

DEATH AND DEMENTIA: A FURTHER LOOK AT THE COMPLEX RELATIONSHIP SET IN *MADISON V. ALABAMA*

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ABSTRACT

*When creating a judicial precedent, accuracy and precision matter. However, modern science, although evolving, is not perfect. The rational understanding doctrine states that for the death penalty to be applicable, one must have a rational understanding of their crimes and reason for execution. In *Madison v. Alabama* (2019), Appellant Vernon Madison was charged with capital murder and was set to receive the death penalty before suffering a series of severe strokes. Diagnosed with vascular dementia, attendant disorientation, cognitive impairment, and memory loss as a result of these strokes, Madison's legal team was granted certiorari before the Supreme Court.*

Despite no foolproof test for dementia, the Court accepted conflicting expert opinions debating whether Madison truly had dementia. This is where I found flaws in the reasoning of Madison. The Court's reliance on medical diagnoses with less than 100% accurate results opens the door to future manipulation. The sweeping rational understanding doctrine can provide justice to victims across the nation, but at the same time, it can be manipulated to protect convicted criminals. With more research being conducted discussing 'pseudodementia,' dementia-like symptoms but not the same as dementia, and other possible explanations for dementia-like symptoms, this article asserts that the rational understanding doctrine is too broad to apply to capital punishment. Therefore, the Court appears to have two options: to either continue hyper-refining 8th

Amendment capital punishment eligibility or remove themselves from the complexity of capital punishment. Without completely accurate fool-proof science, the Court runs the risk of allowing those sentenced to death to escape culpability via insanity defenses.

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I. INTRODUCTION

On April 18, 1985, in Mobile, Alabama, police Officer Julius Schulte responded to a domestic violence call.¹ Upon arrival, Officer Schulte encountered Vernon Madison. Armed with a .32 caliber revolver, Madison shot Officer Schulte two times – both in the back of Officer Schulte’s head, fatally wounding him.² After Madison was detained, he was charged with capital murder and was forced to pick between either accepting a plea or being sentenced to receive the death penalty.³ While waiting on the state’s death row for thirty years, Madison suffered a series of strokes, with the most severe occurring in 2015 and 2016.⁴ Madison was diagnosed with vascular dementia, attendant disorientation, cognitive impairment, and memory loss due to these strokes.⁵ In light of these severe medical complications, Madison’s legal team brought a series of appeals arguing that the lack of rational understanding exempted Madison from the death penalty. Ultimately, this case was escalated to the Supreme Court which vacated the decision supporting Madison’s execution.⁶

¹ *Madison v. Alabama*, 139 S. Ct. 718, 724 (2019).

² Steve Almasy and Mayra Cuevas, *Supreme Court Stays Execution of Inmate Who Lawyers Say is Not Competent*, CNN (Jan. 26, 2018, 5:21 AM), <https://edition.cnn.com/2018/01/25/us/alabama-execution-vernon-madison/index.html>.

³ *Madison*, 139 S. Ct. at 722.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 723.

The 8th Amendment states that no person shall be subject to “cruel and unusual punishment.”⁷ Sentencing a criminal who does not remember their crime was determined in *Ford v. Wainwright* (1986) to be unconstitutional.⁸ However, there is a caveat to this ruling. When a convicted criminal suffers from a mental disorder such as dementia, the Supreme Court uses the standard of ‘rational understanding’ to evaluate the constitutionality of capital punishment.⁹ This doctrine decrees that a criminal with a mental disorder can be sentenced to death if and only if they have a rational understanding of why they are receiving this punishment.¹⁰

The rational understanding doctrine is a sweeping precedent. The Court established a binary option of either understanding the crime and being put to death or the inverse. This creates a concerning standard that can be manipulated by those sentenced to death yet do not believe they should be executed. This article examines the unique relationship between the death penalty and dementia under the rational understanding doctrine. First, by examining the precedents set in the *Ford* and *Panetti v. Quarterman* (2007) decisions, context is provided for the Court’s decision

⁷ U.S. CONST. amend. VIII.

⁸ *Ford v. Wainwright*, 477 U.S. 399, 431 (1986).

⁹ *Madison*, 139 S. Ct. at 722.

