No. 22-7830

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

APRIL TERM, 2023

Steven Lynn Nicholson- Petitioner Pro Se

Vs.

Kim Cargor-Respondent

Petition for Writ of Certiorari

To the United States Court of Appeals

For the Sixth Circuit

Steven Lynn Nicholson/ #492918

3510 N. Elm St.

Jackson, MI 49201

QUESTIONS PRESENTED

Does the 6th Circuit Court of Appeals position to acquiesce to MCL 768.37 by not interfering with Michigan's jurisdiction conflict with how multiple U.S. Courts of Appeal handle the issue of Diminished Capacity and Voluntary Intoxication?

Is the aforementioned question not an issue that needs a Federal check and balance in effort to preserve every Americans constitutional right?

Is it a problem that needs to be reviewed by This Supreme Court regarding the difference in opinion amongst the Federal Circuit Courts when it comes to Diminished Capacity and Voluntary Intoxication, whereas Federal Courts generally agree with their accompanying lower state courts regarding Rule of Law pertaining to Diminished Capacity and Voluntary Intoxication?

Is the 6th Circuit Court of Appeals in error of failing to acknowledge that Petitioner was denied his 14th Amendment right of Due Process to present a COMPLETE defense; said failure being based on MCL 768.37 which denies one's 14th Amendment right to present a COMPLETE defense?

Are Michigan state Courts in error [particularly in light of the amendment to MCR 6.502 (G) (3) (b)] in denying the Federal 14th Amendment Right of Due Process to be able to present a COMPLETE defense when Petitioner was forced to deny the primary defense in his case? [See (TT -1, Line 21 (from pg. 3 of 2012 Motion to Remand), *on the record,* the prosecutor objected to the voluntary intoxication defense before this defense was even put on the record.

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Appendix B- Order Denying Application for Leave to Appeal from the Michigan Supreme Court is reported in *People v. Nicholson, 146222*; and the second Michigan Supreme Court Order Denying Application for Leave to Appeal is reported in *People v. Nicholson, 156652.*

Appendix C- Order Denying Remand and Opinion from the Court of Appeals is reported at *People v. Nicholson, MI. Ct. App. 4/3/2012; 304784*, and the second Court of Appeals Denial is reported at *People v. Nicholson, MI. Ct. App. 8/31/2017, 914 N.W. 2d 918 (Mich. 2018) 338544.*

Appendix D- The 2016 Opinion of the Trial Court of Wayne County, Michigan from Judge Shannon Nicol Walker reported at *LC-10-012115-01-FC*, Wayne County Circuit Court.

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Petition for Writ of Certiorari

To the United States Court of Appeals

For the Sixth Circuit

Petitioner, Steven Nicholson, respectfully PRAYS, in Jesus' name, that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit appears as **Appendix A** to the petition and is REPORTED at *22-1586 Steven Nicholson v. Noah Nagy, Fed R. App., P. 22(b).*

The opinion of the United States Eastern District Court for Southern Michigan appears at **Appendix A** to the petition and is REPORTED at *4:14-CV-10828-MAG-DRG*, United States Eastern District Court of Michigan, Southern Division.

The opinions of the highest state court to review the merits appears at **Appendix B** to the petition and is REPORTED at *People v. Nicholson, 146222* Michigan Supreme Court from the Michigan Court of Appeals decision (unpublished) appears at *People v. Nicholson, MI. Ct. App. 4/3/2012; 304784* (**Appendix C**) & the second opinion is REPORTED at *People v. Nicholson, 156652* Michigan Supreme Court from the Michigan Court of Appeals decision at *People v. Nicholson, MI. Ct. App. 8/31/2017, 914 N.W. 2d 918 (Mich. 2018) 338544.*(**Appendix C**).

The opinion of the Trial Court of Wayne County, Michigan appears at **Appendix D** to the petition and is REPORTED at *LC-10-012115-01*, Wayne County Circuit Court.

JURISDICTION

Petition for Writ of Certiorari is sought from the January 25, 2023 order of the United States Court of Appeals for the Sixth Circuit *22-1586 Steven Nicholson v. Noah Nagy, Fed R. App., P. 22(b)* denying my Application for Certificate of Appealability and is set forth in Appendix A.

