

No. COA10-814

FIFTEEN-B DISTRICT

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA)
)
 v.) From Orange
)
ALVARO RAFAEL CASTILLO)

DEFENDANT-APPELLANT'S BRIEF

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NORTH CAROLINA COURT OF APPEALS

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DEFENDANT-APPELLANT’S BRIEF

QUESTIONS PRESENTED

- I. WHETHER THE TRIAL COURT COMMITTED PLAIN ERROR BY FAILING TO INSTRUCT THE JURY THAT THE INSANITY DEFENSE APPLIES IF A DEFENDANT BELIEVED DUE TO MENTAL ILLNESS THAT HIS CONDUCT WAS MORALLY RIGHT?
- II. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION BY OVERRULING DEFENDANT’S OBJECTION TO AN IMPROPER STATEMENT MADE BY THE PROSECUTOR IN CLOSING ARGUMENT?

STATEMENT OF THE CASE

These noncapital cases were tried at the July 27, 2009 Criminal Session of Orange County Superior Court before the Honorable R. Allen Baddour, on indictments charging defendant with one count of first-degree murder (06 CRS 54833), one count of assault with a deadly weapon with intent to kill inflicting serious injury (06 CRS 54860), one count of assault with a deadly weapon with intent to kill (06 CRS 54861), three counts of possession of a weapon of mass

destruction (06 CRS 54856, 06 CRS 54858-59), one count of discharging a firearm on educational property (06 CRS 9516), one count of discharging a weapon into occupied property inflicting serious injury (06 CRS 54862), and two counts of possession of a weapon on educational property (06 CRS 54863-64).

At the close of the State's case, the State amended the charge of assault with a deadly weapon with intent to kill inflicting serious injury in 06 CRS 54860 to assault with a deadly weapon with intent to kill. The State also amended the charge of discharging a firearm into occupied property inflicting serious injury in 06 CRS 54862 to discharging a firearm into occupied property.

That day, the jury returned verdicts finding defendant guilty of one count of first-degree murder (06 CRS 54833), two counts of assault with a deadly weapon with intent to kill (06 CRS 54860-61), three counts of possession of a weapon of mass destruction (06 CRS 54856, 06 CRS 54858-59), one count of discharging a firearm on educational property (06 CRS 9516), one count of discharging a weapon into occupied property (06 CRS 54862), and two counts of possession of a weapon on educational property (06 CRS 54863-64).

On August 21, 2009, Judge Baddour arrested judgment on all counts of possession of a weapon of mass destruction (06 CRS 54856, 06 CRS 54858-59) and one count of possession of a weapon on educational property (06 CRS 54864). He sentenced Mr. Castillo to life imprisonment without parole for first-degree

murder (06 CRS 54833). He imposed a consolidated sentence of imprisonment of 25 to 39 months for assault with a deadly weapon with intent to kill (06 CRS 54860), discharging a firearm on educational property (06 CRS 9516), discharging a firearm into occupied property (06 CRS 54862), and one count of possession of a weapon on educational property (06 CRS 54863). This sentence runs consecutively to the life sentence. He also imposed a consecutive sentence of 25-39 months imprisonment for another count of assault with a deadly weapon with intent to kill (06 CRS 54861). Mr. Castillo filed a notice of appeal.

STATEMENT OF GROUNDS FOR APPELLATE REVIEW

Defendant appeals under N.C. Gen. Stat. § 7A-27(b) from a final judgment of Orange County Superior Court.

STATEMENT OF THE FACTS

Introduction

It is undisputed that eighteen-year-old Alvaro Castillo fatally shot his father, Rafael Castillo, at home and then wounded two students at Orange High School in Hillsborough on August 30, 2006. The question at trial was whether Mr. Castillo was not guilty of these and related crimes by reason of insanity.

Alvaro Castillo has a history of serious mental illness, including a suicide attempt on April 20, 2006. Beginning in June 2006, his mental illness led him to

believe that God had saved him from suicide for a purpose: to kill others and finally himself as a “sacrifice” to save them from lives of suffering in a sinful world. On August 30, 2006, Mr. Castillo acted on this belief by killing his father and then driving to Orange High School, where he planned to commit a school massacre modeled after such infamous school shootings as the 1999 massacre at Columbine High School. He fired shots with a semiautomatic rifle at the school building and at students standing outside the building, wounding two students. A school resource officer arrested him when his rifle jammed.

All of the mental health experts who examined Mr. Castillo after the shootings agreed that he was suffering from serious mental illness at the time of the shootings, including psychosis and major depressive disorder. The experts had different opinions about Mr. Castillo’s precise diagnosis and about whether he was legally insane under North Carolina law. However, they all agreed that while Mr. Castillo understood that his acts were legally wrong, his mental illness led him to believe that his acts were morally right.

Alvaro Castillo’s Mental Health History

Alvaro Castillo was born in San Francisco in November 1987. His father, Rafael Castillo, was an immigrant from a poor family in El Salvador. Alvaro has two younger sisters: Victoria, who suffers from bulimia, and Teresa, who is autistic. When Rafael Castillo came to the United States, he left a girlfriend and

children behind in El Salvador. A son named Tony died in El Salvador. Alvaro's mother, Vicky Castillo, came from a wealthy family in Madrid, Spain. Vicky and seven of her nine siblings suffer from severe mental illness. (Tpp. 1703-09, 1758-61, 1770, 1775-76, 1923-30)

Vicky described the family's life in San Francisco as "a constant powder keg of tension." (Tp. 1964) Rafael insisted on being in control, he put rigid demands on the family, and he abused Vicky, Alvaro, and Victoria emotionally and physically. Rafael sometimes grabbed Vicky's hair, pulled her to the floor, and hit her if she disagreed with him. Sometimes he hit the children. Rafael insisted that when the children were five years old, they had to work solely on their education, read adult-level books, and stop playing with friends. When any family members were ill or injured, Rafael blamed Vicky and insisted that they take cold showers instead of receiving medical treatment. When Vicky wanted to separate and return to Spain with the children, Rafael said he would kill her. The family moved to North Carolina in 2001. (Tp. 1762-68, 1771, 1785-87, 1842, 1899, 1931-47)

