

# Clark v. Arizona: Diminishing the Right of Mentally Ill Individuals to a Full and Fair Defense

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In *Clark v. Arizona*, the U.S. Supreme Court was faced with two main questions: Does Arizona's insanity defense statute, with its abridged *M'Naughten* standard, violate the Fourteenth Amendment? And does Arizona case law, with its complete prohibition on the use of mental disease or defect evidence to combat required *mens rea* elements of a crime, violate due process? In a six-three decision, the Court answered both of these questions in the negative.

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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. In the early morning of June 21, 2000, Officer Moritz was dispatched to a residential neighborhood on complaints of a vehicle circling the block and playing loud music. Officer Moritz was in his police uniform and was driving a marked patrol car when he located the vehicle, driven by Eric Clark, and stopped it. Less than 1 minute after Officer Moritz exited his squad car, there was an exchange of gun shots and the officer 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'Naughten* 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."<sup>1</sup> In addition, the legislature had defined the crime of first degree murder to include "intentionally or knowingly killing a law enforcement officer who is in the line of duty."<sup>2</sup> Relevant case law derives from the Arizona Supreme Court decision in *State v. Mott*<sup>3</sup> 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."

At trial, there were several undisputed facts: Eric Clark was the driver of the vehicle, Eric Clark shot Officer Moritz, Eric Clark had chronic paranoid schizophrenia, and Eric Clark had been actively psychotic. The state advanced a theory wherein Mr. Clark was driving around with music blaring in a scheme to lure police to the scene. The prosecution used Mr. Clark's prior statements about his feelings toward police to prove the required *mens rea* elements of the crime. The defense was essentially precluded from presenting evidence of mental illness that rebutted the prosecution's evidence of the requisite *mens rea* that he had acted intentionally or knowingly to kill a law enforcement officer. The trial court ruled that it was bound by *Mott* to exclude the consideration of any mental illness evidence on this very issue and could only apply such evidence to the determination of the affirmative defense of guilty

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except insane. At the close of the defense case consisting of this evidence bearing on mental illness, the trial court issued a special verdict of first-degree murder, expressly finding that Mr. Clark shot and caused the death of Officer Moritz beyond a reasonable doubt and that Mr. Clark had not shown that he was insane at the time. 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*.

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'Naughten* standard. The court of appeals also upheld the trial court's reading and application of *Mott*, 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* was granted by the U.S. Supreme Court. 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.<sup>4</sup>

## The Decision

In a six–three decision delivered by Justice Souter and joined by Justices Roberts, Scalia, Thomas, Alito, and Breyer (in part), the U.S. Supreme Court affirmed the ruling of the Arizona Court of Appeals, failing to find a due process violation in either Arizona's abbreviated *M'Naughten* standard or *Mott*'s ban on considering mental illness evidence to negate the required criminal intent.<sup>5</sup> The Court began by dissecting the *M'Naughten* standard and the state's capacity to define crimes and defenses. It broke the classic *M'Naughten* standard down into its two components: a cognitive capacity and a moral capacity and addressed the due process challenge leveled at Arizona's abbreviated version.

The Court rejected the notion that the changed standard offends any fundamental principle of justice.

History shows no deference to *M'Naughten* that could elevate its formula to the level of fundamental principle, so as to limit the traditional recognition of a state's capacity to define crimes and defenses . . . even a cursory examination of the traditional An-

glo-American approaches to insanity reveal significant differences among them [Ref. 5, p 8].

Given the various standards (cognitive incapacity, moral incapacity, volitional incapacity, and product of mental illness) applied by different jurisdictions, "due process imposes no single canonical formulation of legal insanity" (Ref. 5, p 12). The Court then turned to an analysis of the new standard, which yields the opinion that the abbreviated standard is essentially no different when applied,

. . . for cognitive incapacity is relevant under that statement, just as it was under the more extended formulation. . . 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. . . 5, pp 12–13].

Up to this point, the Court's opinion, with its formulation of the essential questions to be answered and its handling of the abridged *M'Naughten* standard, generally conforms to the verdicts of lower courts as well as the sentiments of *amici curiae* (the American Psychiatric Association, the American Psychological Association, and the American Academy of Psychiatry and the Law).

