

No. 18-5278
Capital Case

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2018

CHRISTOPHER COLLINGS,

Petitioner,

vs.

MISSOURI,

Respondent.

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

**BRIEF OF RESPONDENT IN OPPOSITION
TO PETITION FOR A WRIT OF CERTIORARI**

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Questions Presented

Capital Case

Should the Missouri Supreme Court have rejected a freestanding claim of trial court error raised for the first time on appeal from a post-conviction proceeding?

May Missouri define the required mental state of first-degree murder to exclude voluntary intoxication when evidence of voluntary intoxication evidence is admissible during the penalty phase of a capital trial?

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Statement of the Case

I. Collings brutally raped and strangled a young girl.

Petitioner Collings is responsible for the horrific November 2007 kidnapping, rape, and murder of a nine-year-old girl, Rowan Ford. App. 2a.

According to his confession, after a night of drinking with the girl's stepfather, Collings, who had previously lived with the girl and her family, kidnapped her from her bedroom in the middle of the night, took her asleep to his trailer, and then raped her. App. 3a. She awoke and struggled. App. 3a. He then led her to his truck in the dark, hoping that she could not identify her rapist, but moonlight fell on his face. App. 4a. So he took some rope from his truck, looped it around her neck, and pulled until she stopped moving. App. 4a. He then left her body in a sinkhole in a cave, and burned evidence of his crime. App. 4a. More details about this offense are summarized in the Missouri Supreme Court's opinion on direct appeal. *State v. Collings*, 450 S.W.3d 741, 747-53 (Mo. 2014).

A jury convicted Collings of murder in the first degree, Mo. Rev. Stat. § 565.020 (2000), and he was sentenced to death. *Id.* at 747. At the penalty phase, his lawyer submitted evidence that he had a poor childhood; abused tobacco, alcohol, and marijuana; and had anxiety problems. Pet. 3-4. The Missouri Supreme Court affirmed his conviction and sentence. *Id.* at 747.

II. Collings sought post-conviction relief from his conviction and resulting death sentence, claiming that the jury should have considered his drunkenness at the time.

After the denial of his direct appeal, sought post-conviction relief in the trial court. *Collings v. State*, 543 S.W.3d 1, 5 (Mo. 2018). He claimed that expert psychiatric and neurobiological testimony and well-accepted scientific research finds “addiction as a brain disease.” Pet. 4. He thus tried to show that he may have blacked out during the crime, reducing his culpability, or possibly his drunkenness may have made him make up the events recounted in his confession, perhaps at the suggestion of the girl’s stepfather. Pet. 6, 8.

In this motion for post-conviction relief, he claimed that Missouri law, which prohibits evidence of voluntary intoxication to negate a mental state for first-degree murder, violates his rights to due process, to present a defense, and to a fair trial (PCR L.F. 16-18). Mo. Rev. Stat. § 562.067.3 (2000); MAI-CR 3d 310.50.¹ The jury instruction on this law read:

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

¹ Section 562.076.1 provides, "A person who is in an intoxicated or drugged condition, whether from alcohol, drugs or other substance, is criminally responsible for conduct unless such condition is involuntarily produced and deprived him of the capacity to know or appreciate the nature, quality or wrongfulness of his conduct." Mo. Rev. Stat. § 562.067.3 (2000).

condition whether from alcohol or drugs will not relieve a person of responsibility for his conduct.

App. 8a-9a. He also claimed that trial counsel was ineffective for failing to present evidence to support a challenge to the statute and jury instruction. (PCR L.F. 19-25). The motion court denied these claims (PCR L.F. 181-182).

III. The Missouri Supreme Court rejected his claims.

On appeal to the Missouri Supreme Court, the petitioner repeated these claims—but he also tried to broaden his claim and argue that the statute and instruction were unconstitutional on another ground, too (Pet. App. Br. 36, 48-51). He asserted that Missouri’s law violates the Eighth Amendment’s protection against cruel and unusual punishment because it prevents the jury from finding the defendant’s “personal, subjective moral culpability” before being sentenced to death (Pet. App. Br. 36, 48-51).