Alvaro was a polite and obedient child. He regularly attended Catholic Church with his family; he was an altar boy and read the Bible. As a young child, Alvaro worried about his parent's conflicts. Although he loved his father, he was afraid of him. As an adolescent, Alvaro became servile to his father to keep family

peace. He would get Rafael's slippers, jump up to turn the TV channel for him, iron his clothes, and cook his favorite food. (Tpp. 1704-1723, 1774, 1950-51)

Two incidents in his childhood had lasting and deeply disturbing effects on Alvaro. When he was eight years old, a friend showed him pornography on a computer. Alvaro was disgusted by the pornography. It made him feel that the world is horrible and that he was horrible for viewing it. These feelings became lifelong obsessions. He ate excessively to cope with his guilt, becoming obese. He started to fear that people were watching him, he began to watch violent movies, and he became socially isolated. (Tpp. 1947-50)

The second incident occurred when Alvaro was fifteen years old and became sexually aroused when he babysat for a three- or four-year old boy. He became obsessed with feeling sinful about his arousal, a feeling that exacerbated his obsessive beliefs that he was a horrible person living in a horrible world. He worried that he might be a pedophile, and his sense of guilt led him to consider suicide. He told his mother that he was depressed and asked her about taking psychiatric medication, but she decided against medication and did not arrange therapy for him. Alvaro resorted to self-flagellation with a stick, prayer, rigid eating, and exercise to cope with his agitation. He became obsessive about cleaning the house and about checking whether the doors were locked at night. He believed he was being watched through cameras in air vents. He believed that he

was being watched by a picture of a woman in the bathroom; he turned the picture over whenever he used the bathroom. His belief that he was being watched led him to keep the blinds in his room closed. He was afraid that the FBI or the CIA was watching him, and he wore a jacket and a hat to conceal himself from them. (Tpp. 1706, 1788-91, 1798, 1814, 1956-58)

Alvaro attended Orange High School. Teachers regarded him as kind and eager to please (for example, he baked pies for teachers). He was an excellent student who overachieved by getting high grades despite having an IQ of 90. However, he was shy and isolated, and his classmates thought he was odd. (Tpp. 1959-61, 2003, 2007, 2132)

In high school Alvaro developed three strong obsessions. He became obsessed with school shootings, other mass murders, and natural disasters. He also became obsessed with firearms, though he did not own or use firearms then. He also became obsessed with a girl in school, "A.R."¹ (Tpp. 1711-13, 1738, 1805, 1961-63, 2255-58)

Alvaro joined the National Guard to learn to use firearms after graduating from high school in 2005. Basic training was a terrible, humiliating experience for

¹ This brief will refer to A.R. by initials to protect her privacy.

him. In his eyes, his harsh drill instructors resembled his dictatorial father, and he fantasized about killing them. (Tpp. 1794-97, 1819, 2012)

Alvaro Castillo's Suicide Attempt on April 20, 2006

When Alvaro returned home after basic training, he became desperate to leave the National Guard. His desperation led him plan to commit suicide. He began to keep a journal on January 1, 2006 about his suicide plans. During this period, he also attended Durham Technical College and worked for a soccer supply company. (Tpp. 1835)

In his first journal entry on January 1, he wrote, "I just can't stand living in a world that is corrupt and full of fear, drugs, pornography, and alcohol. It is a decadence!!! All I see is bad media influences. Death must be the answer!!!" He observed that he was obsessed with A.R., just as John Hinckley, Jr. was obsessed with actress Jodie Foster when he shot President Reagan. He wrote, "I plan to buy a handgun and blow my brains out." (Tpp. 2016-17, State's Exhibit 77)

On March 10, Alvaro wrote that he was obsessed with the Columbine massacre. He mentioned videos he had seen about school shootings. He wrote that he felt sorry for the Columbine shooters -- Eric Harris and Dylan Klebold -- as well as for their victims. He expressed a physical attachment to Eric Harris, and he worried about his sexuality. On March 11, he described violent fantasies in which an imaginary twin brother named Red forced him to commit horrible acts to spare

other people from abuse or pain. He also put in his journal photographs of the guns used by Harris and Klebold and a photograph of their bodies after they had killed themselves. On March 25, Alvaro wrote that he when he buys a gun, he will label it with A.R.'s name. (Tpp. 2018-19, State's Exhibit 77)

On March 29, Alvaro wrote that he would kill himself with a shotgun because Eric Harris killed himself with a shotgun; that he would prepare audiotapes and letters to explain his reasons for suicide to A.R., his parents, and the police; and that he would send an email to A.R. expressing his love and telling her that he named a gun after her. Alvaro wrote about his guilt about almost molesting the boy, his worry about his sexuality, and his despair about living in an "evil" world marked by "Sex toys, brothels, prostitution, pornography, sex manuals, sex games, homosexuality, sex, drugs, Internet pornography." On April 2, Alvaro wrote that he was planning his suicide to be a "copycat" suicide of Eric Harris'. He said he would wear his National Guard dress uniform to copy a character in a movie who committed suicide, and he would write A.R.'s name on his shotgun. On April 4, he wrote, "I AM NOT GOING BACK TO TRAINING! I refuse to be yelled at anymore." (State's Exhibit 77)

