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The Abridged *M’Naghten* Standard and the Consideration of Mental-Disorder Evidence in Relation to *Mens Rea*

Arizona’s Abbreviated Insanity Defense Statute Is Constitutionally Permissible, and Arizona’s Case Law Prohibiting Consideration of Mental-Disorder Evidence in Challenging *Mens Rea* Remains in Effect

In *State v. Clark*, No. 03-0985 (Ariz. Ct. App. January 25, 2005), the Arizona Court of Appeals affirmed the conviction and sentencing of Eric Clark, thereby upholding the constitutionality of Arizona’s insanity law, with its truncated *M’Naghten* standard. The court of appeals also upheld the trial court’s reading and application of *State v. Mott*, 931 P.2d 1046, 1051 (Ariz. 1997), effectively creating a blanket prohibition against the consideration of mental disease or defect evidence to negate *mens rea* elements of the crime charged. The Arizona Supreme Court denied discretionary review, and writ of *certiorari* to the United States Supreme Court has subsequently been granted. The American Psychiatric Association, the American Psychological Association, and the American Academy of Psychiatry and the Law joined in submitting an *amicus curiae* brief in support of the petitioner, Eric Michael Clark. The United States Supreme Court, in a six–three decision, ultimately affirmed, failing to find any due process flaw in either Arizona’s case law or its insanity defense statute.

Facts of the Case

Eric Clark shot and killed Flagstaff Police Officer Jeffrey Moritz on June 21, 2000. Eric was 17 years

old at the time of the shooting, and he was charged with first-degree murder. Mr. Clark was reportedly a healthy and well-adjusted young man until approximately a year and a half before the shooting, when he began to develop the symptoms of a major mental illness, including mood swings and episodes wherein he would scream or whisper gibberish. Mr. Clark eventually began to believe that he was being poisoned and that the earth was being invaded by aliens. Mr. Clark’s parents spent the months leading up to the shooting desperately trying to have him committed and treated, and they had called at least five facilities during the two days before the shooting searching for a way to get Mr. Clark treated. Tragically, these efforts were unsuccessful, and Mr. Clark shot and killed Officer Moritz in the early morning of June 21, 2000. The officer had been dispatched to a residential neighborhood on complaints of a vehicle circling the block and playing loud music. He was in his police uniform and was driving a marked patrol car when he located the vehicle, driven by Eric Clark, and stopped it. Nearly one minute after Officer Moritz exited his squad car, there was an exchange of gun shots, and Officer Moritz was mortally wounded.

Several elements of Arizona’s case and legislative law crucially affect the unfolding of this case. In 1994, the Arizona legislature altered the language of its insanity defense, abandoning its more traditional *M’Naghten* standard, to “guilty except insane if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong” (Ariz. Rev. Stat. § 13-502(A) (1994)). In addition, the legislature defined the crime of first-degree murder as “intentionally or knowingly killing a law enforcement officer who is in the line of duty” (Ariz. Rev. Stat. § 13-1105(A) (1994)). Relevant case law derives from the Arizona Supreme Court decision in *Mott* which held that “Arizona does not allow evidence of a defendant’s mental disorder short of insanity to negate the *mens rea* elements of a crime” (*State v. Mott*, 931 P.2d, p 1051).

At trial, there were several undisputed facts: Eric Clark was the driver of the vehicle, Mr. Clark shot Officer Moritz, and Mr. Clark suffered from chronic paranoid schizophrenia and had been actively psychotic. Although the prosecution was able to use Mr. Clark’s behavior to establish circumstantial evidence of the required *mens rea* element of first-degree mur-

der, the trial court announced that it was bound by *Mott* to exclude the consideration of any mental illness evidence on this very issue and could apply such evidence only to the determination of the affirmative guilty-except-insane defense. Applying Arizona's knowledge-of-wrong standard, the trial court found Mr. Clark guilty of murder in the first degree. Mr. Clark appealed this verdict, contesting the narrowness of Arizona's insanity defense standard and the trial court's refusal to apply his mental illness evidence to its determination of *mens rea*.

Ruling and Reasoning

The Arizona Court of Appeals first examined the sufficiency of the evidence establishing the *mens rea* elements of the crime, that Mr. Clark intentionally and knowingly killed a law enforcement officer. In doing so, the court of appeals revisited much of the same circumstantial evidence utilized by the trial court in its determination of guilt, opining that "the mode of operation of the mind may be ascertainable from Mr. Clark's conduct; therefore Mr. Clark's conduct is admissible into evidence as it may indicate sanity or insanity or at least throw light one way or another on the issue." However, when considering the defense's contention that it was deprived of a complete defense by Arizona's narrower guilty-except-insane standard and the inability to have mental illness evidence considered to combat the state's circumstantial behavioral evidence of the required *mens rea*, the court of appeals upheld the trial court's application of both the narrower standard and the *Mott* verdict, quoting *State v. Wagstaff* (794 P.2d 188, 127 (Ariz. 1990)): "Statutes are presumed constitutional and the burden of proof is on the opponent of a statute to show that it infringes upon a constitutional guarantee or violates a constitutional principle."

In considering the abridged *M'Naughten* standard, with its omitted "nature and quality" prong, the court of appeals asserted that there is no constitutional requirement for an insanity defense and that United State's Supreme Court has granted each state the freedom to create and define such a defense at its discretion. The court of appeals argued that the new statutory language, with the omitted prong, really fails to make an appreciable difference (relative to the original two-prong statute), reasoning that "It is difficult to imagine that a defendant who did not ap-

preciate the nature and quality of the act he committed would reasonably be able to perceive that the act was wrong."

