

*** CAPITAL CASE ***

No. _____

IN THE
Supreme Court of the United States

CHRISTOPHER COLLINGS, *Petitioner*,

v.

STATE OF MISSOURI, *Respondent*.

On Petition for a Writ of Certiorari
to the Supreme Court of Missouri

PETITION FOR A WRIT OF CERTIORARI

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*** CAPITAL CASE ***

QUESTION PRESENTED

Whether it violates the Eighth Amendment to instruct a capital jury that they may not consider evidence of the defendant's intoxication at the time of the crime in evaluating whether he deliberated, when such mental state element is a "circumstance of the particular offense," *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976), and a "critical facet of the individualized determination of culpability required in capital cases," *Tison v. Arizona*, 481 U.S. 137, 156 (1987)?

PARTIES TO THE PROCEEDING

Petitioner, Christopher Collings, was the appellant below. Respondent, the State of Missouri, was the respondent below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Christopher Collings respectfully prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Missouri.

OPINION BELOW

The opinion of the Supreme Court of Missouri is published at 543 S.W.3d 1 (Mo. banc 2018) (Appendix 1a-37a). The Supreme Court of Missouri's order denying rehearing is unpublished (Appendix 1b).

JURISDICTION

The Supreme Court of Missouri denied Petitioner's rehearing motion on April 17, 2018. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment to the Constitution of the United States provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment to the Constitution of the United States provides in relevant part: "[N]or shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

In the state courts below, Mr. Collings challenged Missouri's voluntary intoxication statute, § 562.076, RSMo 2000, and its corresponding jury instruction, MAI-CR3d 310.50, as violating the Eighth and Fourteenth Amendment in a first-degree murder case where the State was seeking death, because their effect is to exclude relevant evidence, like chronic addiction and gross intoxication, that individualizes the defendant's culpable mental state at the time of the crime. Specifically, Mr. Collings alleged that, in a capital case, he has a due process right to present evidence to rebut every element of the State's case, including his ability to deliberate, and because the statute and instruction prevented his jury from considering evidence of his aggressive impairment on his ability to deliberate at the time of the crime, he was denied due process of law.

Mr. Collings also argued that he was subjected to cruel and unusual punishment, because the Eighth Amendment requires that, before a death sentence may be imposed, the defendant must be found beyond a reasonable doubt to have personally acted knowingly and with a deliberate mental state in causing death; the death penalty is not per se excessive "when a life has been taken *deliberately by the offender.*" *Gregg v. Georgia*, 428 U.S. 152, 187 (1976) (emphasis added). But Missouri's statutory scheme excludes consideration of a defendant's intoxication on his ability to deliberate before sentencing him to death. Instead, the jury may infer "deliberation" from the defendant's objective conduct, combined with the false statutory premise that he was sober, without regard to his true state of mind.

A. Mr. Collings' chronic, lifelong alcohol and drug addiction

Expert testimony at Mr. Collings' state post-conviction hearing showed that he was biologically predisposed to addiction, as both of his biological parents suffered serious problems with alcohol and drug addiction (App. 10a). Because these addictions led to criminal behavior, Mr. Collings was taken from his parents as a baby and placed with foster parents who adopted him much later. (App. 6a). However, his foster parents soon suffered the traumatic loss of a biological child and later divorced. (App. 6a). His biological parents, also divorced, but maintained sporadic contact with the adoptive family, which resulted in Mr. Collings being shuffled between four households during his formative years. (App. 6a).

At a very young age, Mr. Collings was exposed to nicotine and he began using alcohol and marijuana at fourteen, which is young in terms of brain development and their effects on the brain. (App. 10a). As a teenager, Mr. Collings was having trouble managing his emotions and behaviors and marijuana had a calming effect, making him feel less anxious. (App. 10a).