On April 5, Alvaro wrote that he had chosen April 20 (the seventh anniversary of the Columbine shootings) for his suicide and that he would kill himself at the exact time of day that Eric Harris had killed himself. On April 6, he

wrote, "In two weeks I will be dead at last! Oh yes, soon I will be rid of the temptations of life and I will no longer be afraid of being yelled at or bossed around anymore. I am going to break my parents' hearts, but sacrifices must be made." He noted on April 8 that he had made videotapes for A.R. and his family, and he said he would make five videotapes because Harris and Klebold had made five videotapes. He put photographs of John Hinckley, Jr., Jodie Foster, A.R., and a shotgun in the journal. On April 12, he rejoiced that he had finally bought the shotgun he would use to kill himself: "I have done it!!! Today, I went to Wal-Mart at 2:20 p.m. and I bought a 12 gauge pump-action shotgun!!!" On April 19 he finished making his videotapes and rented a violent movie and a horror movie. He said that the horror movie "is a perfect example of what the world is coming to. A Sodom and Gomorrah. A world of lust, sadism, masochism, torture, cruelty, and murder." He wrote that he had practiced with his shotgun and that "I just made huge holes on the tree trunks. Just think of what it will do to my head." He wrote, "I have got to do this to pay for all my sins." (State's Exhibit 77)

On April 20, Alvaro asked his father to go to the post office to mail the tapes he had made. He planned to shoot himself while his father was on that errand. However, his father returned as Alvaro was putting on his National Guard uniform and wrestled the shotgun away from him. Alvaro left the house and drove away. His father called 911, and a deputy sheriff stopped Alvaro, handcuffed him, and took him to University of North Carolina Hospitals in Chapel Hill. Alvaro was

distraught and told a deputy multiple times that he wanted to die. (Tpp. 1599-1603, State's Exhibit 77) He was involuntarily committed with an initial diagnosis of psychotic disorder, major, recurrent, and severe depressive disorder. (Tpp. 1971-72, 2088) He was discharged on April 27 after hospital staff thought he was no longer suicidal. His diagnosis at the time of discharge included major depressive disorder, possible psychotic disorder, and anxiety disorder. (Tpp. 2091, 2507)

After his release from UNC, Alvaro received outpatient therapy at two clinics. He secured a discharge from the National Guard. (Tpp. 1641, 1809-10, 1830, 1882, 1894) As result of a disagreement between the clinics about which clinic should treat him, he did not receive any therapy or medication after July 24. (Tpp. 1629-37, 1894, 1973-87)

Alvaro Castillo's Preparations for the August 30, 2006 Shootings

Alvaro Castillo interpreted his failure to kill himself as a sign that God had saved him from suicide so that he could commit a Columbine-like massacre at Orange High School to "sacrifice" other children to save them from evil. He wrote in his journal on June 1,

Anyway, I now realize what I must do. I must commit a Columbine-like massacre at . . . Orange High School. I started getting ideas for it a few days after I was released. I must save some children from sin! This massacre will be different from Columbine and Red Lake. Eric Harris

and Dylan Klebold wanted revenge. Jeff Weise wanted power. I want redemption and sacrifice. I will sacrifice some students and then kill myself.”

He also wrote, “Sacrifice will occur and those children will be freed from evil. . . . We have to die and leave this sick, drinking, sex-crazed, drug using, sadistic, masochistic world.” Just a few days after his release, he bought another shotgun, and he planned to buy a semiautomatic rifle -- the same models used by Harris and Klebold. He planned to name the shotgun “Arlene” (the name Harris gave his shotgun) and the rifle “A.R.,” and he planned to saw off the shotgun, as Harris had done with his shotgun. He bought the rifle and ammunition in early June. He continued to watch violent movies, including movies about school shootings. (Tpp. 1977-81, State’s Exhibit 77)

In June, Alvaro told his mother that he wanted to visit Columbine High School in Colorado, and she agreed to go with him. She somehow thought that visiting Columbine might end his obsession with that massacre. They went for two days to Colorado. Alvaro was excited to visit Columbine. He bought a trench coat in Colorado because Eric Harris had worn a trench coat during the Columbine massacre. (Tpp. 1802-05, 1823-26, State’s Exhibit 77)

In July, Alvaro bought a second shotgun and sawed off the barrel. On July 10, he wrote, “My weapons are my lovers. I spend a lot of time with them and I hope they will not leave me. I am always faithful to them.” On July 10, he wrote

that on the day of the massacre, “I will contact the principal of Columbine High School and tell him about my plans. It has to happen. A school shooting has never happened in North Carolina so it is high time that one happens.” He wrote on July 11, “Ironic that I want to stop harm by doing it.” He began to make pipe bombs because Harris and Klebold used pipe bombs at Columbine; he learned how to make them from a movie about the Columbine massacre. On July 24 (his last day of therapy), he wrote, “I know that I am doing the right thing. We must remember Columbine. Sacrifices must be made.” On July 29, he wrote, “I feel sorry for the families and parents of the victims, but there is nothing I can do. I cannot end pain except my own. I will sacrifice those children so they will not suffer the harsh consequences and hardships of life. Everything I hear, see, smell, touch, taste, and think about is temptation. All I see is temptation and sin.” On August 2, he wrote, “Guns are just like toys and lovers for me. I adore them. They are fun to play with. I love my weapons.” (Tpp. 2049, 2073-74, 2307-08, 2369, State’s Exhibit 77)

In August, Alvaro’s mother found his rifle under his bed. His parents wanted to discard the rifle, but Alvaro persuaded them to let him keep it. Alvaro slept with his rifle for comfort -- he said it was like a child holding a Teddy bear or a blanket. (Tpp. 1715-16, 1807-12, 2004-06, State’s Exhibit 77)

On August 10, Alvaro wrote that he had chosen August 30 as the date for his planned Orange High School massacre. He noted that it was the anniversary of the flooding of New Orleans from Hurricane Katrina and the birthday of Kip Kinkel, who killed his parents and then killed two students in a school shooting in 1998. He said he would buy black cargo pants and boots for his shooting. He wrote, "I must do this! I have to show the world Columbine. We must talk and remember it. I love thinking about it. I must die! I am having very sick fantasies these days. I do not want to think or feel anymore. I do not want to be conscious. I want to die young and as a virgin. Lust is a killer. Lust will bring the world down." (Tpp. 2076, State's Exhibit 77)