[X] No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under **28 U.S.C §1254(1)**.

The date on which the highest **state** court decided my case was March 4, 2013. A copy of that decision, *4:14-CV-10828*, appears at Appendix A.

The jurisdiction of this Court is invoked under **28 U.S.C. § 1257(a)**.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pursuant to **U.S. Supreme Court Rule 14.1(f)**, the full text of **U.S. Constitutional Amendment XIV** is set forth in Appendix E

Pursuant to **U.S. Supreme Court Rule 14.1(f)**, the full text of **28 U.S.C., Title 28, Section 2253** is set forth in Appendix E

Pursuant to **U.S. Supreme Court Rule 14.1(f)**, the full text of **28 U.S.C. § 2254 (e)(A)** ii is set forth in Appendix E

Pursuant to **U.S. Supreme Court Rule 14.1(f)**, the full text of **U.S.C.S. 2254(d)** is set forth in Appendix E

STATEMENT OF THE CASE

1. Procedural Facts

I, Mr. Nicholson, was initially charged with two counts of First Degree Felony Premeditated Murder, two counts of Felony Homicide, and two counts of First Degree Child Abuse for the tragically accidental drowning's of my children, Jonathan Alan Sanderlin and Ella Grace Stafford, to which I was their full time custodial Father and Guardian. Following a bench trial, I was convicted of First Degree Felony Premeditated Murder, Second Degree Murder and First Degree Child Abuse. I filed a Direct Appeal *LC-10-012115-01*, Motion for Leave to Appeal, twice (*People v. Nicholson, No. 304784, 2012 WL 4512570 MI Ct. App. Oct. 2, 2012*), and *People v. Nicholson, MI. Ct. App. 8/31/2017, 914 N.W. 2d 918 (Mich. 2018) 338544*, followed by an Application for Leave to the Michigan Supreme Court for each COA denial, case numbers, *146222 & 156652* and a Writ of Habeas Corpus *4:14-CV-10828*. I

had a basic lack of understanding of case law and was not able to properly formulate legal arguments or offer any legal authority due to ignorance of the law **MCR 6.508 (D) (3) (a,b) (i, iii);** and ineffective assistance of appellate counsel, which is an issue I failed to bring up and have likely forfeited as a source of recourse, nevertheless, it was a factor in my demise. I then filed in the United States Court of Appeals for the Sixth Circuit *22-1586 Steven Nicholson v. Noah Nagy, Fed R. App., P. 22(b.*.

My arguments were never "plainly meritless" or in any way were they meant to engage in "intentionally dilatory tactics." See, *Wagner, 581 F.3d at 419.* I have raised these issues during every petition I have submitted and will continue raising these issues of Voluntary Intoxication and Diminished Capacity as defenses as often as I can. One reason, is because I did not hurt my children and these defenses are the only logical explanations to the tragic events that took my children's lives and two, because these issues/defenses were never properly exhausted by valid argument being allowed for it, then allowing response to said argument due to the unconstitutional application of **MCL 768.37** which *laughs* in the face of the **14th Amendment** right to present a COMPLETE defense, particularly when there was not proof beyond a reasonable doubt to every fact necessary to prove the crimes I was charged and convicted of. ["State may not deprive any person 'of life, liberty, or property, without due process of law…" (**U.S. Const. AM XIV; Const. 1963, Art. 1 §17**)] This constitutional challenge to **MCL 768.37** is due to the fact that Michigan legislature would do its citizens justice to reform this law to reflect the standard practiced in the majority of the States in the U.S.

2. Substantive Facts

The conclusion of Dr. Gerald Scheiner that I, Mr. Nicholson, was too incapacitated from Xanax overdose to form the specific intent to kill my children was never *truly* investigated. (See **Scheiner's Report @ OTHERS)** *Court of Appeals Presiding Judge Cynthia Diane Stephens made Scheiner's report a part of the Lower Court record on 4/3/2012 in COA's denial of my Motion to Remand, as she*

