

AKE v. OKLAHOMA

No. 83-5424

SUPREME COURT OF THE UNITED STATES

470 U.S. 68; 105 S. Ct. 1087; 84 L. Ed. 2d 53; 1985 U.S. LEXIS 52; 53 U.S.L.W. 4179

November 7, 1984, Argued  
February 26, 1985, Decided

OPINION

JUSTICE MARSHALL delivered the opinion of the Court.

The issue in this case is whether the Constitution requires that an indigent defendant have access to the psychiatric examination and assistance necessary to prepare an effective defense based on his mental condition, when his sanity at the time of the offense is seriously in question.

I

Late in 1979, Glen Burton Ake was arrested and charged with murdering a couple and wounding their two children. He was arraigned in the District Court for Canadian County, [\*71] Okla., in February 1980. His behavior at arraignment, and in other prearraignment incidents at the jail, was so bizarre that the trial judge, *sua sponte*, ordered him to be examined by a psychiatrist "for the purpose of advising with the Court as to his impressions of whether the Defendant may need an extended period of mental observation." App. 2. The examining psychiatrist reported: "At times [Ake] appears to be frankly delusional. . . . He claims to be the 'sword of vengeance' of the Lord and that he will sit at the left hand of God in heaven." *Id.*, at 8. He diagnosed Ake as a probable paranoid schizophrenic and recommended a prolonged psychiatric evaluation to determine whether Ake was competent to stand trial.

In March, Ake was committed to a state hospital to be examined with respect to his "present sanity," *i. e.*, his competency to stand trial. On April 10, less than six months after the incidents for which Ake was indicted, the chief forensic psychiatrist at the state hospital informed the court that Ake was not competent to stand trial. The court then held a competency hearing, at which a psychiatrist testified:

"[Ake] is a psychotic . . . his psychiatric diagnosis was that of paranoid schizophrenia -- chronic, with exacerbation, that is with current upset, and that in addition . . . he is dangerous. . . . [Because] of the severity of his mental illness and because of the intensities of his rage, his poor control, his delusions, he

requires a maximum security facility within -- I believe -- the State Psychiatric Hospital system." *Id.*, at 11-12.

The court found Ake to be a "mentally ill person in need of care and treatment" and incompetent to stand trial, and ordered him committed to the state mental hospital.

Six weeks later, the chief forensic psychiatrist informed the court that Ake had become competent to stand trial. At the time, Ake was receiving 200 milligrams of Thorazine, an antipsychotic drug, three times daily, and the psychiatrist indicated that, if Ake continued to receive that dosage, his [\*72] condition would remain stable. The State then resumed proceedings against Ake.

At a pretrial conference in June, Ake's attorney informed the court that his client would raise an insanity defense. To enable him to prepare and present such a defense adequately, the attorney stated, a psychiatrist would have to examine Ake with respect to his mental condition at the time of the offense. During Ake's 3-month stay at the state hospital, no inquiry had been made into his sanity at the time of the offense, and, as an indigent, Ake could not afford to pay for a psychiatrist. Counsel asked the court either to arrange to have a psychiatrist perform the examination, or to provide funds to allow the defense to arrange one. The trial judge rejected counsel's argument that the Federal Constitution requires that an indigent defendant receive the assistance of a psychiatrist when that assistance is necessary to the defense, and he denied the motion for a psychiatric evaluation at state expense on the basis of this Court's decision in *United States ex rel. Smith v. Baldi*, 344 U.S. 561 (1953).

