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# IN THE SUPREME COURT OF THE STATE OF DELAWARE

PARRIS HAMILTON,	)
Defendant-Below Appellant	) v, ) )
V.	) ) No. 548, 2013 )
STATE OF DELAWARE,	)
Plaintiff-Below, Appellee	)

# ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

## STATE'S ANSWERING BRIEF

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DATE: July 12, 2013

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#### NATURE AND STAGE OF THE PROCEEDINGS

The Appellant, Parris Hamilton ("Hamilton"), was arrested on October 24, 2009 and subsequently charged, by indictment, with Murder First Degree (2 counts: intentional and felony-murder), Attempted Murder First Degree (2 counts), Burglary First Degree, Kidnapping First Degree (2 counts) and Possession of a Firearm During the Commission of a Felony (PFDCF) (7 counts) (D.I. 1, 4).

Jury selection began in the Superior Court on May 17, 2012, and trial began on May 22, 2012. (D.I. 79, 90). On June 8, 2012, the jury found Hamilton guilty as charged. (D.I. 90). On June 19, 2012, Hamilton filed a motion for judgment of acquittal. (D.I. 97). After considering submissions from both parties, Superior Court issued a lengthy opinion on August 27, 2012 denying Hamilton's motion. (Ex. A to Op. Brf.) (D.I. 99).

Following a presentence investigation, Hamilton was sentenced on September 7, 2012 to four life sentences plus 55 years at Level V, suspended after 51 years for varying levels of supervision. (Ex. B to Op. Brf.) (D.I. 90, 99).

Hamilton has appealed his conviction. On May 13, 2013, Hamilton filed an opening brief and appendix in support of his appeal. This is the State's Answering Brief.

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#### SUMMARY OF THE ARGUMENT

**I. DENIED.** Evidence of voluntary intoxication is not admissible to support a claim that a defendant acted under the influence of extreme emotional distress. The trial judge did not abuse his discretion when permitting the State's expert to testify about his understanding of 11 *Del. C.* § 641.

**II. DENIED.** The trial judge did not abuse his discretion when he gave the jury two curative instructions regarding the State's expert's testimony related to voluntary intoxication. Any prejudice Hamilton may have suffered as a result of Dr. Raskin's testimony was cured by both the trial judge's curative instructions and the jury instruction pertaining to extreme emotional distress.

**III. DENIED.** The trial court properly instructed the jury as to the applicability of voluntary intoxication to the affirmative defense of extreme emotional distress. The jury instruction as written was an accurate statement of the law from which the jury was able to perform its duty.

**IV. DENIED.** The State presented sufficient evidence at trial for the jury to find Hamilton guilty of Burglary First Degree and its related offenses. Hamilton neither had a license nor a privilege to remain in the Moody home to commit the crimes for which he was convicted.

#### **STATEMENT OF FACTS**

Hamilton and Crystal Moody ("Crystal") had been involved in a three-year relationship. A31-33. Hamilton moved into 1524 West 4<sup>th</sup> Street with Crystal and her four children in September of 2009. A32. By the end of that month, Crystal asked Hamilton to leave as their relationship had ended and Hamilton was not paying any rent. A32-33. Hamilton took some of his belongings when he left. A33. Crystal and two of her sons bagged up the remainder of Hamilton's belongings for him take at a later time, with the exception of a Sony Playstation 3 ("PS3").<sup>1</sup> A33. Crystal told Hamilton that he could return to get his remaining belongings but only when she was there. A34. Crystal also advised her sons that they were not to let Hamilton into the house without her permission. A34. When he asked, Crystal told Hamilton that she had a new person in her life. A36. The new man was Andrew McManus, whom she had known previously. A36. Hamilton referred to McManus as her "new nigger." A36.

Although Hamilton and Crystal were no longer in a relationship, he frequently called her on both her cell and home phone in an effort to restart the relationship. A33-34. When Hamilton's grandmother died in September

<sup>&</sup>lt;sup>1</sup> In the time he lived at 1524 W. 4<sup>th</sup> Street, Hamilton had connected the PS3 to the internet and the TV in Crystal's second floor bedroom.

of 2009, Crystal did not attend the funeral. A33. Regardless, shortly after the funeral, Crystal came home from work at A.I. Children's Hospital and found Hamilton cooking dinner at her home with two of his own children. A33. Crystal asked Hamilton to leave, but because his two young boys were present, she did not force the issue. A33. When he left the next day, Hamilton did not ask for the PS3 but took several bags of his things and left some things to be picked up later. A33.