clearly saw the relevance of facts contained within Scheiner's Report. This evidence was suppressed during my trial due to the unconstitutional law of **MCL 768.37**. It continues to be ignored for the same reason. Furthermore, prosecutors *are* reserved the right to object to defenses brought forth by an accused; THE PROSECUTOR, KAREN GOLDFARB, DID OBJECT OVER AND OVER AGAIN. I was subsequently denied the opportunity to present the defense necessary allotted to me under my **14th Amendment Right of Due Process**. I concede the issue was forfeited, but it was forfeiture by force. Prosecutor Karen Goldfarb continuously blocked every attempt I made through my lawyer to bring up Scheiner's report. **{TT-I, Line 21 (from pg.3, 2012 Motion to Remand)} [This transcript cite is from my lawyer's brief as I was denied the right to my Full Trial Transcripts, See: MCR 6.433 Order by Vera Massey Jones in OTHERS]** They never wanted me to get him on the stand or to get it on the record that I tried to use his report even though I knew how the **MCL 768.37** standard would have hurt that argument. I didn't care. I tried over and over to get him on the record and his report on the record because I knew his report was the only logical explanation to this nightmare I had caused with my stupid choices. Thankfully, COA Judge, Cynthia Diane Stephens DID make it a part of the Lower Court record as I mentioned. Judge Stephen's decision is further validated by the report of Oakland County Medical Examiner, Dr. L.J. Dragovich which absolutely validates Scheiner's report and the truth that this horrible accident stemming from my horrible decisions was not purposeful. **(See Dragovich's Report, @ OTHERS)** This weighty evidence further establishes how necessary it is for the Highest Court in the country to provide a check and balance for the differing opinions on the Voluntary Intoxication / Diminished Capacity law nationwide. *Take note, two unpaid experts validated my story.*

The last paragraph of the dissent in *Michigan v. Corley, 2016 Mich. App. Lexis 2406* is very revealing in regards to Defendant Nicholson's situation. Judge Kathleen Jansen states that the new evidence in the *Corley* case deserves a remand for a new trial because *the trial court failed to consider certain facts.* Judge Vera Massey Jones perpetrated this same neglect for due process when she ignored "a great deal

of mitigating evidence that was available for Counsel to utilize at trial, but went unutilized because Counsel not only failed to exercise due diligence in searching for it," (*quoting Armstrong v. Kenna, 534 F. 3d 857, 863 8th Cir. 2008*) but was severely persuaded to neglect the relevant evidence of consequence pertaining to Scheiner's report. *Beasley v. United States, supra* states that "defense must seek all possible defenses." I never *intentionally* waived my right to present Scheiner's report. The fact is that I never even knew it was a right I had that would become abandoned or forfeited due to my failure and lack of guidance from counsel to assert said right. *People v. Carter, 462 Mich. 206* A waiver and a forfeiture is definitely different and to accuse me of waiving my right in regards to Scheiner's report is unreasonable application of law, *Williams v. Taylor, 529 U.S. 362, 407 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000).* Scheiner's ignored report should be seen as new evidence since it was not allowed as part of the COMPLETE defense I tried to bring. My trial lawyer would not comply with my desire to push for the allowance of Scheiner's report. All of Winters' trial strategy was poorly constructed and made a just result not likely. The "new" evidence of Scheiner's report corroborates My testimony from arrest until now, and discredits the prosecution's theory. Prosecution had no proof of intent or motive, NONE, to show that I killed my children. Intent and motive were imagined by Judge Vera Massey Jones as the Trial Transcripts show. (Judge Vera Massey Jones' key point in why she convicted Me was that she didn't believe in the so-called "perfect storm" said to have occurred for these deaths to have been accidental. **(TT-pg. 60, L-4, 6)** Better yet she theorized to a scenario that she *felt* fit why the Defendant would have chosen to kill his children instead of allowing for a *full* defense. **[TT-pg. 59, L-3-25]**) However, as Scheiner's report makes clear; when a person has NO control of their faculties, or the ability to be conscious, canceling the ability to be conscious of premeditation, then they cannot be responsible for premeditation to make a willful and deliberate decision; yet the unconstitutional **MCL 768.37** law didn't allow this relevant aspect of this horror story to come to light.

