

Clark v. Arizona (2006)

548 U.S. 735

Eric Clark was charged with first-degree murder under an Arizona statute prohibiting “intentionally or knowingly” killing a police officer in the line of duty. At his bench trial, Clark did not contest that he shot the officer or that the officer died, but relied on his own undisputed paranoid schizophrenia at the time of the incident to deny that he had the specific intent to shoot an officer or knowledge that he was doing so. Accordingly, the prosecutor offered circumstantial evidence that Clark knew the victim was a police officer and testimony indicating that Clark had previously stated he wanted to shoot police and had lured the victim to the scene to kill him. In presenting the defense case, Clark claimed mental illness, which he sought to introduce for two purposes. First, he raised the affirmative defense of insanity, putting the burden on himself to prove by clear and convincing evidence that, in the words of another state statute, “at the time of the [crime, he] was afflicted with a mental disease or defect of such severity that [he] did not know the criminal act was wrong.” Second, he aimed to rebut the prosecution’s evidence of the requisite mens rea (i.e., guilty mind) that he had acted intentionally or knowingly to kill an officer. The trial court ruled, however, that Clark could not rely on evidence bearing on insanity to dispute the mens rea, citing the Arizona Supreme Court’s decision in State v. Mott (1997), which refused to allow psychiatric testimony to negate specific intent and held that Arizona does not allow evidence of a mental disorder short of insanity to negate the mens rea element of a crime. As to his insanity, then, Clark presented lay testimony describing his increasingly bizarre behavior over the year before the shooting. Other lay and expert testimony indicated, among other things, that Clark thought that “aliens” (some impersonating government agents) were trying to kill him and that bullets were the only way to stop them. A psychiatrist testified that Clark was suffering from paranoid schizophrenia with delusions about “aliens” when he killed the officer and concluded that Clark was incapable of luring the officer or understanding right from wrong and was thus insane at the time of the killing. In rebuttal the state’s psychiatrist gave his opinion that Clark’s paranoid schizophrenia did not keep him from appreciating the wrongfulness of his conduct before and after the shooting. The judge then issued a first-degree murder verdict, finding that in light of the facts of the crime, the expert evaluations, Clark’s actions and behavior both before and after the shooting, and the observations of those who knew him, Clark had not established that his schizophrenia distorted his perception of reality so severely that he did not know his actions were wrong. Clark moved to vacate the judgment and life sentence, arguing, among other things, that Arizona’s insanity test and its Mott rule violate due process. He claimed that the Arizona Legislature had impermissibly narrowed its insanity standard in 1993 when it eliminated the first of the two parts of the traditional M’Naghten insanity test. The trial court denied the motion, and the Arizona Court of Appeals affirmed. The U.S. Supreme Court granted certiorari.

Opinion of the Court: Souter, Roberts, Scalia, Thomas, Breyer, Alito.

Concurring in part and dissenting in part: Breyer.

Dissenting opinion: Kennedy, Stevens, Ginsburg.

MR. JUSTICE SOUTER delivered the opinion of the Court.

...We granted certiorari to decide whether due process prohibits Arizona from thus narrowing its insanity test or from excluding evidence of mental illness and incapacity due to mental illness to rebut evidence of the requisite criminal intent. We now affirm.

Clark first says that Arizona's definition of insanity, being only a fragment of the Victorian standard from which it derives, violates due process. The landmark English rule in *M'Naghten's Case*, 8 Eng. Rep. 718 (1843), states that

the jurors ought to be told ... that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring 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.

The first part asks about cognitive capacity: whether a mental defect leaves a defendant unable to understand what he is doing. The second part presents an ostensibly alternative basis for recognizing a defense of insanity understood as a lack of moral capacity: whether a mental disease or defect leaves a defendant unable to understand that his action is wrong....

In 1993, the legislature dropped the cognitive incapacity part, leaving only moral incapacity as the nub of the stated definition. Under current Arizona law, a defendant will not be adjudged insane unless he demonstrates that "at the time of the commission of the criminal act [he] was afflicted with a mental disease or defect of such severity that [he] did not know the criminal act was wrong."

Clark challenges the 1993 amendment excising the express reference to the cognitive incapacity element. He insists that the side-by-side *M'Naghten* test represents the minimum that a government must provide in recognizing an alternative to criminal responsibility on grounds of mental illness or defect, and he argues that elimination of the *M'Naghten* reference to nature and quality "offends [a] principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."