The Missouri Supreme Court rejected his arguments. It denied his claims that the statute and rule were unconstitutional deprivations of his rights to due process and to present a defense and that counsel was ineffective for failing to present evidence to challenge them. *Collings*, 543 S.W.3d at 8-12.

In Missouri, a person is guilty of first-degree murder if he or she "knowingly causes the death of another person after deliberation upon the

matter." Sec. 565.020.1. "Deliberation" is defined as "cool reflection for any length of time no matter how brief." Sec. 565.002(3). App. 9a. Section 562.076.1 provides, "A person who is in an intoxicated or drugged condition, whether from alcohol, drugs or other substance, is criminally responsible for conduct unless such condition is involuntarily produced and deprived him of the capacity to know or appreciate the nature, quality or wrongfulness of his conduct." Mo. Rev. Stat. § 562.067.3 (2000).

In its holding, the Missouri Supreme Court relied on this Court's decision in *Montana v. Egelhoff*, 518 U.S. 37 (1996), in which a majority of this Court held in a plurality opinion and concurring opinion that the states had the right to define the culpable mental state for deliberate murder to exclude voluntary intoxication as a factor that negates that mental state. *Collings*, 543 S.W.3d at 10-11. As this Court has explained, "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.'" App. 12a (quoting 518 U.S. at 43). And, "historically, voluntary drunkenness has not uniformly been admissible as evidence." App. 12a. The Missouri Supreme Court also relied on a previous decision reaching the same conclusion. App. 14a (citing *State v. Roberts*, 948 S.W.2d 577 (Mo. banc 1997)).

The Court also held that counsel had no obligation to challenge the statute and instruction because earlier precedent had upheld their constitutionality and because his counsel's decision not to present evidence on the issue was reasonable trial strategy. *Collings*, 543 S.W.3d at 11-12. The court held that "trial counsel's decision not to investigate and present evidence challenging the constitutional validity of section 562.076 and the corresponding jury instruction was a strategic choice based on experience." App. 16a.

The Court did not address the claim that the statute and instruction violated the Eighth Amendment by failing to allow a subjective assessment of the petitioner's mental state and individualized mental culpability. *Id.* at 8-12.

Reasons for Denying the Writ

Under this Court's Rule 10, certiorari is granted "only for compelling reasons." Rule 10. In reviewing a decision of a state court of last resort, review is generally limited to claims that (1) the state court decided an important federal question in a way that either conflicts with another state's court of last resort or the United States court of appeals; (2) the state court decided an important federal question that has not been, but should be, settled by this Court; or (3) the state court decided an important federal question in a way that conflicts with relevant decisions of this Court. Rule 10(b), (c). A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law. Rule 10. But these are the only claims presented here, if they are in fact properly presented at all.

This Court should deny review for three reasons.

- First the Missouri Supreme Court did not address the federal question that the petition raises.
- Second, the petition fails to raise any valid claim of a conflict with any opinion from this Court or any other federal court or state court of last resort on voluntary intoxication.
- And third, the petition incorrectly asserts that Missouri capital juries

may not consider the defendant's subjective responsibility for his crimes: they can, at the penalty stage.

The petitioner thus has not raised a claim of general importance warranting this Court's review.

I. The Missouri Supreme Court did not address the question presented in its opinion.

The question presented is not properly before this Court because neither the trial court ruling on the motion nor the Missouri Supreme Court addressed the federal question that the petition raises.

The question presented concerns the Eighth Amendment constitutionality of the jury instruction on evidence of voluntary intoxication, that is, whether it causes cruel and unusual punishment (Pet. i). The petitioner argues that any statutes, like Missouri's, which "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" and thus that the evaluation of a capital defendant's "personal, subjective moral culpability for the crime" require consideration of evidence of voluntary intoxication (Pet. 9-11).

But the Missouri Supreme Court did not address this argument in its opinion because it was not properly preserved in the Missouri trial court. The

Missouri Supreme Court considered two issues raised by the petitioner in one multifarious point on appeal: (1) that the Missouri statutory prohibition and corresponding jury instruction establishing that voluntary intoxication does not negate the culpable mental state for the charged offense violated the petitioner's right to due process and to "present a defense"; and (2) that trial counsel rendered ineffective assistance of counsel for failing to investigate and present evidence challenging the constitutionality of the statute and jury instruction. *Collings*, 543 S.W.3d at 8-9.