At fifteen, Mr. Collings spent several weeks at an inpatient facility for adolescents with psychiatric problems. (App. 10). He was prescribed several medications, including antidepressants and a sedative. (App. 11). Despite recommendations from the doctors that Mr. Collings receive continued psychotherapy and remain on an antidepressant, his adoptive family did not refill his prescription; therefore, he continued self-medicating with alcohol and marijuana to ease his anxiety (App. 11).

Over time, Mr. Collings became a regular drinker and drank very heavily episodically, consuming large volumes of alcohol in short periods of time. (PCR Tr. 52). He was required to attend substance abuse classes for his addiction by an employer after testing positive for marijuana. (PCR Tr. 53). A family service agency diagnosed him with alcohol and cannabis abuse. (PCR Tr. 54).

Expert psychiatric and neurobiological testimony presented at Mr. Collings' post-conviction hearing showed that, at the time of his trial, well-accepted scientific research acknowledged addiction as a brain disease. (App. 9a-10a). This disease of addiction changes the brain's structure and functioning; over time, chemical exposure to addictive substances causes physical changes, thus changing behavior. (App. 9a-10a). Addiction hijacks and alters the brain's circuitry and motivational system causing neurological changes, prompting the addict to use substances compulsively. (App. 10a). These structural and functional changes induce compulsive behavior, affecting the addict's decision-making and inhibition, planning, and impulse control. (App. 10a). When a person transitions into addiction, the brain's frontal lobe, which controls executive functioning, is compromised. (App. 10a). These changes show up on neuroimaging where the frontal lobe shows decreased metabolism and less activity than normal. (App. 10a).

The prefrontal cortex of the brain is responsible for decision-making, judgment, consequential thinking, impulse control, organization, planning and emotion control. (PCR Tr. 28). The prefrontal cortex is highly evolved in humans, but there is a developmental lag in the young teenage years before that part of the brain develops.

(PCR Tr. 27). Long-term addiction changes brain functioning and performance because the prefrontal cortex isn't working optimally; impulse and emotion control decrease while cravings and compulsive use increase. (PCR Tr. 27, 29).

There are dose specific cognitive impairments with acute alcohol intoxication. (PCR Tr. 31). Impulse control becomes progressively compromised with increasing levels of alcohol, including the ability to inhibit queues that result in response inhibition. (PCR Tr. 31). Chronic and acute alcohol and cannabis use lead to cognitive impairments related to information processing, memory, motivation, impulsivity and decreased inhibition. (PCR Tr. 32-33). These substances affect the frontal lobes' ability to control behavior and exercise judgment; a person with chronic use of both substances is at risk for ongoing maladaptive decision-making, especially around the substances. (PCRTr.33).

There is also a scientifically recognized genetic component to substance abuse that creates a higher risk for some people developing an addiction to drugs or alcohol. (App. 10a). Fifty percent of addiction is traceable to genetic factors and fifty percent to the environment. (App. 10a). Genetic factors include having a biological relative with an addiction disorder; environmental factors include childhood trauma or abuse, loss of parental figures, domestic violence, and family members with substance abuse and mental health disorders. (App. 10a).

B. The crime and Mr. Collings' inconsistent confession

David Spears' six-year-old step-daughter disappeared on the night of November 2, 2007. (App. 2a-3a). Her body was later found on November 9 in a cave; her death was

determined to be from strangulation as indicated by the ligature mark on her neck. (App. 3a). She had been sexually assaulted and suffered injuries to her vaginal area. (App. 3a).

On the night of November 2, Mr. Collings' had been out drinking with the victim's father, David Spears, and another man. Mr. Collings had consumed six six-packs of Smirnoff Ice Triple Black over the span of six hours, yet consumed no food since lunchtime. (App. 11a). The three men made at least three trips for alcohol that evening. (Tr. 3754). They drank and shot pool at Spears' house, then left Spears' step-daughter alone in the house and went to Mr. Collings' home to smoke a "hog leg" of marijuana. (Tr. 4520). Mr. Spears and the other man left Mr. Collings' home at some point, and the victim disappeared later that evening (App. 2a).

