Mental Health Defenses

Capital Case Law and Death Penalty Litigation
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With thanks to Professor John Rubin, author of the following articles:
The Diminished Capacity Defense, Administration of Justice Memorandum, 1992
The Voluntary Intoxication Defense, Administration of Justice Memorandum, 1993

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Roadmap

- What is Diminished Capacity?
- What Can the Expert Say?
- What Evidence is Sufficient for an Instruction?
- Jury Instructions
- Other Defenses and Issues

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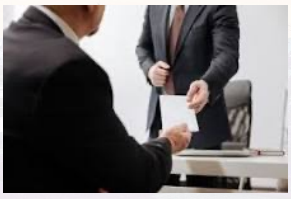
All these affirmative MH defenses require notice

- **Per G.S. 15A-905(c):**
  - **Diminished Capacity**
  - **Voluntary Intoxication**
  - **Insanity**
  - **Automatism**



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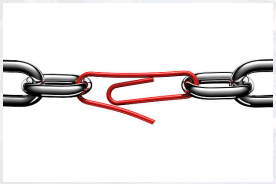
Diminished Capacity: "Negating"



- Negating
  - Defense attempts to "negate" a key element of First Degree Murder
- What element is negated?
  - Premeditation
  - Deliberation
  - Specific Intent to Kill

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Diminished Capacity

The "Twinkie Defense"

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Diminished Capacity: Burdens

- Who has the burden?
  - Defense has burden of production
  - State has ultimate burden of persuasion

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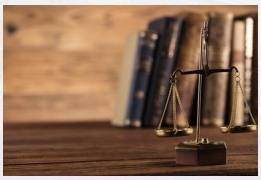
Burdens: Different Standards



To get instruction:

- Highest: Voluntary Intoxication
  - "utterly incapable" of forming state of mind
- Intermediate: Diminished Capacity
  - Sufficient evidence reasonably to warrant inference of the fact at issue
- Most permissive: Self-Defense
  - "any evidence" (from which a rational fact-finder could find D acted in self-defense)

See State v. Clark, 324 N.C. 146 (1989)
Note different burden for lesser-included offense of 2nd degree- still "any evidence"

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Selected Cases

- ***State v. Shank*, 322 N.C. 243 (1988)**
  - D was in a custody battle, using drugs, emotionally disturbed
  - Expert said D had "Psychogenic amnesia"
  - Trial Court did not allow expert to testify as to D's emotional disturbance and mental health issues
  - Trial court did not allow expert to testify as to D's ability to make plans and carry them out
  - Trial court was concerned about allowing expert to testify on "ultimate issue"

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Selected Cases

- ***Shank*, continued**
  - N.C.S.C. held that the testimony should have been admitted under N.C. Rule of Evidence 704
  - N.C.S.C. distinguished the N.C. Rule from the Federal Rule
  - N.C.S.C. granted D a new trial, holding that trial court erroneously prevented D from presenting a diminished capacity defense

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What Can the Expert Say?

- Rule 704- Federal Rule of Evidence
  - Rule 704. Opinion on ultimate issue
    - (a) In General — Not Automatically Objectionable. An opinion is not objectionable just because it embraces an ultimate issue.
    - (b) Exception. In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

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What Can the Expert Say?

- Rule 704- N.C. Rule of Evidence
  - 8C, Rule 704. Opinion on ultimate issue
  - Testimony in the form of an opinion or inference is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.
- Also look at advisory note to F.R.E. 704, history of rule (1975, 1984)

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What Can the Expert Say?

D could not form specific intent to kill	Probably OK
D was incapable of premeditation at the time	Probably not OK
D was incapable of deliberation at the time	Probably not OK
D was incapable of making plans	OK
D was incapable of carrying out plans	OK
D did not act in a cool state of mind	Probably not OK
D acted in suddenly aroused violent passion	Probably not OK

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Selected Cases

- ***State v. Rose*, 323 N.C. 455 (1988)**
  - D presented evidence of head injury, prior psychotic episode
  - D tried for insanity defense, with diminished capacity as fallback
  - Expert can testify that D was unable to form specific intent to kill at the time of the offense (this came in)
  - Expert can't testify that D lacked ability to premeditate and deliberate (State's objection was sustained properly)
  - Trial Court erroneously refused to give this instruction: "You may consider the Defendant's mental condition in connection with his ability to form the specific intent to kill."

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Selected Cases

- ***State v. Baldwin*, 323 N.C. 455 (1988)**
  - D argued that it was error when trial court did not allow expert to testify to D's statements during evaluation.
  - N.C.S.C. found no error- concluding statements were self-serving exculpatory hearsay, not required to be admitted under Rule 705
  - Statements would be admissible under Rule 705 as facts underlying expert's opinion, i.e. showing basis of opinion, but Rule 403 still applies
  - N.C.S.C. said that trial court did not abuse its discretion in excluding the evidence under 403

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Selected Cases: Evidence Sufficient to Get Instruction?