¹⁰ *Id.* at 723.

in *Madison v. Alabama* (2019). While critiquing flaws that arise in the *Madison* decision, this article is not intended to be another dissenting opinion; but instead aims to to raise awareness of the possible escape of culpability from the death penalty. By pinpointing flaws within the Court’s decision in *Madison*, this article aims to warn against the vague coverage of the rational understanding doctrine in capital punishment cases involving mental disorders.

II. FOUNDATIONAL CASE: *FORD V. WAINWRIGHT*

In 1974, a jury in a Florida state trial court convicted Alvin Ford of murder, and he was sentenced to death.¹¹ Throughout the trial, Ford and his legal team never posited that Ford was mentally ill.¹² However, after his sentencing, Ford began to exhibit symptoms consistent with a mental disorder.¹³ After being examined by a psychiatrist—at counsel’s request—Ford’s legal team invoked Fla. Stat. § 922.07 (1985), requiring the determination of competency for a condemned inmate.¹⁴ Florida’s governor assigned three psychiatrists to evaluate Ford, each of whom reached a

¹¹ *Ford*, 477 U.S. at 399.

¹² *Id.*

¹³ *Id.* at 403.

¹⁴ *Id.*

conflicting diagnosis.¹⁵ There was controversy over whether these new diagnoses should be considered in tandem or at all with the prior examination (by Ford's legal team) before sentencing Ford.¹⁶ The Governor's office declined to disclose whether the submissions would be considered, signed the death warrant without explanation, and confirmed the 11th circuit's sentence for Ford.¹⁷ Through the proper channel of appeals, the U.S. Supreme Court granted certiorari in this case and heard arguments on April 22nd, 1986.¹⁸

In a 5-4 decision, the Burger Court ruled on two questions: whether the death penalty violated the 8th and 14th Amendments when used on the mentally ill, and whether the 11th Circuit Court erred when they failed to accept Ford's petition for a final evidentiary hearing.¹⁹ The court ruled in favor of Ford on both questions, with Justice Marshall writing the majority opinion, emphasizing the structure of the 8th Amendment, calling any execution of the mentally ill "savage and inhumane."²⁰ Dating back to English common law, it has always been asserted that capital punishment

¹⁵ *Id.* at 399.

¹⁶ *Id.*

¹⁷ *Ford*, 477 U.S. at 399.

¹⁸ *Id.*

¹⁹ *Id.* at 405, 410.

²⁰ *Id.* at 406.

on the mentally ill has had no retributive or deterrent effect throughout history.²¹

The dissenting opinions, written by Justices O'Connor and Rehnquist, agreed in part with the majority's view.²² Specifically, O'Connor and Rehnquist agreed with the ruling but disputed its reasoning and opinion. The primary difference between these two dissenting opinions and the majority opinion lies in their determination of the scope of the 8th Amendment.²³ The dissenting opinions explicitly stated that the 8th Amendment does not create a substantive right to avoid execution while considered insane.²⁴ This fundamental disagreement permeated throughout the Burger Court.

III. FOUNDATIONAL CASE: *PANETTI V. QUARTERMAN*

In 1992, Scott Panetti, amid a psychotic breakdown, brutally murdered his estranged wife's mother and created a hostage scenario before ultimately surrendering to the police.²⁵ Tried for capital murder in 1995, Panetti was sentenced to death despite his well-documented history

²¹ *Id.* at 407.

²² *Id.* at 427, 431.

²³ *Ford*, 477 U.S. at 427, 431.

²⁴ *Id.*

²⁵ *Panetti v. Quarterman*, 551 U.S. 930, 935 (2007).

of mental illness.²⁶ During the initial hearings, Panetti did not argue that his mental illness rendered him ineligible for execution.²⁷ However, once an execution date was set, Panetti filed a motion that he was incompetent for the death penalty due to his mental illness.²⁸ Dismissed without a hearing, both the trial and appellate courts rejected Panetti's claim.²⁹

Filing another petition under 28 U.S.C.S. § 2244, the finality of determination was called into question.³⁰ Bombarding the court with 10 motions, Panetti attempted to get a competency hearing along with mental health experts.³¹ It was deemed that to rule on the remaining motions, an expert report reviewing Panetti's mental condition was necessary.³² The report concluded that Panetti had an understanding of the rationale behind his execution.³³ With this report, the Court concluded that Panetti was competent enough to be executed.³⁴ This decision was affirmed by the Court of Appeals for the Fifth Circuit;³⁵ however, the Supreme Court took issue with the Fifth Circuit's decision.³⁶

²⁶ *Id.* at 930.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 942.

