AZ JUDICIAL CONFERENCE

Navigating Mental Health Challenges in the Arizona Courts: Impacts, Insights and Lived Experience

NAVIGATING MENTAL HEALTH CHALLENGES IN THE ARIZONA COURTS IMPACTS, INSIGHTS, AND LIVED EXPERIENCE

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Navigating Mental Health Challenges in the Arizona Courts

Impacts, Insights, Lived Experiences

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Prevalence of Mental Illness

- According to the National Alliance on Mental Illness (NAMI), one in five Americans experience mental illness during their lifetime. And, one in twenty-five Americans experience a serious mental illness in any given year.
- Serious Mental Illness (SMI) is illness that substantially interferes with or limits one or more major life activities. (NAMI)

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- According to SMI Adviser, it is estimated that as many as 1 million veterans live with mental health conditions as a result of their wartime service, including, but not limited to, PTSD, traumatic brain injury, depression, and anxiety.

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- "[S]tudies have shown that up to 80% of children enter the foster care system with a significant mental health need." W. David Lohr & V. Faye Jones, *Mental Health Issues in Foster Care*, 45 Pediatric Annals 342, 342 (2016).
- "28 percent [of] lawyers suffered from depression[,] 19 percent of lawyers had severe anxiety[, and] 11.4 percent of lawyers had suicidal thoughts in the previous year." *New Study on Lawyer Well-Being Reveals Serious Concerns for Legal Profession*, Am. Bar Ass'n (Dec. 2017).

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- "According to the National Institute of Mental Health, as compared to 14 deaths by suicide for each 100,000 deaths (as of 2019) in the general population, the national average rate for lawyers is 66 suicides per 100,000 deaths." Scott Merrill, *Legal Field Has High Rates of Substance Use, Mental Illness*, Concord Monitor (July 19, 2021, 6:09:59 PM).

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- "Currently, only 10 to 15 percent of American adults with schizophrenia are in the workforce, a number that includes many part-time jobs." Maria Hengeveld, *Job Hunting with Schizophrenia*, The Atlantic (July 28, 2015).

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Possible Effect of Mental Illness on Death from Other Causes

- "Patients with [serious mental illness] show a[n] . . . 85% higher risk of death from [cardiovascular disease] compared to the regionally matched general population." Christopher U. Correll et al., *Prevalence, Incidence and Mortality from Cardiovascular Disease in Patients with Pooled and Specific Severe Mental Illness: A Large-Scale Meta-Analysis of 3,211,768 Patients and 113,383,368 Controls*, 16 World Psychiatry 163, 176 (2017).

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- "In the UK, any psychiatric diagnosis was associated with . . . a more than two-fold increased stroke mortality in all age groups . . . ." Chin-Kuo Chang et al., *All-Cause Mortality among People with Serious Mental Illness (SMI), Substance Use Disorders, and Depressive Disorders in Southeast London: A Cohort Study*, 10 BMC Psychiatry 1, 2 (2010).

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- "[A] nationwide study [in Denmark] had two major findings: firstly, in COVID-19 positive patients, schizophrenia spectrum disorders, bipolar disorder, unipolar depression and psychotropic drug redemption—but not other psychiatric disorders—were associated with an increased risk of death and severe COVID-19 . . . ." Carlo Alberto Barcella et al., *Severe Mental Illness is Associated with Increased Mortality and Severe Course of COVID-19*, 144 Acta Psychiatrica Scandinavica 82, 82, 88 (2021).

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Panelists' Stories

- Michele Lafayette
- Adrian Delgadillo
- Joannie Collins
- Darlene Ollada
- Christopher Staring

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Discussion Questions

- How have you been impacted by stigma surrounding mental illness? How have loved ones been affected?
- Have you seen progress with regard to diminishing the negative impact of stigma?
- What is the effect of self-medication and co-occurring substance abuse disorders?

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- What challenges do families face in navigating the mental health system, including when to involve law enforcement, interacting with law enforcement, interacting with mental health care providers, confidentiality issues, and legal proceedings (criminal and civil)?
- Compassion fatigue?
- What challenges exist in obtaining clear diagnoses and appropriate care?
- Pros, cons, and myths about psychiatric medications?
- Isn't it just a matter of people taking their medications?

