



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**CARLOS TERCERO CRUZ V. HON. MICHAEL BLAIR/STATE OF  
ARIZONA  
CR-22-0123-PR**

**PARTIES:**

*Petitioner:* Carlos Tercero Cruz

*Respondent/Real Party in Interest:* The State of Arizona

**FACTS:**

Petitioner Cruz has an IQ of approximately 64. In Mexico, where he was born and grew up, he never attended any school and was known not to be able to read or write or even learn to write his own name. It is undisputed that he is intellectually disabled.

In May 2015, emergency services were called to petitioner's home. His 4-year-old daughter was transported to the hospital and pronounced deceased. She weighed only 16 pounds at death. The medical examiner opined that the death was likely attributable to cardiac or respiratory failure caused by "the combination of numerous blunt force injuries in the setting of a weakened immune system due to malnutrition and dehydration, as well as methamphetamine toxicity."

In June 2015, petitioner Cruz was indicted for first degree murder, kidnapping and child abuse. The state filed a Notice of Intent to Seek the Death Penalty. The defense filed a motion to dismiss the death penalty pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002), based on Dr. Francisco Gomez's evaluation of Cruz and his conclusion that Cruz has an IQ of 64 and suffers from an intellectual disability. The State then withdrew its Notice of Intent to Seek the Death Penalty.

In April 2020, petitioner Cruz was found competent to stand trial. As his defenses, he disclosed insufficiency of the evidence and mere presence. He listed five expert witnesses, including Dr. Gomez, and eleven civilian witnesses. During the pretrial motion phase of the prosecution, the State moved to preclude petitioner Cruz's expert witnesses, asserting that they could only present improper "diminished capacity" defense evidence, which is prohibited in *Arizona. State v. Shantz*, 98 Ariz. 200 (1965). Under this rule, evidence of defendant's mental disorder short of insanity is inadmissible either as an affirmative defense or to negate the "*mens rea*" (mental state) element of a crime. *State v. Mott*, 187 Ariz. 536 (1997). *Mott* ruled that mental-state evidence in the form of expert psychological testimony was inadmissible, as the Arizona legislature had "declined to adopt the defense of diminished capacity when presented with the opportunity to do so." *Id.* at 540-541. The State also moved to preclude Cruz's lay witnesses.

In September 2021, the trial court heard argument on the State's motions to preclude mental health expert Dr. Gomez and the lay witnesses. (Petitioner had withdrawn the other two mental health experts.) The State urged the trial court to exclude expert testimony of Cruz's mental retardation, as

it was equivalent to diminished capacity evidence. At the same time, the State conceded that petitioner should be allowed to call a lay witness who

“knows the defendant personally and says, ‘It’s my belief he cannot read’ . . . . But to bring in Dr. Gomez or to suggest that . . . the jury should hear what happened related to the *Atkins* pretrial issue that only a judge makes, that is not appropriate.”

In opposition to the motion, the defense argued that the evidence under discussion was being offered not to show *mens rea* (the criminal mental state) but to negate *actus reus* (the substantive elements of the crime). Defense counsel argued that:

[T]he jury has a right to know Mr. Cruz's disabilities and his limitations. . . . Because if the jury is not made aware of that, is Mr. Cruz held to the same standard as a physician who is trained in medicine and who is not getting his child care? No. Because a physician can read, can drive to the store, has money, can read medicine bottles. Mr. Cruz can't do all of those things. . . . so it would be dishonest to hide from the jury the fact who Mr. Cruz is and what his disability is and how it has an impact on this particular case.

After considering these arguments, the trial court precluded the testimony of defense mental health expert Dr. Gomez. Nonetheless, the court found that lay (non-expert, or civilian) evidence of defendant’s inability to read, write, speak English, *etc.*, was relevant and admissible. However, in order to avoid the “needless presentation of cumulative evidence.” the trial court excluded all but two of petitioner Cruz’s eleven proposed civilian witnesses.

Petitioner Cruz filed a Petition for Special Action with the Court of Appeals, which declined jurisdiction. He then petitioned for review from the denial of special action relief. The Arizona Supreme Court granted review of the two issues listed below.

#### **ISSUES:**

1. Did the trial court make an incorrect legal decision, thereby abusing its discretion, in precluding Cruz’s expert and lay witness testimony that Cruz has a low intelligence quotient proffered to rebut the *actus reus* of the charged offenses?
2. Do the trial court’s legal rulings deny Cruz the opportunity to present a complete, meaningful defense?

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