On August 29, he wrote, "Well, tomorrow is the day that Hillsborough, NC will remember Columbine once and for all. I am ready! I have been waiting for months. Tomorrow is the day that I will die! I want to die! It is that simple!" He also wrote, "I am tired of my depression. I am feeling really down these days. I cannot deal with my emotions anymore. People who read this will probably laugh at me. I am tired of suffering in the world." (State's Exhibit 77)

Beginning in late May 2006, Alvaro made videos in which he reviewed his obsessions and his plans for the Orange High School shooting. (State's Exhibits 95, 95) In the videos, as in his journal, he talked at length about his belief that God had directed him to kill students at Orange High School to sacrifice them to save

them from an evil world. In a tape made in May, Alvaro said, “I believe that I was stopped from suicide by God because I have to do another massacre. That’s right. In my view, I think I must do a massacre. . . . And I’m not doing it for revenge. I love that school. I’m doing it to save them. Another massacre has got to take place so we can remind the world of how evil it is.” Alvaro also talked about the significance he found in similarities between the signs for Columbine and Orange High Schools: “I’ve been looking for signs of Columbine in Orange High School. And look. Look at this. That sign, my friends, looks exactly like the one in Columbine. . . . It looks exactly like it. This is why it must happen. It must happen. I must save them.” In a tape made in July, Alvaro put his shotgun in his mouth and said, “That’s how I’m going to end my life. Put a round in, cock it, blow my brains out.” Then he immediately sang the theme song from the old *Mickey Mouse* television show. (State’s Exhibits 95, 96)

Alvaro compiled an 18-page notebook with detailed descriptions and photographs of school shootings, other mass murders, and shooters, which he named, “Mass Murderers and School Shootings of the 20th and 21st Centuries.” (State’s Exhibit 84)

The Shootings on August 30, 2006

On August 30, Alvaro fatally shot his father multiple times as his father was reading on a couch in their living room. Then he covered his father's body with a sheet. He left the following note on the couch, next to his father's body:

I just sacrificed my father. I am not proud for what I did.
I will see him soon in heaven. I am sorry. I am crazy."

(Tp. 1328, 2366-67) He taped this note to his bedroom door: "I am sorry! Sorry for everything. I am sick. Mentally ill." He left his journal, his notebook about mass murders and school shootings, and videotapes on his bed. (Tpp. 1415-26)

At noon, he wrote in his journal,

Today is the big day for Operation Columbine. It is time that the world be reminded of Columbine. I will die today! I just killed my father. I felt good! He is finally dead. I do feel a little remorse. Still, he is finally with God and Tony. I loved my father. I hesitated, but I finally did it. God be with him.

(State's Exhibit 77)

After he killed his father, Alvaro also made a short video of himself talking into the camera and of his father's body under the sheet. He said,

I did it. I killed my father. I sacrificed him. He's with the Lord now. He's with Tony. And now it's time to get this done. I am sorry. But look at me. I'm not even crying now. I just killed him, and I feel fine. I feel fine. I feel fine.

. . .

Once again, I'm sorry for what I did. But he's gone. He's dead. I'm sorry for the pain I'm going to cause, but I'm not right in the head. I just want to die. I just want to die.

(State's Exhibits 95, 96)

Alvaro then drove to Orange High School in a van, parking near the school. He wore a black trench coat, black cargo pants, boots, a military belt with ammunition pouches, a T-shirt, and a headband. He had written "Shoot me" and "Columbine" in marker on the headband. He had written "Natural Selection" on the front of the T-shirt and "Remember Columbine, April 20, 1999, Littleton, Colorado" on the back. (Tpp. 1170-71, 1260-61) He also had a number of magazines of 9 mm. bullets, some homemade pipe bombs, and smoke bombs. (Tpp. 1125-47, 1529)

Alvaro left the van with his rifle and sawed-off shotgun. He set off smoke bombs and fired his rifle into the air. Then he shot at students standing outside the school; none of them were hit, and they crawled into the school. (Tpp. 958-67) He fired at the school building. One bullet broke a window, and a second bullet broke glass above a door. (Tp. 1097) One student inside the school was hit in the shoulder by a shard of glass; he had a minor wound that was treated with a band-aid. (Tpp. 973-82) One bullet went through a window, hit another student in the chest, and bounced onto the floor. The bullet caused a small, swollen abrasion on

her chest. She was taken to the emergency room at UNC Hospitals and released in three hours. She had a large bruise, could not move her arm for a few weeks, and had a cough for two to three weeks. She did not receive medical treatment for the bruise or the cough. The wound healed, leaving a tiny scar. (Tpp. 1004-18)

School Resource Officer London Ivey and a teacher named Barry LeBlanc left the school and then ran toward Alvaro when they realized that his rifle had jammed. Ivey ordered Alvaro to put his weapons down, and Alvaro obeyed. Alvaro recognized Ivey and said, "Ivey, kill me. Shoot me. You'll like it. You'll like it." Ivey ordered Alvaro to lie down on the ground, Alvaro obeyed, and LeBlanc handcuffed him. (Tpp. 1026-35, 1063, 1071-80) According to Ivey, Alvaro said "nonsensical things, talking about Columbine." (Tp. 1035) Alvaro said twice, "Kill me. Just kill me. Remember Columbine." (Tp. 1081) Sheriff's deputies arrived at the school. As Ivey put him into a patrol car, Alvaro said, "Remember Columbine." (Tpp. 1035, 1096) Inside the car, Alvaro was distraught, and he said, "He won't hurt anyone else again." Ivey asked him what he meant, and Alvaro said, "I sacrificed him. He won't hurt anyone else again." Ivey asked whom he was talking about, and Alvaro said it was his father. (Tpp. 1035, 1064)

Officers found magazines of 9 mm. bullets, 9 mm. shell casings, and two pipe bombs in the parking lot. (Tpp. 1125-47, 1157-60) A car in the lot had a flat

tire, and there were two bullet holes in the body of the car. (Tpp. 1152-53) Inside the van, officers found a map with a layout of Orange High School, shotgun shells, and 9 mm. bullets. (Tpp. 1184-90)