Argument

The 6th Circuit Court, in their response to my Petition for COA, actually *conceded* that Scheiner's report *makes* [abundantly] *clear* that I lacked the Specific Intent to harm my children. [**pg.5 6th Circuit Response in** Appendix A- Opinion of U.S. District Court of Appeals reported in *22-1586, Steven Nicholson v. Noah Nagy Fed. R. App., p.22(b), (2023)*] The 6th Circuit surmises that I claimed to have acted in an intoxicated manner *to hurt* my children; the Court is way off base with that prognosis. *My claim was and always has been that my action in an intoxicated manner was that I went to SLEEP.* When the Court can concede in such a way yet still deny my right to a defense/new trial due to the **MCL 768.37** law constitutionally devoid of due process, then there is a serious flaw with said law and efforts should be made by the Court of Highest Authority to rectify the differing opinions amongst the Circuit Courts to provide every American their fullest rights to a complete defense.

REASONS FOR GRANTING THE PETITION

For context purposes only, various facts and issues of my actual case have been set forth in this Petition. My goal is for Certiorari to be granted in hopes that the majority of people called "offenders" who are Adults-in-Custody, who may or may not be guilty of the crime they are incarcerated for, will have their United States Constitutional right to **Due Process** reinstated in order to present a complete defense according to the **14th Amendment** provision set forth when our country was established and supposed to be a free, equitable and democratic nation. If by proxy, my case is shown favor through any retroactive adaptations of rule of law, well then, God bless it. I do desire a fair chance at life though.

Legislature created an unbalanced scheme, denying many offenders their **14th Amendment, Due Process** right to a defense in the *2001 P.V. Carpenter, 464* case; this legislature clearly contrasts with the introduction of Diminished Capacity / Voluntary Intoxication evidence and the constitutional right to a defense. A defendant claiming Diminished Capacity does not admit guilt of the crime charged OR

assert he is legally insane. (I am not insane, nor was I insane at the time) Rather, they deny the prosecution's '*prima facie*' case by challenging its claim that he possessed the requisite mens rea at the time of the crime. Hence, insanity evidence to prove the affirmative defense of legal insanity is distinct from the Diminished Capacity evidence to disprove the requisite mens rea of a specific intent crime. Yet for somewhat substantive reasons (offenders abused the overly lax law based on earlier *M'Naughten* rules), Michigan has decided to go too far in the opposite direction of the old law regarding Diminished Capacity and Voluntary Intoxication, thus stepping all over the rights of every American based on their **14th Amendment, Due Process** right to a COMPLETE defense. Ex Michigan Supreme Court Justices, J. Kelly AND J. Cavanaugh and Ex MI Court of Appeals Judge Amy Ronayne Krause all agree with the point I am making here. (See J. Kelly's dissent in *2001 P.V. Carpenter, 464* in which J. Cavanaugh agrees with said dissent) (See Judge Krause' opinion in *People v. Flynn, 2020 MI App. Lexis 5477* where she URGED the Michigan Supreme Court to revisit the *Carpenter* ruling; she stated that she would)

The 2001 Legislature has rendered *Inadmissible Evidence Relevant to negate mens rea* (for proving their case); in turn, this shuts the door for a defendant to fairly, if at all, defend all of the facts. (See *"48" in P.V. Carpenter*)

Before 2001, Voluntary Intoxication WAS a defense to Specific Intent crimes. The statute was abused by some but was fair. The statute made sense when applied correctly. The statute also needed to be tougher so it wasn't abused. But the changes made to the Diminished Capacity law (including G.B.M.I.-guilty but mentally ill) in *2001 P.V. Carpenter, 464* went too far. Voluntary Intoxication by definition/proxy is clearly in the same realm with Diminished Capacity and all its extensions. (*P.V. Dombrowski, 2022, MI App. LEXIS 6988 [pt. 2]) (P.V. Anthony 1327 MI. App 24 [regarding @44 superseding]*)

Also, the author of '**82 Michigan Bar Journal, 17 (Feb. 2003),**' "Criminal Law: The Untimely Death of Michigan's Diminished Capacity Defense," by, Kimberley Reed Thompson, establishes, among a plethora of eye opening claims, that the change to Michigan's law is: "erroneous statutory interpretation," (on the part of the legislature).