Expert testimony concluded that Mr. Collings would have been under "acute significant alcohol intoxication" resulting in aggressive brain functioning impairments on the night of November 2. (App. 11a). These impairments resulted in decreased inhibition, impaired comprehension, the inability to process and apply information, and his ability to pause and consider his actions was significantly compromised. (App. 11a).

Further, the subsections of Mr. Collings' brain that are responsible for capturing and encoding memories are highly sensitive to alcohol's toxic effects, and will go "off-line" during periods of high intoxication. (App. 11a). People lose the ability to record memories and can "blackout"—still conscious and able to function, but without working memory. (PCR Tr. 68). Mr. Collings had experienced alcohol-induced blackouts before. (PCR Tr. 69). An expert concluded that Mr. Collings' likely suffered such "blackouts" on the night of the crime due to the amount of alcohol in his system. (App. 11a).

After the victim's body was found, Mr. Spears and Mr. Collings separately confessed to sexually assaulting and killing her; however, each of their confessions was completely inconsistent with the other. (App. 4a-5a). Law enforcement officers were surprised by Mr. Collings' confession because they had assumed that Mr. Spears' killed his step-daughter and Mr. Collings simply knew what happened. (App. 4a).

Mr. Spears initially confessed to having sexual intercourse with his step-daughter, putting a rope around her neck and strangling her, after Mr. Collings told him that it had to be done. (App. 5a). Mr. Collings however, denied that Spears was involved at all. (App. 5a). Other circumstances supported Mr. Spears' being involved: he prevented his wife, the victim's mother, to search for the victim after discovering that she was missing when she returned home from work; he lied and told his wife that her daughter was staying with a friend (Tr.3652-53); he also prevented his wife from calling the police when she could not find her daughter (Tr.3653); Mr. Spears called his mother to borrow her Suburban at around midnight on November 2, and he was gone until 7:00 a.m. the next morning (Tr. 5889); and cadaver dogs alerted at the scent of human remains in four separate place on the Suburban that Mr. Spears had been driving. (Tr. 5905, 5913-18).

While Mr. Collings also confessed to details of the crime, he maintained that Spears was not present. As the prosecutor admitted, "they've made statements that are at odds with each other, both of these defendants." (PTR. 86, 159). The prosecutor acknowledged, "[at Christopher's trial,] [t]he state argued that Collings' statement was an accurate account of the events surrounding [the victim's] murder even though Collings said Spears was not involved in the actual rape and murder," [but] "[i]n David Spears'

trial the state would be in a position to have to present David Spears' statement and argue its validity," [and] "[t]his would put the state in a position of arguing inconsistent theories of who actually strangled [the victim]."¹

An expert concluded that a jury would not be able to accurately assess Mr. Collings' mental state at the time of the crime without considering his history of alcohol and drug use and their effects. (App. 11a). Further, Mr. Collings level of intoxication would have substantially impaired his capacity to appreciate the criminality of his conduct or conform his conduct to the requirements of the law. (App. 11a).

Further, intoxication evidence would have cast serious doubt on Mr. Collings' "confessions," in that, according to the expert, it is unlikely he would have had such a distinct level of recall in the midst of acute, significant alcohol intoxication. Also, since evidence points towards Mr. Spears' involvement, it would have been a valid question for the jury whether Mr. Collings' "memory" was simply a rehearsed retelling of what he'd been told by Mr. Spears.

C. Missouri court's ruling on the constitutionality of the voluntary intoxication statute

The Supreme Court of Missouri denied Mr. Collings' claim that the voluntary intoxication statute and its corresponding instruction violate the Eighth and Fourteenth Amendments. (App. 8a-15a). The Court relied on *Montana v. Egelhoff*, 518 U.S. 37 (1996), wherein this Court analyzed a Montana statute providing a defendant's voluntary

¹ Schlichtman, Lisa. "Murder Charges against David Spears are Dismissed." *Monett Times*, Sept. 26, 2012. <http://www.monett-times.com/story/1898156.html> (7/7/17).

intoxication “may not be taken into consideration in determining the existence of a mental state which is an element of [a criminal] offense.” (App. 12a) (citing *Egelhoff*, 518 U.S. at 39-40). It noted that a state’s decision regarding how to regulate such procedures “is not subject to proscription under the Due Process Clause unless it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.” *Id.* at 43 (App. 12a).

