



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. STEPHEN JAY MALONE, JR.**  
CR-18-0431-PR

**PARTIES:**

*Petitioner/Cross-Respondent/Defendant:* Stephen Jay Malone Jr. (“Malone”)

*Respondent/Cross-Petitioner:* The State of Arizona (“the State”)

**FACTS:**

Malone was involved in a long-term relationship with AS. In June 2014, after an argument, AS was attempting to drive away from Malone’s home with her children and her sister. After blocking her car with his own, Malone retrieved his handgun and shot and killed AS. He also shot AS’s sister, injuring her. He was charged with the first-degree murder of AS, aggravated assault of the sister, and felony endangerment of the children.

Malone’s main defense to the murder charge was lack of premeditation. He contended that he was not planning to kill AS but was instead hoping to “work things out with her” and to renew his relationship with her and his children. AS’s killing, he argued, was an impulsive act. In support, he disclosed the report of Dr. Sullivan, a forensic neuropsychologist. Sullivan’s testing of Malone led him to conclude that Malone suffered from “significant and permanent diffuse brain damage.” He also opined that one characteristic of “diffuse brain damage” is “impulsivity.”

Before trial, the State moved to preclude Sullivan from testifying that Malone’s “impulsivity” resulted from “brain damage.” It acknowledged that under *State v. Christensen*, 129 Ariz. 32 (1981), Malone could present expert testimony that he had “the character trait of impulsivity,” which could be offered to show a lack of premeditation. But the State also argued that Sullivan should be precluded from tying the character trait of “impulsivity” to “brain damage,” which the State argued was barred under *State v. Mott*, 187 Ariz. 536 (1997). The *Mott* decision held that a defendant could not rely on mental defect or deficiency in an attempt to show that he lacked the required mental state, or *mens rea*, required to commit a crime.

The court granted the State’s motion, ruling that the expert could testify that Malone had a trait of impulsiveness but could not testify that he suffered from brain damage. At trial, Dr. Sullivan testified about Malone’s character trait of “impulsivity.” Malone’s mother also testified, explaining that her son displayed serious signs of impulsiveness throughout his life. After a five-day trial, the jury convicted Malone on all charges. He then filed an appeal in the Court of Appeals.

***The Court of Appeals’ Opinion.*** The Court of Appeals affirmed Malone’s convictions. *State v. Malone*, 245 Ariz. 103 (App. 2018). The majority explained that because Arizona law does not recognize a defense of diminished capacity, a defendant may not offer evidence of a mental disorder to negate the *mens rea* element of a crime. *State v. Mott*, 187 Ariz. 536, 540-41 (1997). It also noted, however, that a defendant may introduce evidence that he has a character trait for impulsivity as evidence that he did not premeditate a homicide. *State v. Christensen*, 129 Ariz. 32 (1981). The key issue, it reasoned, was whether the testimony of Malone’s expert was

properly characterized as evidence of diminished mental capacity or as evidence demonstrating that Malone had an impulsive personality trait. The majority concluded “it is evidence of both.”

The majority indicated that Malone did not proffer the expert testimony regarding brain damage to prove that he was incapable of reflecting but instead offered it “to demonstrate a brain condition that rendered it less likely that he may have done so.” Because of that, the majority ruled that “the evidence was admissible to the extent offered to corroborate the defendant’s claims that he had a character trait of impulsivity,” although it would not have been admissible to support a claim that Malone was “incapable” of reflecting on, or premeditating, the homicide.

The majority noted that the Arizona Supreme Court had yet to consider what a court should do with evidence “that may be fairly characterized as both admissible evidence of a character trait for impulsivity and inadmissible evidence of a mental defect.” But it also noted that *Christensen* provided a workable standard for treating such a case by “allow[ing] evidence for one purpose (to show that a defendant had an ingrained tendency to act a certain way) but not another (to show that a defendant was incapable of premeditating an offense).” Accordingly, it held that the brain-damage evidence was admissible to corroborate Malone’s claim that he possessed a character trait for impulsivity, and it therefore should have been admitted, subject to a limiting instruction.

Nonetheless, the majority affirmed the conviction because the trial court’s exclusion of the expert’s testimony ruling was harmless error. It explained that although Malone was not permitted to present evidence of brain damage, he did introduce extensive evidence of his character trait for impulsivity. It noted that his mother “testified at length about his lifelong impulsive behavior and inability to cope with his emotions.” It further noted he also was “permitted to introduce extensive expert testimony regarding his character trait for impulsivity.” The majority further explained that its conclusion that the exclusion of the evidence was harmless was “further bolstered by the fact that the state never challenged that Malone had a character trait for impulsivity.”

One judge on the panel dissented in part, reasoning that the Arizona Supreme Court’s decision in *Mott* precluded the expert from testifying that that Malone suffered from brain damage.

## **ISSUES:**

Malone asks the Arizona Supreme Court to address this issue:

Did the court of appeals err in concluding that the incorrectly precluded evidence of Appellant’s brain damage—as it informed his character trait for impulsivity in defense of first-degree murder—constituted harmless error?

The State asks the Arizona Supreme Court to address this issue:

“Arizona does not allow evidence of a defendant’s mental disorder short of insanity . . . to negate the *mens rea* element of a crime.” *State v. Mott*, 187 Ariz. 536, 541 (1997). Premeditation is part of the *mens rea* for first-degree murder. Did a majority of a panel of the court of appeals err when it held, in a published opinion, that Malone was entitled to introduce evidence of his alleged brain damage to negate premeditation in his first-degree murder trial?

***This Summary was prepared by the Arizona Supreme Court Staff Attorneys’ Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.***