On October 23rd, Crystal took the day off from work. A36. She, her sister and McManus went shopping, returning to her house between four and A36. five o'clock in the afternoon. Her sons Christopher Moody ("Christopher") and Tyrone Moody ("Tyrone") were also home. A37. McManus stayed and Crystal prepared dinner. A37. Sometime after dinner, she and McManus went upstairs. A37. Hamilton then began calling Crystal. A37. Hamilton sounded drunk. A38. At first, he wanted to know what she was doing and wanted to come over, but Crystal told him no and that she would talk to him the next day. A37-38. He called again and referred to McManus, asking her if her "nigger" was there. A38. Crystal told Hamilton that they would talk when he was sober. A38. Hamilton called back another time, this time using Crystal's landline, which necessitated her going downstairs. A38. After the call, she returned upstairs. A38.

At around 9:00 p.m., Christopher was in the downstairs front living room watching TV when he heard someone knocking on the front door. A22. He opened the door to see Hamilton, who asked to see Crystal. A22-23. Assuming that Crystal was going to take Hamilton back, Christopher let him in. A22. Tyrone Moody came from the kitchen area and started to talk to Hamilton. A23. Tyrone called for his mother upstairs to tell her Hamilton was there. Crystal came downstairs very quickly. A23.

Crystal asked Hamilton why he was at her home. A38. He replied, "Why, is your nigger here?" A40. Crystal told him to go and reminded him that he was not supposed to be there. A40. After Crystal told him several times to leave, Hamilton finally said he came to get his PS3. A40. Christopher went upstairs to retrieve it and while upstairs, he heard a crash, which caused him to return downstairs without the PS3. A28-29. Christopher saw Hamilton, Crystal and Tyrone at the bottom of the steps; Tyrone was between his mother and Hamilton. A29. Hamilton appeared as if he was going to fight Tyrone. B10. Christopher walked around them toward the living room and stayed off to the side. A29; B10. Hamilton pushed Crystal. A41. Crystal again told Hamilton to leave and Tyrone said, "no, you can't hit my mom. You really have to leave now. You have to go." A41; B11. Hamilton then pulled a gun out from his coat. B11. Hamilton shot Tyrone twice at close range – in the chest and abdomen and then he shot Christopher. B11. Both of them fell to the floor. B11.

Hamilton walked over to Tyrone's body, stood over him, and shot him again. B11-12. After this shot Tyrone was motionless. B11-12. Christopher was shot twice, once in the neck/right clavicle area and once in his left leg. B11. As Christopher was lying on the floor he could not move his legs, and after a while, his arm went numb. B11.

After shooting Tyrone and Christopher, Hamilton shot Crystal. B12. She suffered wounds to the face, upper abdomen, right breast, right shoulder, lower back and leg. A44. Seven shell casings were recovered from inside the house. B8-9. Throughout the shooting, Hamilton was laughing and repeatedly threatened to kill everyone in the house. A41-42.

Crystal and Christopher survived. Tyrone, however, died from multiple gunshot wounds. B15. One shot entered his left arm, traversed his chest, perforated his heart and lung, and ultimately lodged in his right arm. B13-15. He also had a close-range bullet wound in his left elbow and another wound, through and through, on his upper left leg. B-15. He had two more wounds in his back. B15. The medical examiner stated that all wounds were lethal. B-15.

At around 9:00 p.m., the police received a 911 call from a neighbor,

reporting shots fired. B1. Wilmington police officers arrived at the Moody residence shortly thereafter and the situation quickly developed into a hostage situation. B1. The police surrounded 1524 West 4<sup>th</sup> Street, keeping in occasional contact with Hamilton. B1-2. Because of what he was saying, police believed that Hamilton would not surrender peacefully and they declined to enter the house. B4. Police learned there were wounded people inside that Hamilton would not release. B2-3. Finally, around 1:00 a.m. Hamilton came outside, gun in hand. B6. At first, despite commands, he refused to relinquish the gun. B5. However, in short order, Hamilton put the gun down and surrendered. B6-7.