"Limitation to present a defense, may, under some circumstances violate due process." {*Rock v. Ark., 483 U.S. 44, 55; 107 S. Ct. 2704; 97 L. Ed. 2d 37 [1987]*} Change in the Diminished Capacity law in *P.V. Carpenter* also diminished the constitutional requirement of Prosecutorial Proof of guilt beyond a reasonable doubt on **each** element of the charged offense, thus making the Prosecution's conviction of Me incomplete and a violation of my U.S. constitutional due process rights as an American.

"Rules excluding evidence contravene the Due Process right to present a defense when they infringe a weighty interest of an accused or significantly undermine a fundamental element of defense." (*U.S. v. Sheffer*)

(*Lucio v. Lumpkin, 987 F. 3d 451*)- Relitigated under **28 U.S.C.S. §2254(d)**-[Federal due process right to present testimony from an EXPERT (*Scheiner in MY case*); without this allowance she was deprived her *constitutional* right to present a COMPLETE defense, just like in Mr. Nicholson's case.] This Voluntary Intoxication / Diminished Capacity issue must be uniform and justified nationwide.

An essential component of procedural fairness is an opportunity to be heard. That opportunity becomes an empty one when the state is permitted to exclude competent, reliable evidence directly affecting the ascertainment of guilt (Voluntary Intoxication is a "mental abnormality," especially when I did not expect it to happen, even reasonably).

Quoted from U.S. Supreme Ct. Justice's dissent from the opinion given in *Kahler V. Kansas, 140 S. Ct.*: "The **Due Process Clause** protects those "principles of Justice" so rooted in the traditions and

conscience of our people as to be ranked as fundamental..." (*Leland, 343 U.S., at 798, 72 S. Ct. 1002, 96 L. Ed 1302*)

A quote from: (*Montana V. Egelhoff, 518 U.S. 37, 43, 116 S.Ct. 2013, 135 L. Ed. 2d 361, 1996*): "The 'Primary Guide' to determine whether a principle of justice ranks as fundamental is a 'historical practice.'" Furthermore, in *Montana V. Egelhoff,* the Justices of the U.S. Supreme Court could not agree on an opinion in totality Justices O'Connor, Stevens, Souter and Breyer, JJ dissented, claiming that the Montana statute on Voluntary Intoxication, in which the spirit of the law is the same as Michigan's statute on the same issue, DID violate the **14th Amendment**. How can Michigan's stance *not* also be a violation?? With all due respect, the opinions for and against Voluntary Intoxication in *Montana V. Egelhoff* seem to be a broad and impotent attempt to satisfy the public with any answer, essentially sweeping this issue under the rug instead of doing the hard work of figuring out an answer that will fully and nationally satisfy such a momentous issue particularly when a *basic* defense IS that rooted in the traditions and conscience of the people as to ranked as fundamental and a constitutional right.

With the way **Constitutional laws §840 & §854** read, I propose these two laws are an example of how, in so many ways, Rule of Law has died in this country if denial of a defense with merit for any American is allowed to continue to be denied.

Judges for Third Judicial Circuit Court of Wayne, 383, Mich. 10 - "Every court has inherent powers to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction, subject to, or not in conflict with valid existing laws AND *constitutional* provisions." (Provisions such as the right to present a defense according to **Due Process** laws in the **14th Amendment**) Furthermore, The Supreme Court of the United States has the power to manage the fundamental principles of justice that each state either correctly or incorrectly applies to any law ever

created; thus the reason The Supreme Court is The Supreme Court. Please see the necessity to review the divided mind of the states on this matter.

If Federal Circuit Courts generally agree with the lower state courts for Rule of Law in most instances, than that would mean there is a difference in opinion nationwide amongst the circuit courts regarding a defense for an accused pertaining to Diminished Capacity/Voluntary Intoxication. This ongoing problem is one which needs to be reviewed by the U.S. Supreme Court. The following list is of every state and the correlating statute or controlling case for said state which is used to either allow or disallow a defense in SOME MANNER, even in the minutest manner, to Voluntary Intoxication / Diminished Capacity:

Defense for Voluntary Intoxication/ Diminished Capacity Allowed- Yes or NO; Other

Alaska-YES/Statute-§11.70.030(a)/ (9th Circuit)

Alabama-YES/ §13A-3-2(c)/ (11th Circuit)