³¹ *Panetti*, 551 U.S. at 930.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 931.

³⁶ *Id.* at 934.

The Court was faced with the issue of whether the Eighth Amendment permits the execution of an inmate who has factual awareness of the reason behind their execution but, due to mental illness, is unable to comprehend a court's rationale in delivering the death penalty.³⁷ In a 5-4 decision, the Roberts Court ruled in favor of Panetti—remanding the Fifth Circuit decision until further evaluation under the new standard was conducted.³⁸ However, this question remained unanswered due to the Court's reticence to create a precedent of understanding.³⁹ While the lower circuits utilized the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) as a guiding document in understanding precedent,⁴⁰ there was no confirmation that they were correct or incorrect in doing so. The Court argued that the Fifth Circuit's decision "rests on a flawed interpretation of *Ford*."⁴¹ The majority opinion stated that the lack of consideration toward Panetti's delusions may have prevented the understanding of the facts warranting capital punishment, not the rationale behind the decision of capital punishment.⁴² The Court heavily considered the signs that Panetti was mentally ill when coming to their decision.⁴³ Noting Panetti's

³⁷ *Panetti*, 551 U.S. at 934.

³⁸ *Id.*

³⁹ *Id.* at 968.

⁴⁰ *Id.*

⁴¹ *Id.* at 956.

⁴² *Id.*

⁴³ *Panetti*, 551 U.S. at 956.

non-adherence to his extremely severe medication prescription a month before his trial date, the visibility and severity of Panetti's mental illness drastically increased.⁴⁴ The Court interpreted this as an aggravating factor of Panetti's dementia and as a reason not to establish a governing precedent. As a result of the multitude of moving factors in the *Panetti* case, the Court wrote, "Although we reject the standard followed by the Court of Appeals, we do not attempt to set down a rule governing all competency determinations."⁴⁵ Without a concrete rule governing the Supreme Court's approach towards capital punishment for mentally ill criminals, the issue arose again twenty years later in *Madison*.

IV. KEY CASE STUDY: *MADISON V. ALABAMA*

On April 18, 1985, in Mobile Alabama, Vernon Madison shot and fatally killed Officer Schulte. Madison was later arrested, imprisoned, and convicted of murder. While in prison, Vernon Madison suffered a series of severe strokes. Although Madison was diagnosed with vascular dementia, attendant disorientation, cognitive impairment, and memory loss, the Courts did not expressly mention or determine whether Madison did or did not have dementia. Instead, they remanded this issue to the lower courts.

⁴⁴ *Id.* at 961.

⁴⁵ *Id.* at 960-961.

However, Vernon Madison's appearance throughout all of the proceedings influenced the Court's perception of dementia while establishing the rational understanding doctrine. Madison's symptoms, perceptions, and overall well-being following his series of strokes guided the Court in its decision. Therefore, it is imperative to comprehend the Court's reasoning in *Madison* and its foundation for the rational understanding doctrine.

A. Analysis of The Usage of Expert Opinions

The Court utilized the insights of two experts during the case to ascertain the validity of Madison's dementia.⁴⁶

Dr. John Goff, appointed by Madison, testified that although Madison "'underst[ood] the nature of execution' in the abstract, he did not comprehend the 'reasoning behind' Alabama's effort to execute *him* [emphasis added]."⁴⁷ Madison no longer could "independently recall the facts of the offense he is convicted of."⁴⁸ Instead, Madison understood why someone who, under the same facts as his, would be sentenced to death. Goff ultimately claimed that Madison had vascular dementia, a form of dementia that causes significant cognitive decline, paired with retrograde

⁴⁶ *Madison*, 139 S. Ct. at 726.

⁴⁷ *Id.* at 727.