***State v. Clark*, 324 N.C. 146 (1989)**
- Battered woman syndrome case
- One expert testified to D's mental condition, but no opinion as to whether it affected ability to form specific intent to kill
- Second expert was too equivocal
- Trial Court properly refused to give diminished capacity instruction

***State v. Lancaster* , 137 N.C.App. 37 (2000)**
- Also too equivocal
- Substance use "could have" affected mental state; expert also avoided conclusions about D's ability to think at time

See also, State v. McDowell, 215 N.C.App. 184 (2011)

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Selected Cases: Evidence Sufficient to Get Instruction?

- Compare above cases with *Rose, Shank*
- In *Rose* and *Shank*, experts clearly indicated reason to believe that D lacked capacity to form specific intent to kill
- Note that diminished capacity is a bit of a misnomer
  - Really about whether evidence is sufficient to NEGATE specific intent to kill

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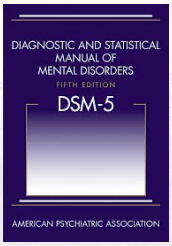
What Diagnoses are Possible for Diminished Capacity?

- No clear inclusion or exclusion of diagnoses
- Possible diagnoses:
  - PTSD
  - TBI
  - Schizoaffective disorders
  - Intellectual disability
  - Psychogenic amnesia
  - Emotional disturbance (severe depression, anxiety, other)
  - Chronic and extreme stress
  - Psychotic episode



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Jury Instructions: Diminished Capacity + Voluntary Intoxication

- Voluntary Intoxication, Lack of Mental Capacity-Premeditated and Deliberate First Degree Murder PJI 305.11
  - if you find that the defendant [was intoxicated] [was drugged] [lacked mental capacity], you should consider whether this condition affected the defendant's ability to formulate the specific intent which is required for conviction of first degree murder
- Note that in PJI, it is called "lack of mental capacity"

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Jury Instructions: Voluntary Intoxication

- **Voluntary Intoxication PJI 305.10**
  - Generally, voluntary intoxication is not a legal excuse for crime. However, if you find that the defendant was intoxicated, you should consider whether this condition affected the defendant's ability to formulate the specific intent…
- **Not a valid defense for felony murder, unless underlying offense requires specific intent**
- **Also consider lying in wait, poison, imprisonment torture- courts have said these are "physical acts" and don't require specific intent (G.S. 14-17, *Baldwin)***

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Automatism

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Jury Instructions: Automatism

- **Automatism or Unconsciousness PJI 302.10**
  - defendant was physically unable to control his physical actions because of automatism or unconsciousness; that is a state of mind in which a person, though capable of action, is not conscious of what the person is doing at the time the crime was alleged to have been committed.

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Jury Instructions: Automatism

- **Also see "All You Need to Know about Automatism," UNC SOG blog by Jeff Welty**
- **Where the underlying felony is voluntary, automatism is not a defense to felony murder *State v. Boggess*, 195 N.C. App. 770 (2009)**
- **Defense has burden of proof, but only to jury's satisfaction (unless defense "arises from State's evidence," in which case State has burden)**

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Jury Instructions: Insanity

- **Insanity PJI 304.10**
  - The test of insanity as a defense is whether the defendant, at the time of the alleged offense, was laboring under such a defect of reason, from disease or deficiency of the mind, as to be **incapable of knowing the nature and quality of the act** or, if the defendant did know this, whether the defendant was, by reason of such defect of reason, **incapable of distinguishing between right and wrong** in relation to that act.

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Sentencing

- G.S. 15A-2000(f)(2), (6) – Mitigating Factors
  - The capital felony was committed while the defendant was under the influence of mental or emotional disturbance.
  - The capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was impaired.
- Compare with G.S. 15A-1340.16 (for standard felony sentencing)
  - The defendant was suffering from a mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.

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Sentencing

- Rules of evidence don't apply to sentencing
- Due process considerations may preclude "mechanistic" application of Rules of Evidence. *See Georgia v. Green*, 442 U.S. 95 (1979).
- …"evidentiary flexibility is encouraged" - *State v. Pinch*, 306 N.C. 1 (1982).

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Voir Dire

- What issues arise related to Diminished Capacity during Voir Dire?
- How might parties address MH defenses in selecting a jury?

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Intellectual Disability

- *Atkins v. Virginia* – 2002. Sentencing a person with Intellectual Disability (ID) to death is violation of 8th amendment.
  - Previously used "mental retardation" language- 15A-2005 revised in 2015.
- D can move pretrial for hearing- D has burden of showing ID by clear and convincing evidence. G.S. 15A-2005(c)
- If case proceeds to sentencing, jury should consider whether there is evidence of Intellectual Disability (ID) **prior to consideration** of aggs and mits. G.S. 15A-2005(e).
  - (Trifurcation?) *State v. Ward*, 364 N.C. 157 (2010). *See* PJI 150.05.

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Thank You

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