There were three different reasons under Missouri law why the Missouri Supreme Court did not have to address the petitioner's Eighth Amendment claim about voluntary intoxication.

First, Missouri court rules require the appellant to "[i]dentify the trial court ruling or action that the appellant challenges" in his "point relied on[.]" Missouri Supreme Court Rule 84.04(d). In his brief, the petitioner's point relied on identified the claim of error by stating, "The motion court clearly erred in denying Christopher's claim [that] § 562.076 and its corresponding jury instruction, MAI-CR 3d 310.50, unconstitutionally prohibit Christopher's right to present a defense and, alternatively, trial counsel were ineffective in failing to present evidence to challenge the statute's and instructions constitutionality...." (Pet. App. Br. 21). Claims not raised enough in the point

relied on are waived. *State ex rel. Clemons v. Larkins*, 475 S.W.3d 60, 72 n. 13 (Mo. 2015).

Second, the petitioner raised at least two different claims of error to the Missouri Supreme Court in the same point relied on: denial of his freestanding constitutional claim and denial of his claim of ineffective assistance of trial counsel (Pet. App. Br. 21). A point violates Missouri court rules when it groups together multiple, independent claims rather than raising a single claim of error; such a multifarious point is subject to dismissal and may be reviewed only at the Court's discretion. *Kirk v. State*, 520 S.W.3d 443, 450 n. 3 (Mo. 2017).

Third, the petitioner raised the claim that § 562.076 and MAI-CR 3d 310.50 violated his Eighth Amendment right to be free from cruel and unusual punishment because they deprived him the right to a subjective determination for the first time on appeal from the denial of his post-conviction claim (PCR L.F. 16-18; Pet. App. Br. 36, 48-51). Under Missouri law, claims not included in the post-conviction relief motion are waived and cannot be reviewed on appeal. *Tisius v. State*, 519 S.W.3d 413, 425 (Mo. 2017).

When the highest state court has failed to pass upon a federal question, this Court assumes that the omission was because of want of proper

presentation in the state court. *Street v. New York*, 394 U.S. 576, 582 (1969). Because the Missouri Supreme Court's opinion was silent on the federal question presented by the petitioner and there existed at least three independent state law grounds for the Missouri Supreme Court to deny review of this question, the petition has failed to show that he properly presented the federal question to the Missouri Supreme Court.

II. There is no division of authority on the question presented.

The petitioner also has identified no conflict between the Missouri Supreme Court, this Court, or any other jurisdiction on whether states may define intent, including for first-degree murder, to exclude the effects of voluntary intoxication on the defendant's mental processes.

To the contrary, the Missouri Supreme Court's decision is consistent with the views of this Court expressed in *Montana v. Egelhoff*, 518 U.S. 37 (1996) in the plurality opinion and the concurring opinion. In *Egelhoff*, four justices held that Montana's statute stating that the jury could not consider the defendant's "intoxicated condition...in determining the existence of a mental state which is an element of the offense" did not violate due process or the right to present a defense. *Egelhoff*, 518 U.S. at 41, 51-56. Those justices held that a rule "disallowing consideration of voluntary intoxication when a defendant's state of mind is at issue" is within the prerogative of the states

and “[n]othing in the Due Process Clause prevents them from doing so.” *Id.* at 56.

Justice Ginsberg, concurring in the judgment, held that such laws are constitutional, not as improper prohibitions on “relevant, exculpatory evidence,” but because such laws redefine the mental state element of the offense to remove the exculpatory value of voluntary intoxication from the *mens rea* requirement for the crime. *Id.* at 57-58 (Ginsberg, J. concurring). States enjoy wide latitude in defining the elements of criminal offenses and how much moral culpability should be a prerequisite to conviction of a crime. *Id.* at 58. Justice Ginsberg explicitly rejected the claim that such laws violate due process because they do not offend “a principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.” *Id.* at 58-59. She also explicitly stated that, in a prosecution for deliberate homicide, the State need not prove the *mens rea* “in a purely subjective sense.” *Id.* at 58. Thus, this Court held that under such circumstances, voluntary intoxication is not a defense because it does not negate the mental state. *Id.* at 41-61.