The Court next turned to the *Mott* decision and the resultant complete prohibition on the use of mental disease or defect evidence to combat required *mens rea* elements of a crime. As stated in *Psychiatric News*, it is this second part of the ruling "that most disturbed those who follow psychiatric law cases."<sup>6</sup> The Court began this analysis with a discussion of evidence with potential bearing on *mens rea*. It opined that there are three categories of such evidence: observational, mental disease, and capacity. Observational evidence is described as testimony regarding direct observations about what the defendant has done or said, and this could include an expert witness's account of "Clark's tendency to think in a certain way and his behavioral characteristics" (Ref. 5, p 16). Mental disease evidence consists of:

. . . opinion testimony that Mr. Clark suffered from a mental disease with features described by the witness. . . . This evidence characteristically but not always comes from professional psychologists or psychiatrists who testify as expert witnesses and base their opinions in part on examination of a defendant, usually conducted after the events in question [Ref. 5, p 17].

Capacity evidence regards: . . . a defendant's capacity for cognition and moral judgment (and ultimately also his capacity to form *mens rea*). . . . Here, as it

usually does, this testimony came from the same experts and concentrated on those specific details of the mental condition that make the difference between sanity and insanity under the Arizona definition [Ref. 5, p 17].

Having defined these categories, the Court went on to state:

. . . [W]hat we can say about these categories goes to their cores, however, not their margins. . . . Necessarily, then, our own decision can address only core issues, leaving for other cases any due process claims that may be raised about the treatment of evidence whose categorization is subject to dispute [Ref. 5, pp 18–19].

The Court clearly read *Mott* as allowing observational evidence but forbidding either mental disease or capacity evidence. It acknowledged that the trial court appeared to have precluded Mr. Clark's use of all three forms of evidence. However, the Court concluded that Mr. Clark's objection to the application of the *Mott* rule did not turn on the distinction between lay and expert witnesses or the kinds of testimony they were competent to present. A crucial issue for the Court was whether Mr. Clark apprised the Arizona courts that he believed the trial judge had erroneously limited the consideration of observation evidence. The majority opinion stated:

Did Mr. Clark apprise the courts that he believed the trial judge had erroneously limited the consideration of observation evidence. . . ? This sort of evidence was not covered by the *Mott* restriction, and confining it to the insanity issue would have been an erroneous application of *Mott* as a matter of Arizona law. For the following reasons we think no such objection was made in a way the Arizona courts could have understood it, and that no such issue is before us now. We think the only issue properly before us is the challenge to *Mott* on due process grounds, comprising objections to limits on the use of mental disease and capacity evidence [Ref. 5, pp 21–22].

Having clarified the *Mott* question in this manner, the Court proceeded to uphold the decision and described it as the Arizona Supreme Court's device to preclude any defense of diminished capacity. The court discussed the presumption of sanity, being the presumption that a defendant has the capacity to form the *mens rea* necessary for a verdict of guilt and the consequent criminal responsibility. This presumption dispenses with a requirement on the government's part to include as an element of every criminal charge an allegation that the defendant had such a capacity:

Unlike the presumption of innocence, the force of the presumption of sanity varies across the many states and federal jurisdic-

tions, and prior law has recognized considerable leeway on the part of the legislative branch in defining the presumption's strength through the kind of evidence and the degree of persuasiveness necessary to overcome it [Ref. 5, p 26].

The Court reasoned that there are two ways in which the sanity (or capacity) presumption can be challenged: a defendant can present evidence of mental disease or incapacity to contest *mens rea*, or he or she can raise the affirmative defense of insanity. The Court acknowledged the defendant's right to present favorable evidence on an element that must be proven to convict him, but explained that this right is not absolute:

The right to introduce relevant evidence can be curtailed if there is a good reason for doing that. . . . The mental-disease and capacity evidence is thus being channeled or restricted to one issue and given effect only if the defendant carries the burden to convince the fact-finder of insanity; the evidence is not being excluded entirely, and the question is whether reasons for requiring it to be channeled and restricted are good enough [Ref. 5, pp 29–30].

The Court asserted that:

. . . if a jury were free to decide how much evidence of mental disease and incapacity was enough to counter evidence of *mens rea* to the point of creating reasonable doubt, that would in functional terms be analogous to allowing jurors to decide on some degree of diminished capacity to obey the law [Ref. 5, p 32].

This, and "the controversial character of some categories of mental disease, the potential of mental-disease evidence to mislead, and the danger of according greater certainty to capacity evidence than experts claim for it" yield reasons that are "good enough" in the Court's estimation for Arizona to channel or restrict mental-disease and capacity evidence to one issue (Ref. 5, p 34).

