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U.S. JUSTICES LOOK AT ARIZ. KILLING MURDERER'S INTENT FOCUS OF INSANITY CASE *John Faherty, The Arizona Republic*

Two **Arizona** attorneys argued before the U.S. Supreme Court Wednesday in a case that could determine how the state prosecutes mentally ill people accused of crimes.

The case involves Eric **Clark**, then 17, who shot and killed Flagstaff police Officer Jeff Moritz early on the morning of June 21, 2000.

Clark was later convicted of first-degree murder.

The **Clark** decision could affect the way other states prosecute the mentally ill.

The high court is considering two issues in **Clark vs. Arizona**.

The first is broad: Namely, did the limited scope of **Arizona's** insanity-defense law limit **Clark's** constitutional right to due process?

The second is narrower, more nuanced and far more likely to have greater long-term consequences in **Arizona's** courtrooms.

It focuses on whether defendants in the state should be allowed to introduce mental illness in determining if they had the capacity to form intent for a crime. Currently, they cannot.

From the beginning of this case, state prosecutors and **Clark's** defense lawyers agreed on two things: **Clark** shot Moritz, and **Clark** was mentally ill.

But they disagreed on how those two facts should be considered in deciding his fate.

Arizona law allows a court to consider only the mental illness of a defendant in determining if he was able to distinguish between right and wrong at the time of the crime.

Clark's attorney, David Goldberg, repeated a common-law lesson to the justices: "A person thinks he is squeezing a lemon, but it turns out to be his sister. He knows that killing his sister is wrong but not that squeezing a lemon is wrong."

In **Clark's** case, he says he believed he was killing a space alien, not a police officer.

Most states follow what is called the M'Naghten test, which was developed in England in 1843, for an insanity defense. In addition to the right and wrong questions, it also allows a judge or jury to consider mental illness in determining if the defendant was able to understand the nature of his acts. In short, did he know what he was doing? Did he intend to commit the crime he committed?

The issues at play are important enough that the Bush administration is backing **Arizona** and sent its top Supreme Court lawyer, Paul Clement, to help argue **Arizona's** case.

10 states back **Arizona**

Ten states are also supporting **Arizona** and filed briefs warning justices that if they accept **Clark's** view of the case "it will call into serious question the validity of the majority of state insanity statutes."

Clark is supported by a variety of mental-health groups, including the American Psychiatric Association, American Psychological Association and American Association on Mental Retardation.

Clark was arrested the day after he shot Moritz. Almost immediately, his sanity was questioned. Eventually, the state diagnosed him as a paranoid schizophrenic. He was treated and eventually deemed competent for trial. His case was heard in a non-jury trial in Coconino County Superior Court. Judge Jeffrey Coker found **Clark** guilty of first-degree murder and sentenced him to life in prison without the possibility of parole for 25 years.

Goldberg, a Flagstaff attorney, appealed Coker's verdict all the way to the Supreme Court.

Goldberg argued Wednesday that his client's right to due process was unfairly denied because **Arizona** law prohibited him from introducing evidence of **Clark's** mental illness on the issue of intent.

Specifically Goldberg said that his defendant was so mentally ill that he thought he was shooting a space alien, not a police officer.

In **Clark's** trial in Coconino County, the state argued that **Clark** was driving around Flagstaff with his music blasting in order to bait a police officer into pulling him over.

Discussion of the case led to a surreal moment Wednesday when Justice Stephen Breyer prefaced a question by conceding that killing a space alien was not morally wrong.

Several justices, particularly Breyer and Justice Anthony Kennedy, questioned Goldberg along lines that would suggest they believe that when an **Arizona** court considers mental illness on the issue of right and wrong, that would include whether he knew what he was doing. In short, it appeared that they assumed **Arizona's** law to be adequate.

"It is difficult to imagine that a person who did not know what he was doing would know right from wrong," Breyer said.

Kennedy reiterated, "You can argue mental incapacity to determine right versus wrong."

