IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

ROYAL CLARK,

Defendant and Appellant.

S045078

CAPITAL CASE

Fresno County Superior Court No. F91-446252-9
John E. Fitch, Judge

RESPONDENT'S SUPPLEMENTAL BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (continued)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, **v.** **ROYAL CLARK,** Defendant and Appellant.	S045078 **CAPITAL CASE**

STATEMENT OF THE CASE

On August 28, 2006, with this Court's permission, appellant filed a supplemental opening brief, raising the sole claim of instructional error in the sanity phase. Respondent addresses appellant's claim below. Rather than rehash the lengthy record, respondent adopts and incorporates by reference the statement of the case and the statement of facts set forth in the Respondent's Brief.

behavior, which could be viewed as irresistible impulse. For instance, Dr. Berg testified: "I still believe that he was in the condition that I told you about when I was here before, a condition in which he *was not in control*, was not aware, et cetera" (62 RT 9530, italics added); and on direct examination, agreeing with Dr. Richard King's evaluation and opinion, that "[appellant] did not appear to be floridly psychotic at the time of the offenses, but rather became enraged and unable to control his temper," and that "[appellant] did seem to understand that his judgment and his impulse control were notably nonexistent whenever he lost his temper" (62 RT 9532-9533).[3/] CALJIC No. 4.05 correctly states that irresistible impulse is not a proper basis for an insanity defense.[4/] (See *People v. Coddington* (2000) 23 Cal.4th 529, 602 ["With the restoration of the *M'Naghten* test of legal insanity, irresistible impulse no longer affords the basis for an insanity defense."], overruled on other grounds in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13; *People v. Cantrell* (1973) 8 Cal.3d 672, 685-686 ["The courts of this state have long refused to equate irresistible impulse with legal insanity or to accept it as a complete defense to a crime."], disapproved of on another ground by *People v. Flannel* (1979) 25 Cal.3d 668, 685, fn. 12; *People v. Hubert* (1897) 119 Cal. 216, 223.) "Irresistible impulse does not demonstrate that the defendant is unable to understand the nature and

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3. Respondent also adds that defense counsel's "a knee jerk reaction" remark during closing could be understood as irresistible impulse, despite his claim to the contrary. (64 RT 9841, 9905.)

4. California courts apply the *M'Naughten* test for insanity, that is, "at the time of the committing the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.". (See *People v. Kelly* (1992) 1 Cal.4th 495, 532-534; *People v. Skinner* (1985) 39 Cal.3d 765, 768; *People v. Coffman* (1864) 24 Cal. 230, 235.)

quality of an act or that he does not know that the act is wrong." (*People v. Coddington, supra,* 23 Cal.4th at p. 602.)

Appellant's claim, that CALJIC No. 4.05 was misleading in that there was a fair likelihood the jury misunderstood the instruction to preclude even consideration of the evidence of irresistible impulse as support for appellant's recognized insanity defense, is untenable.

> In order to prevail on a claim that the jury instructions are misleading, the claimant must prove a reasonable likelihood that the jury misunderstood the instructions as a whole. [Citation.] The absence of an essential element in one instruction may be supplied by another or cured in light of the instructions as a whole.

(*People v. Van Winkle* (1999) 75 Cal.App.4th 133, 147, internal quotations omitted; see *People v. Cain* (1995) 10 Cal.4th 1, 36; *People v. Castillo* (1997) 16 Cal.4th 1009, 1016.) Here, the trial court correctly and adequately explained the applicable law on the defense of insanity to the jury:

> Now, you folks have found [appellant] guilty of all crimes charged. You must now determine whether he was legally sane or legally insane at the time of the commission of each of these crimes. This is the only issue for you to determine in this proceeding.
>
> You may consider evidence of his mental condition before, during and after the time of the commission of the crime as tending to show [appellant's] mental condition at the time the crime was committed.
>
> Mental illness or mental abnormality, in whatever form either may appear, are not necessarily the same as legal insanity. A person may be mentally ill or mentally abnormal and yet not be legally insane.
>
> A person is legally insane when by reason of mental disease or mental defect he was incapable of knowing or understanding the nature and quality . . . of his acts, or incapable of distinguishing right from wrong at the time of the commission of the crime.
>
> The term "wrong" as used in the sanity trial means the violation of generally accepted standards of moral obligations.

(64 RT 9926 [CALJIC No. 4.00]; cf. *People v. Kelly, supra,* 1 Cal.4th at p. 535.) A jury instruction that irresistible impulse is not insanity simply emphasized, or clarified, that "[i]rresistible impulse does not demonstrate that the defendant is unable to understand the nature and quality of an act or that he

does not know that the act is wrong." (*People v. Coddington, supra,* 23 Cal.4th at p. 602; cf. *People v. Fields* (1983) 35 Cal.3d 329, 368-372 ["antisocial personality disorder" is not, as a matter of law, a mental disease or defect under the definition of insanity]; *People v. Martin* (1981) 114 Cal.App.3d 739, 743-746 [a "sociopath" is not a mental disease or defect under the definition of insanity].) Nothing in CALJIC No. 4.05 precluded consideration of irresistible impulse evidence to the extent that such evidence suggested appellant was incapable of knowing or understanding the nature and quality of his acts, or incapable of distinguishing right from wrong at the time of the commission of the crime. (See *People v. Coddington, supra,* 23 Cal.4th at p. 603.) To the contrary, the trial court instructed the jury:

> You may consider evidence of [appellant's] mental condition before, during and after the time of the commission of the crime as tending to show [his] mental condition at the time the crime was committed.