Ake was tried for two counts of murder in the first degree, a crime punishable by death in Oklahoma, and for two counts of shooting with intent to kill. At the guilt phase of trial, his sole defense was insanity. Although defense counsel called to the stand and questioned each of the psychiatrists who had examined Ake at the state hospital, none testified about his mental state at the time of the offense because none had examined him on that point. The prosecution, in turn, asked each of these

psychiatrists whether he had performed or seen the results of any examination diagnosing Ake's mental state at the time of the offense, and each doctor replied that he had not. *As a result, there was no expert testimony for either side on Ake's sanity at the time of the offense.* The jurors were then instructed that Ake could be found not guilty by reason of insanity if he did not have the ability to distinguish right from wrong at the time of the alleged offense. They [\*73] were further told that Ake was to be presumed sane at the time of the crime unless *he* presented evidence sufficient to raise a reasonable doubt about his sanity at that time. If he raised such a doubt in their minds, the jurors were informed, the burden of proof shifted to the State to prove sanity beyond a reasonable doubt.<sup>1</sup> The jury rejected Ake's insanity defense and returned a verdict of guilty on all counts.

1 *Oklahoma Stat., Tit. 21, § 152* (1981), provides that "[all] persons are capable of committing crimes, except those belonging to the following classes . . . (4) Lunatics, insane persons and all persons of unsound mind, including persons temporarily or partially deprived of reason, upon proof that at the time of committing the act charged against them they were incapable of knowing its wrongfulness." The Oklahoma Court of Criminal Appeals has held that there is an initial presumption of sanity in every case, "which remains until the defendant raises, by sufficient evidence, a reasonable doubt as to his sanity at the time of the crime. If the issue is so raised, the burden of proving the defendant's sanity beyond a reasonable doubt falls upon the State." *663 P. 2d 1, 10* (1983) (case below); see also *Rogers v. State*, *634 P. 2d 743* (Okla. Crim. App. 1981).

At the sentencing proceeding, the State asked for the death penalty. No new evidence was presented. The prosecutor relied significantly on the testimony of the state psychiatrists who had examined Ake, and who had testified at the guilt phase that Ake was dangerous to society, to establish the likelihood of his future dangerous behavior. Ake had no expert witness to rebut this testimony or to introduce on his behalf evidence in mitigation of his punishment. The jury sentenced Ake to death on each of the two murder counts, and to 500 years' imprisonment on each of the two counts of shooting with intent to kill.

On appeal to the Oklahoma Court of Criminal Appeals, Ake argued that, as an indigent defendant, he should have been provided the services of a court-appointed psychiatrist. The court rejected this argument, observing: "We have held numerous times that, the unique nature of capital cases notwithstanding, the State

does not have the responsibility of [\*74] providing such services to indigents charged with capital crimes." *663 P. 2d 1, 6* (1983). Finding no error in Ake's other claims,<sup>2</sup> the court affirmed the convictions and sentences. We granted certiorari. *465 U.S. 1099* (1984).

2 The Oklahoma Court of Criminal Appeals also dismissed Ake's claim that the Thorazine he was given during trial rendered him unable to understand the proceedings against him or to assist counsel with his defense. The court acknowledged that Ake "stared vacantly ahead throughout the trial" but rejected Ake's challenge in reliance on a state psychiatrist's word that Ake was competent to stand trial while under the influence of the drug. *663 P. 2d, at 7-8*, and n. 5. Ake petitioned for a writ of certiorari on this issue as well. In light of our disposition of the other issues presented, we need not address this claim.

We hold that when a defendant has made a preliminary showing that his sanity at the time of the offense is likely to be a significant factor at trial, the Constitution requires that a State provide access to a psychiatrist's assistance on this issue if the defendant cannot otherwise afford one. Accordingly, we reverse.

## II

Initially, we must address our jurisdiction to review this case. After ruling on the merits of Ake's claim, the Oklahoma court observed that in his motion for a new trial Ake had not repeated his request for a psychiatrist and that the claim was thereby waived. *663 P. 2d, at 6*. The court cited *Hawkins v. State*, *569 P. 2d 490* (Okla. Crim. App. 1977), for this proposition. The State argued in its brief to this Court that the court's holding on this issue therefore rested on an adequate and independent state ground and ought not be reviewed. Despite the court's state-law ruling, we conclude that the state court's judgment does not rest on an independent state ground and that our jurisdiction is therefore properly exercised.

