



New Jersey

P.O. Box 32159
Newark, NJ 07102
Tel: 973-642-2086
Fax: 973-642-6523
info@aclu-nj.org
www.aclu-nj.org

LIZA WEISBERG
Senior Staff Attorney

973-854-1705
lweisberg@aclu-nj.org

June 2, 2025

Honorable Chief Justice and Associate Justices
Supreme Court of New Jersey
25 Market Street
Trenton, New Jersey 08625

Re: A-43-24 *State v. Jeremy Arrington* (090216)
Appellate Division Docket No.: A-002662-21

Honorable Chief Justice and Associate Justices:

Pursuant to *Rule 2:6-2(b)*, kindly accept this letter brief in the above-captioned case on behalf of amicus curiae the American Civil Liberties Union of New Jersey (“ACLU-NJ”).

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PRELIMINARY STATEMENT

The Appellate Division in this case ruled that expert testimony is a mandatory prerequisite to an affirmative defense of insanity. It arrived at this mistake by treating legal insanity like a medical diagnosis, when instead the defense has operated for nearly two centuries as a theory of social accountability grounded in the types of facts about state of mind that juries routinely encounter and appraise. To be sure, an insanity defense presented through lay testimony alone may often prove unpersuasive. But here, the Appellate Division held that lay testimony is *categorically* inadequate to establish insanity. To prejudge the sufficiency of every defendant's proof on insanity is unsound and unconstitutional. In effect, the Appellate Division's opinion rewrites the rules of evidence and preemptively superintends every insanity defense.

The M'Naghten test for legal insanity, adopted in New Jersey shortly after its introduction in England in 1843 and unchanged since, substantially predates psychiatry as a medical or forensic discipline. The test exculpates a defendant who can show that, due to a "defect of reason, from disease of the mind," (1) he did not know what he was doing when he committed the crime alleged or (2) he did not know that what he was doing was wrong. *See* N.J.S.A. 2C:4-1. Importantly, "disease" in this context is not a clinical classification. To

assume otherwise, as the Appellate Division did, not only ignores the origins and history of the M’Naghten test but invites rigid medical pathology to displace a jury’s normative assessment of moral responsibility.

Juries must often assess a criminal defendant’s mental state to make complex determinations about culpability. They do so with and without the assistance of expert testimony. The Appellate Division’s decision in this case underestimates the jury and undermines its essential role.

What’s more, it undermines the defendant’s constitutional rights to testify on his own behalf and to present a complete defense. Here, Jeremy Arrington faced a judicial ultimatum: call an expert witness or else forfeit your right to testify about your state of mind at the time of the crimes you allegedly committed. Mr. Arrington was unable to procure expert testimony and was thus silenced. As a result, he was forced to present an incomplete defense. The rights to testify and to a complete defense are central to the truth-seeking function of our criminal justice system and cannot be infringed absent compelling justification. The Appellate Division failed to conduct the constitutionally mandated inquiries—including the balancing test used to resolve constitutional claims under our State Constitution—that would have probed any such justifications. If it had conducted those inquiries, it would

have necessarily upheld Mr. Arrington’s rights. The Appellate Division’s procedurally and substantively flawed opinion should be reversed.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amicus relies upon the statement of facts and procedural history contained in the Defendant’s Appellate Division brief.

ARGUMENT

I. Jurors are capable of assessing a defendant’s insanity defense without the aid of a testifying expert.

In general, expert testimony is necessary only when “a subject is so esoteric that jurors of common judgment and experience cannot form a valid conclusion” absent the expert’s aid. *Wyatt by Caldwell v. Wyatt*, 217 N.J. Super. 580, 591 (App. Div. 1987). And in those instances, the rule of evidence governing expert testimony is framed permissively, allowing, but not requiring, expert testimony “[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” N.J.R.E. 702.

