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Supreme Court to grapple with constitutional right to an insanity defense

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Kraig Kahler says he spiraled out of control when he learned his wife was having an affair with a woman, and despite seeing mental health professionals, he refused to take the anti-anxiety and depression pills they prescribed.

So when he drove to his wife's grandmother's home on Thanksgiving weekend in 2009 and opened fire on his family, killing his wife, her grandmother and his two daughters, he says he was insane.

The state of Kansas, however, allows a narrow insanity defense that requires a defendant to show a lack of intent. Kahler didn't meet that bar, and he was convicted and sentenced to be executed.

His case goes to the Supreme Court in October — the first of the term — where his attorneys will argue that he has a constitutional right to mount an insanity defense and the Kansas law has denied him a fair trial by prohibiting that.

Legal scholars said he has a good chance of prevailing.

"The pedigree of the insanity defense is long-standing, and I think there are a lot of precedents that uphold it," said Michael Gerhardt, a professor at the University of North Carolina School of Law at Chapel Hill.

Most other states allow defendants to show they aren't criminally liable if they do not know the nature of their act or couldn't differentiate right from wrong at the time.

Kansas says it allows an insanity defense but that it's modified to focus on a criminal's intent rather than ability to judge.

"Abolishing the insanity defense would mean eliminating any consideration of insanity evidence. That is not what Kansas law does," the state argued in its brief.

In Kahler's case, the state points to the fact that he killed his wife but allowed his son, who was standing next to his wife at the time, to go unharmed. That, the state says, shows he was in control of his actions.

The insanity defense is different from competency to stand trial. A judge will decide whether the accused is of sound enough mind to go through with the trial. That has no bearing on guilt or innocence.

Insanity, meanwhile, is an argument raised by the defendant during trial, and the jury is asked to make a determination about the accused person's sanity at the time of the crime.

Clark Neily, vice president for criminal justice at the Cato Institute, said the insanity defense is a “long-standing feature” of American and English common law. He said there are humanitarian reasons for not imposing criminal liability on people suffering from mental illness.

“It very clearly runs contrary to a core principle of not only American, but English criminal law going back for centuries,” he said.

One of the most famous examples of the insanity defense is the case of John Hinckley Jr., who tried to assassinate President Reagan based on his obsession with actress Jodie Foster. He was hoping to get her attention.

He was found not guilty by reason of insanity and spent more than three decades in a mental hospital before a judge ruled that he could be released in 2016.

Outcry over the case led to the Insanity Defense Reform Act, which raised the bar at the federal level for defendants to plead insanity.

Several states also moved to abolish the insanity defense in their courts.

Stephen J. Morse, a law and psychiatry professor at the University of Pennsylvania, said Idaho changed its laws before the attack on Reagan, but Kansas, Montana, Utah and Nevada altered their laws afterward.

The Nevada Supreme Court ruled the move unconstitutional, but courts upheld the other state laws.

“Hinkley was a turning point because it was a public spectacle and such an unpopular verdict,” Mr. Morse said.

Yet he said moves to abolish the insanity defense altogether fell short.

The Supreme Court faced an insanity defense case from Idaho in 2013. The defendant asked the justices to rule that the Eighth and 14th Amendments guaranteed the right. The court declined to hear that case.

But a change in the court’s composition, with two new justices, may signal a willingness, scholars said.

Mr. Gerhardt said Justice Neil M. Gorsuch, along with the other liberal and moderate justices, may be receptive to Kahler’s argument.

Mr. Morse said Justice Clarence Thomas, seen to be an adherent of the “originalist” school of legal thought, could also be enticed by the case.

“One would think they would believe the insanity defense is deeply rooted in our legal history and traditions,” he said.