### ARGUMENT

# I. HAMILTON DID NOT SUFFER ANY PREJUDICE ASSOCIATED WITH WITNESS TESTIMONY REGARDING THE EFFECT OF VOLUNTARY INTOXICATION ON THE AFFIRMATIVE DEFENSE OF EXTREME EMOTIONAL DISTRESS

#### **Question Presented**

Whether the State's expert's testimony regarding voluntary intoxication in the context of DEL. CODE. ANN. tit. 11, § 641 prejudiced Hamilton.

#### **Standard and Scope of Review**

This Court reviews evidentiary rulings restricting or allowing expert testimony for an abuse of discretion.<sup>2</sup>

## **Merits of the Argument**

At trial, Hamilton presented the affirmative defense of Extreme

Emotional Distress ("EED"). In pertinent part, the Delaware Code explains

EED as follows:

Extreme emotional distress is not reasonably explained or excused when it is caused or occasioned by the accused's own mental disturbance for which the accused was culpably responsible, or by any provocation, event or situation for which

<sup>&</sup>lt;sup>2</sup> Sammons v. Doctors for Emergency Servs., P.A., 913 A.2d 519, 528 (Del. 2006) (citing Bush v. HMO of Del., 702 A.2d 921, 923 (Del.1997); Pinkett v. Brittingham, 567 A.2d 858, 860 (Del.1989)).

the accused was culpably responsible, or when there is no causal relationship between the provocation, event or situation which caused the extreme emotional distress and the victim of the murder. *Evidence of voluntary intoxication shall not be admissible for the purpose of showing that the accused was acting under the influence of extreme emotional distress.*<sup>3</sup>

The State's expert, Dr. David Raskin, testified that it was his opinion that the

defense of extreme emotional distress was in no way applicable to

Hamilton's actions. A83. Regarding voluntary intoxication, Dr. Raskin

testified on direct examination:

Q: Do you understand if there are any other limits to this defense?

A: []The second thing, which is very important, is that voluntary intoxication does not permit the defense. If someone is drinking heavily, of course it's going to affect their state of mind and their control systems and their judgment and all that sort of stuff, so if that's on board, it's not possible. A82-83.

On cross examination Dr. Raskin testified:

Q: If you had someone who is an angry drunk, is it your testimony that an angry drunk would not be able to qualify for extreme emotional distress if they were drinking on an evening where something horrible happened?

A: My understanding is if voluntary intoxication is on board, that that is not, that you have negated the opportunity for an extreme emotional distress defense.

Q: So, it's your testimony, then, if there's any alcohol within someone's system, that they can't possibly qualify for extreme

<sup>&</sup>lt;sup>3</sup> DEL. CODE ANN. tit. 11, § 641 (emphasis added).

emotional distress?

A: If at the time the event happened there's evidence for drinking, we're not talking about, you know, I had a drink last Saturday, but continuous drinking, and if there's evidence for an alcoholic sort of drinking history, and I don't believe - now, this is, of course, the Court system, I'm uncomfortable even saying this because I'm not knowledgeable enough to say it, but I'll say it, in my opinion you have negated the ability to use that defense if there is evidence that alcohol of any significance is on board.

Q: So, if someone, then, is a drinker, and there's no evidence that when they drink they get violent, but on a night in question they are drinking and something happens that evening, something horrible, is it your testimony, then, that the nonviolent drinker can't qualify for extreme emotional distress?

A: Yes, that's my understanding. Now, it is not my testimony, it's my understanding, because I told everybody I'm trying to understand this statute as best I can. I'm not a legal expert, but I'm giving you my, sort of, reading of it.

\* \* \*

Q: I'm asking you and you and I know the Court's going to instruct it, but I'm asking you under your understanding of the statute, would that preclude you from qualifying for extreme emotional distress?

A: Under the statute, the way I understand it, voluntary intoxication and an event that happens around that precludes your being able to use that as a defense, *that's my understanding*.<sup>4</sup> A90 (emphasis added).

<sup>&</sup>lt;sup>4</sup> Hamilton argues that Dr. Raskin's testimony regarding voluntary intoxication required a curative instruction, which the record reflects was given while Dr. Raskin was under direct examination. A82-83. Hamilton then elicited the same testimony he complains of (presumably compounding the alleged error) on cross examination. A90-91.