Under the M’Naghten test, insanity is not “so esoteric” that its lies beyond the average juror’s ken. Nor does it rely for proof in all instances on “scientific, technical, or other specialized knowledge.” *Id.*

The test unfolds sequentially. First, the factfinder is asked “to conduct the easier enquiry whether a defendant knew the nature and quality of his actions.” *Clark v. Arizona*, 548 U.S. 735, 755 n.24 (2006); *see also State v. Singleton*, 211 N.J. 157, 174-75 (2012). If the answer is no, the defendant lacks “cognitive capacity” and is deemed legally insane. *See Clark*, 548 U.S. at 755 n.24. Otherwise, the factfinder proceeds to “the harder and broader enquiry” into “moral capacity”—that is, “whether the defendant knew his actions were wrong.” *Id.*

These are not medical assessments. On the contrary, legal insanity turns on elemental questions core to human experience. “Sometimes described as the ‘right and wrong’ test, [the M’Naghten test’s] purpose is to determine whether the defendant had sufficient mental capacity to understand what he was doing when he committed the crime.” *State v. Worlock*, 117 N.J. 596, 603 (1990). It is, in the simplest sense, “[d]irected at the defendant’s ability to ‘know.’” *Id.* These basic moral principles of excuse are embedded in conventional social norms and criminal jurisprudence alike.

The Model Criminal Jury Charge on the insanity defense emphasizes that jurors may choose to accord whatever credibility and weight they deem appropriate to the testimony of experts—including, presumably, none at all. *Model Jury Charges (Criminal)*, “Insanity (N.J.S.A. 2C:4-1)” (approved Oct.

1988) (“You are the sole judges of the credibility of the medical witnesses, as well as all other witnesses, and the weight to be accorded to the testimony of each.”). The Charge thus implicitly recognizes that an insanity defense may rest on lay testimony alone.

Just as jurors regularly attempt without expert aid to understand the workings of a defendant’s mind in service of their factfinding duties, including to measure motive or mens rea, they are capable of “performing their traditional function of sorting through all of the evidence and using their common sense to make simple logical deductions,” *State v. Cain*, 224 N.J. 410, 427 (2016), concerning insanity.¹ “[T]he rub of this case,” Judge Jacobs describes in concurrence, “lies in discerning a subject’s true state of mind; whether he knew the nature and quality of his acts, and if he did, whether he knew what he was doing was wrong.” *State v. Arrington*, 480 N.J. Super. 428, 448 (App. Div. 2024) (Jacobs, J., concurring). There is nothing exceptional

¹ Evaluating an affirmative defense of insanity and considering whether a defendant’s “mental disease or defect” negates the mens rea element of the charged crime are distinct but related exercises. The latter implicates the diminished capacity doctrine under N.J.S.A. 2C:4-2. This Court will have the opportunity to address whether evidence sufficient to warrant a diminished capacity jury instruction must include expert testimony or medical documentation. *See State v. Mustafa*, ___ N.J. Super. ___, ___ (App. Div. 2025) (slip op. at 25-28) (*cert. granted*). Notwithstanding this open question, the analogy to ordinary mens rea evaluations is instructive.

about this task. It resides “peculiarly and ultimately within human comprehension, unaided by expert scrutiny when circumstances dictate.” *Id.*

As the Appellate Division noted, while there may be policy reasons to “replace the traditional M’Naghten test with modern concepts of mental disorders, the Legislature has not done so.” *Arrington*, 480 N.J. Super. at 433. And as the concurrence explains, “[t]his test was applied by jurors decades before the advent of psychiatric expertise.” *Id.* at 448 (Jacobs, J., concurring). Even as early as 1842, when the House of Lords articulated the M’Naghten test, its “essential concept and phraseology” were “already ancient and thoroughly embedded in the law.” *Kahler v. Kansas*, 589 U.S. 271, 310 (2020) (quoting Platt & Diamond, *The Origins of the “Right and Wrong” Test of Criminal Responsibility and Its Subsequent Development in the United States: An Historical Survey*, 54 Cal. L. Rev. 1227, 1258 (1966)). Thus, imposing modern medical definitions on the test’s “disease of the mind” language is “anachronistic.” *Arrington*, 480 N.J. Super. at 449 (Jacobs, J., concurring). Just as jurors used the M’Naghten test to discern culpability without psychiatric testimony for the overwhelming portion of its long history, it “may yet be applied without need for such expertise.” *Id.* at 448.