The Oklahoma waiver rule does not apply to fundamental trial error. See *Hawkins v. State, supra, at 493*; *Gaddis [\*75] v. State*, *447 P. 2d 42, 45-46* (Okla. Crim. App. 1968). Under Oklahoma law, and as the State conceded at oral argument, federal constitutional errors are "fundamental." Tr. of Oral Arg. 51-52; see *Buchanan v. State*, *523 P. 2d 1134, 1137* (Okla. Crim. App. 1974) (violation of constitutional right constitutes fundamental error); see also *Williams v. State*, *658 P. 2d 499* (Okla. Crim. App. 1983). Thus, the State has made application of the procedural bar depend on an antecedent ruling on federal law, that is, on the determination of whether federal constitutional error has been committed. Before

applying the waiver doctrine to a constitutional question, the state court must rule, either explicitly or implicitly, on the merits of the constitutional question.

As we have indicated in the past, when resolution of the state procedural law question depends on a federal constitutional ruling, the state-law prong of the court's holding is not independent of federal law, and our jurisdiction is not precluded. See *Herb v. Pitcairn*, 324 U.S. 117, 126 (1945) ("We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of Federal laws, our review could amount to nothing more than an advisory opinion"); *Enterprise Irrigation District v. Farmers Mutual Canal Co.*, 243 U.S. 157, 164 (1917) ("But where the non-Federal ground is so interwoven with the other as not to be an independent matter, or is not of sufficient breadth to sustain the judgment without any decision of the other, our jurisdiction is plain"). In such a case, the federal-law holding is integral to the state court's disposition of the matter, and our ruling on the issue is in no respect advisory. In this case, the additional holding of the state court -- that the constitutional challenge presented here was waived -- depends on the court's federal-law ruling and consequently does not present an independent state ground for the decision rendered. We therefore turn to a consideration of the merits of Ake's claim.

### III

This Court has long recognized that when a State brings its judicial power to bear on an indigent defendant in a criminal proceeding, it must take steps to assure that the defendant has a fair opportunity to present his defense. This elementary principle, grounded in significant part on the *Fourteenth Amendment's* due process guarantee of fundamental fairness, derives from the belief that justice cannot be equal where, simply as a result of his poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake. In recognition of this right, this Court held almost 30 years ago that once a State offers to criminal defendants the opportunity to appeal their cases, it must provide a trial transcript to an indigent defendant if the transcript is necessary to a decision on the merits of the appeal. *Griffin v. Illinois*, 351 U.S. 12 (1956). Since then, this Court has held that an indigent defendant may not be required to pay a fee before filing a notice of appeal of his conviction, *Burns v. Ohio*, 360 U.S. 252 (1959), that an indigent defendant is entitled to the assistance of counsel at trial, *Gideon v. Wainwright*, 372 U.S. 335 (1963), and on his first direct appeal as of right, *Douglas v. California*, 372 U.S. 353

(1963), and that such assistance must be effective. See *Evitts v. Lucey*, 469 U.S. 387 (1985); *Strickland v. Washington*, 466 U.S. 668 (1984); *McMann v. Richardson*, 397 U.S. 759, 771, n. 14 (1970).<sup>3</sup> Indeed, in *Little v. Streater*, 452 U.S. 1 (1981), we extended this principle of meaningful participation to a "quasi-criminal" proceeding and held that, in a paternity action, the State cannot deny the putative father blood grouping tests, if he cannot otherwise afford them.

3 This Court has recently discussed the role that due process has played in such cases, and the separate but related inquiries that due process and equal protection must trigger. See *Evitts v. Lucey*; *Bearden v. Georgia*, 461 U.S. 660 (1983).

[\*77] Meaningful access to justice has been the consistent theme of these cases. We recognized long ago that mere access to the courthouse doors does not by itself assure a proper functioning of the adversary process, and that a criminal trial is fundamentally unfair if the State proceeds against an indigent defendant without making certain that he has access to the raw materials integral to the building of an effective defense. Thus, while the Court has not held that a State must purchase for the indigent defendant all the assistance that his wealthier counterpart might buy, see *Ross v. Moffitt*, 417 U.S. 600 (1974), it has often reaffirmed that fundamental fairness entitles indigent defendants to "an adequate opportunity to present their claims fairly within the adversary system," *id.*, at 612. To implement this principle, we have focused on identifying the "basic tools of an adequate defense or appeal," *Britt v. North Carolina*, 404 U.S. 226, 227 (1971), and we have required that such tools be provided to those defendants who cannot afford to pay for them.

