

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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DEC 29 2014

Appeal from Calhoun County
Honorable Diane S. Goodstein, Circuit Court Judge
Appellate Case Tracking No. 2013-000468

SC Court of Appeals

The State,

Respondent,

vs.

John Edward Haynes,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court did not err in refusing to allow testimony regarding automatism when the only evidence presented indicated Appellant became voluntarily intoxicated, and neither voluntary intoxication nor diminished capacity are viable defenses in South Carolina.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

ARGUMENT

- I. **The trial court did not err in refusing to allow testimony regarding automatism when the only evidence presented indicated Appellant became voluntarily intoxicated, and neither voluntary intoxication nor diminished capacity are viable defenses in South Carolina.**

Appellant contends the trial court erred in excluding his proposed expert witness's testimony regarding automatism and sexual performance. First, the only evidence presented indicated he became voluntarily intoxicated and even those jurisdictions that allow evidence of automatism distinguish it from voluntary intoxication. Further, his argument is merely an attempt to claim diminished capacity, which is not allowed in South Carolina and like voluntary intoxication cannot serve as a defense.

South Carolina does not recognize a defense of diminished capacity. See Gill v. State, 346 S.C. 209, 220, 552 S.E.2d 26, 32 (2001); see also, State v. Tennant, 394 S.C. 5, 11 n.2, 714 S.E.2d 297, 300 n.2 (2011) (noting South Carolina does not recognize a diminished capacity defense). Further, this Court has found it is not error to exclude expert testimony when the sole purpose of that testimony is to attempt to argue a version of diminished capacity. See State v. Santiago, 370 S.C. 153, 162, 634 S.E.2d 23, 28 (Ct. App. 2006). In Santiago, the defendant claimed his Asperger's disorder prevented him from being able to form the requisite mental state to commit a murder. This Court found the trial court properly refused the testimony when it was to establish he was guilty of at most a lesser included offense because of his diminished capacity. Id. at 162-163; 634 S.E.2d at 28 (citing Gill, 346 S.C. at 220, 552 S.E.2d at 32).

Additionally, South Carolina does not allow voluntary intoxication to serve as a defense. In State v. Vaughn, the South Carolina Supreme Court explained:

We adopt the rule that voluntary intoxication, where it has not produced permanent insanity, is never an excuse for or a defense to crime, regardless of whether the intent involved be general or specific. Reason requires that a man who voluntarily renders himself intoxicated be no less responsible for his acts while in such condition. To grant immunity for crimes committed while the perpetrator is in such a voluntary state would not only mean that many offenders would go unpunished but would also transgress the principle of personal accountability which is the bedrock of all law.

State v. Vaughn, 268 S.C. 119, 125-126, 232 S.E.2d 328, 330-331 (1977) (declining to allow voluntary intoxication to serve as a defense to burglary, housebreaking, and assault with intent to ravish); see also, State v. South, 310 S.C. 504, 508, 427 S.E.2d 666, 669 (1993) (“Furthermore, voluntary intoxication does not relieve an individual from criminal responsibility.”).¹

South Carolina has not had opportunity to directly consider whether to accept a defense of automatism. Further, the defense appears to be an attempt to skirt the rule that diminished capacity is not a defense in South Carolina. However, even those jurisdictions that have accepted automatism as a defense distinguish its application when the basis for the alleged automatic behavior is voluntary intoxication.

In North Carolina, the Supreme Court has clearly adopted a distinction between automatism and voluntary intoxication:

“The rule in this jurisdiction is that where a person commits an act without being conscious thereof, the act is not a criminal act even though it would be a crime if it had been committed by a person who was conscious.” However,

¹ The trial court properly charged the jury neither voluntary intoxication nor diminished capacity is not a defense. (T.427; R. 218).

unconsciousness as a result of voluntary ingestion of alcohol or drugs will not warrant the instruction requested here by defendant.

State v. Fisher, 445 S.E.2d 866, 877 (N.C. 1994)(internal citations omitted). The North Carolina Supreme Court subsequently explicated: “The defenses of voluntary intoxication and automatism are **fundamentally inconsistent**, and this Court has stated that ‘unconsciousness as a result of voluntary ingestion of alcohol or drugs will not warrant the instruction [for automatism] requested here by defendant.’” State v. Morganherring, 517 S.E.2d 622, 641 (N.C. 1999) (emphasis added) (quoting Fisher); see also, Polston v. State, 685 P.2d 1, 9 (Wyo. 1984) (“Where unconsciousness results primarily from self-induced intoxication, the defense of automatism is not available”).

