

## **Summary of SC89390, *State of Missouri v. Jamie Avery***

Appeal from the Webster County circuit court, Judge John W. (Bill) Sims

**Attorneys:** Avery was represented by Craig A. Johnston of the public defender's office in Columbia, and the state was represented by Shaun J. Mackelprang of the attorney general's office in Jefferson City.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A woman appeals her convictions following the shooting death of a man. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirmed the judgment against her. There was abundant evidence of her alcohol consumption earlier the day of the shooting to support the trial court's decision to submit a voluntary intoxication instruction to the jury, overruling a previous court of appeals opinion to the extent it requires evidence of impairment in addition to consumption. Further, there is no evidence the trial court abused its discretion in excluding evidence that the man who was killed was a registered sex offender.

**Facts:** Jamie Avery was charged with second-degree murder and armed criminal action for the shooting death of Bruce Avery. The evidence showed she shot Avery once, causing massive bleeding that resulted in his death. She told police that: she told Paris to leave the house, but he refused; he complied only after she got a gun and threatened to call the police; a short time later, he returned to the house and told her to put the gun down or he would beat her; he grabbed at the gun, and she shot him; and she did not mean to kill him. Over Avery's objection, the state proffered a voluntary intoxication instruction based on evidence that she had consumed more than eight drinks over a seven-hour period in a bar earlier that day. Its language instructed the jury that "an intoxicated condition from alcohol will not relieve a person of responsibility for her conduct." The court submitted the instruction to the jury, which found Avery guilty of the lesser-included offense of voluntary manslaughter and armed criminal action. Avery was sentenced to concurrent terms in prison of 15 and 35 years, respectively. She appeals.

**AFFIRMED.**

**Court en banc holds:** (1) There was abundant evidence of Avery's alcohol consumption to support the trial court's decision to submit the voluntary intoxication instruction to the jury so the jury would understand what legal effect to give to that evidence. An instruction given in every criminal case specifically directs the jury that, in giving instructions, the court is not assuming as true any fact referred to in those instructions but leaves it to the jury to determine the facts. The model approved instruction on which the instruction given here was based – MAI-CR3d 310.50 – also is based on section 562.076,

RSMo 2000, which permits evidence that a person is in a voluntarily intoxicated condition to be admissible on issues of conduct but not for negating a mental state that is an element of the offense. To the extent that *State v. Bristow*, 190 S.W.3d 479 (Mo. App. 2006), holds that, in addition to alcohol consumption, there must be direct evidence that such consumption has resulted in impairment before the voluntary intoxication instruction may be given, that decision is overruled. It remains within the trial court's discretion, when instructions are supported by the evidence, which instructions are necessary to avoid confusing or misleading the jury.

(2) The court did not abuse its discretion in excluding evidence that Paris was registered as a sex offender. There was no evidence offered at trial that Avery knew anything about Paris' conviction, and the mere fact of a sex-offender registration is of little, if any, probative value in determining who was the initial aggressor.