The Supreme Court made no distinction between the application of *Egelhoff* in a capital case, simply noting that Missouri had applied *Egelhoff* and upheld the constitutional validity of MAI-CR 3d 310.50 in *State v. Roberts*, 948 S.W.2d 577 (Mo. banc 1997), which was a capital case (App. 14a). *Egelhoff* itself, however, was not a capital case, and this Court has never considered whether its death penalty jurisprudence would alter the *Egelhoff* analysis.

REASONS FOR GRANTING THE WRIT

- I. *Voluntary intoxication statutes which completely preclude relevant evidence bearing on the defendant’s guilt do not comport with this Court’s requirement of a heightened degree of reliability in capital cases*

This Court has required that the imposition of death against a defendant requires a “heightened standard of reliability” at every step of the process. *Ford v. Wainwright*, 477 U.S. 399, 411 (1986). And because “extraordinary measures” are required by the Eighth Amendment to ensure the reliability of decisions regarding both guilt and punishment in a capital trial, *Eddings v. Oklahoma*, 455 U.S. 104, 118 (1982), there must be a finding of

personal, subjective moral culpability for the crime. *Gregg*, 428 U.S. at 177 (1976).

Therefore, it is unconstitutional to impose a death sentence in a case where the jury is not required to find a subjective culpable mental state, because his “punishment must be tailored to his personal responsibility and moral guilt.” *Enmund v. Florida*, 458 U.S.782, 801 (1982).

The Eighth Amendment requires that to be sentenced to death, the defendant must be found beyond a reasonable doubt to have personally acted knowingly and with a deliberative mental state in causing the death; the death penalty is not per se excessive “when a life has been taken *deliberately by the offender*.” *Gregg*, 428 U.S. at 187 (emphasis added). But this specific mental state of “deliberation” cannot be simply the theoretical mental state of a generic sober person; rather, it must be the real and subjective mental state of the defendant charged with first-degree capital murder.

Voluntary intoxication statutes like Missouri’s, which exclude all relevant evidence of the question of the defendant’s mental state, allow deliberation to be found, and a death sentence imposed by the jury, on the basis of a statutory presumption that the defendant’s mental state is that of a reasonable, non-intoxicated person. But this Court has said that “[t]he focus must be on *his* culpability...for we insist on ‘individualized consideration as a constitutional requirement in imposing the death sentence,’” *Enmund*, 458 U.S. at 798 (quoting *Lockett v. Ohio*, 438 U.S. 586, 605 (1978)), “which means that we must focus on ‘relevant facets of the character and record of the individual offender.’” *Id.* (quoting *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976)).

Missouri's blind application of *Montana v. Egelhoff* in capital cases, leaves the substantive Eighth Amendment question unresolved in states with *Egelhoff*-type statutes.

II. *The majority of death penalty states allow voluntary intoxication on the issue of specific intent, and in those states, the Eighth Amendment is satisfied.*

Of the states that provide for the criminal penalty of death, the majority allow a defendant to present evidence of voluntary intoxication on the question of his specific intent to commit the crime.² This means that many defendants facing the death penalty are allowed to present evidence to their juries showing how their mental state – an element of the crime – was affected by intoxication, which ultimately may negate a finding of specific intent or a deliberative state of mind, reduce culpability and possibly the ultimate sentence.

