

**SYNOPSIS OF CRIMINAL OPINIONS IN THE MISSISSIPPI SUPREME COURT
HANDED DOWN MAY 19, 2016**

Archie Quinn v. State, No. 2014-KA-01115-SCT (Miss. May 19, 2016)

CASE: Capital Murder

SENTENCE: Life w/o Parole

COURT: Oktibbeha County Circuit Court

TRIAL JUDGE: Hon. Lee J. Howard

TRIAL ATTORNEYS: Frank Clark, Forrest Allgood, Chokwe Lumumba, Imhotep Alkebu-Lan

APPELLANT ATTORNEY: Hunter N. Aikens, George T. Holmes

APPELLEE ATTORNEY: Lisa L. Blount

DISTRICT ATTORNEY: Forrest Allgood

DISPOSITION: Affirmed. Lamar, Justice, for the Court. Waller, C.J., Randolph, P.J., Coleman, Maxwell and Beam, JJ., Concur. Dickinson, P.J., Concur in Result Only with Separate Written Opinion Joined by Kitchens and King, JJ.

ISSUES: (1) Whether that the jury was incompletely instructed on the elements of the crime, and (2) whether he received ineffective assistance of counsel.

FACTS: Early on September 28, 2008, Terry Johnson called 911 from a neighbor's house and reported that someone was shooting into his trailer. Johnson reported that he had gotten out of the house, but that his live-in girlfriend, Stacy Gray, was still inside. Johnson identified Archie Quinn as the shooter and reported that Quinn had shot him in the hip with a shotgun. Quinn and Gray had been in a prior relationship. Quinn had spoken to Gray the night before at a casino, but no apparent argument occurred. Quinn then drove to Johnson's trailer blowing his horn and demanding Gray come get some of her stuff that he still had. Johnson raised his kitchen window and told Quinn that he could leave Gray's things in the yard, or that he could bring them back later. Quinn then started firing a shotgun into the house, hitting Johnson. He testified there was constant shooting and that Gray tried to get him to hide, but he said he needed to get help as he could not find his cell phone. He continued to hear shots as he ran to a neighbor's house. When police arrived, Quinn was driving away from the trailer. He stopped, got out of his car and shot himself in the face with the shotgun. Gray's body was found in the trailer. Gray had shotgun wounds to her head and her torso, as well as a handgun wound to her head. Quinn survived his wounds and was charged with Gray's murder. He was evaluated several times at the State Hospital. The doctors went back and forth, but after a fourth evaluation, found him competent to stand trial. The circuit court precluded the death penalty under *Atkins*, and Quinn was subsequently convicted. He appealed.

HELD: (1) Quinn was charged with capital murder with the underlying felony of burglary. The jury was instructed on burglary as breaking and entering "with the intent to commit a crime, to wit: an assault." The jury was not instructed on assault. This was not plain error. (Quinn did not object to the instruction, nor did he raise this issue in his post-trial motions). Only the intent to commit some

crime need be proven in order to establish the second element of burglary. The State need not also prove the elements of that intended crime. "Assault" is commonly understood to mean causing or attempting to cause bodily injury to another. The State presented sufficient evidence for the jury to find that Quinn feloniously broke into Johnson's house with the intent to assault.

As such, the trial judge sufficiently instructed the jury here, as it was instructed that burglary in Quinn's case meant feloniously entering the dwelling house of another with the intent to commit an assault—facts that the trial judge said the jury must find beyond a reasonable doubt.

(2) Quinn argued that his trial counsel was ineffective for (1) failing to challenge the finding of Quinn's competency at the competency hearing, (2) failing to request an evaluation for an insanity defense, (3) failing to object to Quinn's indictment, which did not specify whether the State alleged the "underlying crime" to burglary to be simple assault or aggravated assault, and (4) failing to object to the prosecutor playing Gray's 911 recording again during closing arguments. The Court found the record insufficient to address Quinn's ineffectiveness claims adequately. He is free to raise the issue again on PCR.

Dickinson, Presiding Justice, Concurring in Result Only:

Justice Dickinson believed the trial judge erred by failing to provide the jury with any information about, or explanation of, what is required for the crime of assault, but that the error was harmless. The State does not need to prove the elements of the intended crime. However, the State should be required to prove the accused intended to commit the elements of the intended crime. The facts of this case easily prove Quinn's intent, but not every case is that clear.

So my concern with today's majority, as well as the majority in [Windless \[v. State\]](#), No. 2014-KA-00547-SCT (Miss. October 1, 2015)], is this Court's blanket rule in burglary cases, that the trial court only need advise the jury of the name of the crime the accused intended to commit, with no duty to explain the elements or requirements for the intended crime. For this reason, I respectfully concur in result only.

To read the full opinion, click here:

<https://courts.ms.gov/Images/Opinions/CO112000.pdf>

John Ashley Hale v. State, No. 2014-KA-01778-SCT (Miss. May 19, 2016)
[opinion from 2/4/16 modified - no significant changes]

CASE: Sale of Controlled Substance (Count I, II, and IV, oxycodone and Count III, morphine)

SENTENCE: 8 years without parole as a habitual offender for each count. The sentences in Counts I and II were ordered to run consecutively to each other, and the sentences in Counts III and VI were ordered to run concurrently with Counts I and II.