Notably, during the course of Dr. Raskin's testimony on cross examination, Hamilton did not object or request a curative instruction. A90-91. Instead, Hamilton belatedly raised the issue again during a prayer conference held the day following Dr. Raskin's testimony. A68-69.

Hamilton argues that evidence of "some degree of intoxication" does not preclude a jury considering EED as an affirmative defense.<sup>5</sup> Without relevant support, he claims that Dr. Raskin's testimony regarding voluntary intoxication amounted to a misstatement of the law that requires reversal. He is incorrect.

To support his proposition, Hamilton cites *Eustice v. Rupert*,<sup>6</sup> Shivley v. Klein,<sup>7</sup> and Money v. State.<sup>8</sup> However, these cases involve a different situation - counsel's misstatements in closing arguments. As such, these cases do not assist him. In addition, the judgment in each case Hamilton cites was nevertheless affirmed. By contrast, here, the allegation is that a witness misstated the law during the presentation of evidence. Hamilton fails to provide any authority that would support the proposition that a

<sup>&</sup>lt;sup>5</sup> Op. Brf. at 16.

<sup>&</sup>lt;sup>6</sup> 460 A.2d 507, 511 (Del. 1983).

<sup>&</sup>lt;sup>7</sup> 551 A.2d 41 (Del. 1988).

<sup>&</sup>lt;sup>8</sup> 2008 WL 3892777 (Del. Aug. 22, 2008). Op. Brf. at 20-21.

misstatement of law made by a witness requires reversal. Even if one were to apply the holdings in the above cases to the facts of this case, Hamilton's argument gains no traction because he has failed to engage in a meaningful analysis and is unable articulate any prejudice he suffered as a result of Dr. Raskin's testimony. Indeed, rather than demonstrate prejudice, which he cannot do, Hamilton predominantly dedicates his argument to a recitation of how Delaware courts have addressed § 641. However, neither § 641 nor the cases cited by Hamilton assist him especially because evidence of voluntary intoxication is not admissible to support a claim that a defendant acted under the influence of extreme emotional distress.<sup>9</sup>

Dr. Raskin's testimony was his understanding of the interplay between voluntary intoxication and EED. The trial judge reminded the jury on three occasions, during Dr. Raskin's direct testimony, his cross examination and in final jury instructions, that Dr. Raskin's opinion regarding voluntary intoxication was just that – his opinion. A82-83; A90-91; B16. The trial judge also took great care to advise the jury that the court would instruct them on the applicable law, which was done prior to their deliberations. B16. To the extent that Hamilton claims any prejudice

<sup>&</sup>lt;sup>9</sup> *Cruz v. State*, 12 A.3d 1132 (Del. 2011); *State v. Manger*, 732 A.2d 234 (Del. Super. 1997); DEL. CODE ANN. tit. 11, § 641.

resulting from Dr. Raskin's testimony, it was cured by both the trial judge's curative and final jury instructions.<sup>10</sup>

<sup>&</sup>lt;sup>10</sup> See Money, 2008 WL 3892777 (holding that prosecutor's misstatement of law was cured by correct jury instruction); *Eustice*, 460 A.2d 507 at 511 (counsel's misstatement of law was cured by trial judge's instruction).

## II. THE TRIAL COURT PROPERLY INSTRUCTED THE JURY DURING THE COURSE OF DR. RASKIN'S TESTIMONY

#### **Question Presented**

Whether the trial court properly instructed the jury after the State's expert provided his interpretation of the applicability of voluntary intoxication to DEL. CODE ANN. tit. 11, § 641.

### **Standard and Scope of Review**

This standard of review of a trial judge's decision regarding a curative instruction is abuse of discretion.<sup>11</sup>

### **Merits of the Argument**

Hamilton argues that Dr. Raskin's testimony regarding voluntary intoxication in the context of EED defense coupled with the trial judge's failure to give a curative instruction require reversal. Hamilton's contention that the trial judge failed to issue a curative instruction is incorrect.