² See e.g. *State v. Vaughn*, 232 S.E.2d 328, 330 (S.C. 1977) (It is clear that the majority of American jurisdictions permit voluntary intoxication to be interposed as a defense to specific intent crimes); *McElmurry v. State*, 60 P.3d 4, 23 (Okla. Ct. App. 2002) (“By statute, voluntary intoxication is not a defense to criminal culpability. However, we recognize an exception to this rule where the accused was so intoxicated that his mental abilities were totally overcome and it therefore became impossible for him to form criminal intent.”); *State v. Walls*, 463 S.E.2d 738, 761 (N.C. 1995) (substantial evidence of intoxication admissible to show the defendant could not form a deliberate and premeditated intent to kill); *Jackson v. State*, 791 So.2d 979, 1019 (Ala. Crim. App. 2000); *State v. Kidd*, 265 P.3d 1165 (Kansas 2011); *People v. Berg*, 23 Cal. App. 5th 959 (Cal. App. May 25, 2018).

This approach in these states is consistent with this Court’s capital jurisprudence holding that “the Eighth Amendment . . . requires consideration of . . . the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death.” *Woodson*, 428 U.S. at 304. And the defendant’s mental state, is “[a] critical facet of the individualized determination of culpability required in capital cases,” *Tison v. Arizona*, 481 U.S. 137, 156 (1987).

III. Missouri is in the minority of jurisdictions that preclude such evidence, which violates Due Process and the Eighth Amendment

Missouri is in the minority of death penalty jurisdictions³ that does not permit evidence of voluntary intoxication to rebut the defendant’s mental state, even where the specific intent of deliberation is required for first degree murder – the only crime eligible for the death penalty in Missouri. See § 562.076 and § 565.020, RSMo 2000.

Missouri’s voluntary intoxication statute mandates:

Evidence that a person was in a voluntarily intoxicated or drugged condition may be admissible when otherwise relevant on issues of conduct but in no event shall it be admissible for the purpose of negating a mental state which is an element of the offense. In a trial by jury, the jury shall be so instructed when evidence that a person was in a

³ See e.g. *Evans v. State*, 226 So.3d 1 (Miss 2017) (“[t]he law in Mississippi is clear that voluntary intoxication is not a defense to a specific-intent crime.”); *State v. Payne*, 314 P.3d 1239, 1272–73 (Ariz. 2013); *Flowers v. State*, 370 S.W.3d 228, 232 (Ark. 2010); *Davis v. State*, 313 S.W.3d 317, 328–29 (Tex. Crim. App. 2010).

voluntarily intoxicated or drugged condition has been received into evidence.

§ 562.076, RSMo. Pursuant to this statute, the standard pattern jury instruction was administered to Mr. Collings' jury before guilt phase deliberations, which directed:

The State must prove every element of the crime beyond a reasonable doubt.

However, in determining the defendant's guilt or innocence, you are instructed that an intoxicated or a drugged condition whether from alcohol or drugs will not relieve a person of responsibility for his conduct.

Missouri Approved Instruction, Criminal 3d, 310.50.

In Missouri, §562.076 and MAI-CR3d 310.50 preclude capital juries from evaluating the defendant's personal, subjective moral culpability, by excluding relevant defense evidence of intoxication on the issue of his actual *mens rea*, before finding guilt and recommending death. This is especially troublesome here, where expert testimony shows the Mr. Collings' chronic lifelong addiction and the effect of his intoxication on the night of the crime may not have been truly "voluntary" at all, and may have precluded a finding of deliberation. Further, his level of intoxication also may have precluded accurate memories of the night of the crime, undermining the validity of his confessions – the main evidence against him. Mr. Collings' jury should have been allowed to consider this evidence on the issue of his personal responsibility and moral guilt. *Enmund, supra*. Therefore, as applied to this capital case, both Missouri's statute and instruction violate the Eighth and Fourteenth Amendments.

Because substance abuse and addiction research has evolved in the last twenty years and confirms addiction isn't necessarily "voluntary" for the addict, and because capital juries are required to find evidence of subjective *mens rea* of the defendant – not simply a finding of deliberation based on a hypothetical sober person, especially where lack of specific intent to cause death is a mitigating factor, *Lockett*, 438 U.S. at 597 – these statutes and instructions should not be allowed to preclude evidence of intoxication in capital cases. The effect is to preclude the defense from presenting relevant evidence of addiction and intoxication that individualizes the defendant's culpable mental state at the time of the crime.