⁴⁸ *Id.*

amnesia.⁴⁹ Goff attributed the lack of understanding of Vernon Madison's legal situation to the aforementioned amnesia.⁵⁰

Conversely, Dr. Karl Kirkland, appointed by the court, asserted that Madison “‘was able to discuss his case’ accurately and ‘appear[ed] to understand his legal situation.’”⁵¹ This argument, coupled with the fact that “[t]here was no evidence of psychosis, paranoia, or delusion” drastically detracted from Dr. Goff's report.⁵² Both experts confirmed that Madison suffered from no delusions.⁵³ The Court continued to rely on both expert's conflicting testimony in both the majority and dissenting opinions.

B. Analysis of Justice Kagan's Majority Opinion

The question of whether Madison was delusional was not the guiding factor for the Court's decision. Ruling in a 5-3 decision, Justice Kagan, delivered the majority opinion of the Court.⁵⁴ In her opinion, Kagan posed a unique hypothetical. She explained how one may not be able to remember their first day of school. However, when prompted with the fact that they hit somebody and got sent home, their recollection becomes

⁴⁹ *Id.* at 722.

⁵⁰ *Id.*

⁵¹ *Madison*, 139 S. Ct. at 725.

⁵² *Id.* at 726.

⁵³ *Id.*

⁵⁴ *Id.* at 723.

clear.⁵⁵ She applied this to the circumstances in the *Ford* and *Panetti* decisions. When a criminal appreciates the harm that they caused, the retributive value is evident.⁵⁶ Conversely, Kagan noted that when a criminal cannot acknowledge the harm they incited, there is no acceptable reason for capital punishment.⁵⁷ A caveat to this guiding rule is that when an illness is episodic, capital punishment is less morally concerning.⁵⁸

Kagan's majority opinion elucidated the difference between the *Panetti* ruling and the *Madison* ruling.⁵⁹ In *Panetti*, the ruling focused on the effect of mental disorders; the Court examined how mental illnesses can affect the rational understanding of crimes.⁶⁰ However, the *Panetti* court did not examine the cause—mental illness—behind the crimes.⁶¹ *Madison* takes an in-depth look at the causation behind Madison's crime—dementia. Kagan followed Justice Kennedy's opinion in *Panetti* discussing how one must have a rational understanding, but further explored the causation of Madison's understanding and lack thereof. The Court adopted the *Panetti* standard of evaluation in the *Madison* decision, acknowledging that

⁵⁵ *Id.* at 731.

⁵⁶ *Id.*

⁵⁷ *Madison*, 139 S. Ct. at 723-724.

⁵⁸ *Id.* at 724.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

delusional disorders can drastically alter the rational understanding of criminals.⁶²

The issue at dispute in *Madison* is whether the state was correct in its decision that *Madison* was eligible for the death penalty. Madison's counsel argued that the state was incorrect in its rationale that only delusions – not dementia – count as an exclusion for the death penalty.⁶³ Conversely, the state wrote that Madison “did not provide a substantial threshold showing of insanity sufficient to convince this Court to stay the execution.”⁶⁴ The Court was concerned with the implications of ruling that insanity includes delusional disorders. Justice Kagan inferred that the state utilized the word insanity to describe Madison's behavior and delusions. Kagan countered that if the state determined that insanity includes delusional disorders, then they committed an error in their reasoning.⁶⁵ The state refuted the notion that they correlated insanity and delusional disorders by claiming that the use of ‘insanity’ was only to mirror Madison's verbiage in hearings.⁶⁶ This calls into question whether the state understood the requirement for a punishment to be cruel and unusual.

⁶² *Id.*

⁶³ *Madison*, 139 S. Ct. at 724.

⁶⁴ *Id.* at 723.

⁶⁵ *Id.*

⁶⁶ *Id.* at 728.

