



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



State v. Richter, CR-17-0452-PR

PARTIES:

Petitioner: State of Arizona

Respondent: Sophia Leann Richter

FACTS:

In 2002, Richter married Fernando, and he became stepfather to her three daughters. Fernando was diagnosed as a paranoid schizophrenic, and the family lived on his disability payments. When the family lived in Pinal County, Richter and Fernando took the girls out of school. In 2013, the family moved to a home in Tucson. MP was then 17 years old, BA was 13 years old, and AA was 12 years old. BA and AA shared a room and MP had her own room.

In the early morning of November 26, 2013, BA and AA were awakened by the sound of a dish or vase breaking. Fernando, wielding a knife, began to kick in the bottom of their room door, which was locked from the inside. The girls escaped out a window and woke a neighbor.

When police arrived, they found Richter and Fernando in the home. Richter told police that Fernando had burned her with a knife; she had fresh burn marks and knife wounds on her body, along with scars and older wounds. Police found MP locked in a bedroom alone, sitting on the bed with extremely loud music playing. BA and AA later said that they had not seen MP in more than a year.

Conditions in the home were extremely unsanitary, with dog waste in the living room and urine and vomit in the bedrooms. The refrigerator contained a five-gallon bucket full of pasta and rancid meat. Police found closed-circuit cameras in the living room and girls' bedrooms plus alarm sensors at the tops of the bedroom doors and windows. The girls' bedroom windows were covered with sheets and blankets.

The girls reported a history of austere and unsanitary living conditions and bizarre house rules. They were generally not allowed out of their rooms. When they needed to use the restroom, they had to don hats and signal the camera. When they were not allowed out in time, they relieved themselves in their clothes or on the floor. Richter and Fernando played loud music or static in the bedrooms constantly and they often turned it up to painfully loud levels. Richter told the girls they did this so that the neighbors could not hear if the girls yelled or screamed. Richter fed the girls bowls of the "noodle concoction" from the refrigerator twice a day and required the girls to quickly eat all their food, even if it was more than their stomachs could hold. Richter and Fernando also maintained numerous other strange rules, such as waking BA and AA every morning at 2:00 a.m. and forcing them to march in place until they were told to stop, a practice the parents called

“mumbling.” MP was also awoken at 2:00, but was not required to “mumble.” To punish the girls for violating the rules, Fernando would beat the girls with a belt, stick, or metal spoon.

According to Richter, Fernando also subjected her to his domineering. She claimed that he controlled her makeup and clothing choices, limited her contact with family members, and hit and choked her or cut her with knives if she challenged his rulings. Richter indicated that the few times Fernando let her leave the home, Fernando insisted she keep an ongoing cell phone call with him so he could hear what was going on. She stated that the one time she stood up to him on a family trip to California he threw her out of the hotel room by her hair.

Richter and Fernando were indicted for three counts each of kidnapping and child abuse, one for each girl, for the period between September 1 to November 26 while the family was living in the Tucson home. Fernando was also charged with two counts of aggravated assault for hitting BA and AA during that time.

Before trial, Richter filed a notice stating she intended to present a defense of duress under [A.R.S. § 13-412](#), arguing that she was the victim of Fernando’s criminal acts. She also sought to introduce expert testimony that she suffers from post-traumatic stress disorder (PTSD) based on Fernando’s abuse and that she lived in a constant state of fear. She argued that this expert evidence would constitute “observation evidence,” which the U.S. Supreme Court found admissible in [Clark v. Arizona, 548 U.S. 735 \(2006\)](#).

The State argued that Richter was actually attempting to present a diminished capacity defense, claiming that she did not possess the requisite legal mental state (also known as the “mens rea,” Latin for “guilty mind”) required for the offenses. The State claimed that Richter was trying to argue that she could not have intentionally, knowingly, recklessly, or negligently harmed her children because, due to her PTSD, she lacked the mental capacity to have committed child abuse. In the State’s view, Richter’s position was prohibited by [State v. Mott, 187 Ariz. 536, 540-41 \(1997\)](#), and by [Clark](#).

The State also contended that Richter was not entitled to a duress defense because she had not been compelled to abuse the girls by Fernando’s “threat or use of immediate physical force” throughout the entire three-month period charged as required under [A.R.S. § 13-412](#).

The trial court agreed with the State. It held that [Mott](#) prohibited Richter’s proposed expert testimony because it amounted to “psychological evidence as to diminished capacity.” [State v. Richter, 243 Ariz. 131, 135 ¶ 9 \(App. 2017\)](#). The trial court also held that the expert testimony did not qualify as “observation evidence” under [Clark](#). The trial court denied Richter’s request to present a duress defense because, in the court’s view, Richter was essentially presenting a diminished capacity defense by asserting that she was a battered woman who could not form the requisite mental state required to have committed criminal child abuse. The trial court also ruled that Richter had not presented sufficient evidence of the “threat or use of immediate physical force” to be entitled to present the jury with a duress defense.

The court of appeals reversed. The court held that “this case is readily distinguishable from [Mott](#),” because here, Richter sought to introduce evidence that she was compelled by Fernando to commit the charges against her by her duress, rather than to present evidence of diminished

capacity. *Id.* at 136 ¶ 17. The court of appeals also held that the expert testimony Richter sought to introduce constituted “observation evidence,” under *Clark*, because the expert would explain Richter’s “PTSD, virtual captivity, and constant state of fear, for herself and her children” and would “explain what was on Sophia’s mind as she committed the alleged offenses” and was “therefore admissible under *Mott* and *Clark*.” *Id.* at 135-36 ¶ 13, n.4, 138 ¶ 21.

As for Richter’s duress defense, the court held that under A.R.S. § 13-412(A), the term “immediate” means “occurring without delay; instant.” *Id.* at 138 ¶ 23. The court stated that Richter “maintained that she was under immediate threat of physical harm to herself and/or her children because Fernando set the rules of the house, which she was subject to, and she was abused, as evidenced by the photographs of her knife injuries, if she in any way challenged his authority.” *Id.* ¶ 25 (internal quotation marks omitted). The court held that this type of “ongoing” threat could constitute an “immediate” threat and thereby “provide[] a legal basis for the duress defense.” *Id.* at 139 ¶ 29.

The court of appeals reversed Richter’s convictions and remanded for a new trial.

ISSUES:

1. Whether the court of appeals properly applied the “observation evidence” exception in *Clark v. Arizona*, 548 U.S. 735 (2006), in the context of a duress defense?
2. Whether an abuser’s constant threats of harm over a three-month period can constitute the “threat or use of immediate physical force” under A.R.S. §13-412(A) sufficient to permit the defendant to raise a duress defense to her allegedly ongoing abuse of her children.

DEFINITIONS:

In relevant part, the defense of “**Duress**” is defined this way in A.R.S. § 13-412:

A. Conduct which would otherwise constitute an offense is justified if a reasonable person would believe that he was compelled to engage in the proscribed conduct by the threat or use of immediate physical force against his person or the person of another which resulted or could result in serious physical injury which a reasonable person in the situation would not have resisted.

B. The defense provided by subsection A is unavailable if the person intentionally, knowingly or recklessly placed himself in a situation in which it was probable that he would be subjected to duress.

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