Notably, the Legislature has preserved the traditional spirit and formulation of the M’Naghten test in our criminal code not through

unreasoned inaction but affirmative choice. Before the current version of the statutory insanity provision was enacted in 1978, the old version explicitly contemplated that the defense be supported by the sworn certificates of two psychiatrists.² *See State v. Whitlow*, 45 N.J. 3, 12-13 (1965). When the present version of the insanity provision became law, the Legislature eliminated the reference to expert psychiatrists. *Arrington*, 480 N.J. Super. at 440. Without citation, the Appellate Division asserts that the Legislature nonetheless “maintained the general premise that a defendant would need to retain an expert to advance an insanity defense at trial.” *Id.* The text of N.J.S.A. 2C:4-1, codifying M’Naghten, purportedly “signal[s] the necessity of such a testifying expert.” *Id.* But reproducing the ancient words of the M’Naghten test without qualification or modification signals precisely the opposite.

II. Requiring a defendant to call an expert witness in order to assert an insanity defense is unconstitutional.

A defendant’s rights to present a complete defense and to testify are protected by the New Jersey and United States Constitutions and cannot be burdened absent a searching inquiry into the necessity of the infringement. The courts below did not perform one. Under any conceivably applicable standard,

² Even under this regime, the reviewing court recognized that “lay opinion testimony” on insanity was in “parity” with expert testimony and entitled to “equal weight.” *State v. Scelfo*, 58 N.J. Super. 472, 477-78 (App. Div. 1959).

a blanket rule requiring expert testimony in support of an insanity defense is inappropriate.

A. The trial court infringed on Mr. Arrington’s right to present a complete defense and to testify.

The New Jersey and Federal Constitutions guarantee the “meaningful opportunity to present a complete defense.” *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)); *see also State v. Chambers*, 252 N.J. 561, 582 (2023); *State v. Garron*, 177 N.J. 147, 168 (2003); *State v. Budis*, 125 N.J. 519, 531 (1991). This right derives from the Compulsory Process Clauses in the United States and New Jersey Constitutions, which give the accused in a criminal prosecution the right to call “witnesses in his favor,” *U.S. Const.* amend. VI; *N.J. Const.* art. I, ¶ 10, as well as the due process right to a “fair opportunity to defend against the State’s accusations.” *State v. Cope*, 224 N.J. 530, 551 (2016). Broadly, the constitutional right to present a complete defense entails “the right to present the defendant’s version of the facts.” *Washington v. Texas*, 388 U.S. 14, 19 (1967).

This right is closely related to—or else encompasses—the defendant’s right to testify in his defense. The right to call witnesses under the Compulsory Process Clause “logically” includes the accused’s “right to testify” on his own behalf. *Rock v. Arkansas*, 483 U.S. 44, 52 (1987); *see also State v. Savage*, 120 N.J. 594, 628 (1990) (“[A] criminal defendant is entitled to testify on his or

her own behalf under Article I, paragraphs 1 and 10 of our State Constitution.”). The right to testify emanates too from federal and state constitutional due process guarantees. *See Rock*, U.S. 483 at 52; *Savage*, 120 N.J. at 628. And finally, “[t]he opportunity to testify is also a necessary corollary to the Fifth Amendment’s guarantee against compelled testimony.” *Rock*, 483 U.S. at 52.

Conditioning a defendant’s right to offer testimony in his defense on also calling an expert witness severely burdens that right—and in Mr. Arrington’s case, given his inability to procure expert testimony, wholly gutted it. Prevented from speaking about his own mental state at the time of the alleged crimes, Mr. Arrington was forced to present an incomplete defense. The trial court deprived him of his right to put forward his version of the facts.

