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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to the Court of Appeals  
Appeal From Calhoun County  
Hon. Diane S. Goodstein, Circuit Court Judge  
Appellate Case Tracking No. 2015-001565  
\_\_\_\_\_

The State,

Respondent,

v.

John Edward Haynes,

Petitioner.

\_\_\_\_\_  
Opinion No. 2015-UP-228 (S.C. Ct. App. filed May 6, 2015)  
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**RETURN TO PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS**  
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## **STATEMENT OF QUESTIONS PRESENTED**

I. The Court of Appeals properly affirmed the trial court's refusal to allow Petitioner to present expert testimony regarding automatism when the only evidence presented indicated Petitioner became voluntarily intoxicated, and neither voluntary intoxication nor diminished capacity are viable defenses in South Carolina.

## STATEMENT OF THE CASE

### **Procedural History**

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

## ARGUMENT

**I. The Court of Appeals properly affirmed the trial court's refusal to allow Petitioner to present expert testimony regarding automatism when the only evidence presented indicated Petitioner became voluntarily intoxicated, and neither voluntary intoxication nor diminished capacity are viable defenses in South Carolina.**

The Court of Appeals correctly found the trial court did not err in excluding his proposed expert witness's testimony regarding automatism and sexual performance. First, the only evidence presented at trial indicated Petitioner became voluntarily intoxicated, and even those jurisdictions that allow evidence of automatism distinguish it from voluntary intoxication. Further, his argument to apply automatism as a defense is merely an attempt to establish a diminished capacity defense, which like voluntary intoxication cannot serve as a defense in South Carolina.

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, the Court of Appeals previously found it was not error to exclude expert testimony when the sole purpose of that testimony was 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. The Court of Appeals 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, this 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) (emphasis added); 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.”).<sup>1</sup> As this Court stated back in 1886:

But we think that the broad current of modern opinion holds the wise old doctrine that **voluntary drunkenness of whatever degree** is no excuse for crime committed under its influence. Any other principle would be destructive to the peace and order of society.

State v. Bundy, 24 S.C. 439, 444 (1886) (emphasis added).

South Carolina has not had opportunity to directly consider whether to accept a defense of automatism. 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 accepting automatism as a defense will distinguish its application when the basis for the alleged automatic behavior is voluntary intoxication.

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<sup>1</sup> The trial court properly charged the jury neither voluntary intoxication nor diminished capacity is a defense. (T.427; R. 218).

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, 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.

Petitioner attempts to portray the issue as one involving a qualified expert who should have been allowed to testify about the concept of automatism. Even assuming for the sake of argument his expert was qualified<sup>2</sup>, Petitioner’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. As a result, the trial court properly excluded the irrelevant testimony which could have only served to confuse the jury or have them render a verdict on an improper basis.

The facts presented clearly indicated Petitioner was voluntarily intoxicated, which cannot serve as a defense to a crime in South Carolina no matter the degree of intoxication. See Bundy, 24 S.C. at 444. 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).<sup>3</sup> 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).<sup>4</sup>

The testimony, of course, is directly refuted by the child’s own testimony. She explained Petitioner 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-

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<sup>2</sup> There is significant doubt whether Petitioner’s expert is qualified in light of the fact she merely read some articles on automatism and studied it in school. The doubt is heightened by this Court’s recent opinion in State v. Chavis, 412 S.C. 101, 771 S.E.2d 336 (2015), and its reliability requirements for having an expert qualified.

<sup>3</sup> 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 Petitioner. (T.319-320; R. 118-119).

<sup>4</sup> 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).

32). Further, she testified he touched her breasts and genitals and then had sexual intercourse with her when she was fifteen. (T.209-211; R. 32-34). There is no dispute the sexual intercourse occurred because the child became pregnant and gave birth to a baby whose DNA matched Petitioner. (T.294-295; R. 93-94). Even after impregnating the child, Petitioner again had sexual intercourse with her. She gave birth to a second child roughly a year later. (T.211-212; R. 34-35).<sup>5</sup>

Petitioner 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 Petitioner “has an alcohol problem and needs help.” (T.232; R. 55). Petitioner asserted he was too drunk to know what he was doing. As a result, Petitioner’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. The Court of Appeals correctly affirmed Petitioner’s conviction and sentence and this Court should deny the Petition for Writ of Certiorari.

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<sup>5</sup> Again there is no possible dispute Petitioner 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 of the foregoing reasons, it is respectfully submitted that this Court should deny the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

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August 20, 2015

STATE OF SOUTH CAROLINA

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**PROOF OF SERVICE**  
\_\_\_\_\_

I, Sally Ellison, certify that I have served the within Return to Petition For Writ of Certiorari to the Court of Appeals 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  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.  
This 20<sup>th</sup> day of August, 2015.

  
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