

## Insanity defense undergoes test case

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The Tennessee Supreme Court is reviewing the way the state's courts handle the insanity defense in criminal cases for the first time since the legislature rewrote the law on the subject seven years ago.

The General Assembly voted in 1995 to shift the burden of proof from the prosecution to the defense when a defendant claims he or she is not guilty of a crime because of insanity. Under the law that had been in effect for many years, the prosecution had the burden of proving a defendant was sane once the defense had put on substantial proof of insanity.

The Supreme Court is now considering whether a conviction can stand if the defense presented "clear and convincing evidence" of insanity at the time of the offense and the prosecution did not present any proof directly rebutting that.

The test case involves Christopher M. Flake, 30, a former criminal justice student with a long history of mental problems, who was convicted of killing two men and attempting to kill a third during a two-day period in April 1997.

The Supreme Court will hear arguments April 2 on whether the state Court of Criminal Appeals was right when it reversed a jury's finding that Flake was guilty of attempted voluntary manslaughter in the non-fatal shooting of Turner Carpenter, a 67-year-old Memphis church counselor who had agreed to talk with him on April 6, 1997.

A Shelby County Criminal Court judge imposed a four-year prison sentence on Flake, the son of an FBI agent who lives in the Memphis suburb of Germantown, for that crime in February 2000.

Flake's murder convictions, which got him two sentences of life without the possibility of parole, are not as far along in the appeals process. He was convicted in January 2001 of first-degree murder in the shooting deaths of a former employer and an Alcoholics Anonymous counselor, in separate incidents the night before Carpenter was shot.

Nashville attorney David Raybin, who has joined Flake's defense team at the appeals-court level, says that the Supreme Court's ruling in the Carpenter shooting case should also determine whether Flake's murder convictions stand, since the evidence that was presented about Flake's mental condition was similar in all the cases.

Flake spent more than two years in state mental hospitals before doctors at Western Mental Health Institute determined in August 1999 that he was competent to stand trial and insane when he shot Carpenter.

The lawyers who represented Flake during the Carpenter shooting trial, in November 1999, presented testimony from five mental health experts, all of whom said he met the legal test for insanity at the time of the shooting. Carpenter testified that Flake seemed to "turn into the devil himself" just before he fired the shot, and investigators said Flake told them that "voices" told him to shoot Carpenter as a signal to the FBI to come to the church "to take care of the terrorists and Mafia members" there.

Dr. John Hutson, a clinical psychologist, said Flake was one of the three most disturbed persons he had seen out of almost 10,000 evaluations he had performed for sanity and competence to stand trial.

Prosecutors presented testimony from two doctors and the mental health director at the Shelby County Jail, but none of them had evaluated Flake's mental condition at the time he shot Carpenter, in a church office on a Sunday evening.

The prosecution asked the jury to convict Flake of attempted first-degree murder, but the panel found him guilty of the lesser offense of attempted voluntary manslaughter.

Raybin said in an interview last week that "there are extreme cases where a jury verdict is wrong and it should be changed by the appellate courts."

"It's so hard for lay people to realize that mental illness is real," Raybin said. He said studies had shown that people think the insanity defense is used much more often than it actually is.

"It's extraordinarily rare for it to be successful," Raybin said. "This is a case of someone who is profoundly insane. Anyone who hears the facts would say that this is crazy."

But Assistant State Attorney General Kim R. Helper said, in the brief she filed with the Supreme Court, that there were enough conflicts in the trial testimony about Flake's mental condition to justify the jury's rejection of his insanity defense.

Helper noted that legislators said, when they rewrote the state's criminal insanity law in 1995, that "the ultimate issue of a defendant's sanity remains with the jury."

In the Flake case, she said, "the jury's verdict in no way demonstrates that it disregarded the facts of the case. Rather, based upon the facts, the jury simply did not deem the expert opinions offered by the defendant convincing to satisfy his burden of proof."