Arizona-NO/ A.R.S. §13-502(A) /(9th Circuit)

Arkansas-NO/Arkansas Stat. Ann. §41-207/ (9th Circuit)

California-YES/ Only for forming Specific Intent/ Cal. Penal Code §22(b)/ (9th Circuit)

Colorado-NO/ C.R.S. §18-1-804/ (10th Circuit)

Connecticut-WHEN RELEVANT/ General Statute §52a-7/ (2nd Circuit)

Delaware-NO/11 Delaware Code §401(c) & 421/ (3rd Circuit)

Florida-NO/EXCEPT in cases of prescribed meds like in Michigan/FL. St. §775.05 & §893.02/ (11th Circuit)

Georgia-NO/JUST LIKE MICHIGAN; O.G.G.A §16-3-2 & 4/ (11th Circuit)

Hawaii-YES/Only under Subsection 5 of H.R.S. §702-230/ (9th Circuit)

Idaho-NO/BUT under Idaho Code 18§116 for Murder, there is wiggle room/ (9th Circuit)

Illinois-YES/§720 I.L.C.S. 5/6-3/ (7th Circuit)

Indiana-YES/Burns Ind. Code Ann. §35-41-3-5(2)/ (7th Circuit)

Iowa-YES/§73 Iowa L. Rev. 935 (701.5 of Iowa Code) [Muddy]/ (8th Circuit)

Kansas-YES/K.S.A. §21-5205(b)/ (10th Circuit)

Kentucky-YES/K.R.S. §501.080 (13)/ (6th Circuit)

Louisiana-YES/La. R.S. §14:15(2)-ONLY for Specific Intent/ (5th Circuit)

Maine-YES, but Muddy/17-A.M.R.S. §37/ (1st Circuit)

Maryland-YES, Only for Specific Intent/ MCPJI 5:08(2d, 2016 Supp.)/ (4th Circuit)

Massachusetts-YES/ Commonwealth V. Brennan, 399 Mass. 358/

Michigan-NO, but.../ P.V. Garcia, 398 Mich.250 gives hope, but MCL§768.37 kills hope/ (6th Circuit)

Minnesota-YES/ Minn. Stat. §609.075/ (7th Circuit)

Mississippi-NO/ Smith v. State, 445 So. 2d 227 / (5th Circuit)

Missouri- NO, Only for Involuntary Intox. / R.S. MO. §562.076/ (8th Circuit)

Montana- NO, Only for Involuntary Intox. /MCA §45-2-203/ (9th Circuit)

Nebraska-NOT CLEAR/ R.R.S. Neb §29-122/ (8th Circuit)

Nevada-YES, For Specific Intent/ N.R.S.A. §193.220/ (9th Circuit)

New Hampshire-YES/(N.H.) R.S.A. 626:2/ (1st Circuit)

New Jersey-When Relevant/ N.J.S. §2C:2-8/ (3rd Circuit)

New Mexico-YES, for Specific Intent/ N.M.R.A. §14-5110/ (10th Circuit)

New York-Yes, for Specific Intent/ N.Y. CLS Penal §15.25/ (2nd Circuit)

North Carolina-Yes, for Specific Intent/ NCPJI §206.307A/ (4th Circuit)

North Dakota-WHEN RELEVANT/ N.D. Cent. Code, §12.1.04-02/ (8th Circuit)

Ohio- Yes, for Specific Intent/ ORC Ann. 2901.21(E)/ (6th Circuit)

Oklahoma-Only for Criminal Specific Intent/ 21 Okl. St. §704/ (10th Circuit)

Oregon-YES/ ORS §161.25/ (9th Circuit)

Pennsylvania-YES, to decrease level of murder/18 Pa. C.S. §308/ (3rd Circuit)

Rhode Island- Yes, for Specific Intent, will drop to manslaughter/ S.V. Vanasse, 42 R.I. 278 @ 281, 107 A at 86/ (1st Circuit)

South Carolina- Only for consideration punishment phase/ S.C.Code Ann. § 17-24-10 [22 C.J.S Crim. Law § §112 & 113 (1989)]/ (4th Circuit)