(64 RT 9926.) The import of this instruction was, as observed in Respondent's Brief at page 360, that "mental disease or mental defect" include any and all mental conditions that produce the requisite effect.[5/] (Cf. *People v. Kelly, supra,* 1 Cal.4th at pp. 535-536 [rejecting contention that reference to a "mental disease or mental defect" in the instruction prevented jury from considering the effects of both in combination because "[n]o reasonable juror would believe an insanity finding could be based upon a mental defect or upon a mental disease, but not both."].) In short, CALJIC No. 4.05 was not misleading or confusing. (Cf. *People v. Weaver* (2001) 26 Cal.4th 876, 968-969 [holding that trial court,

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5. Thus, as explained in Respondent's Brief, the requested clarifying instruction, that "The terms 'mental disease' and 'mental defect' include all mental conditions which produce the requisite effects," was unnecessary. "When the jury is properly instructed as to pertinent legal principles, the court need not restate those principles merely in another way." (*People v. Anderson* (1966) 64 Cal.2d 633, 641; *People v. Frye* (1985) 166 Cal.App.3d 941, 951-952.)

in instructing jury at sanity phase of capital murder prosecution that term "mental disease" or "mental defect" did not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, was not required to give an additional instruction, sua sponte, to the effect that evidence of more than mere criminal conduct could, together with evidence of criminal conduct, be considered as proof of a mental disease or defect; instruction as given was sufficiently clear.]; *People v. Buck* (1907) 151 Cal. 667, 674 ["It is contended that the defendant was prejudiced by that part of the charge of the court where, in defining the character of insanity which the law regards as a valid defense in cases of homicide and other crimes of violence, it is pointed out that 'irresistible impulse' to do an act known by the perpetrator to be wrong does not relieve him of its legal consequences. It is said that no such defense was made or attempted; that he had relied alone upon 'settled insanity,' and therefore that the injection of this 'false issue' into the case was confusing, misleading, and prejudicial to the only defense which had been made either in the evidence or the argument. We do not think it an error for a court where the defense of insanity is interposed to a charge of murder to state the law of insanity fully and with all its special limitations and qualifications, and we cannot see how the defendant could have been prejudiced by what was said in regard to 'irresistible impulse.'"].)

Regardless, any error in instructing the jury with CALJIC No. 4.05 was harmless under any standard of harmless error review. (*People v. Watson* (1956) 46 Cal.2d 818, 836; *Chapman v. California* (1967) 386 U.S. 18, 24.) First, appellant's insanity defense – that past injuries caused organic brain damage and immediate stressors on that night of the crimes triggered uncontrollable rage reactions, which rendered his brain "unconscious" in that the rage reactions overwhelmed his cognitive capacity to appreciate the nature and quality of one's acts or to know the difference between right and wrong –

was utterly implausible. The factual circumstances surrounding the commission of the crimes simply did not support an insanity defense, which was probably why defense counsel, Ms. O'Neill, had advised appellant against so pleading. Appellant engaged in coherent, elaborate, purposeful – not automatic, random – steps to kill Laurie and Angie, and to dispose of their bodies far away from each other and the murder site. Second, appellant's trial counsel acknowledged that the defense was not relying – could not rely – on irresistible impulse. (64 RT 9841.) Irresistible impulse, as exhibited by criminal or antisocial acts, is not – cannot be – a "mental disease or mental defect" under the definition of insanity. (Pen. Code, § 1026; cf. *People v. Fields, supra,* 35 Cal.3d 329, 368-372; *People v. Superior Court (Williams)* (1991) 233 Cal.App.3d 477, 489-490; *People v. Martin, supra,* 114 Cal.App.3d at pp. 743-746.) CALJIC No. 4.05 did not alter or otherwise affect the defense's insanity theory, which was appellant had brain dysfunction and he suffered rage reactions that night that rendered his brain "unconscious" in that the rage reactions overwhelmed his cognitive capacity to understand the nature of his acts or to distinguish right from wrong. Despite being "unconscious" and perhaps having seizures, appellant performed complex, purposeful acts. Appellant was, in the words of defense expert Dr. Berg, on "automatic pilot." (57 RT 9021-9025.) According to Dr. Berg, apparently, the complex, purposeful acts that appellant performed after suffering rage reactions were not the result of irresistible impulses.

Accordingly, appellant's instructional error claim should be rejected.

CONCLUSION

Accordingly, for the reasons stated, respondent respectfully asks that judgment be affirmed.

Dated: October 16, 2006

Respectfully submitted,

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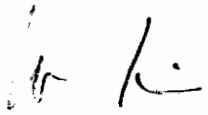

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: ***People v. Clark*** No.: **S045078**

I declare:
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On October 23 2006, I served the attached **RESPONDENT'S SUPPLEMENTAL BRIEF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 2550 Mariposa Mall, Room 5090, Fresno, California 93721, addressed as follows:

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FR1995XS0002

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 23, 2006, at Fresno, California.

Michelle Deme-Garber
Declarant

Michelle Deme-Garber
Signature