The Supreme Court ultimately remanded the question of whether Madison was competent or not to the lower courts on the premise that no argument that they mentioned prior was admissible.⁶⁷ This meant that the lower courts would have to determine whether a person experiencing delusions actually had dementia. The Court expressly clarified that they had no say in whether Madison had a ‘rational understanding’ of his crimes, but rather that a person who can not rationally understand their crimes can not be sentenced to the death penalty.⁶⁸

C. Analysis of Justice Alito’s Dissenting Opinion

In Justice Alito’s dissenting opinion, Alito addressed only the first question of whether a criminal with no recollection of their crime can be formally executed.⁶⁹ The second question discussed is whether the 8th Amendment and evolving standards of decency doctrine protect Madison under his extremely specific circumstances.⁷⁰ Alito asserted that nowhere in the Court’s petition was the second question ever addressed and, therefore, did not dignify a response.⁷¹ Alito claimed that under Rule

⁶⁷ *Id.* at 729.

⁶⁸ *Id.*

⁶⁹ *Madison*, 139 S. Ct. at 732.

⁷⁰ *Id.* at 733-734.

⁷¹ *Id.* at 734.

14.1(a), the Court should not be permitted to rule on that question.⁷² While the majority opinion refuted this claim,⁷³ declaring that it is not about the number of words discussing the question, but the subtext behind them, Justice Alito and the dissenting opinion address the second question in a hypothetical manner.

The primary issue with *Madison* that the dissenting opinion presented was the foundation and rationale for granting certiorari.⁷⁴ Primarily, Alito asserted that the majority opinion misinterpreted the word “insanity.” In a 2018 hearing, a state court judge opined on Madison’s circumstances. They wrote, “[the] defendant did not provide a substantial threshold showing of *insanity*, a requirement set out by the United States Supreme Court, sufficient to convince this Court to stay the execution.”⁷⁵ This error in this quote stems from the addition of the appositive: “a requirement set out by the United States Supreme Court,” which Alito believes redefined the term prior—insanity.⁷⁶ This definition follows the precedent definitions set out in *Ford* and *Panetti* but contradicts the majority’s declaration that “If the state court used the word “insanity” to

⁷² *Id.* at 732.

⁷³ *Id.* at 727.

⁷⁴ *Id.* at 734.

⁷⁵ *Madison*, 139 S. Ct. at 735.

⁷⁶ *Id.*

refer to a delusional disorder, then error occurred.”⁷⁷ By this supposedly faulty definition of insanity, Justices Gorsuch and Thomas joined Alito in their dissent against the Court's ruling in *Madison*.

V. THE COURT’S DECISION IN *MADISON* IS FLAWED

After examining the Court’s decisions in *Ford*, *Panetti*, and *Madison*, it is evident that the Court was incorrect in its decision towards capital punishment for those with dementia. This assertion stems primarily from the significant margin of error within dementia diagnoses.

A. *The Margin of Error Within Dementia Diagnoses*

There is a significant margin of error stemming from the ‘rational understanding’ doctrine. This argument further contains two sections: the evolving science behind dementia and the possibility of manipulating symptoms. Both ways are a form of escaping culpability resulting from the *Madison* decision.

⁷⁷ *Id.* at 729.

1. Flaws in Dementia Testing

Neither schizophrenia nor dementia, the mental illnesses that affect the outcome of *Panetti* and *Madison*, have a test that can fully diagnose either illness.⁷⁸ In *Panetti's* case, schizophrenia has no concrete test that can prove one either has or does not have schizophrenia.⁷⁹ Instead, doctors use a multitude of scans, psychological evaluations, and emotional tests to create a complete diagnosis.⁸⁰ Notably, if one does not present physical symptoms such as a tumor or tissue damage stemming from mental illness, they are not excluded from being diagnosed with a mental disorder.⁸¹ Such an issue poses a threat to the accuracy of expert diagnoses.

Additionally, dementia has three main types of variants called “pseudodementia”, separate forms of dementia branching off from the original dementia diagnosis.⁸² Depressive pseudodementia is when a person exhibits cognitive impairment alongside a depressive illness to mirror dementia.⁸³ Depressive pseudodementia can also stem from a

⁷⁸ *Schizophrenia Diagnosis*, NHS Mental Health (April 13, 2023), <https://www.nhs.uk/mental-health/conditions/schizophrenia/diagnosis>.

