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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

vs.

ARLENA WILLES

Defendant.

CR2019-005397-001

**STATE'S MOTION TO PRECLUDE  
DIMINISHED CAPACITY DEFENSE**

(Assigned to the Honorable Geoffrey Fish)

The State of Arizona, by and through undersigned counsel, and hereby moves this Honorable Court preclude any reference in opening, testimony, or argument to the claim that Defendant suffers from a diminished capacity or any other mental defect or psychological disorder. The State further moves to preclude any defense based upon this claim. This motion is supported by the attached Memorandum of Points and Authorities.

## Memorandum of Points and Authorities

### I. FACTS

The Defendant is charged with two counts of Child Abuse for obstructing the medical care of her fifteen year old son, and for failure to thrive of the same victim. The State anticipates that the Defense will argue at trial that the Defendant was unable to comprehend the harm she was doing to her son. Defense has not disclosed any mental health expert or doctor intended to testify at trial as to Defendant's mental health, and Defendant has not noticed the defense of guilty except insane.

### II. LAW

#### a. Arizona law prohibits evidence of diminished capacity at trial

"[T]he use of expert psychiatric evidence to negate mens rea" is referred to as a "diminished capacity" or "diminished responsibility" defense." *United States v. Pohlot*, 827 F.2d 889, 896 (3d Cir. 1987) *cert. denied*, 484 U.S. 1011, 108 S.Ct. 710 (1998). Arizona does not recognize the defense of diminished capacity. *State v. Mott*, 187 Ariz. 536, 541, 931 P.2d 1046, 1051 (1997). Courts may consider evidence of a defendant's diminished capacity solely for the purposes of proving a mitigating factor during sentencing<sup>1</sup>; diminished capacity evidence is expressly precluded "either as an affirmative defense or to negate the *mens rea* element of a crime." *State v. Johnson*, 229 Ariz. 475, 276 P.3d 544, 549 (Ct. App. Div. 2 2012) (quoting *State v. Mott*, 187 Ariz. 536, 541, 931 P.2d 1046, 1051 (1997)). Also, merely showing the defendant's capacity is reduced by way of mental illness is insufficient for an insanity defense. *Id.*

In *State v. Wright*, 214 Ariz. 540, 542-43, 155 P.3d 1064, 1066-67 (Ct. App. Div. 2 2007), the defendant was charged with theft of a vehicle and burglary. The Court of Appeals affirmed the preclusion of the diminished capacity defense. The trial court denied the defendant's

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<sup>1</sup> Defendant suffering from PTSD from military service was allowed to introduce psychological evidence during sentencing, but such evidence did not mitigate the sentence because the defendant must show a connection between the effects of the PTSD and the crime committed. *State v. Styers*, 227 Ariz. 186, 189, 254 P.3d 1132, 1135 (2011).

presentation of expert testimony about low IQ, lack of common sense, naiveté, and mental deficiencies found from his poor test performance because “a diminished capacity defense . . . is expressly prohibited under Arizona law.” 214 Ariz. at 543, 43 P.3d at 1067. Any evidence of Defendant’s “diminished capacity” resulting from past trauma, past experiences, or any psychological condition should be precluded outright as irrelevant. Arizona law mandates that such evidence be excluded. *Mott*, 187 Ariz. at 541, 931 P.2d at 1051.

**b. Arizona law allows psychological evidence of insanity at trial only if insanity is used as an affirmative defense for a defendant to plead guilty except insane**

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 [...].

Ariz. Rev. Stat. Ann. § 13-502(A).

In order to satisfy § 13-502(A), a defendant must show by clear and convincing evidence that he had a lack of moral capacity at the time of the offense. *Id.* at § 13-502(C). To prove a lack of moral capacity a defendant must show “whether a mental disease or defect leaves a defendant unable to understand that his action is wrong.” *Clark v. Arizona*, 548 U.S. 735, 747, 126 S. Ct. 2709, 2719 (2006). Evidence of moral incapacity can only be introduced for an insanity defense, not to negate the *mens rea* of an offense.<sup>2</sup> *Clark*, 548 U.S. at 756-57, 126 S. Ct. at 2724.