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- Are persons suffering from mental illness more likely to be violent or otherwise dangerous?
- Is the use of particular language important? "Crazy?" "Depressed" vs. "Sad"?
- Is mental illness the result of personal weakness, religious failings, or bad parenting?
- Can persons with mental illness thrive in work or school settings?

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- What are some effective techniques for communicating with persons suffering from mental illness?
- Resources for person suffering from mental illness and their loved ones?
- Have you had particularly noteworthy courtroom experiences?
- One thing you would really like judges to know?

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Insanity & Other Mental Illness Issues in Arizona

Arizona, like most states, adopted the M'Naghten test for insanity, *see State v. Macias*, 60 Ariz. 93, 98, 99 (1942), declared in 1843 and named for Daniel M'Naghten, who was found "not guilty on the ground of insanity" of murdering a secretary to the Prime Minister of England, Henry F. Fradella, *How Clark v. Arizona Imprisoned Another Schizophrenic While Signaling the Demise of Clinical Forensic Psychology in Criminal Courts*, 10 N.Y.C. L. Rev. 127, 130-31 & 131 (2006) (quoting Gerald Robin, *The Evolution of the Insanity Defense: Welcome to the Twilight Zone of Mental Illness, Psychiatry, and the Law*, 13 J. Contemp. Crim. Just. 224, 226 (1997)). M'Naghten's defense was that he suffered from delusions of persecution which caused him to attempt to kill the prime minister. *See id.* at 130. "Under [the] M'Naghten test or rule, an accused is not criminally responsible if, at the time of committing the act, he 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." *M'Naghten Rule*, Black's Law Dictionary (6th ed. 1990). Thus, a defendant is sane if: (1) he had "sufficient mental capacity to know and understand what he was doing"; and (2) he knew and understood that it was wrong. *Id.* Many states have adopted this standard or a variation either through statute or case law. *See id.*

Arizona used the M'Naghten test until 1993, *see, e.g.*, *Macias*, 60 Ariz. at 99; *State v. Schantz*, 98 Ariz. 200, 206 (1965), when the legislature amended A.R.S. § 13-502(A). *Compare* 1993 Ariz. Sess. Laws, ch. 256, § 3, *with* 1984 Ariz. Sess. Laws, ch. 287, § 1. The current version reads:

> A person may be found 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. A mental disease or defect constituting legal insanity is an affirmative defense. Mental disease or defect does not include disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or impulse control disorders. Conditions that do not constitute legal insanity include momentary, temporary conditions arising from the pressure of the circumstances, moral decadence, depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who

> does not suffer from a mental disease or defect or an abnormality that is manifested only by criminal conduct.

§ 13-502(A).

Thus, Arizona dropped the cognitive incapacity part of the M'Naghten rule, and now only considers moral incapacity—that is, whether the defendant knew what he was doing was wrong. *See State v. Tamplin*, 195 Ariz. 246, ¶ 10 (App. 1999) ("[Section 13-502] essentially abandoned the first prong of the *M'Naghten* test, limiting the availability of the insanity defense to a person who, at the time of the criminal act, was 'afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong.'").

Arizona's definition of the word "wrong" is based on "generally accepted moral standards of the community" and includes both legal and moral wrong. *State v. Romero*, 248 Ariz. 601, ¶ 16 (App. 2020). The practical effect of this definition is that a jury may properly infer that the defendant "knew his conduct was morally wrong" from "evidence showing the defendant was aware his conduct was illegal." *Id.* ¶ 17. This is because acts forbidden by law are generally violative of community standards of morality. *State v. Corley*, 108 Ariz. 240, 243 (1972). Conversely, however, the jury may find that a defendant knew his conduct was morally wrong even if he did not know the acts were forbidden by law. *Romero*, 248 Ariz. 601, ¶ 17.

The burden is on the defendant to prove his "legal insanity by clear and convincing evidence." § 13-502(C). If the finder of fact finds the defendant guilty except insane, with respect to sentencing, the court must "(1) determine the appropriate sentence for a legally sane defendant; (2) impose and suspend that sentence; (3) order the defendant to remain under the jurisdiction of the court for the length of the sentence; and (4) commit the defendant to a secure facility for the length of the sentence." *Gilpin v. Harris*, 258 Ariz. 61, ¶ 23 (2024); *see also* § 13-502(D). However, prior to sentencing, the superior court is not required to "revoke the release of a defendant found guilty except insane" as traditionally required by Rule 7.2(c)(1)(A), Ariz. R. Crim. P., because commitment to a secure facility is not a sentence of imprisonment. *Dominguez v. Metcalf*, 255 Ariz. 310, ¶¶ 5, 7-8, 11 (App. 2023).