⁷⁹ *Id.*

⁸⁰ *Tests and Scans to Diagnose Dementia*, Alzheimer's Society (December 2023), <https://www.alzheimers.org.uk/about-dementia/symptoms-and-diagnosis/dementia-diagnosis/how-to-get-dementia-diagnosis/tests-and-scans>.

⁸¹ Hara Estroff Marano, *Getting a Mental Health Diagnosis*, Psychology Today (August 7, 2023), <https://www.psychologytoday.com/us/basics/therapy/getting-a-mental-health-diagnosis>.

⁸² Alan J Carson, Adam Zeman & Tom Brown, *Organic Disorders in*, 8 COMPANION TO PSYCHIATRIC STUDIES 319 (8th ed. 2010).

⁸³ *Id.*

significant event that spurs an onslaught of depressive emotions.⁸⁴ Similarly, hysterical pseudodementia is when a person exhibits cognitive impairment in non-organic ways.⁸⁵ This ultimately covers any form of simulated dementia rather than depressive episodes.⁸⁶ Lastly, simulated dementia is a form of dementia that has been feigned deliberately in the pursuit of personal gain.⁸⁷ Since there is no guaranteed form of dementia testing, these forms of pseudodementia allow for manipulation of the symptoms of dementia.

This research casts doubt on the diagnosis of Madison's dementia. While this article does not assert that Madison had any of the aforementioned pseudodementia variants, it is important to acknowledge that Madison's strokes could have clouded any of these pseudodementia diagnoses. Madison's severe strokes could have prompted depressive or hysterical episodes which ultimately might have led to a form of pseudodementia rather than the actual diagnosis of dementia.⁸⁸ But nowhere in the Court's opinion nor rationale does it mention pseudodementia as a possible cause of Madison's inability to lack a rational understanding of his punishment. In establishing the rational

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Madison*, 139 S. Ct. at 722.

understanding doctrine, the Court's decision was flawed due to the uncertainty behind the science of dementia.

2. Potential for the Manipulation of Symptoms

The scientific flaws in dementia testing only support the idea that the test is “beatable”. Objectively speaking, the moral consequence of telling a lie—feigning dementia—is inconsequential to the act of murder. If those convicted of crimes, or their legal teams, realize that lying about not having a rational understanding of their alleged wrongdoings allows them to live, a dangerous precedent is set. Albeit, it is even possible that this happened in the *Ford*, *Panetti*, and *Madison* cases.

In *Ford*, Alvin Ford originally had no sign of dementia.⁸⁹ However, after being sentenced to death – an extreme outcome– Ford began to exhibit signs of dementia. Depressive pseudodementia mirrors the descent into dementia-related symptoms that Ford may have experienced.⁹⁰ Additionally, there is no concrete determination that Alvin Ford felt remorse for his actions. In 1974, mental disorders were stereotyped and stigmatized to where medicinal and psychological tests were commonly

⁸⁹ *Ford*, 477 U.S. at 399.

⁹⁰ *Id.*

incorrect.⁹¹ The stigmatization of medicinal and psychological mental illness tests was an underlying symptom of a lack of understanding. A flaw in testing could have allowed Ford to escape culpability and avoid the death penalty.

In *Panetti*, Scott Panetti suffered a series of mental breakdowns before and after his sentencing.⁹² Such hysterical breakdowns contribute to the idea that Panetti possibly experienced a form of hysterical pseudodementia.⁹³ Therefore, it is possible that Panetti's appearance of naturally developed dementia was not natural, but instead induced by his mental breakdowns. Scott Panetti notably stopped taking his medication before and during his trial, which may have created a form of simulated dementia.⁹⁴ Without his strong medications, Panetti may have exacerbated his mental conditions to mirror the symptoms and signs of dementia.⁹⁵ Utilizing his non-adherence to medication for his gain, Panetti possibly highlighted dementia-like behaviors to prevent his execution.

Interestingly, *Madison* does not fall under one specific category of the aforementioned pseudodementias. As he suffered from strokes,

⁹¹ WULF RÖSSLER, THE STIGMA OF MENTAL DISORDERS: A MILLENNIA-LONG HISTORY OF SOCIAL EXCLUSION AND PREJUDICES, (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5007563/>.

⁹² *Panetti*, 551 U.S. at 930.

