

STATE OF LOUISIANA

NO. 21-K-517

VERSUS

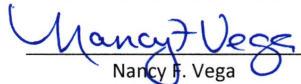
FIFTH CIRCUIT

BRIAN CLARKE

COURT OF APPEAL

STATE OF LOUISIANA

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS


Nancy F. Vega
Chief Deputy, Clerk of Court

August 11, 2021

Nancy F. Vega
Chief Deputy Clerk

IN RE BRIAN CLARKE

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT, PARISH OF ST CHARLES, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE M. LAUREN LEMMON, DIVISION "D", NUMBER 20,399

Panel composed of Judges Marc E. Johnson,
John J. Molaison, Jr., and John J. Lee, Jr.

WRIT GRANTED

Relator, Brian Clarke, seeks review of the 29th Judicial District Court's July 22, 2021 judgment granting the State's Motion in Limine to Preclude Defense of Intoxication. In an amended bill of information filed on November 17, 2020, the State charged Mr. Clarke with one count of home invasion in violation of La. R.S. 14:62.8. The district court found that specific intent was not required to commit the crime of home invasion, and therefore Mr. Clarke was not entitled to assert voluntary intoxication as an affirmative defense. Mr. Clarke timely filed a Notice of Intention to Apply for Writ of Certiorari and the subsequent, instant writ. For the following reasons, we find that the district court abused its discretion and grant the writ application.

Louisiana Revised Statute 14:15 provides, in pertinent part, that the intoxicated or drugged condition of the offender at the time of the commission of the crime is immaterial except when the offender's intoxicated or drugged

condition precluded the presence of a specific criminal intent, then that fact constitutes a defense to a prosecution for that crime. La. R.S. 14:15 (2).

“Voluntary intoxication can be considered as a defense only in cases where specific intent is a necessary element of the crime.” *State v. Boleyn*, 328 So.2d 95 (La. 1976). *State v. Yanes*, 09-929 (La. App. 5 Cir. 4/27/10); 40 So.3d 245, 251.

Whether voluntary intoxication in a particular case is sufficient to preclude specific intent is a question to be resolved by the trier of fact. *State v. Leeming*, 612 So.2d 308, 313 (La. App. 5 Cir. 1992), *writ denied*, 616 So.2d 681 (La. 1993).

The State argued in its motion that Mr. Clarke should not be able to assert the defense of voluntary intoxication because home invasion is a general intent crime. The use of the term “intent” in the definition of a crime references “general criminal intent” *in the absence of qualifying provisions*. La. R.S. 14:11. (Emphasis added.) Home invasion is the unauthorized entering of any inhabited dwelling, or other structure belonging to another and used in whole or in part as a home or place of abode by a person, where a person is present, *with the intent to use force or violence upon the person of another or to vandalize, deface, or damage the property of another*. La. R.S. 14:62.8. (Emphasis added.) The italicized portion of the statute cited in the preceding sentence is its qualifying provision – the specific criminal intent required to commit a home invasion. In order to prove an offender committed a home invasion, circumstances must indicate that the offender entered an inhabited dwelling, *etc.*, without authorization and “actively desired” [. . .] to use force or violence against another person, or to vandalize, deface, or damage another person’s property. *See* La. R.S. 14:10 (1).

“General criminal intent is present wherever there is specific intent.” La. R.S. 14:10; *see State v. Besse*, 11-230 (La. App. 5 Cir. 12/28/11); 83 So.3d 257, 263–64, *writ denied*, 12-292 (La. 5/25/12); 90 So.3d 409 (illustrating general criminal intent present in La. R.S. 14:62.3 (A) unauthorized entry of an inhabited

dwelling, which is an element of home invasion.) Therefore, as the State asserted and the Second Circuit stated in *State v. Williams*, 49,249 (La. App. 2 Cir. 10/1/14); 149 So.3d 462, 468, *writ denied*, 14-2130 (La. 5/22/15); 173 So.3d 1167, one could say that home invasion is also a general intent crime, but we, respectfully, point out that such an assertion is misleading. Proof of specific intent is required where the statutory definition of the crime “includes the intent to produce or accomplish some prescribed consequence (the frequent language being ‘with intent to . . .’).” *State v. Elzie*, 343 So.2d 712, 713-14 (La. 1977). To sum, we find that home invasion is a specific intent crime. Mr. Clarke is therefore allowed to assert voluntary intoxication as an affirmative defense. Accordingly, the writ application is granted.

Gretna, Louisiana, this 11th day of August, 2021.

MEJ
JJM
JJL

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES



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FIRST DEPUTY CLERK

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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **08/11/2021** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

21-K-517

E-NOTIFIED

29th Judicial District Court (Clerk)
Honorable M. Lauren Lemmon (DISTRICT JUDGE)
Maria M. Chaisson (Relator)

MAILED

Hon. Joel T. Chaisson, II (Respondent)
District Attorney
Twenty-Ninth Judicial District Court
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