South Dakota- Yes, for Specific Intent; S.D. codified Voluntary Intoxication-NO/ for S.I.-Schouten, 2005 S.D. 122/ for V.I.-Laws §22-16-6/ (8th Circuit)

Tennessee-YES/ Tenn. Code Ann. §39-11-503/ (6th Circuit)

Texas-YES, for Temp. Insanity/ Texas Penal Code §8.04/ (5th Circuit)

Utah-YES, If mental state needed is negated regarding Specific Intent/ Utah Code Ann. §76-2-306/ (10th Circuit)

Vermont-YES/ S.V. Congress, 2014- 13 V.S.A. §2301/ (2nd Circuit)

Virginia-YES, for Specific Intent, Premeditation/ Va. Code Ann. §18.2-32/ (4th Circuit)

Washington- Yes, for Specific Intent/ A.R.C.W. §9A.16.090/ (9th Circuit)

West Virginia- Yes, for Specific Intent/ 8 A.L.R.D.3d 1236 §4 (a) (1966)/ (4th Circuit)

Wisconsin-NO, only if Involuntary Intoxication, but also, not clear, SEE: S.V. Guiden, 46 Wis 2d 328 (1970)/ (8th Circuit)

Wyoming- Yes, for Specific Intent/ Wyoming Stat. §6-1-202/ (10th Circuit)

As the list of U.S. States previous shows; 37 of the 50 states in the United States either allow outright for a defense to offenses involving Voluntary Intoxication / Diminished Capacity, or at least they have even the slightest, justifiable concession for a defense to Voluntary Intoxication / Diminished Capacity

cases for any American to present the circumstances involved in any potential case of this magnitude. How is it that this miscarriage of justice can continue to be ignored?

All of the statutes cited above, for each state, substantiates how this is a miscarriage of justice. Looking to the precedent in **U.S.C.S. 2254(d)**, I submit that Michigan State Court Law based on People v. Carpenter are "diametrically different: and "mutually opposed" to Supreme Court decisions which concur with states who allow defenses for Voluntary Intoxication and Diminished Capacity cases. Therefore, Michigan courts' decision in the *2001 People v. Carpenter* case regarding rule of law pertaining to Voluntary Intoxication and Diminished Capacity are "unreasonable application" of the **14th Amendment Due Process Clause of the United States.** Amendments to the Michigan law in this particular area of law must be made for valid constitutional defenses for Americans in Michigan, and other lacking states, which have made bad choices and caused tragic accidents to occur; otherwise there is a *double standard* particularly when the new standard of Michigan Court Rule is taken into account.

DOUBLE STANDARD

According to the amendment to **MCR 6.502 (G)** from a *November 16th 2022* order issued by Michigan's Legislature *(effective 1.31.2023)*, my request in this Writ for Certiorari for The Supreme Court to make Voluntary Intoxication / Diminished Capacity laws, including Michigan's, uniform nationwide is vitally crucial and even more relevant now.

MCR 6.502(G) (3) (b) substantiates how relevant the expert in my case actually was. Scheiner's expert report and opinion based on his scientific expertise establishes that I needed a COMPLETE defense for my constitutional rights to have been upheld. I had nothing close to that COMPLETE defense. If Michigan is willing to concede to the change in **MCR 6.502**, than the Voluntary Intoxication / Diminished Capacity law must be amended as well in order for any defendant to utilize prong (b):

[MCR 6.502 (G) (3) (b) - for purposes of sub rule (G) (2), "new evidence" includes new scientific evidence. This includes, but is not limited to, shifts in science entailing changes in:

(a) a field of scientific knowledge, including shifts in scientific consensus;

(b) a testifying expert's own scientific knowledge and opinions; or

(c) a scientific method on which the relevant scientific evidence at trial was based.]

I reiterate to the premise that there must be a uniform mindset towards how these issues regarding Voluntary Intoxication and Diminished Capacity are handled among all 50 states in order for constitutional Due Process to have its way, which you Supreme Court Justices have the authority, granted by the Almighty God of Abraham, Isaac and Jacob, to find a resolution to.

CONCLUSION

The petition for writ of certiorari, if granted, would be justified.

Respectfully submitted,

/s/ Steven Lynn Nicholson

Steven Lynn Nicholson

Date: 4.24.23