The claim entails no light burden, and Clark does not carry it. History shows no deference to *M'Naghten* 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 Anglo-American approaches to insanity reveals significant differences among them, with four traditional strains variously combined to yield a diversity of American standards. The main variants are the cognitive incapacity, the moral incapacity, the volitional incapacity, and the product-of-mental-illness tests. The first two emanate from the alternatives stated in the *M'Naghten* rule. The volitional incapacity or irresistible-impulse test, which surfaced over two centuries ago (first in England, then in this country), asks whether a person was so lacking in volition due to a mental defect or illness that he could not have controlled his actions. And the product-of-mental-illness test was used as early as 1870, and simply asks whether a person's action was a product of a mental disease or defect. Seventeen States and the Federal Government have adopted a recognizable version of the *M'Naghten* test with both its cognitive incapacity and moral incapacity components. One State has adopted only *M'Naghten's* cognitive incapacity test, and 10 (including Arizona) have adopted the moral incapacity test alone. Fourteen jurisdictions, inspired by the Model Penal Code, have in place an amalgam of the volitional incapacity test and some variant of the moral incapacity test, satisfaction of either (generally by showing a defendant's substantial lack of capacity) being enough to excuse. Three States combine a full *M'Naghten* test with a volitional incapacity formula. And New Hampshire alone stands by the product-of-mental-illness test. The alternatives are multiplied further by variations in the prescribed insanity verdict: a significant number of these jurisdictions supplement the traditional "not guilty by reason of insanity" verdict

with an alternative of “guilty but mentally ill.” Finally, four States have no affirmative insanity defense, though one provides for a “guilty and mentally ill” verdict. These four, like a number of others that recognize an affirmative insanity defense, allow consideration of evidence of mental illness directly on the element of *mens rea* defining the offense.

With this varied background, it is clear that no particular formulation has evolved into a baseline for due process, and that the insanity rule, like the conceptualization of criminal offenses, is substantially open to state choice. Indeed, the legitimacy of such choice is the more obvious when one considers the interplay of legal concepts of mental illness or deficiency required for an insanity defense, with the medical concepts of mental abnormality that influence the expert opinion testimony by psychologists and psychiatrists commonly introduced to support or contest insanity claims. For medical definitions devised to justify treatment, like legal ones devised to excuse from conventional criminal responsibility, are subject to flux and disagreement. There being such fodder for reasonable debate about what the cognate legal and medical tests should be, due process imposes no single canonical formulation of legal insanity.

Nor does Arizona’s abbreviation of the *M’Naghten* statement raise a proper claim that some constitutional minimum has been shortchanged. Clark’s argument of course assumes that Arizona’s former statement of the *M’Naghten* rule, with its express alternative of cognitive incapacity, was constitutionally adequate (as we agree). That being so, the abbreviated rule is no less so, for cognitive incapacity is relevant under that statement, just as it was under the more extended formulation, and evidence going to cognitive incapacity has the same significance under the short form as it had under the long.

Though Clark is correct that the application of the moral incapacity test (telling right from wrong) does not necessarily require evaluation of a defendant’s cognitive capacity to appreciate the nature and quality of the acts charged against him, his argument fails to recognize that 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. As a defendant can therefore make out moral incapacity by demonstrating cognitive incapacity, evidence bearing on whether the defendant knew the nature and quality of his actions is both relevant and admissible. In practical terms, if a defendant did not know what he was doing when he acted, he could not have known that he was performing the wrongful act charged as a crime....

We are satisfied that neither in theory nor in practice did Arizona’s 1993 abridgment of the insanity formulation deprive Clark of due process....

... [S]upporting the *Mott* rule is Arizona’s authority to define its presumption of sanity (or capacity or responsibility) by choosing an insanity definition ... and by placing the burden of persuasion on defendants who claim incapacity as an excuse from customary criminal responsibility. No one, certainly not Clark here, denies that a State may place a burden of persuasion on a defendant claiming insanity. And Clark presses no objection to Arizona’s decision to require persuasion to a clear and convincing degree before the presumption of sanity and normal responsibility is overcome.

But if a State is to have this authority in practice as well as in theory, it must be able to deny a defendant the opportunity to displace the presumption of sanity more easily when addressing a different issue in the course of the criminal trial. Yet, ... just such an opportunity would be available if expert testimony of mental disease and incapacity could be considered for whatever a

factfinder might think it was worth on the issue of *mens rea*. As we mentioned, the presumption of sanity would then be only as strong as the evidence a factfinder would accept as enough to raise a reasonable doubt about *mens rea* for the crime charged; once reasonable doubt was found, acquittal would be required, and the standards established for the defense of insanity would go by the boards.

Now, a State is of course free to accept such a possibility in its law. After all, it is free to define the insanity defense by treating the presumption of sanity as a bursting bubble, whose disappearance shifts the burden to the prosecution to prove sanity whenever a defendant presents any credible evidence of mental disease or incapacity. In States with this kind of insanity rule, the legislature may well be willing to allow such evidence to be considered on the *mens rea* element for whatever the factfinder thinks it is worth. What counts for due process, however, is simply that a State that wishes to avoid a second avenue for exploring capacity, less stringent for a defendant, has a good reason for confining the consideration of evidence of mental disease and incapacity to the insanity defense.