B. Courts must engage in searching inquiries to justify burdens on a defendant’s constitutional rights.

With certain exceptions, the New Jersey Supreme Court applies a balancing test to resolve constitutional claims under the State Constitution, weighing “the nature of the affected right, the extent to which the governmental restriction intrudes upon it, and the public need for the restriction.” *Greenberg v. Kimmelman*, 99 N.J. 552, 567 (1985). The Court has emphasized that, under this test and according to New Jersey’s unique constitutional tradition, the due process protections afforded by the State

Constitution may be broader and stronger than those of the U.S. Constitution.

See e.g., Jamgochian v. N.J. State Parole Bd., 196 N.J. 222, 239 (2008)

(“Because we have, from time to time, construed Article 1, Paragraph 1 to provide more due process protections than those afforded under the United States Constitution, we analyze the due process concerns in this case under our State Constitution”); *State v. Henderson*, 208 N.J. 208, 287 n.10 (2011) (“[E]xpanded protections stem from the due process rights guaranteed under the State Constitution.”); *State v. Melvin*, 248 N.J. 321, 347 (2021) (“The Federal Constitution provides the floor for constitutional protections, and our own Constitution affords greater protection for individual rights than its federal counterpart. The doctrine of fundamental fairness reflects the State Constitution’s heightened protection of due process rights.”).

The Appellate Division engaged in this type of rigorous balancing when considering whether a rule limiting the availability of the insanity defense violated a defendant’s rights to due process and to “present a viable defense.” *State v. Burnett*, 198 N.J. Super. 53, 58-61 (App. Div. 1984). The rule required a defendant to serve notice of his intention to claim insanity on the prosecuting attorney within thirty days of his original plea or else forfeit the defense. The Court pointed to “compelling” interests “which strongly militate in favor of the sanction of preclusion where the rule has been repeatedly and flagrantly

violated,” “important public policy concerns which compel broad pretrial discovery,” and the “essential public purpose” of preventing gamesmanship. *Id.* at 59-60. Strict enforcement of the rule also promoted efficiency and stability in criminal calendaring. *Id.* at 60. On the other side of the scale were the “liberty interests of the accused.” *Id.* at 59-60. Only after weighing the “competing values” at stake did the Court ultimately reject the defendant’s constitutional arguments. *Id.* at 60.

Under the federal Compulsory Process and Due Process Clauses, courts must also “conduct a searching substantive inquiry” before excluding any “criminal defense evidence.” *Taylor v. Illinois*, 484 U.S. 400, 423 (1988) (Brennan, J., dissenting). “After all, [f]ew rights are more fundamental than that of an accused to present witnesses in his own defense.” *Id.* (quoting *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973)). In light of the “paramount value our criminal justice system places on acquitting the innocent,” a rule that prevents favorable testimony from reaching the jurors’ ears “demands close scrutiny.” *Id.*; *see also Garron*, 177 N.J. at 169-170 (“The competing state interest served by barring proposed evidence must be ‘closely examined’ when the denial or significant diminution of the rights of confrontation and compulsory process ‘calls into question the ultimate integrity of the fact-finding process.’”) (quoting *Chambers*, 410 U.S. at 295).

Under these standards, “if evidence is relevant and necessary to a fair determination of the issues, the admission of the evidence is constitutionally compelled.” *Garron*, 177 N.J. at 171. A court may consider “rules of evidence and procedure designed to ensure the fairness and reliability of criminal trials” when conducting the appropriate constitutional inquiry. *Id.* at 169. “But when the mechanistic application of a state’s rules of evidence or procedure would undermine the truth-finding function by excluding relevant evidence necessary to a defendant’s ability to defend against the charged offenses, the Confrontation and Compulsory Process Clauses must prevail.” *Id.*; *see also* John M. Cannel, *New Jersey Criminal Code Annotated*, comment 4 on N.J.S.A. 2C:14-7d (2003) (“neither statutes nor evidence rules may bar defendant from using evidence and material relevant to his defense where the bar would violate the constitutional right to confront and cross-examine witnesses”).