The Missouri Supreme Court’s opinion finding no constitutional infirmity with § 562.076² and MAI-CR 3d 310.50 rested on the plurality and

² Section 562.076.1 provides, “A person who is in an intoxicated or drugged condition, whether from alcohol, drugs or other substance, is

concurring opinions in *Egelhoff. Collings*, 543 S.W.3d at 10-11. Because this Court has held that states have the constitutional prerogative to define culpable mental states, including for deliberate murder, to exclude the effect of voluntary intoxication on the defendant's mental processes, the Missouri Supreme Court held, as it had done before, that Missouri statute and jury instruction were consistent with this Court's ruling in *Egelhoff* and thus were constitutional.

The petitioner also attempts to create the appearance of a disagreement between the states on this issue by arguing that a majority of "death penalty states allow voluntary intoxication on the issue of specific intent" (Pet. 11).

Even if that assertion were true, there is no conflict on a question of *federal* law between states that allow voluntary intoxication to negate a culpable mental state and those that do not. No state that the petition cites as permitting evidence of voluntary intoxication to negate a culpable mental state bases its rules on federal constitutional principles as opposed to on state law grounds (Pet. 11 n. 2). *See, e.g., Cheadle v. State*, 149 P.3d 919, 919-20 (Okla.Crim.App. 1915) (state common law); *State v. Shelton*, 79 S.E. 885 (N.C. 1913), overruled on other grounds by *State v. Oakes*, 106 S.E.2d 206

criminally responsible for conduct unless such condition is involuntarily produced and deprived him of the capacity to know or appreciate the nature, quality or wrongfulness of his conduct." Mo. Rev. Stat. § 562.067.3 (2000).

(N.C. 1958) (state common law); *Englehardt v. State*, 7 So. 154, 155 (Ala. 1890) (state common law); K.S.A. 21-5205 (2010) (Kansas statute); Cal. Pen. Code § 29.4 (2012) (California statute). As this Court decided in *Egelhoff*, these courts were constitutionally free to define a culpable mental state as either being negated or not being negated by voluntary intoxication. *Egelhoff*, 518 U.S. at 56 (plurality), 58 (Ginsberg, J. concurring). Thus, appellant has pointed to no conflict on a federal constitutional question between the states.

III. Missouri capital juries may consider voluntary intoxication on the issue of punishment.

Finally, the petitioner has failed to raise a claim worthy of this Court's review because he is wrong that Missouri capital juries are prevented from considering a defendant's voluntary intoxication in evaluating the circumstances of his offense or in determine the "individualized determination of culpability" required to impose a death sentence.

True, in the *guilt* phase of a first-degree murder trial, the defendant may not rely on voluntary intoxication to negate the intent of deliberation. Rev. Stat. Mo. § 562.076 (2000); MAI-CR 3d 310.50.

But this does not prevent Missouri capital juries from considering a defendant's voluntary intoxication during the *penalty* phase of the capital trial. Under Missouri law, a capital jury must make additional findings which

include consideration of the subjective moral culpability of the defendant because it includes consideration of “any evidence” which a juror considers aggravating or mitigating. Mo. Rev. Stat. § 565.032.1(2) (2000). “Virtually no limits” are placed on the relevant mitigating evidence a capital defendant may introduce about his own circumstances. *Glass v. State*, 227 S.W.3d 463, 469 (Mo. 2007).

On the specific issue of the defendant’s subjective mental condition, the defense may present evidence in mitigation and have the jury instructed to consider statutory mitigating circumstances—which allows the jury to evaluate the defendant’s mental condition, including: (1) whether the defendant was under the influence of extreme mental or emotional disturbance, or (2) whether the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to law was substantially impaired. Mo. Rev. Stat. § 565.032.3(2), (5) (2000).