## The Dissent

Justice Kennedy, with whom Stevens and Ginsburg joined, delivered a cogent dissenting opinion that highlights the perceived critical flaws in the majority opinion and the commensurate injustice it harbors. The tone is aptly set with the opening statement:

In my submission the Court is incorrect in holding that Arizona may convict petitioner Eric Clark of first-degree murder for the intentional or knowing killing of a police officer when Mr. Clark was not permitted to introduce critical and reliable evidence showing he did not have that intent or knowledge [Ref. 5, p 1].

This is ultimately the heart of the matter and speaks to the injustice foreshadowed by *amicus curiae*:

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 [Ref. 4, p 5].

The route that the majority took to arrive at its decision was discussed by Justice Kennedy, who wrote:

Seizing upon a theory invented here by the Court itself, the Court narrows Mr. Clark's claim so he cannot raise the point everyone else thought was involved in the case. . . . This restructured evidentiary universe, with no convincing authority to support it, is unworkable on its own terms. . . . The Court refuses to consider the key part of Mr. Clark's claim because his counsel did not predict the Court's own invention. It is unrealistic, and most unfair [Ref. 5, pp 1–2].

The Court's categoric breakdown of evidence apparently reframes the vital issue in the case, but beyond that, it opens a Pandora's Box of questions as lower courts are faced with the difficult task of sorting out the types of evidence. Where does observational evidence end and mental-disease evidence begin? And what is the sense in divorcing the two, when the context and meaning of observations are entirely dependent on reliable and relevant explanations of mental illness? These ill-defined boundaries are likely to foster future clarification via the appellate process.

The Court has clearly preserved the right to have experts provide observational testimony, a vital element of evidence. However, the weight of such observations is potentially curtailed by the inability to present such data in its most comprehensible context according to the dissent. Justice Kennedy articulates this very problem, using the example of Mr. Clark and schizophrenia. An expert's observation that a defendant believed the world was being taken over by aliens may strike a fact-finder as outrageous when stripped of any accompanying mental-disease evidence. This observation achieves its full weight when it is married to an explanation of schizophrenia and the fact that bizarre delusions are typical of this illness. Under these constraints, an expert would presumably be able to testify that a defendant tends to play music very loudly, but would be unable to ex-

plain that this is often a coping strategy used by patients with schizophrenia to drown out auditory hallucinations. Again, the weight of the observation is radically diminished when presented in contextual isolation. However, a reading of the majority opinion provides a differing opinion, which appears to not require such a narrow view of observation testimony.

The dissenting justices clearly read *Mott* in a very different fashion than the majority, failing to find "any distinction between observation and mental-disease evidence, or lay and expert testimony." Its holding was stated in broad terms: "Arizona does not allow evidence of a defendant's mental disorder short of insanity either as an affirmative defense or to negate the *mens rea* elements of a crime" (Ref. 5, p 6). Justice Kennedy interprets the majority opinion as attempting to "divine a fact/opinion distinction in *Mott*," (Ref. 5, p 6) and erroneously "treating mental-illness evidence as concerning only 'judgment,' rather than fact. . . . Arizona's rule is problematic because it excludes evidence no matter how credible and material it may be in disproving an element of the offense" (Ref. 5, pp 11–12). The dissenting justices recognized that mental illness evidence is sometimes very credible and useful and sometimes not; they suggested that this issue can be more justly resolved on a case-by-case basis rather than a complete ban on such evidence. The dissent skillfully articulated the reality that mental-disease evidence can be both good and bad: relevant and reliable on some occasions, and potentially misleading on others. The crucial difference is in how this risk is balanced:

It is somewhat striking that while the Court discusses at length the likelihood of misjudgment from placing too much emphasis on evidence of mental illness, it ignores the risk of misjudging an innocent man guilty from refusing to consider this highly relevant evidence at all [Ref. 5, p 15].

## References

1. Ariz. Rev. Stat. § 13-502(A) (1996)
2. Ariz. Rev. Stat. § 13-1105(A) (1996)
3. State v. Mott, 931 P.2d 1046 (Ariz. 1997)
4. Brief *Amicus Curiae* for the American Psychiatric Association et al., Clark v. Arizona, U.S. Sup. Ct. No. 05-5966 (filed Jan. 30, 2006)
5. Clark v. Arizona, 126 S. Ct. 2709 (2006)
6. Daly R: High court allows states leeway in insanity-defense standards. Psychiatric News. August 4, 2006, p 13