Alvaro's statement about sacrificing his father prompted officers to check his house. They found Rafael Castillo's body on the couch, under a sheet. They found the note next to his body, the note on Alvaro's door, and the videos, journal, and notebook on Alvaro's bed. They found six pipe bombs, seven 9 mm. shell casings, another sawed-off shotgun, firecrackers, and smoke bombs. (Tpp. 1292-1303, 1305-31, 1415-37, 1529-30)

Deputies drove Alvaro to the Orange County Jail and then to the emergency room at UNC Hospitals. Deputy Rick Smith said that Alvaro was extremely upset in the patrol car on the way to the jail. Alvaro tried to wrap the seatbelt around his neck, but Smith took it away from him. Alvaro asked to be killed. (Tpp. 1232-44, 1274-75) Alvaro told Smith that he had killed his father that morning, that "He was sacrificed." (Tpp. 1244, 1275-76) He said that his father "was probably in heaven with the son that he loved," and he said that he loved his father but hated him for his father's abuse of his mother. (Tpp. 1251, 1277) Alvaro told Smith that "Orange High School was the perfect place to make people aware of the sacrifice." (Tp. 1276) He said that he "was going to save those kids from sex, drugs, pornography, and abusive people like my father in their lives." (Tpp. 1276-77)

Alvaro told Smith that it was the birthday of school shooter Kip Kinkel. (Tp. 1254) He also told Smith that he had sent an email about his plans to the principal of Columbine High School that morning. (Tp. 1258) Alvaro shook so uncontrollably that officers had to take his fingerprints twice. (Tpp. 1197, 1207)

Deputies then drove Alvaro to the UNC Emergency Room. During the ride, Alvaro pointed his hand at his head and mouth, and made sounds like a gun firing. (Tpp. 1197, 1209) He was cooperative, and he alternately became anxious and calm. He asked whether anyone was following them, such as the FBI, and said he was worried about snipers. He sang to himself as they neared the hospital. (Tpp. 1198-99, 1201, 1210-14) He told a doctor at the hospital that he had an imaginary twin named Red who had told him to commit the shootings at Orange High School. He said that Red told him to do terrible things all the time -- to hurt and rape people, and to make people rape Alvaro. He said it was the first time he had ever acted on any of Red's orders. (Tpp. 1201-02)

Alvaro's mother and sister visited him in the Central Prison mental hospital after the shootings. When his mother asked whether he would like to have confession, Alvaro first said, "Oh, yes, Mom. No problem." But then he said, "but what do I have to confess about? I didn't do anything bad. I did the right thing." (Tpp. 1756-57; 1722)

Mental Health Expert Testimony

Every mental health expert who examined Alvaro Castillo after the shootings agreed that he was psychotic, finding that he suffered from either schizoaffective disorder or psychosis not otherwise specified. (Tpp. 2181, 2209) Four mental health experts testified during the trial about Alvaro Castillo's mental condition at the time of the shootings on August 30, 2006.

Dr. Kyle Johnson, a UNC psychiatrist, interviewed Alvaro when officers brought him to the emergency room. Dr. Johnson diagnosed Alvaro as suffering from psychotic disorder not otherwise specified, paranoid delusions, and hallucinations. (Tp. 1673) Alvaro described his conduct that day in detail to Dr. Johnson. (Tp. 1677) Alvaro's affect was flat when he talked about his conduct that day, but he became tearful when he talked about his belief that he should die. (Tp. 1666) Alvaro told Dr. Johnson that he distinguished between sacrifice, which he called an act of love, and murder, which he called an act of hate. (Tpp. 1666, 1682-83) He said he had sacrificed his father to spare him from judgment for his abuse; he said he tried to sacrifice students to spare them from the pain he had suffered. Alvaro told Dr. Johnson that sacrificing people was the right thing to do. He said it would help them, that it was an act of love rather than an act of harm. (Tp. 1666) He said he hoped that a deputy would shoot him that day. (Tp. 1678) He told Dr. Johnson about his fantasies in which his imaginary twin Red had told

him to murder, torture, and rape people, to hit himself, and to be raped by others. Alvaro said he felt paranoid about cameras in air vents and hidden microphones in the room. He told Dr. Johnson that he sometimes had beaten himself with fists and belts. He also told Dr. Johnson about his obsession with the Columbine shootings. (Tpp. 1668-69)

Dr. James Hilkey, a psychologist, and Dr. James Bellard, a psychiatrist, both testified that as a result of serious mental illness, Alvaro Castillo could not distinguish between right and wrong when he shot his father and committed the shooting about Orange High School on August 30, 2006. Dr. Hilkey testified that on August 30, Alvaro was floridly psychotic, with two severe mental disorders: schizoaffective disorder and schizotypal personality disorder with obsessive-compulsive personality traits. (Tp. 2117) Schizoaffective disorder combines certain symptoms of schizophrenia and bipolar illness. Alvaro's symptoms included a delusional system, magical thinking that certain events were signs from God to carry out certain acts, paranoia, serious and chronic depression, manic episodes, and suicidal ideation. (Tpp. 2159-66)

Dr. Hilkey testified that Alvaro had a psychotic break after his suicide attempt: in the summer of 2006 he suffered from the delusion that his failure to commit suicide was a sign from God that he should carry out God's will to save other people from their suffering by sacrificing them. (Tpp. 2167-68, 2178-81,

2185-86, 2190-92, 2194, 2249-50, 2306) This delusion that he was following God's will led him to plan the shootings and to carry them out on August 30. (Tpp. 2178-81, 2186-87) Dr. Hilkey testified that Alvaro knew that he intended to kill people by shooting them and that the shootings were legally wrong, but due to his psychosis, he believed that the shootings were morally right. (Tpp. 2238-39, 2278-79, 2282-83, 2289, 2303, 2314-15) Although Alvaro had previously had murderous fantasies, he did not interpret them as directions from God until his delusional system began after his suicide attempt. (Tp. 2187) His rational reason for killing his father out of anger merged on August 30 with his irrational belief that he would be helping his father by sacrificing him to relieve his father's suffering. (Tpp. 2179-81) Similarly, Alvaro's desire for notoriety as a school shooter merged with his delusion that God wanted him to shoot students to sacrifice them to save them from suffering. (Tpp. 2226-28)