Psychological evidence generally may not be used to negate the *mens rea* element of a crime. A court “may preclude defendants from offering evidence of mental and psychological deficiencies to challenge” *mens rea* because “[e]ven the most psychiatrically ill have the capacity to form intentions.” *Mott*, 187 Ariz. at 541, 931 P.2d at 1051 (quoting *Pohlot*, 827 F.2d at 903). Since *mens rea* can be satisfied by a showing of conscious awareness or some

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<sup>2</sup> This is because, “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.” *Clark*, 548 U.S. at 772-73, 126 S. Ct. at 2709.

purposeful activity, regardless of any psychological origins, a defendant in Arizona cannot plead “not guilty” for reasons of insanity or diminished capacity. *Mott*, 187 Ariz. at 543, 931 P.2d at 1053 (quoting *Pohlot*, 827 F.2d. at 906-07).

**Legal insanity is not merely impairment but requires a very high level of mental incapacity.**

Section 13-502(A) states that legal insanity does not include:

disorders that result from voluntary intoxication [or impairment by usage of drugs or alcohol], character defects, psychosexual disorders or impulse control disorders . . . temporary conditions arising from the pressure of the circumstances, moral decadence, depravity or passion growing out of anger, jealousy, revenge, [or] hatred.

Irresistible impulse is not a legal defense. *State v. Wahrlich*, 105 Ariz. 102, 104, 459 P.2d 727, 729 (1969) (citing *State v. Schantz*, 98 Ariz. 200, 208, 403 P.2d 521, 526 (1965)). In this case, Defendant cannot lawfully claim any mental “condition” caused her treatment of the victim.

When a defendant “knew the difference between right and wrong,” testimony about emotional instability, antisocial tendency, psychopathic or sociopathic personality was inadmissible to assert an insanity defense. *State v. Everett*, 110 Ariz. 429, 433, 520 P.2d 301, 305 (1974). Even when a defendant was diagnosed as a paranoid schizophrenic with hallucinations about aliens trying to kill him, such evidence was inadmissible at trial. *Clark*, 548 U.S. at 745, 126 S. Ct. at 2717-18. Arizona law emphatically does not permit such evidence offered for such a purpose. See *Mott*, 187 Ariz. at 541, 931 P.2d at 1051 (“diminished capacity evidence is expressly precluded “either as an affirmative defense or to negate the *mens rea* element of a crime”).

In this case Defendant should be precluded from claiming any psychotic disorder, emotional instability, low IQ or lack of education as an excuse, defense, or justification for her actions. No evidence exists Defendant did not know what she was doing wrong. Indeed, Defendant has not plead insanity or guilty except insane, which Arizona law recognizes, nor is

either cited in the Defendant's Notice of Defenses. Consequently, all such evidence should be precluded.

In this case, Defendant does not seek the guilty except insane defense. The State is concerned the defense may seek to confuse the jury through an excuse defense due to claims of the Defendant's lack of education and low IQ. That is not permissible under the law in Arizona. If the defense pursues any insanity defense the Defendant must plead guilty except insane. Unless and until any declaration of guilty except insane is timely raised this Court should preclude any reference in opening, testimony, or argument to the claim that Defendant suffers from a diminished capacity or any other mental defect or psychological disorder. Similarly, since any testimony on the subject is expressly prohibited as a defense the Court should also preclude any affirmative defense based upon such claims. *See Mott*, 187 Ariz. at 541, 931 P.2d at 1051 ("diminished capacity evidence is expressly precluded "either as an affirmative defense or to negate the *mens rea* element of a crime").

### **III. Conclusion**

The State requests the Court grant the State's Motion in Limine to preclude all psychological evidence, defenses, testimony, or argument pertaining to the Defendant's alleged diminished capacity or any other mental defect or psychological disorder.

Respectfully submitted April 1, 2021.

ALLISTER ADEL  
MARICOPA COUNTY ATTORNEY

BY:  
/s/ Frankie Grimsman  
Deputy County Attorney

Copy emailed\delivered  
April 1, 2021, to:

The Honorable Geoffrey Fish  
Judge of the Superior Court

Rick Tosto  
Attorney for Defendant

BY:  
/s/ Frankie Grimsman  
Deputy County Attorney