It is obvious that Arizona's *Mott* rule reflects such a choice. The State Supreme Court pointed out that the State had declined to adopt a defense of diminished capacity (allowing a jury to decide when to excuse a defendant because of greater than normal difficulty in conforming to the law). The court reasoned that the State's choice would be undercut if evidence of incapacity could be considered for whatever a jury might think sufficient to raise a reasonable doubt about *mens rea*, even if it did not show insanity. In other words, 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 a reasonable doubt, that would in functional terms be analogous to allowing jurors to decide upon some degree of diminished capacity to obey the law, a degree set by them, that would prevail as a stand-alone defense.

A State's insistence on preserving its chosen standard of legal insanity cannot be the sole reason for a rule like *Mott* ... Are there ... characteristics of mental-disease and capacity evidence giving rise to risks that may reasonably be hedged by channeling the consideration of such evidence to the insanity issue on which, in States like Arizona, a defendant has the burden of persuasion? We think there are: in the controversial character of some categories of mental disease, in the potential of mental-disease evidence to mislead, and in the danger of according greater certainty to capacity evidence than experts claim for it.

To begin with, the diagnosis may mask vigorous debate within the profession about the very contours of the mental disease itself....

Next, there is the potential of mental-disease evidence to mislead jurors (when they are the factfinders) through the power of this kind of evidence to suggest that a defendant suffering from a recognized mental disease lacks cognitive, moral, volitional, or other capacity, when that may not be a sound conclusion at all. Even when a category of mental disease is broadly accepted and the assignment of a defendant's behavior to that category is uncontroversial, the classification may suggest something very significant about a defendant's capacity, when in fact the classification tells us little or nothing about the ability of the defendant to form *mens rea* or to exercise the cognitive, moral, or volitional capacities that define legal sanity.... The limits of the utility of a professional disease diagnosis are evident in the dispute between the two testifying experts in this case; they agree that Clark was schizophrenic, but they come to opposite conclusions on whether the mental disease in his particular case left him bereft of cognitive or

moral capacity. Evidence of mental disease, then, can easily mislead; it is very easy to slide from evidence that an individual with a professionally recognized mental disease is very different, into doubting that he has the capacity to form *mens rea*, whereas that doubt may not be justified. And of course, in the cases mentioned before, in which the categorization is doubtful or the category of mental disease is itself subject to controversy, the risks are even greater that opinions about mental disease may confuse a jury into thinking the opinions show more than they do. Because allowing mental-disease evidence on *mens rea* can thus easily mislead, it is not unreasonable to address that tendency by confining consideration of this kind of evidence to insanity, on which a defendant may be assigned the burden of persuasion.

There are, finally, particular risks inherent in the opinions of the experts who supplement the mental-disease classifications with opinions on incapacity: on whether the mental disease rendered a particular defendant incapable of the cognition necessary for moral judgment or *mens rea* or otherwise incapable of understanding the wrongfulness of the conduct charged. Unlike observational evidence bearing on *mens rea*, capacity evidence consists of judgment, and judgment fraught with multiple perils: a defendant's state of mind at the crucial moment can be elusive no matter how conscientious the enquiry, and the law's categories that set the terms of the capacity judgment are not the categories of psychology that govern the expert's professional thinking. Although such capacity judgments may be given in the utmost good faith, their potentially tenuous character is indicated by the candor of the defense expert in this very case. Contrary to the State's expert, he testified that Clark lacked the capacity to appreciate the circumstances realistically and to understand the wrongfulness of what he was doing, but he said that "no one knows exactly what was on [his] mind" at the time of the shooting. And even when an expert is confident that his understanding of the mind is reliable, judgment addressing the basic categories of capacity requires a leap from the concepts of psychology, which are devised for thinking about treatment, to the concepts of legal sanity, which are devised for thinking about criminal responsibility. In sum, these empirical and conceptual problems add up to a real risk that an expert's judgment in giving capacity evidence will come with an apparent authority that psychologists and psychiatrists do not claim to have. We think that this risk, like the difficulty in assessing the significance of mental-disease evidence, supports the State's decision to channel such expert testimony to consideration on the insanity defense, on which the party seeking the benefit of this evidence has the burden of persuasion....

Arizona's rule serves to preserve the State's chosen standard for recognizing insanity as a defense and to avoid confusion and misunderstanding on the part of jurors. For these reasons, there is no violation of due process ... and no cause to claim that channeling evidence on mental disease and capacity offends any "principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."

The judgment of the Court of Appeals of Arizona is, accordingly, affirmed.

MR. JUSTICE KENNEDY, with whom MR. JUSTICE STEVENS and MS. JUSTICE GINSBURG join, dissenting.

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 Clark was not permitted to introduce critical and reliable evidence showing he did not have that intent or knowledge...

Since I would reverse the judgment of the Arizona Court of Appeals on this ground, and the Arizona courts might well alter their interpretation of the State's criminal responsibility statute were my rationale to prevail, it is unnecessary for me to address the argument that Arizona's definition of insanity violates due process....