). Demanding courts admit such wildly speculative lay testimony in the Quixotic hopes of "nullification" or persuading "a lawless decision maker"—along with his fallback position that there should be a 104 hearing only "if the defense wants" one so he can shield the State and the trial court from "a pre-trial preview of his defense"—lays bare the absurdity of defendant's overarching position that a defendant can say anything to advance the insanity defense. Strickland, 466 U.S. at 695; (Dsb42).

Any error is harmless in this case.

Finally, it is well established that appellate courts should reject as harmless errors that are not clearly capable of producing an unjust result. State v. Macon, 57 N.J. 325, 336, 337-38 (1971); R. 2:10-2. While it may be unusual to argue that the complete denial of a defense could ever be harmless, that is the case here. Any testimony by defendant, a layman, that he was “insane” at the time of the crimes would have been “dubious” at best. See Ake, 470 U.S. at 90 (Rehnquist, 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.”); Arrington, 480 N.J. Super. at 450, 453 (Jacobs, J.S.C., concurring) (noting defendant’s only “proffer consisted of the facts of the case itself” and deeming any error in this case harmless).

Against defendant’s irrelevant, incompetent, and unprecedented “monologue[,]” id. at 443, that he “acted ‘crazy’” (Dsb19), the jury would have heard: defendant’s detailed confession, which “does not suggest insanity,” Ake, 470 U.S. at 90 (Rehnquist, J., dissenting); the deliberate way he carried out the murders; the State’s proposed expert opining that defendant was sane; and that defendant was reading law books while in the jail and even

admitted to “a mental health counselor that he was faking...mental illness so it would be in his records when he goes to court.” (5T32-2 to 12); accord Ake, 470 U.S. at 90 (Rehnquist, J., dissenting) (noting Ake told a cellmate “he was going to try to ‘play crazy.’”). Such evidence would have thoroughly discredited any self-serving lay testimony from defendant assessing his own mental capacity, and any reasonable jury would have found so beyond a reasonable doubt. So, even if the trial court’s ruling barring the insanity defense was error—which again, it was not—that error must be deemed harmless.

Conclusion

For these reasons, this Court should affirm the Appellate Division’s judgment affirming defendant’s convictions.

Respectfully submitted,

THEODORE N. STEPHENS II
ESSEX COUNTY PROSECUTOR
ATTORNEY FOR PLAINTIFF-RESPONDENT

s/Frank J. Ducoat – No. 000322007
Deputy Chief Assistant Prosecutor
Appellate Section

Of Counsel and on the Brief