Once committed, A.R.S. § 13-3994 allows the defendant, his secure facility, or his outpatient treatment supervisor to request a hearing to modify the nature of his commitment term. After the hearing, the court can take one of the following actions: (1) "[i]f . . . the person still has a mental disease or defect and is dangerous, the court shall order that the person remain committed at the secure mental health facility"; (2) "[i]f . . . the person no longer needs ongoing treatment for a mental disease or defect

and is not dangerous, the court shall place the person on supervised probation for the remainder of the commitment term"; (3) "[i]f . . . the person still has a mental disease or defect or . . . the mental disease or defect is in stable remission but the person is no longer dangerous, the court shall order the person's conditional release" but "[t]he person shall remain under the court's jurisdiction"; or (4) "[i]f the person could have been sentenced pursuant to § 13-704, § 13-710 or § 13-751, subsection A and . . . the person no longer needs ongoing treatment for a mental disease or defect and the person is dangerous, the court shall impose the sentence and order the person to be transferred to the state department of corrections for the remainder of the commitment term." § 13-3994(B).

Arizona's Current Insanity Test Upheld: *Clark v. Arizona*, 548 U.S. 735 (2006)

Clark was charged with first-degree murder for intentionally or knowingly killing a law enforcement officer in the line of duty during an alleged paranoid schizophrenic episode. *Id.* at 743-44. In a bench trial, Clark raised the defense of insanity and sought to introduce evidence of mental illness to rebut the state's evidence that he had the requisite intent to kill a police officer. *Id.* The trial court, citing *State v. Mott*, 187 Ariz. 536 (1997), ruled Clark could not rely on evidence of insanity to rebut intent. *Clark*, 548 U.S. at 745.

A psychiatrist testified Clark was suffering a paranoid schizophrenic episode with delusions about aliens when he killed the police officer and was not capable of understanding right from wrong. *Id.* In contrast, the state's psychiatrist testified that paranoid schizophrenia did not keep Clark from appreciating the wrongfulness of his actions. *Id.* Clark was found guilty of first-degree murder and the court found Clark had not shown he was insane at the time of the shooting. *Id.* at 746.

The Supreme Court ultimately upheld Arizona's insanity test and explained that despite removing the cognitive incapacity prong of M'Naghten, evidence of cognitive incapacity had "the same significance" under Arizona's new insanity test as it did under M'Naghten. *Id.* at 753, 756. That is, a defendant can demonstrate moral incapacity (not knowing right from wrong) by establishing cognitive incapacity (not knowing the quality or nature of his actions) because "[i]n 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." *Id.* at 753-54. The Court reasoned that because evidence of cognitive incapacity remained relevant and admissible under Arizona's insanity test, despite being removed from the statute, the new insanity defense was constitutional. *Id.* at 753–56.

Rejecting "Diminished Capacity" and Impulsivity Defense

The "diminished capacity" or "diminished responsibility" defense refers to using a mental disease or defect to challenge the mens rea element of a crime. *State v. Malone*, 247 Ariz. 29, ¶ 9 (2019). The Arizona Supreme Court has repeatedly rejected this defense, both when the M'Naghten test was used, and after the 1993 amendment. *See id.*; *Schantz*, 98 Ariz. at 208-13 & n.1 (rejecting defendant's argument that jury should have been instructed that "a character or behavior disorder . . . may constitute evidence tending to negate the accused's capacity to entertain the required malice aforethought, specific intent or knowledge"); *see also State v. Richter*, 245 Ariz. 1, ¶ 13 (2018); *Mott*, 187 Ariz. at 538.

In *Mott*, the court rejected Mott's diminished capacity defense, explaining that "[t]he practice of barring defendants from offering diminished capacity evidence to negate the *mens rea* element of a crime does not violate a fundamental principle." 187 Ariz. at 538, 542. Mott was charged with first-degree murder and two counts of child abuse for the death of her child where she knew her daughter needed medical attention for injuries caused by her abusive boyfriend but did not take her to a hospital. *Id.* at 538-39. Mott offered expert testimony to challenge the element of knowledge or intent on the child abuse counts and, upon hearing the expert testify that battered-woman syndrome was relevant to Mott's ability to protect her children, the court found the testimony was an attempt to establish a diminished capacity defense and ruled it inadmissible. *See id.* at 539.

