

Opinion of BREYER, J.

SUPREME COURT OF THE UNITED STATES

No. 05–5966

ERIC MICHAEL CLARK, PETITIONER *v.* ARIZONA

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF
ARIZONA, DIVISION ONE

[June 29, 2006]

JUSTICE BREYER, concurring in part and dissenting in part.

As I understand the Court’s opinion, it distinguishes among three categories of evidence related to insanity: (1) fact-related evidence as to the defendant’s specific state of mind at the time of the crime, *e.g.*, evidence that shows he thought the policeman was not a human being; (2) expert opinion evidence that the defendant suffered from a mental disease that would have affected his capacity to form an intent to kill a policeman, *e.g.*, that he suffers from a disease of a kind where powerful voices command the sufferer to kill; and (3) expert opinion evidence that the defendant was legally insane, *e.g.*, evidence that he did not know right from wrong. *Ante*, at 16–18.

I agree with the Court’s basic categorization. I also agree that the Constitution permits a State to provide for consideration of the second and third types of evidence solely in conjunction with the insanity defense. A State might reasonably fear that, without such a rule, the types of evidence as to intent would become confused in the jury’s mind, indeed that in some cases the insanity question would displace the intent question as the parties litigate both simultaneously.

Nonetheless, I believe the distinction among these kinds of evidence will be unclear in some cases. And though I accept the majority’s reading of the record, I

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remain concerned as to whether the lower courts, in setting forth and applying *State v. Mott*, 187 Ariz. 536, 931 P. 2d 1046 (en banc), cert. denied, 520 U. S. 1234 (1997), focused with sufficient directness and precision upon the distinction.

Consequently, I would remand this case so that Arizona's courts can determine whether Arizona law, as set forth in *Mott* and other cases, is consistent with the distinction the Court draws and whether the trial court so applied Arizona law here. I would also reserve the question (as I believe the Court has done) as to the burden of persuasion in a case where the defendant produces sufficient evidence of the second kind as to raise a reasonable doubt that he suffered from a mental illness so severe as to prevent him from forming any relevant intent at all.

For this reason, I dissent only from Parts III–B and III–C of the Court's opinion and the ultimate disposition of this case, and I join the remainder.