The state must prove beyond a reasonable doubt "every fact necessary to constitute the crime," *In re Winship*, 397 U.S. 358, 364 (1970), and this "extends to every element of the crime," including the *mens rea*. *Sandstrom v. Montana*, 442 U.S. 510, 522 (1979) (quoting *Morissette v. United States*, 342 U.S. 246, 255-56 (1952)). When the state sets a specific floor for *mens rea* in a capital case, the defendant has a constitutional right not to be sentenced to death when the state doesn't meet that standard. When a state creates a protection for the accused – especially with respect to sentencing – it may not, without violating the Due Process Clause of the Fourteenth Amendment, arbitrarily withhold that protection when it would have some *practical effect* in a pending case. *Hicks v. Oklahoma*, 447 U.S. 343, 346 (1980).

In Missouri, "deliberation" is a mandatory requirement first-degree murder. The *practical effect* of the "deliberation" element is limited solely to sentencing, as it is the sole distinction between first and second-degree murder. *Cf.* §§ 565.020 and 565.021.

The only consequence of finding “deliberation” is to increase the penalty to life without parole or death. *Cf. Mullaney v. Wilbur*, 421 U.S. 684, 698 (1975) (the difference between punishments among different offenses may be of greater moment than the difference between guilt and innocence). Therefore, § 562.076’s substitution of another *mens rea*, circumventing the element of the defendant’s actual *mens rea*, violates the Fourteenth Amendment (under *Hicks*).

While the Supreme Court of Missouri relied on *Montana v. Egelhoff*, 518 U.S. 37 (1996), to deny Mr. Collings’ constitutional challenge to Missouri’s voluntary intoxication statute, *Egelhoff* was not a death-penalty case. The preclusive effect of such statutes has not been evaluated by this Court under the Eighth Amendment in the context of the “heightened standard of reliability” requirement in capital cases. And while, under *Egelhoff*, the definition of a substantive crime is within the purview of state legislatures, *Id.* at 43-44, under *Gregg* and *Enmund*, the floor for evaluating the *mens rea* for a death sentence – as distinguished from the underlying substantive offense – is a matter of federal constitutional law, which Missouri’s statutes and instructions may not dilute.

In a first-degree murder case with evidence of voluntary intoxication, MAI-CR3d 310.50 instructs the jury that such intoxication doesn’t relieve a person of responsibility for conduct and cannot be considered in determining guilt or innocence. Therefore, the resulting guilty verdict makes no finding about his subjective personal, moral culpability for the crime. No finding is made that the defendant possessed a subjectively culpable *mens rea* –only that, viewed as an objectively sober person, he is responsible. In such a case, the death penalty must be precluded.

By enacting § 562.076.3, Missouri has told its capital juries that they must ignore evidence which would – if taken into account along with the other evidence – negate the *mens rea* which the Eighth and Fourteenth Amendments require to impose death.

Through this statutory and instructional presumption of sobriety, Mr. Collings' jury was forbidden from referring to his severe intoxication in deciding whether he acted with a knowing, deliberate mental state, and therefore, a subjectively culpable mind.

In death penalty states, where the “fact” of deliberation is established through the use of voluntary intoxication statutes during the guilt-phase – as it was here – juries are essentially required to nullify their own guilt finding, to be able to view “deliberation” subjectively in the penalty phase. This asks too much, and has the effect of putting a finger on the scale for death in these states. Mr. Collings' jurors should not have been precluded from considering evidence of his addiction and intoxication in evaluating whether he possessed the mental state of deliberation in the guilt-phase. In a first degree murder case, where a state makes the decision to seek the death penalty, then its voluntary intoxication statute must also comport with the Eighth Amendment and Fourteenth Amendments. Mr. Collings' case clearly presents this issue for this Court's review.

CONCLUSION

Wherefore, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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