Later in its decision, when specifically addressing the trial court's refusal to consider mental illness evidence on the issue of *mens rea*, the court of appeals found that Mr. Clark failed to present any proof that he was incapable of knowing that he was killing a police officer. However, even if he had presented such evidence, "the trial court was bound by the supreme court's decision in *Mott*." The court of appeals acknowledged Mr. Clark's contention that *Mott* was wrongly decided and should be overruled, but it also pointed out its own lack of authority to do so and ultimately declined to consider this argument.

Discussion

This case has generated two main questions that will ultimately be resolved by the United States Supreme Court. The first is, does Arizona's complete prohibition of mental disease or defect evidence in considering the element of *mens rea* violate due process under the United States Constitution's Fourteenth Amendment? Second, does Arizona's insanity defense statute, with its abridged *M'Naughten* language, violate the individual's right to due process? In an *amicus curiae* brief, the American Psychiatric Association, the American Psychological Association, and the American Academy of Psychiatry and the Law weigh in on these issues.

In the case at hand, the state of Arizona, in writing its statute for first-degree murder, specifically defined *mens rea* elements of the crime as the intentional or knowing killing of a police officer. At trial, the prosecution presented evidence of the patient's behavior, to prove these elements circumstantially. The state advanced a theory wherein Mr. Clark was driving around with music blaring in a nefarious scheme to lure police to the scene. The prosecution used Mr. Clark's prior statements about his feelings toward police to prove required elements of the crime. At the same time, the defense was entirely precluded from having evidence of mental illness that suggested alternate explanations for Mr. Clark's words and actions considered, thereby hamstringing his ability to present relevant evidence to negate the state's case and thus in effect easing the state's burden of proving beyond a reasonable doubt the required *mens rea* elements. As stated in the *amicus curiae* brief:

A fundamental due process right is the right to present relevant, reliable, non-prejudicial, non-privileged evidence to negate the State's efforts to prove elements of the crime beyond a reasonable doubt. Mental-disorder evidence, in relation to *mens rea* elements of the sort at issue in this case, comes within that right Reversal and remand for new trial-court findings are required on this ground [Amicus Curiae Brief Supporting Petitioner at 5, *Clark v. State*, 126 S. Ct. 2709 (No. 05-5966)].

The constitutionality of Arizona's revised insanity law appears to be less of an issue, with the thinking in the *amicus curiae* more closely approximating the reasoning articulated by the court of appeals on this matter.

Although Arizona in 1994 deleted separate "nature and quality" language from its statute, the knowledge-of-wrong standard on its face can be understood itself to demand rational appreciation of the nature and quality of the act, and that understanding is reflected in the state appellate court's opinion in this case [Amicus Curiae Brief Supporting Petitioner at 6, *Clark v. State*, 126 S. Ct. 2709 (No. 05-5966)].

The brief cautions, however, against too narrow a reading of the knowledge-of-wrong statute, one in which knowledge of wrong was somehow established in the absence of rational understanding. Even then, though, the constitutional breach would prove benign if the court had already considered mental-disorder evidence when evaluating the required *mens rea* elements of the crime, which would naturally entail attention paid to the issue of rational understanding. In short, Arizona's insanity law's potential constitutional defect only becomes exposed when a very narrow interpretation is combined with the unconstitutional wholesale barring of mental illness evidence as it relates to *mens rea* elements. Should the Supreme Court recognize and correct the due process violations enabled by Arizona's *Mott* decision, Arizona's guilty-except-insane statute, constitutionally viable on its surface, would remain so, even when threatened by overly narrow applications.

Addendum

The United States Supreme Court issued its six-three decision on June 29, 2006. In the majority opinion, delivered by Justice Souter and joined by Justices Roberts, Scalia, Thomas, Alito, and Breyer (in part), neither Arizona's application of *Mott* nor its abridged insanity-defense statute amounts to a violation of due process. Consistent with lower courts and *amicus curiae*, the Supreme Court found no substan-

tial problem with the abbreviated insanity-defense statute, echoing the sentiment that the knowledge-of-wrong standard (or moral capacity) subsumes a rational understanding of the nature and quality of the act (cognitive capacity). "Cognitive incapacity is itself enough to demonstrate moral incapacity. Cognitive incapacity, in other words, is a sufficient condition for establishing a defense of insanity, albeit not a necessary one" (*Clark v. Arizona*, 548 U.S. (2006)). Unfortunately, the Court's reading of *Mott* and its complete bar of mental-illness evidence in considering *mens rea* not only departs from the *amicus curiae* but also seems to avoid tackling the ultimate issue. The Court partitions evidence into three categories: observation evidence, mental-disease evidence, and capacity evidence. It then decides that *Mott* only excludes the latter two types of evidence, thereby permitting observation evidence that might include "testimony from those who observed what Mr. Clark did and heard what he said," whether the witness be an expert or a lay person. The Court proceeded to acknowledge that the trial court seemed to have excluded all three categories of evidence in challenging *mens rea* elements, but it then claimed that Mr. Clark's objection to *Mott* did not rest on a distinction between these types of evidence. The Court thereby reasons that the "only issue before us is the challenging to *Mott* on due process grounds." From here, the court goes on to justify Arizona's corraling of mental-illness evidence into the affirmative insanity defense, finding "good enough" reasons in "the controversial character of some categories of mental disease, in the potential of mental-disease evidence to mislead, and the danger of according greater certainty to capacity evidence than experts claim for it." In the end, Mr. Clark's conviction stands, and the constitutional question surrounding the wholesale ban of mental-illness evidence in challenging *mens rea* remains somewhat unresolved, though ominously stacked against the fundamental right of persons with serious mental illness to wage a full and fair defense.

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