Our supreme court concluded that "[b]ecause the legislature has not provided for a diminished capacity defense, we have since consistently refused to allow psychiatric testimony to negate specific intent." *Id.* at 541. Thus, apart from insanity, Arizona does not allow evidence of a defendant's mental disease or defect as an affirmative defense or to negate the mens rea element of a crime. *See id.* The court also distinguished *State v. Christensen*, 129 Ariz. 32 (1981), by explaining that Christensen "merely offered evidence about his behavioral tendencies," not "evidence of his diminished mental capacity." *Mott*, 187 Ariz. at 543-44 & 544. The court further noted that the evidence offered in *Christensen* was "not that [Christensen] was *incapable*, by reason of a mental defect, of premeditating or deliberating but that, because he had a tendency to act impulsively, he did not premeditate the homicide." *Id.* at 544. That is, "[b]ecause [Christensen] was not offering evidence of his diminished capacity, but only of a character trait relating to his lack of premeditation, the defendant was not precluded from presenting the expert testimony." *Id.*

More recently, the Arizona Supreme Court again rejected the diminished capacity defense in *Malone*, 247 Ariz. 29, ¶ 9. There, Malone was charged with

first-degree murder for shooting his partner after a brief car chase. *Id.* ¶¶ 2-3. He sought to admit evidence that his performance on a neuropsychological assessment was "consistent with significant and permanent diffuse brain damage," making him "more likely to have a character trait for impulsivity." *Id.* ¶ 3. Malone was attempting to rebut the state's allegation that he premeditated the murder by introducing evidence that he had acted impulsively. *Id.* ¶ 4. Specifically, the defense expert was allowed to testify that Malone had a character trait for impulsivity and that people with this trait are compromised in their ability to think through the consequences of their actions. *Id.* The state did not dispute Malone was impulsive, but argued he nevertheless premeditated the murder; the jury agreed and he was convicted of first-degree murder. *Id.*

Our supreme court concluded "evidence of a defendant's behavioral tendencies is not diminished capacity evidence and may be admitted to challenge the mens rea of premeditation for a first degree murder charge." *Id.* ¶ 10. The court clarified that "behavioral-tendency evidence" is admissible, *id.* ¶ 11, but that "mental disease or defect evidence, whether introduced to show a defendant's inability to form mens rea or a likelihood he failed to do so, cannot be used to negate mens rea," *id.* ¶ 19. Put differently, "[a]lthough behavioral-tendency evidence is permissible to negate mens rea, linking that behavior to a mental disease or defect, whether directly or under the guise of corroboration, is impermissible." *Id.* ¶ 20.

Other Impulsivity/Diminished Capacity Cases

- *State v. Leteve*, 237 Ariz. 516, ¶ 24 (2015) (trial court erred in precluding expert testimony where expert would have testified about defendant's general character trait for impulsivity, but not that defendant acted impulsively during murders).
- *Christensen*, 129 Ariz. at 34-35 (defendant may admit evidence of character trait under Rule 404, Ariz. R. Evid., to rebut premeditation element).
- *State v. Buot*, 232 Ariz. 432, ¶ 20 (App. 2013) ("[A] defendant charged with second-degree murder may not offer evidence that due to a character trait of impulsivity, he did not act knowingly or recklessly because he lacked the power to control his actions.").
- *State v. Johnson*, 229 Ariz. 475, ¶¶ 15, 18 (App. 2012) (evidence of diminished capacity permitted in aggravation phase of sentencing after defendant has already been found criminally responsible).
- *State v. Hudson*, 152 Ariz. 121, 126 (1986) (insanity defense not available to defendant whose voluntary intoxication aggravates pre-existing mental disorder or created temporary mental incapacity).

- *State v. Fox*, 112 Ariz. 375, 378 (1975) ("It is clearly established that voluntary intoxication is not a basis for a valid insanity defense.").
- *Cruz v. Blair*, 255 Ariz. 335, ¶¶ 18–24 (2023) (trial court properly precluded expert's mental defect testimony offered not to negate mens rea, but to rebut actus reus, on ground that testimony did not bear on whether defendant committed a voluntary act or omission).