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A defendant's mental condition is not necessarily at issue in every criminal proceeding, however, and it is unlikely that psychiatric assistance of the kind we have described would be of probable value in cases where it is not. The risk of error from denial of such assistance, as well as its probable value, is most predictably at its height when the defendant's mental condition is seriously in question. When the defendant is able to make an *ex parte* threshold showing to the trial court that his sanity is likely to be a significant factor in [\*83] his defense, the need for the assistance of a psychiatrist is readily apparent. It is in such cases that a defense may be devastated by the absence of a psychiatric examination and testimony; with such assistance, the defendant might have a reasonable chance of success. In such a circumstance, where the

potential accuracy of the jury's determination is so dramatically enhanced, and where the interests of the individual and the State in an accurate proceeding are substantial, the State's interest in its fisc must yield.<sup>9</sup>

9 In any event, before this Court the State concedes that such a right exists but argues only that it is not implicated here. Brief for Respondent 45; Tr. of Oral Arg. 52. It therefore recognizes that the financial burden is not always so great as to outweigh the individual interest.

We therefore hold that when a defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial, the State must, at a minimum, assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense. This is not to say, of course, that the indigent defendant has a constitutional right to choose a psychiatrist of his personal liking or to receive funds to hire his own. Our concern is that the indigent defendant have access to a competent psychiatrist for the purpose we have discussed, and as in the case of the provision of counsel we leave to the States the decision on how to implement this right.

B

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IV

\*\*\*LEdHR6] [6]We turn now to apply these standards to the facts of this case. On the record before us, it is clear that Ake's mental state at the time of the offense was a substantial factor in his defense, and that the trial court was on notice of that fact when the request for a court-appointed psychiatrist [\*\*1098] was made. For one, Ake's sole defense was that of insanity. Second, Ake's behavior at arraignment, just four months after the offense, was so bizarre as to prompt the trial judge, *sua sponte*, to have him examined for competency. Third, a state psychiatrist shortly thereafter found Ake to be incompetent to stand trial, and suggested that he be

committed. Fourth, when he was found to be competent six weeks later, it was only on the condition that he be sedated with large doses of Thorazine three times a day, during trial. Fifth, the psychiatrists who examined Ake for competency described to the trial court the severity of Ake's mental illness less than six months after the offense in question, and suggested that this mental illness might have begun many years earlier. App. 35. Finally, Oklahoma recognizes a defense of insanity, under which the initial burden of producing evidence falls on the defendant.<sup>11</sup> Taken together, these factors make clear that the question of Ake's sanity was likely to be a significant factor in his defense.<sup>12</sup>

11 See n. 1, *supra*.

12 We express no opinion as to whether any of these factors, alone or in combination, is necessary to make this finding.

\*\*\*LEdHR5B] [5B]In addition, Ake's future dangerousness was a significant factor at the sentencing phase. The state psychiatrist who treated Ake at the state mental hospital testified at the guilt phase that, because of his mental illness, Ake posed a threat of continuing criminal violence. This testimony raised the issue of Ake's future dangerousness, which is an aggravating factor under Oklahoma's capital sentencing scheme, *Okla. Stat., Tit. 21, § 701.12(7)* (1981), and on which the prosecutor relied at sentencing. We therefore conclude that Ake also [\*\*87] was entitled to the assistance of a psychiatrist on this issue and that the denial of that assistance deprived him of due process.<sup>13</sup>

13 Because we conclude that the Due Process Clause guaranteed to Ake the assistance he requested and was denied, we have no occasion to consider the applicability of the *Equal Protection Clause*, or the *Sixth Amendment*, in this context.

Accordingly, we reverse and remand for a new trial.

*It is so ordered.*