Dr. Raskin's testimony regarding involuntary intoxication as it applies to EED was his understanding of the statute. While the trial judge denied counsel's request for a sidebar, he nevertheless, immediately provided the

<sup>&</sup>lt;sup>11</sup> Money, 2008 WL 3892777 at \*2; Sammons v. Doctors for Emergency Servs., P.A., 913 A.2d at 539.

jury with a curative instruction.<sup>12</sup> As previously stated, the trial judge cautioned the jury that Dr. Raskin's testimony represented only *his* understanding of the statute and that the court would instruct the jury as to the law.<sup>13</sup> Despite the trial judge's curative instruction to the jury, Hamilton revisited the issue on cross examination of Dr. Raskin by asking what his understanding of the operation of the EED statute and its applicability when voluntary intoxication was present.<sup>14</sup> The State objected to Hamilton's attempt to read the voluntary intoxication portion of DEL. CODE ANN. tit. 11, § 641 to Dr. Raskin on cross examination. The trial judge sustained the objection and stated in the jury's presence:

I do find that objection appropriate, the whole statute has to be considered as a whole, and again, I will give the jury the complete instruction and the Doctor is only presenting what he

Defense Counsel: Your Honor, may we have a sidebar?

The Court: No. I will explain, ladies and gentlemen, what the law is on extreme emotional distress in my instructions which I'll be giving you probably tomorrow. The Doctor is explaining it from the point of view of his understanding of it as a psychiatrist.

A: That is correct and I'm not making a case I'm understanding all the pieces, this is a psychiatric sort of piece.

A82-83.

<sup>13</sup> *Id*.

<sup>14</sup> A90-91.

<sup>&</sup>lt;sup>12</sup> The record sets forth the following:

believes his interpretation and [the] jury should take it that way regarding what the statute is.

A91.

"A judge's prompt curative instructions presumptively cure error and 'adequately direct the jury to disregard improper matters' from consideration."<sup>15</sup> And, "jurors are presumed to follow the trial judge's instructions."<sup>16</sup> Here, the trial judge addressed the jury on two separate occasions during Dr. Raskin's testimony, giving curative and informative instructions.<sup>17</sup> He twice reminded the jurors that Dr. Raskin was expressing his understanding of the voluntary intoxication component of EED and that the court would instruct the jury on the law.<sup>18</sup> As a result, Hamilton cannot demonstrate prejudice. Moreover, the trial judge's instructions to the jury during Dr. Raskin's testimony as well as the final instructions to the jury were sufficient to cure any possible prejudice.

<sup>&</sup>lt;sup>15</sup> *Jones v. State*, 2013 WL 596379, at \*2 (Del. Feb. 14, 2013) (citing *McNair v. State*, 990 A.2d 398, 403 (Del. 2010) (quoting *Purnell v. State*, 979 A.2d 1102, 1109 (Del. 2009)).

<sup>&</sup>lt;sup>16</sup> *Id.* (quoting *Purnell v. State*, 979 A.2d at 1109 (internal quotation marks omitted)). *See also Banther v. State*, 977 A.2d 870, 891 (Del. 2009); *Revel v. State*, 956 A.2d 23, 27 (Del. 2008) (citations omitted); *Justice v. State*, 947 A.2d 1097, 1100 (Del. 2008); *Guy v. State*, 913 A.2d 558, 565-66 (Del. 2006).

<sup>&</sup>lt;sup>17</sup> A82-83; A90-91.

<sup>&</sup>lt;sup>18</sup> A82-83; A90-91.

# III. THE TRIAL COURT'S JURY INSTRUCTION REGARDING THE APPLICABILITY OF VOLUNTARY INTOXICATION TO THE AFFIRMATIVE DEFENSE OF EXTREME EMOTIONAL DISTRESS WAS A CORRECT STATEMENT OF THE LAW

### **Question Presented**

Whether the trial court properly instructed the jury as to the applicability of voluntary intoxication to the affirmative defense of extreme emotional distress.

## **Standard and Scope of Review**

When the trial judge, as here, agrees to give the requested instruction, but not in the precise manner proposed by the defendant, this Court's review is for an abuse of discretion.<sup>19</sup>

#### <u>Merits</u>

Hamilton asserts that the trial court's instruction, given over Hamilton's objection, failed to properly instruct the jury how to consider his voluntary use of alcohol in determining the presence of the affirmative defense of extreme emotional distress.<sup>20</sup> He is incorrect.