Similarly, “rules that prevent whole categories of defense witnesses from testifying on the basis of a priori categories that presume them unworthy of belief” are constitutionally untenable. *Washington*, 388 U.S. at 22. Thus, for instance, the U.S. Supreme Court rejected on Sixth Amendment grounds a categorical rule against introducing the testimony of an alleged accomplice. *Id.* at 22-23. And in *Rock*, it invalidated a “*per se*” rule excluding all post-

hypnosis testimony. 483 U.S., at 56-62. The Court held that “[a] State’s legitimate interest in barring unreliable evidence does not extend to *per se* exclusions that may be reliable in an individual case.” *Id.* at 61. In the absence of “clear evidence” regarding “all posthypnosis recollections,” the “wholesale inadmissibility of a defendant’s testimony [was] an arbitrary restriction on the right to testify.” *Id.*

C. The courts below failed to conduct necessary constitutional inquiries, and the restriction on Mr. Arrington’s right to present a complete defense and testify could not have survived them.

The Appellate Division dismissed Mr. Arrington’s constitutional claims upon cursory and grossly insufficient analysis. It did not balance his rights to present a complete defense and to testify against “competing values,” including public need. *See Burnett*, 198 N.J. Super. at 60. It did not “closely examine[]” interests that would be served by the diminution of those rights. *See Garron*, 177 N.J. at 169. It did not consider whether Mr. Arrington’s testimony about his state of mind was “relevant and necessary to a fair determination of the issues” and thus “constitutionally compelled.” *Id.* at 171. Perhaps most egregiously, it neglected these analyses only to announce a sweeping categorical rule prohibiting all insanity testimony by defendants (unaccompanied by expert participation) without regard to whether such testimony may be “reliable in an individual case.” *Rock*, 483 U.S. at 61.

Absent “clear evidence” that “repudiat[es] the validity” of this type of testimony in every plausible scenario, the Appellate Division’s categorical rule is arbitrary and unconstitutional. *Id.*

Instead of reckoning with the relevant constitutional standards, the Appellate Division simply noted that “[n]o case in our state has ever constitutionally required” courts to permit a defendant to “testify as he sees fit and tell the jury why he personally believes he was insane” at the time of the alleged crimes. *Arrington*, 480 N.J. Super. at 443. But this statement amounts to the uncontroversial observation that the court faced an issue of first impression. The observation should have commenced a searching substantive inquiry; it certainly did not obviate one.

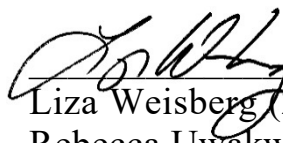
Had the Appellate Division undertaken the required constitutional analysis, it could not have avoided the conclusion that the severe burden imposed on Mr. Arrington’s fundamental rights was unjustified. As detailed in Section I, *supra*, jurors are capable of deploying their common sense and collective wisdom to understand and apply a defendant’s testimony on insanity. No undue confusion or prejudice ensues. New Jersey Rule of Evidence 702, framed permissively, allows but doesn’t mandate expert testimony on technical, scientific, or other specialized subjects. And the reference to “disease of the mind” in N.J.S.A. 2C:4-1, situated in its proper

historical context, does not implicate medical diagnoses. Even if the evidence rule or insanity statute directly precluded exclusive reliance on lay testimony to establish an insanity defense, they would need to yield to Mr. Arrington's constitutional rights. *See Cannel*, comment 4 on N.J.S.A. 2C:14-7d.

CONCLUSION

The Appellate Division's opinion in this case misapprehends the text of the statute codifying the M'Naghten test for legal insanity, underestimates the jury's capacity to fairly evaluate lay testimony on a defendant's mental state, and improperly dismisses Mr. Arrington's constitutional rights to a complete defense and to testify on his own behalf. For the foregoing reasons, the Court should reverse the Appellate Division's opinion in this case.

Respectfully submitted,



Liza Weisberg (247192017)
Rebecca Uwakwe (906102012)
Ezra D. Rosenberg (012671974)
Jeanne LoCicero (024052000)
American Civil Liberties Union
of New Jersey Foundation

P.O. Box 32159
Newark, NJ 07102
(973) 854-1705
lweisberg@aclu-nj.org