And, the Missouri Supreme Court has recognized that at this stage evidence of intoxication can be relevant evidence of both “extreme mental and emotional disturbance” and “substantial impairment.” *Glass*, 227 S.W.3d at 471 (upholding the grant of post-conviction relief because of counsel’s failure to present mitigating evidence that alcohol intoxication led to extreme mental and emotional disturbance and substantially impaired the defendant’s

capacity); *State v. Johnson*, 968 S.W.2d 686, 702 (Mo. 1998) (noting that the court had “approved of the submission of [the substantial impairment] mitigating circumstances in the context of voluntary cocaine intoxication). *State v. Worthington*, 8 S.W.3d 83, 89 (Mo. 1999) (noting that evidence showed that the defendant’s capacity was substantially impaired because of drug and alcohol intoxication). Missouri law thus permits evidence of intoxication on the effect of intoxication on the defendant’s subjective moral culpability for his mental processes.

The petitioner’s error lies in his improper conflation of the guilt phase and penalty phase of the trial. While § 562.076 prohibits evidence that voluntary intoxication negates the mental element of deliberation in the guilt phase, there is no such prohibition under Missouri law for evidence of intoxication in the penalty phase.

The cases that appellant cites from this Court in support of his claim address the states’ obligation to ensure an individualized determination of the defendant’s punishment in imposing and carrying out a death sentence, not the jury’s determination of guilt for a charged offense. *See, e.g., Gregg v. Georgia*, 428 U.S. 153, 190-93 (1976) (permitting death sentencing where a bifurcated, guided system for the jury to consider aggravating and mitigating evidence are in place); *Eddings v. Oklahoma*, 455 U.S. 104, 117-18 (1982)

(addressing the right to have the factfinder properly consider mitigating evidence of a difficult upbringing); *Ford v. Wainwright*, 477 U.S. 399, 411-12 (1986) (addressing fact finding for determination of whether a condemned prisoner is insane); *Enmund v. Florida*, 458 U.S. 782, 797-98 (1982) (addressing the suitability of a death sentence for a non-deliberate felony murder). Missouri law permits an individualized assessment of a capital defendant's suitability for a death sentence, including permitting the consideration of evidence on the effect of intoxication on the defendant's mental processes. Thus, § 562.076 and MAI-CR 3d 310.50, applicable only to the guilt phase of first-degree murder trials, do nothing to prevent the individualized sentencing consideration required by the Eighth Amendment.

The petition suggests that this Court should expand its Eighth Amendment precedents from the penalty-phase to the guilt-phase, and impose heightened standards on the required mental state in a case that may carry a death sentence. Pet. 15-16. But the petition does not show grounds for this Court to reconsider or expand its precedent in this way. *Stare decisis* counsels strongly in the State's favor in criminal cases, and the original meaning of the plain text of the Eighth Amendment does not extend to this situation.

The original meaning and plain text of the Constitution must always be

the touchstone of any decision, and here, the text of the Eighth Amendment does not reach this far. Below, the Missouri Supreme Court relied on this Court's decision in *Montana v. Egelhoff*, 518 U.S. 37 (1996), where this Court explained 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." App. 12a (quoting 518 U.S. at 43). And, "historically, voluntary drunkenness has not uniformly been admissible as evidence." App. 12a. So, too, under the Eighth Amendment.

Nor does the original meaning of the Eighth Amendment require any particular criminal procedures at the guilt-phase of trial. The Eighth Amendment does not prohibit the death penalty. *Id.* Instead, the Eighth Amendment, applicable to the States through the Fourteenth Amendment, provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. vii. This law does not prohibit the death penalty, nor does it apply to regulate the procedures to find guilt at trial in death-penalty cases. "Consistent with the original understanding of the Cruel and Unusual Punishments Clause, this Court's cases have repeatedly taken the view that the Framers intended to prohibit torturous modes of punishment akin to

those that formed the historical backdrop of the Eighth Amendment.” *Baze v. Rees*, 553 U.S. 35, 99 (2008) (Thomas, J., concurring).

Under this Court’s precedents, some penalties may be impermissibly disproportionate to a crime, but Collings does not argue that the death penalty is disproportionate to his crime against nine-year-old Rowan Ford.

Nor could he. This Court has refused to hold that a death sentence for a man who raped and killed a child is unconstitutional under the Eighth and Fourteenth Amendments. *Kennedy v. Louisiana*, 554 U.S. 407, 421, as modified (Oct. 1, 2008). His death sentence thus comports with this Court’s Eighth Amendment jurisprudence.

Conclusion

The petition should be denied.

Respectfully submitted,

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