Dr. Bellard agreed with Dr. Hilkey's opinion that Alvaro Castillo suffered from schizoaffective disorder on August 30, 2006 and that as a result of that disorder, Alvaro had a delusion that God had spared him from suicide for a greater purpose: to sacrifice other people for their own good. (Tpp. 2341, 2353-54, 2374-75, 2385) This delusion meshed with his fascination with school shootings, leading him to plan and then carry out the shootings. (Tp. 2375) Dr. Bellard agreed with Dr. Hilkey's opinion that as a result of this delusion, Alvaro believed that his conduct was morally right, even though Alvaro knew it was legally wrong.

(Tpp. 2387-89) Dr. Bellard explained that in Alvaro's view, asking forgiveness from God for the shootings was consistent with his delusion that his acts were morally right, since even a soldier who kills someone in battle should be humble before God and ask God for forgiveness. (Tp. 2368)

Dr. Nicole Wolfe, a psychiatrist at Dorothea Dix Hospital, agreed that on August 30, 2006, Alvaro Castillo suffered from a severe mental illness -- including psychosis -- that influenced his actions. (Tp. 2375, 2742) However, she believed that Alvaro understood on August 30 that his actions that day were wrong. (Tpp. 2723-26) She thought that Alvaro committed the shootings to gain notoriety, and that his desire for forgiveness showed that he understood that his acts were wrong. (Tpp. 2723-26) Dr. Wolfe discounted Alvaro's many statements that his motive was to sacrifice people to save them from suffering (Tp. 2713) On cross-examination, though, Dr. Wolfe acknowledged that a person could have both rational and irrational reasons for committing an act and be legally insane. (Tp. 2799) She acknowledged that Alvaro had paranoid delusions about cameras and microphones (Tp. 2712). She also acknowledged that Alvaro had "a strong belief" that he would be helping students by killing them and that God wanted him to commit the shootings. (Tpp. 2765, 2774-75) On direct examination, Dr. Wolfe said that this belief was not a delusion (Tpp. 2714, 2722), but she said on cross-examination that it could be a delusion. (Tp. 2782)

ARGUMENT

I. THE TRIAL COURT COMMITTED PLAIN ERROR BY FAILING TO INSTRUCT THE JURY THAT THE INSANITY DEFENSE APPLIES IF A DEFENDANT BUT BELIEVED DUE TO MENTAL ILLNESS THAT HIS CONDUCT WAS MORALLY RIGHT.

Assignment of Error No. 39 (Rp. 115)

STANDARD OF REVIEW

If defense counsel did not ask the trial court to give a particular jury instruction, this Court reviews the trial court's failure to give the instruction for plain error. *State v. Collins*, 334 N.C. 54, 62, 431 S.E.2d 188, 193 (1993). Plain error is error "so fundamental as to amount to a miscarriage of justice or which probably resulted in the jury reaching a different verdict than it otherwise would have reached." *Id.*

DISCUSSION

Abundant evidence showed that Alvaro Castillo committed the shootings because mental illness led him to believe that God wanted him to shoot his father and students as a sacrifice to save them from suffering. That is, abundant evidence showed that due to mental illness, Mr. Castillo irrationally believed that his acts were morally right. The trial court committed plain error by failing to instruct the

jury that the insanity defense would apply if Mr. Castillo believed that his conduct was morally right, even if he understood that it was legally wrong.

The trial court followed the pattern jury instruction in defining the insanity defense for the jury twice:

The test of insanity as a defense is whether the defendant at the time of the alleged offense was laboring under such a defect of reason from disease or deficiency of the mind as to be incapable of knowing the nature and quality of the act or if he did know this, whether he was by reason of such defect of reason, incapable of distinguishing between right and wrong in relation to the act. This defense consists of two things: First, the defendant must have been suffering from a disease or defect of the mind at the time of the alleged offense; second, this disease or defect must have so impaired his mental capacity that he either did not know the nature and quality of the act as he was committing it or, if he did, that he did not know that this act was wrong.

(Tpp. 3033-34; Rpp. 49-50)

As to [first-degree or second-degree murder], it would be your duty to return a verdict of not guilty if you were satisfied by the evidence that the defendant was suffering from a disease or defect of the mind at the time of the alleged act and that this disease or defect so impaired his mental capacity that he either did not know the nature and quality of the act as he was committing it or, if he did, that he did not know that this act was wrong.

(Tp. 3039; Rp. 55) The trial court instructed the jury to use this definition of the insanity defense for the other alleged offenses, too. (Tpp. 3042-48; Rpp. 58-64)

The problem with this definition of the insanity defense is that it does not explain the meaning of the word “wrong.” Specifically, this definition does not tell jurors whether “wrong” means “legally wrong” or “morally wrong.”

For over 150 years, North Carolina courts have held that a defendant is legally insane if he or she commits a criminal act but, as a result of mental illness, does not know that the act is morally wrong. *State v. Sewell*, 48 N.C. 245 (1855), was the first case in North Carolina to discuss the meaning of legal insanity after *M’Naghten’s Case*, 10 Cl. & Fin. 200, 8 Eng. Rep. 718 (1843). The Court ruled in *Sewell* that “if, at the time the prisoner commits the act, his mind is then capable of distinguishing between moral right and wrong, he is an accountable being, and comes within the operation of the law.” In *State v. Brandon*, 53 N.C. 463, 468 (1862), the Court ruled that

[t]he case put of a criminal act committed under the belief that it was commanded by God, would fall under the rule. The perpetrator in such would not know he was doing what was wrong, but on the contrary, believe he was doing what was right in obeying a power who had a right to command him. This condition of mind would constitute insane delusion in respect to the particular act committed, and if clearly established by proof of pre-existent facts, would excuse from responsibility.