<sup>&</sup>lt;sup>19</sup> Hankins v. State, 976 A.2d 839, 840 (Del. 2008) (citing Wright v. State, 953 A.2d 144, 148 (Del. 2008)).

<sup>&</sup>lt;sup>20</sup> Op. Brf. at 28.

"Jury instructions do not need to be perfect."<sup>21</sup> "Some inaccuracies and inaptness in statement are to be expected in any charge."<sup>22</sup> "A trial court's jury charge will not serve as grounds for reversible error if it is 'reasonably informative and not misleading, judged by common practices and standards of verbal communication."<sup>23</sup> The proper focus is whether the jury instructions are adequate to "enable the jury to intelligently perform its duty in returning a verdict."<sup>24</sup> While a defendant has the "unqualified right" to a correct statement of the law,<sup>25</sup> the determination to give a particular jury instruction, nevertheless, lies within the sound discretion of the trial judge.<sup>26</sup>

As to the charges of Murder First Degree and Attempted Murder First Degree (2 counts), the trial court instructed the jury in pertinent part:

<sup>&</sup>lt;sup>21</sup> Dawson v. State, 581 A.2d 1078, 1105 (Del. 1990).

<sup>&</sup>lt;sup>22</sup> Hankins v. State, 976 A.2d at 842 (citing Flamer v. State, 490 A.2d 104, 128 (Del. 1984)).

<sup>&</sup>lt;sup>23</sup> *Dawson*, 581 A.2d at 1105 (citing *Flamer*, 490 A.2d at 128 and *Baker v. Reid*, 57 A.2d 103, 109 (Del. 1947)).

<sup>&</sup>lt;sup>24</sup> Whalen v. State, 491 A.2d 552, 559 (Del. 1985) (citing Storey v. Castner, 314 A.2d 197, 194 (Del. 1973)).

<sup>&</sup>lt;sup>25</sup> Banther v. State, 884 A.2d 487, 493 (Del. 2005); Floray v. State, 720 A.2d 1132, 1138 (Del. 1998).

<sup>&</sup>lt;sup>26</sup> Banther v. State, 977 A.2d 870, 883 (Del. 2009); Banther, 884 A.2d at 492-93; Davis v. State, 522 A.2d 342, 346 (Del. 1987).

The defendant has the burden of proving, by a preponderance of the evidence, that he acted under the influence of extreme emotional distress. The defendant must also prove by a preponderance of the evidence that there is a reasonable explanation or excuse for the existence of extreme emotional distress. The reasonableness of the explanation or excuse must be determined from the viewpoint of a reasonable person in the defendant's situation under the circumstances as he believed them to be.

In order to be a reasonable explanation, the event that triggered the emotional disturbance must be something external from the defendant and cannot be something for which the defendant was responsible, such as involvement in a crime.

If the defendant intentionally, knowingly or recklessly or negligently brought about his own mental disturbance, extreme emotional distress is not applicable. Further, if the defendant's mental state was caused by voluntary intoxication, extreme emotional distress is not applicable. *The fact that a person consumed alcohol does not necessarily preclude a finding of extreme emotional distress.* 

A97, A100 (emphasis added).

This instruction resulted from the prayer conference. Specifically, when discussing the relevant instruction, Hamilton, without State objection, asked that the Court add the language: "the fact that a person has consumed alcohol does not preclude a finding of extreme emotional distress." A72. The Court agreed to this modification, but added the word "necessarily" before the word "preclude." Hamilton agreed to this addition. A72.

Hamilton next requested the court include language that would essentially state that if the defendant's mental state was caused by voluntary intoxication, and not extreme emotional distress, extreme emotional distress is not applicable. The Court declined to add the phrase "and not by extreme emotional distress" to the sentence, reasonably finding the instruction sufficient and balanced as written. A72-73.

The instruction as read to the jury advised the jury, consistent with DEL. CODE ANN. tit. 11, § 641, that evidence of voluntary intoxication was not admissible for the purpose of showing extreme emotional distress. Indeed, pursuant to DEL. CODE ANN. tit. 11, § 421, voluntary intoxication is not a defense to any criminal charge.<sup>27</sup> However, within the extreme emotional distress instruction, the jury was also plainly told that while voluntary intoxication was not a defense, evidence that Hamilton consumed alcohol did not prohibit a finding of extreme emotional distress. The instruction as written was an accurate statement of the law from which the jury was able to perform its duty. Hamilton's claim is not supported by the record and thus fails.