The Indiana Court of Appeals provided an excellent explanation of the distinction between automatism and voluntary intoxication in Schlatter v. State, 891 N.E.2d 1139 (Ind. App. 2008). Further, the facts of the case considered in Indiana are amazingly analogous to the charges at issue in this case—a father became highly intoxicated, had sex with his daughter, and claimed to know nothing of the occurrence. The Court explained the defense of automatism was not available to the defendant because he “acted voluntarily in becoming intoxicated,” and “he cannot now claim that his actions which resulted from his intoxication were involuntary, and because he cannot claim that his actions were involuntary, the automatism defense is unavailable to him.” Schlatter, 891 N.E.2d at 1143.

Appellant’s attempt to offer a defense of automatism is unavailing because, even under his version of the evidence, the only evidence presented showed he became voluntarily intoxicated prior to engaging in sexual intercourse with his step-daughter.

Specifically, Dr. Harari testified the minor victim told him she “seduced her step-father when he was under the influence of alcohol.” (T.314; R. 113).² Further, Ms. Clark, a DSS case worker, testified the child told her she approached her step-father when he was drunk. (T.327-328; R.126-127).³ The testimony, of course, is directly refuted by the child’s own testimony. She explained Appellant began getting into the bath or shower with her when she was twelve or thirteen and only stopped after being told to by family members. (T.208-209; R. 31-32). Further, she testified he touched her breasts and genitals and then had sexual intercourse with her when she was fifteen.⁴ (T.209-211; R. 32-34). He again had sexual intercourse with her and she gave birth to a second child roughly a year later. (T.211-212; R. 34-35).⁵

Appellant never presented any evidence indicating he was forced to drink or became involuntarily intoxicated. Even during his cross-examination of the minor victim, the only testimony presented established Appellant “has an alcohol problem and needs help.” (T.232; R. 55). The only argument ever presented to the jury was Appellant was too drunk to know what he was doing. As a result, Appellant’s own evidence merely established a claim of voluntary intoxication, which is not a proper defense in South Carolina. As a result, the testimony by his proposed expert was properly excluded as irrelevant and only capable of causing confusion and speculation by the jury.

² Dr. Harari later explained the story of the child seducing her step-father was “extremely farfetched” and was her being “protective, very defensive.” (T.318; R. 117). He fully explained it was his belief she had been sexually abused and was minimizing what happened to her to try and protect Appellant. (T.319-320; R. 118-119).

³ Like Dr. Harari, Ms. Clark did not believe the minor victim’s story of seducing the step-father and also believed she was being protective of him. (T.334-335; 338; R. 133-134).

⁴ There is no dispute the sexual intercourse occurred because the child became pregnant and gave birth to a baby whose DNA matched Appellant. (T.294-295; R. 93-94).

⁵ Again there is no possible dispute Appellant had sexual intercourse with the child because the DNA of the child born again matched his DNA. (T.295-296; R. 94-95).

CONCLUSION

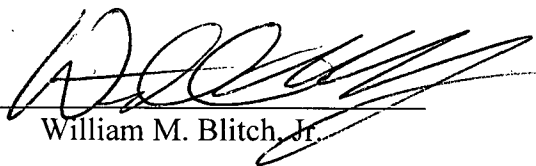
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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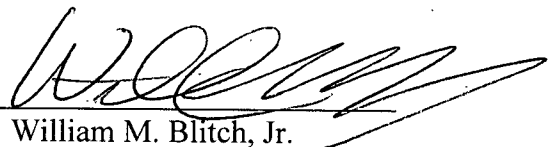
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR and the August 13, 2007, Order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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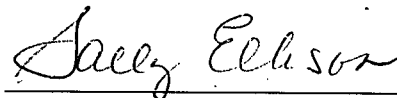
Appellant.

PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

David Alexander, Esquire
S.C. Commission on Indigent Defense
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I further certify that all parties required by Rule to be served have been served.
This 29th day of December, 2014.



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