The Supreme Court has consistently reaffirmed this precedent. In *State v. Haywood*, 61 N.C. 376 (1867), the Court approved a jury instruction that if a defendant “was under the visitation of God, and could not distinguish between

good and evil, and did not know what he did, he is not guilty of any offense against the law; for guilt arises from the mind and wicked will.” *Accord, State v. Bracy*, 215 N.C. 248, 256, 1 S.E.2d 891, 896 (1939); *State v. Terry*, 173 N.C. 761, 92 S.E. 154 (1917); *State v. English*, 164 N.C. 497, 509-10, 80 S.E. 72, 76-77 (1913). In *State v. Thompson*, 328 N.C. 477, 487, 402 S.E.2d 386, 391 (1991), the Court approved an instruction that the test of insanity is whether the defendant understood “the moral wrongfulness of the particular and specific act at issue.”

In *State v. Hodgen*, 47 N.C. 329, 334, 267 S.E.2d 32, 35, *review denied*, 301 N.C. 100, 273 S.E.2d 305 (1980), this Court explained that the test of insanity is whether the defendant understood “the moral ‘wrong’ of the particular and specific act.” In setting out this rule, the Court cited two law review articles that explained for the test of insanity under North Carolina law, “wrong” means “morally wrong”: Dillard S. Gardner, *Insanity as a Defense in the North Carolina Criminal Law*, 30 N.C. L. REV. 4, 11-12 (1951); Comment, *The Insanity Defense in North Carolina*, 14 WAKE FOREST L. REV. 1157, 1166-70 (1978).

The meaning of “wrong” is crucial in this case because the evidence showed that Mr. Castillo knew his acts were legally wrong but that as result of mental illness, he believed they were morally right. Indeed, Mr. Castillo’s belief that God wanted him to kill his father and students precisely fits the Supreme Court’s 1862 ruling in *Brandon* that the insanity defense applies to “a criminal act committed

under the belief that it was commanded by God. . . .” *State v. Brandon, supra*, 53 N.C. at 468.

The jury instructions about the insanity defense in this case were not adequate because they did not explain that even if Mr. Castillo understood that his acts were legally wrong, the insanity defense would apply if, by reason of mental illness, he did not understand that his acts were morally wrong. The absence of such an explicit explanation of “wrong” deprived the jurors of the guidance they needed to consider the insanity defense in the circumstances of this case.

The absence of such an instruction was plain error in this case. There was uncontested evidence that Alvaro Castillo knew that his acts were legally wrong. However, there was also uncontested evidenced that as a result of mental illness, he believed that God wanted him to kill his father and students as a sacrifice to save them from suffering. In other words, there was uncontested evidence that he knew that his acts were legally wrong but that he believed that his acts were morally right.² It is highly probable that the jurors would have found Mr. Castillo not guilty by reason of insanity if the trial court had instructed them that “wrong” means “morally wrong.” Accordingly, Mr. Castillo asks this Court to reverse his convictions.

II. THE TRIAL COURT ABUSED ITS DISCRETION BY OVERRULING DEFENDANT'S OBJECTION TO AN IMPROPER STATEMENT MADE BY THE PROSECUTOR IN CLOSING ARGUMENT.

Assignment of Error No. 34 (Rp. 113)

Standard of Review

This Court reviews a trial court's decision to overrule a defendant's objection to the State's closing argument for abuse of discretion. *State v. Jones*, 355 N.C. 117, 131, 558 S.E.2d 97, 106 (2002). The trial court's decision is an abuse of discretion if the State's closing argument was improper and if there is a reasonable possibility that the jury would have reached a different result if the trial court had sustained the defendant's objection. *State v. Allen*, 353 N.C. 504, 509, 546 S.E.2d 372, 375 (2001).

Discussion

At no point in this trial was there any question that Mr. Castillo had committed these acts. Moments after his arrest, Alvaro Castillo told Officer Ivey that he had killed his father. (Tpp. 1035, 1064) Defense counsel began his opening statement by admitting that Alvaro Castillo killed his father and fired shots at Orange High School. (Tp. 864) Counsel repeated this admission at the end of his opening statement (Tp. 886) and in closing argument. (Tpp. 2934,

² Although Dr. Wolfe maintained that Mr. Castillo's strong belief that his acts were morally right did not amount to a delusion, she acknowledged that he had that belief and that the belief resulted from his mental illness. (Tpp. 2765, 2774-75)

2977) There was only one question in the trial: whether Mr. Castillo was criminally responsible for these acts or whether he was not guilty solely by reason of insanity. The prosecutor's closing argument crossed the line of propriety when he said (over defense counsel's timely objection) that the defense was "faced with a dilemma" because a factual defense would not succeed and the defense had to find another strategy. This argument wrongly impugned the integrity of both defense counsel and Mr. Castillo and violated due process and the Sixth Amendment right to counsel by contending that Mr. Castillo and his attorneys raised the insanity defense only because they were stymied from claiming that Mr. Castillo had committed the alleged criminal acts.

Here is the relevant portion of the prosecutor's argument and defense counsel's objection:

But -- so the defense in this case, they are faced with the dilemma. You know what the defendant has been thinking about. You know about all these plans. You know about all these preparations. So a factual defense just isn't going to work. So where do you go next? Well, obviously because the defendant did have mental illness the next place to go is --

MR. WILLIAMS (defense counsel): Your Honor, may we approach.

THE COURT: Yes.

(A bench conference was held off the record and out of the hearing of the jury)

MR. WOODALL: So anyway, the defense -
- they have got a dilemma here. You are not going to
have a factual defense here. It's going to come down to a
mental health type of defense.

(Tp. 2885, lines 10-24)

Although the trial court did not announce its ruling about the objection after the bench conference, the prosecutor's immediate repetition of his argument made it clear that the court had overruled the objection. The trial court's ruling was an abuse of discretion.