<sup>&</sup>lt;sup>27</sup> DEL. CODE ANN. tit 11, § 421 states:

The fact that a criminal act was committed while the person committing such act was in a state of intoxication, or was committed because of such intoxication, is no defense to any criminal charge if the intoxication was voluntary.

*See also Davis*, 522 A.2d at 344 (charge to the jury that "voluntary intoxication is not a defense to any criminal act" was a complete and accurate statement of Delaware law); *Wyant v. State*, 519 A.2d 649, 651 (Del. 1986) (voluntary intoxication has never been accorded constitutional recognition as a defense to any criminal offense).

## IV. SUFFICIENT EVIDENCE EXISTED FOR THE JURY TO FIND HAMILTON GUILTY OF BURGLARY FIRST DEGREE AND ITS RELATED OFFENSES

#### **Question Presented**

Whether the State presented sufficient evidence at trial to find Hamilton guilty of Burglary First Degree and its companion offenses.

#### **Standard and Scope of Review**

In assessing a challenge to the sufficiency of the evidence, this Court's standard of review is "whether *any* rational trier of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt."<sup>28</sup>

### **Merits**

Hamilton claims that the State failed to present sufficient evidence at trial to convict him of Burglary First Degree, and consequently, that conviction as well as his convictions for Felony-Murder and associated PFDCF charges should be reversed. Specifically, Hamilton maintains that the State failed to prove that he remained unlawfully in the Moody

<sup>&</sup>lt;sup>28</sup> Robertson v. State, 596 A.2d 1345, 1355 (Del. 1991); see also Jackson v. Virginia, 443 U.S. 307, 319 (1979); Shipley v. State, 570 A.2d 1159, 1170 (Del. 1990); Mercer v. State, 2009 WL 4164765, at \*2 (Del. Nov. 25, 2009);

residence.<sup>29</sup> Hamilton claims he had a privilege to remain in the premises, at the very least to retrieve his PS3.<sup>30</sup> He is incorrect.

Burglary First Degree is codified in Section 826, Title 11 of the Delaware Code. It reads, in pertinent part:

(a) A person is guilty of burglary in the first degree when the person knowingly enters or remains unlawfully in a dwelling at night with intent to commit a crime therein, and when, in effecting entry or when in the dwelling or in immediate flight therefrom, the person ...

(2) Causes physical injury to any person who is not a participant in the crime.  $^{31}$ 

Relevant evidence presented at trial demonstrated that Crystal was the sole lessee at 1524 W. 4<sup>th</sup> Street. A31-32. No longer dating Crystal and having been told to move out for failing to financially contribute, Hamilton no longer lived at the residence as of the end of September 2009. A22; A32-33. He did, however, leave some belongings there. A33. Crystal advised Hamilton he could not come to the home to retrieve his belongings without contacting her first, and she told her children that Hamilton was not allowed in the home. A34.

<sup>&</sup>lt;sup>29</sup> Op. Brf. at 31.

<sup>&</sup>lt;sup>30</sup> Op. Brf. at 32.

<sup>&</sup>lt;sup>31</sup> DEL. CODE ANN. tit. 11, § 826(a)(2); *Mercer*, 2009 WL 4164765, at \*2.

On the evening of October 23, 2009, Hamilton called Crystal at least twice. According to her, he was drunk and angry, asking if her "nigger" was there. He wanted to come to the residence. A36-38. Crystal told him no and said she would talk with him when he sobered up. A38. Regardless, around 9:00 p.m., Hamilton came over, asking for Crystal. Christopher let him into the home. A22-23. After being advised that Hamilton was there, Crystal went downstairs and confronted Hamilton asking why he was there and repeatedly telling him to leave. A38-39; 40. At first, Hamilton said he wanted to see her and asked if she was with her "nigger." A40; B10. When Crystal kept repeating he had to leave, Hamilton said he wanted his Playstation. A40; B10. Because it appeared as if Hamilton, who was agitated and drunk, was going to go upstairs, Christopher went upstairs to retrieve the game for him. A28; A40. Christopher heard a crash downstairs. Thinking it was a fight, he headed back downstairs empty-handed and heard his mother telling Hamilton to leave. A29; B10. Tyrone was defensively standing between his mother and Hamilton. A29; B10. Crystal again told Hamilton to leave. A41; B11. He did not. A41. Instead, Hamilton pushed Crystal down. A41.<sup>32</sup> When it appeared as if Hamilton was coming towards