⁹³ *Id.*

⁹⁴ *Id.* at 936.

⁹⁵ *Id.*

Madison therefore did not suffer from hysterical pseudodementia or depressive pseudodementia. However, the lack of pseudodementia explanations does not conclude that Vernon Madison had dementia. The Court's task in *Madison* was to determine whether Madison had a rational understanding of his crimes.⁹⁶ While this question was remanded down to the lower courts, the Court determined that any criminal with dementia was protected from capital punishment so long as they did not have a rational understanding of their crimes. The latter part of this conclusion, the rational understanding doctrine, is drastically undermined by the concept of simulated pseudodementia.

The rational understanding doctrine holds room for manipulation due to the lack of scientific certainty in dementia tests. Without one-hundred-percent accurate tests, systemic errors in the rational understanding doctrine may occur, but this feat will likely be impossible to achieve. Therefore, the Courts must come up with some form of compromise before this loophole is exploited. Regardless of the future precedent set, the Court should factor in the cause, consistency, severity, and overall circumstances of one's dementia symptoms before determining the death penalty. Either depressive, hysterical, or simulated

⁹⁶ *Madison*, 139 S. Ct. at 731.

pseudodementia can mirror the symptoms of dementia.⁹⁷ With those mirrored symptoms, criminals have the opportunity to create blanket claims of not understanding the reason why the state would execute them. Without this understanding, the state has little valid form of retribution and may be unable to hold the convicted person accountable.⁹⁸

VI. THE COURT'S DECISION IN *MADISON* IS FLAWED

With the loopholes in *Ford*, *Panetti*, and *Madison*, the Court is now at an impasse. On the one hand, the Court can continue to give opinions refining the rational understanding doctrine. This method would hyper-clarify the Court's opinion on capital punishment and create strict guidelines for states to follow. However, this method warrants more concern due to the inaccuracies of many mental disorder tests. On the other hand, the Court can follow Justice Blackmun's advice written in *Callins v. Collins* (1994): "From this day forward, I will no longer tinker with the machinery of death."⁹⁹ Justice Blackmun warns against a future in which death penalty jurisprudence becomes commonplace, establishing

⁹⁷ Alan J Carson, Adam Zeman & Tom Brown, *Organic Disorders in*, 8 COMPANION TO PSYCHIATRIC STUDIES 319 (8th ed. 2010), <https://www.sciencedirect.com/book/9780702031373/companion-to-psychiatric-studies>.

⁹⁸ *Id.*

⁹⁹ *Callins v. Collins*, 510 U.S. 1141, 1145 (1994).

precedents on a whim. His warning serves as a declaration that the death penalty is an arbitrary and inherently biased form of punishment. Without meddling with what does and does not constitute the sentence of death as constitutional, the Court lessens the potential for injustice to be served; however, the Court must decide which to take before a flaw in dementia testing allows for exploitations in convicting and sentencing those who deserve the death penalty.

VII. CONCLUSION

This article has addressed the unique relationship between capital punishment and mental disorders. It analyzed Ford and Panetti's prior framework and then applied it to understand the *Madison* decision. After investigating the majority and dissenting opinions in *Madison* it should be asserted that the Court's decision in *Madison* was flawed due to the inconsistencies in dementia testing and potential for manipulation of dementia symptoms. Such a broad precedent like the rational understanding doctrine oversimplifies the rapidly evolving yet unknown science behind dementia. How can one guarantee that a convicted criminal has a mental illness without a one-hundred percent accurate test? Simply put, they can not.

This article highlights two potential options for the Court to follow: continue refining the eligibility for the death penalty or completely remove themselves from any capital punishment jurisprudence. The intent of this article is not to determine which option is superior, but rather to highlight that a change in Supreme Court death penalty jurisprudence is necessary unless dementia tests become extremely accurate. Without waiting until there is a guaranteed form of testing the Court must weigh the risks of criminals with pseudodementia escaping culpability against wrongfully sentencing mentally ill individuals to death. After tinkering with the machinery of death, it has become evident that now—between a rock and a hard place—the Supreme Court should have heeded Justice Blackmun’s warning and no longer tinkered with the machine of death.