COURT: Harrison County Circuit Court

TRIAL JUDGE: Hon. Roger T. Clark

TRIAL ATTORNEY: Robert C. Stewart

APPELLANT ATTORNEY: Mollie M. McMillin, George T. Holmes, Hunter N. Aikens, John Ashley Hale (Pro Se)

APPELLEE ATTORNEY: Jeffrey A. Klingfuss

DISTRICT ATTORNEY: Joel Smith

DISPOSITION: Affirmed. Waller, Chief Justice, for the Court. Dickinson and Randolph, P.JJ., Lamar, Kitchens, King, Coleman and Maxwell, JJ., Concur.

ISSUES: [MOIA Issues] (1) Whether the trial court erred in denying an instruction on involuntary intoxication, (2) whether the trial court erred in denying an entrapment instruction, [Pro Se Issues] (3) whether the State or the trial court failed to respond to Hale's pro se pretrial motions, (4) whether the trial court erred in failing to appoint an expert witness for Hale, (5) whether Hale's indictment was defective, (6) whether Hale received ineffective assistance of counsel, and (7) whether Hale's conviction was the product of vindictive prosecution.

FACTS: On June 20, 2013, Biloxi police executed a search warrant unrelated to this case. Lieutenant Aldon Helmert, who was in plain clothes, stepped out onto the apartment's balcony to get some fresh air. John Ashley Hale was walking by with another man and asked Helmert what he was doing. Helmert said he was "partying." Hale asked Helmert if they were drinking alcohol, and Helmert responded with "something more than that." Hale then asked if he wanted "anything else," and Helmert said he did. Helmert and Investigator David Elliot met with Hale outside the apartment. Hale told them that he had some oxycodone pills that he would be willing to sell. Helmert bought two of these pills from Hale. Hale then left, but he returned about 15 minutes later. Elliot purchased six more oxycodone pills, and Hale sold another investigator four morphine pills and seven alprazolam pills. Hale then returned to his apartment with the investigator and gave him two more morphine pills and another alprazolam pill. They returned to the original apartment and Hale was arrested. Sometime after he arrived at the police department, Hale fell ill and was transported to the hospital. Hale claimed he did not remember anything from that night. Hale testified that he is a military veteran and has numerous health problems, including PTSD and chronic back pain. He had prescriptions for numerous medications, including oxycodone, morphine, and alprazolam. He was staying with friends after his wife died. He testified that he started to feel strange after drinking some grapefruit juice, and he claimed to have no memory of anything from that point until he woke up in the hospital the next day. The officers testified Hale did appear to have been drinking, but was not intoxicated. Charged in a six-count indictment, Hale was convicted of 4 counts and appealed.

HELD: (1) The trial judge did not err in denying Hale's instruction on involuntary intoxication. The instruction lacked an evidentiary basis. Hale presented no evidence of the side effects of his medication or any possible negative interactions between grapefruit juice and his medication. Hale was not precluded from presenting his theory of the case, as other instructions informed the jury Hale's sales had to be "willful." The SCT seemed to imply automatism can be asserted as a defense to a criminal charge, but that when the jury is adequately instructed on "willfulness," it is not error to deny an instruction on automatism or involuntary intoxication.

(2) The trial judge did not err in denying an entrapment instruction. Again, the trial judge found no evidentiary basis. Because Hale claimed he did not remember what happened that night, the trial court had to rely on the testimony of the investigators, who all stated that Hale had initiated both the initial conversation and the subject of selling pills. Hale failed to present sufficient evidence of government inducement.

(3) Hale's claim that the State failed to respond to his pro se pretrial motions is without merit. The record did not support Hale's claim that the State withheld exculpatory discovery from him.

(4) Hale argued that he was denied a fair trial because he did not have the benefit of an expert witness to assist him in explaining his defense of involuntary intoxication. However, counsel gave notice to the state that an expert on gastroenterology would testify. The State objected based on the expert's qualifications and the trial judge reserved his ruling. The defense never called the expert. The claim is without merit.

(5) Hale's indictment was not defective. Hale did not present any arguments concerning his indictment until after he had been convicted. He argued that the indictment failed to specify whether he was charged with a "sale" or "transfer," which lowered the burden of proof. He also claimed error in using a multicount indictment. The claim is barred for failing to cite authority and is without merit. Section 41-29-139 prohibits the sale or transfer of a controlled substance.

(6) The SCT found the record insufficient to review Hale's claims of ineffective assistance of counsel. He is free to raise the issue again on post-conviction.

(7) Hale raised various allegations of corruption within the Harrison County law enforcement system and the court system, and claimed that his convictions were a punishment for his opposition to such corruption. The record fails to support Hale's claims.

To read the full opinion, click here:

<https://courts.ms.gov/Images/Opinions/CO110285.pdf>

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