North Carolina law gives attorneys wide latitude in closing arguments. *State v. Rogers*, 355 N.C. 420, 462, 562 S.E.2d 859, 885 (2002). However, our courts have rightly emphasized that latitude is not license, and that fairness and professional civility require trial courts to impose boundaries of propriety on closing arguments. *State v. Matthews*, 358 N.C. 102, 112, 591 S.E.2d 535, 542 (2004); *State v. Rogers, supra*, 355 N.C. at 462, 562 S.E.2d at 885. *See also Berger v. United States*, 295 U.S. 78, 88, 79 L.Ed. 1314, 1321 (1935). The prosecutor's argument here crossed those boundaries.

The prosecutor's argument was improper for two reasons. First, it wrongly attacked the integrity of defense counsel and Mr. Castillo by claiming that they regarded this trial as a mere game in which they would have denied that Mr. Castillo had committed the criminal acts if they could have gotten away with such a denial. North Carolina courts have repeatedly warned that prosecutors may not

make closing arguments that impugn the integrity of defense counsel. *State v. Matthews*, 358 N.C. 102, 112, 591 S.E.2d 535, 542 (2004); *State v. Rogers, supra*, 355 N.C. at 462, 562 S.E.2d at 885; *State v. Rivera*, 350 N.C. 285, 514 S.E.2d 720 (1999); *State v. Sanderson*, 336 N.C. 1, 10, 442 S.E.2d 33, 39 (1994); *State v. Riley*, ___ N.C. App. ___, 688 S.E.2d 477, *cert. denied*, 364 N.C. 246, ___ S.E.2d ___ (2010).

State v. Riley is instructive. In *Riley*, the defendant's testimony contradicted an admission he had made in his pretrial statement. The prosecutor said during closing argument that the defendant probably had decided to contradict his previous admission because his attorney had told him that the admission could subject him to a greater sentence. This Court ruled that the prosecutor's argument was improper. ___ N.C. App. at ___, 688 S.E.2d at 482. Similarly, in this case, the prosecutor improperly implied that defense counsel and Mr. Castillo raised the insanity defense only because they knew that they could not get away with denying that Mr. Castillo had committed the shootings. That is, the prosecutor improperly implied that the defense counsel and Mr. Castillo presented the insanity defense merely as a strategic ploy in a game of litigation rather than as sincere effort to help the jury understand the truth about why an eighteen-year-old boy killed his own father and shot two students.

Second, the prosecutor traveled outside the record by speculating that defense counsel and Mr. Castillo would have denied that Mr. Castillo had committed the shootings if the State's evidence had not been so strong. While counsel may make arguments based on reasonable inferences from the evidence, counsel may not base a closing argument on matters outside the trial record. N.C. Gen. Stat. 15A-1230(a); *State v. Matthews, supra*, 358 N.C. at 112, 591 S.E.2d at 542; *State v. Jones*, 355 N.C. 117, 135, 558 S.E.2d 97, 108 (2002); *State v. Riley, supra*, ___ N.C. App. at ___, 688 S.E.2d at 481.

The prosecutor's argument was highly prejudicial. Whether the insanity defense applied to Mr. Castillo's conduct was the only issue in this trial. The prosecutor's speculation that defense counsel and Mr. Castillo raised the insanity defense as a mere ploy to solve a "dilemma" in a game of litigation undermined the seriousness of the issue and the strength of the evidence of Mr. Castillo's insanity. There is a reasonable possibility that the jury would have found Mr. Castillo not guilty by reason of insanity if the trial court had sustained defense counsel's objection.

It is helpful to compare this case with *State v. Raines*, 362 N.C. 1, 12-13, 653 S.E.2d 126, 133-34 (2007), *cert. denied*, ___ U.S. ___, 174 L.Ed.2d 601 (2009), and with this Court's decision in *Riley*. In *Raines*, the defendant admitted that he had killed two people. The defense sought to convince the jury to convict

the defendant of second-degree murder rather than first-degree murder. In closing argument, a prosecutor said, over objection, that the defense would have falsely denied that the defendant had killed the victims if the State had not had such strong evidence. The Supreme Court did not decide whether the prosecutor's argument was improper. The Court found that the statement "was neither appropriate nor laudable, but it was not extreme" so as to require reversal, noting that the evidence of first-degree murder was overwhelming. *Id.* at 13, 653 S.E.2d at 134. As discussed above, this Court ruled that the prosecutor's closing argument in *Riley* was improper. The Court held, however, that the improper argument did not require reversal in light of the substantial evidence of guilt. In contrast, in this case, the evidence on insanity was closely contested. Two experts, Dr. Hilkey and Dr. Bellard, gave their opinions that Mr. Castillo was legally insane at the time of the crimes. Even Dr. Wolfe, the only expert who thought that he was not legally insane, agreed that Mr. Castillo suffered from a serious mental illness that led him to believe that his conduct was morally right. There is a reasonable possibility that in this case, the prosecutor's improper argument led the jury to reject the insanity defense. Accordingly, Mr. Castillo asks this Court to reverse his convictions.

CONCLUSION

For the foregoing reasons, defendant respectfully asks the Court to reverse his convictions and to order a new trial.

Respectfully submitted this the 19th day of September, 2010.

(Electronic Submission)
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CERTIFICATE OF COMPLIANCE WITH N.C.R. APP. P. 28(j)(2)

Undersigned counsel hereby certifies that this brief is in compliance with N.C. R. App. 28(j)(2) in that it is printed in 14-point Times New Roman font and contains no more than 8,750 words in the body of the brief, footnotes, and citations included, as indicated by the word-processing program used to prepare the brief.

This the 19th day of September, 2010.

(Electronic Submission)
Benjamin Dowling-Sendor
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CERTIFICATE OF SERVICE

I further hereby certify that a copy of the above and foregoing Defendant-Appellant's Brief has been duly served upon Mr. John G. Barnwell and Mr. Derrick C. Mertz, Assistant Attorneys General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629, by first-class mail, postage prepaid.

This the 19th day of September, 2010.

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