Goldberg did not waiver on his point that **Clark's** mental illness should be considered in determining whether he knew he was killing a police officer.

The knowledge that he was killing a police officer was instrumental to the state's conviction on first-degree murder.

If the high court decides **Arizona** law is wrong in not allowing a judge or jury to consider mental illness in determining a defendant's ability to form intent, it could have lasting repercussions on the state's legal system.

Possible repercussions

"If the court reverses this case, it will be significant," said Paul Bender, professor at **Arizona** State University School of Law. "Many defendants have a degree of mental illness, and courts may have to consider that in determining" the mental component of legal culpability.

In essence, did the defendant have the intent to commit the crime of which he is accused?

As **Arizona** law is written, the court could not consider **Clark's** mental illness on the issue of intent.

The fact that the Supreme Court heard this case unnerved the state.

"We all know the court may want to overturn this case," **Arizona** Attorney General Terry Goddard said last month.

Immediately after Wednesday's arguments, however, he seemed more confident.

"I was very pleased with the general direction of the questions," Goddard said outside the courtroom. "The judges seemed to be very respectful of the state's position."

When Randall Howe addressed the court for the state, his primary argument was that **Clark's** right to due process was upheld when mental incapacity was considered on the question of "Did he know what he was doing was wrong?"

But he, too, faced a series of difficult questions from the judges.

Justice Ruth Bader Ginsburg asked, "How does the state make its case on charges that he shot a police officer if **Clark** did not know he was killing a police officer?"

Howe argued that not only did **Clark** know he was shooting a police officer but also that in the weeks leading up to the shooting he had told people he was going to shoot a police officer.

Ginsburg then asked, "But he is not allowed to introduce evidence that he thought he was killing a space alien?"

If the court finds **Arizona's** laws are too restrictive, it likely will mean a retrial for **Clark**.

A decision is expected in June.

Sitting quietly in the courtroom were **Clark's** parents, David and Terry **Clark**.

For them, the issues are simpler. They want their son to receive medical attention.

"We've never lost sight of the tragedy that brings us here," Terry said. "Both for us and, of course, for the Moritz family. We never thought we would be living this life. But we are."

'Clark vs. Arizona'

June 21, 2000: Eric **Clark**, then 17, shoots and kills Flagstaff Police Officer Jeff Moritz and is arrested the next day.

2000-2003: **Clark** is in state custody and receives treatment for mental illness.

August 2003: **Clark** is convicted of first-degree murder and sentenced to life in prison with chance of parole after 25 years.

January 2005: **Clark's** appeal to the **Arizona** Court of Appeals is rejected.

May 2005: **Arizona** Supreme Court denies review of appeal.

December 2005: U.S. Supreme Court agrees to hear case.

April 19, 2006: **Clark vs. Arizona** is argued before the Supreme Court.

Attorney undaunted by cerebral palsy

Wednesday's argument in **Clark vs. Arizona** before the Supreme Court was the high point in the long career of attorney Randall Howe.

On Sunday, The **Arizona** Republic profiled Howe and his struggles to overcome the challenges presented by living with cerebral palsy.

In that profile, Howe attributed many of his life accomplishments to how his late mother raised him. We caught up with Howe after his appearance before the court.

Q: How did it feel today to stand in the nation's high court?

A: You know, before I got to argue, when I was sitting there waiting, I thought, "How the hell am I going to do this without embarrassing myself?" It was terrible. But once I got going and the judges seemed to like my answers, it was fine.

Q: Did you think of your mother today?

A: Oh, yes, of course. My mom would have been jazzed to know that I was doing what I was capable of doing.

Q: I know you don't define yourself by your condition, but at any point this morning, did you say, "I got dealt a pretty hard hand, and I did all right"?

A: I honestly don't ever think about that. My life is my life. That's all it is. I just deal with it.

Q: Now that you've done this, what's next?

A: I am going to take a couple of weeks off. Then I'll go back to work. And after that, who knows? Whatever happens, happens.

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