<sup>&</sup>lt;sup>32</sup> Even under a most generous reading of the burglary statutes, Hamilton's pushing of Crystal, an act he admitted, and Tyrone's almost contemporaneous order for him to leave, revoked any remote privilege Hamilton might have had while Christopher was retrieving

Crystal again, Tyrone put his hands up and said, "no, you can't hit my mom. You really have to leave now. You have to go." A41. Hamilton said "I'm tired of dealing with you niggers." A41. Hamilton pulled out a gun and shot Crystal and her children laughing and saying "I'm killing all you niggers. I'm just going to kill you all." A41-42; B11. Christopher told his mother he was sorry for initially letting Hamilton in, and Hamilton said "you don't need to be sorry. You never liked me anyway." B12.

The Delaware Code states "The intent to commit a crime therein may be formed prior to the unlawful entry, be concurrent with the unlawful entry, or such intent may be formed after the entry while the person remains unlawfully."<sup>33</sup> A person "enters or remains unlawfully" when the person is not licensed or privileged to do so.<sup>34</sup> After being told to leave numerous

his PS3. Any criminal act thereafter, was committed while he unlawfully remained in the dwelling. *See State v. Hamilton*, I.D. No. 0910017490, opinion at 46-47, Herlihy, J. (opinion) (Del. Super. Aug. 24, 2012).

<sup>&</sup>lt;sup>33</sup> DEL. CODE ANN. tit. 11, § 829(e) was amended in 2008 to include this definition. *See* H.B. 208, 144<sup>th</sup> Gen. Assemb. (Del. 2007) B17-18.

<sup>&</sup>lt;sup>34</sup> DEL. CODE ANN. tit. 11, § 829(d); *see also Moye v. State*, 2010 WL 549625, at \* 2 (Del. Feb. 17, 2010). To the extent that Hamilton claims that rule of lenity applies to his case, he is mistaken. The "rule of lenity" requires that an ambiguous penal statute be strictly construed against the State in defendant's favor. *State v. Boston*, 1992 WL 91173, \*6 (Del. Super. Apr. 16, 1992). Because the definition of the phrase "enter or remain unlawfully" is unambiguous, and Hamilton cannot make a case for ambiguity, the "rule of lenity" is inapplicable. *See State v. Hamilton*, I.D. No. 0910017490, opinion at 25, Herlihy, J. (opinion) (Del. Super. Aug. 24, 2012).

times, Hamilton neither had a license nor a privilege to remain in the Moody home to commit the crimes for which he was convicted. Hamilton's request for the PS3, after first asking for Crystal and also denigrating her male companion, was merely a pretext to remain in the residence after being told repeatedly to leave, in order to facilitate his crimes. Indeed, he entered the residence armed with a loaded firearm.

The jury is the sole judge of witness credibility.<sup>35</sup> Here, the jury could have found that Hamilton formed his intent to commit his crimes, before he entered with a loaded gun, when he entered, or at any of the numerous times he was told to leave. In any case, the jury, as the rational trier of fact, had ample evidence in which to find Hamilton guilty of Burglary First Degree and its related offenses beyond a reasonable doubt.

<sup>&</sup>lt;sup>35</sup> *Pryor v. State*, 453 A.2d 98, 100 (Del. 1982). In fulfilling its function, the jury must consider all the evidence presented, but it is within its discretion to accept one portion of a witness' testimony and reject another part. *Id.* (citing *State v. Matsushefske*, 215 A.2d 443 (Del. 1965)).

# CONCLUSION

The judgment of the Superior Court should be affirmed.

<u>/s/ Maria T. Knoll</u>

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Date: July 12, 2013

## **CERTIFICATE OF SERVICE**

The undersigned, being a member of the Bar of the Supreme Court of Delaware, hereby certifies that on July 12, 2013, she caused the attached document to be delivered via File and ServeXpress to:

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