

Supreme Court of Louisiana

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NEWS RELEASE #031

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 29th day of June, 2022 are as follows:

PER CURIAM:

2021-KK-01460

STATE OF LOUISIANA VS. BRIAN CLARKE (Parish of St. Charles)

AFFIRMED. SEE PER CURIAM.

SUPREME COURT OF LOUISIANA

No. 2021-K-01460

STATE OF LOUISIANA

VS.

BRIAN CLARKE

On Writ of Certiorari to the Court of Appeal, Fifth Circuit, Parish of St. Charles

PER CURIAM:

We granted defendant's application to determine whether the court of appeal correctly found that voluntary intoxication is an affirmative defense to the crime of home invasion. Based on the clear language of the statute that defines the crime of home invasion, La.R.S. 14:62.8, we agree with the court of appeal that specific intent is a necessary element of the offense. Therefore, whether voluntary intoxication is sufficient to preclude specific intent in this case is a question to be resolved by the trier of fact. Accordingly, the trial court erred in granting the State's motion in limine to prohibit defendant from asserting voluntary intoxication as an affirmative defense.

Defendant Brian Clarke is charged with one count of home invasion, La.R.S. 14:62.8. He provided notice of his intent to present the affirmative defense of voluntary intoxication at trial. In response, the State filed a motion in limine seeking to prohibit defendant from asserting an intoxication defense because, in the State's view, home invasion is a general intent crime. The trial court granted the State's motion.

The court of appeal granted defendant's writ application, and found that home invasion is a specific intent crime to which defendant is entitled to present voluntary intoxication as an affirmative defense. *State v. Clarke*, 21-517 (La. App. 5 Cir.

8/11/21), ___ So.3d ___, available at 2021 WL 3552367. Based on the clear language of the statute defining the crime, we agree.

Statutory interpretation begins “as [it] must, with the language of the statute.” *Bailey v. United States*, 516 U.S. 137, 144, 116 S.Ct. 501, 506, 133 L.Ed.2d 472 (1995). Louisiana criminal statutes must be “given a genuine construction, according to the fair import of their words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provision.” La.R.S. 14:3; *State v. Muschkat*, 96-2922, pp. 4–5 (La. 3/4/98), 706 So.2d 429, 432. What “a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.” Norman J. Singer, *Statutory Construction*, 46:03, p. 135 (6th ed. 2000); *see also State v. Barbier*, 98-2933, p. 5 (La. 9/8/99), 743 So.2d 1236, 1239 (“[T]he first order of business is to look at the language of the statute itself.”).

Criminal intent may be specific or general. As defined in La.R.S. 14:10, “[s]pecific criminal intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act[,]” while “[g]eneral criminal intent is present whenever there is specific intent, and also when the circumstances indicate that the offender, in the ordinary course of human experience, must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act.” Under La.R.S. 14:11, “in the absence of qualifying provisions, the terms ‘intent’ and ‘intentional’ have reference to ‘general criminal intent.’”

“In Louisiana, we require proof of specific intent where the statutory definition of a 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) (citations omitted). Pursuant to La.R.S. 14:62.8 (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.*” Thus, to convict the defendant of home invasion, the jury must find that defendant entered an inhabited dwelling without authorization and with the intent to produce or accomplish one of the prescribed consequences, i.e. to use force or violence upon the person of another or to vandalize, deface, or damage the property of another. This statutory definition extends beyond the mere inclusion of the words “intent” or “intentional” to include qualifying language that requires a defendant to act *with the intent to* produce or accomplish one or more of the prescribed consequences. Therefore, the statutory definition includes a requirement of specific intent. *See State v. Ellis*, 2012-0540, pp. 6–7 (La. App. 4 Cir. 1/16/13), 109 So.3d 944, 948; *see also* Home invasion and armed home invasion (R.S. 14:62.8), 17 La. Civ. L. Treatise, Criminal Jury Instructions § 10:100 (3d).

The State argues that home invasion is simply the combination of two other general intent crimes, unauthorized entry of an inhabited dwelling and battery, and therefore home invasion, as an unauthorized entry accompanied by a battery, cannot itself be a specific intent crime. The State also claims that more serious crimes require only proof of general intent, and therefore the State questions why a less serious crime like home invasion would have a requisite intent that is more difficult for the State to prove.

As an initial matter, of the twelve crimes the State characterizes as more serious than home invasion yet requiring only proof of general intent, we note that two—aggravated kidnapping and aggravated second degree battery—require proof of specific intent. *See, e.g., State in the Interest of D.F.*, 2020-0372, p. 7 (La. App. 4 Cir. 11/12/20), 310 So.3d 599, 602 (“Aggravated kidnapping is a specific intent crime.”); *State v. Druilhet*, 97-1717, p. 3 (La. App. 1 Cir. 6/29/98), 716 So.2d 422, 423 (“Second degree battery is a specific intent offense.”). Furthermore, of the ten

remaining crimes, only two—first degree rape and armed robbery—carry harsher penalties than home invasion, which is punishable by up to 30 years imprisonment at hard labor, while the remaining have lesser penalties. Regardless, it is not the potential for harm from the criminal conduct or the potential penalty the offender faces that define the requisite intent but rather the statutory language.

The statutes defining first degree rape and armed robbery make no reference to intent at all. *See* La.R.S. 14:42, 14:64.¹ In contrast, the statute defining home invasion includes qualifying language that requires a defendant to act *with the intent to* produce or accomplish one or more prescribed consequences. The State’s characterization of home invasion as an unauthorized entry in conjunction with a coincidental or simultaneous battery likewise ignores the qualifying language used in the statute, which requires the unauthorized entry be performed with the intent to accomplish another criminal act—much like simple burglary, La.R.S. 14:62, which is a similarly defined crime with a requisite specific intent.

There is no dispute here that defendant can present an intoxication defense at trial if the crime requires proof of specific intent. Voluntary intoxication can only be considered as a defense in cases where specific intent is a necessary element of the crime, and the defendant claims his intoxication precluded the capacity to form that intent. *See, e.g., State v. Williams*, 11-427, p. 10 (La. App. 5 Cir. 2/28/12), 88 So.3d 1102, 1110. Because the trial court erred in concluding that home invasion does not require proof of specific intent, the trial court erred in granting the State’s motion in limine to prohibit defendant from asserting voluntary intoxication as an affirmative defense at trial.

¹ This is not surprising given that the criminal intent required for each of these crimes is apparent in the criminal acts themselves. *See State v. Kennedy*, 2000-1554, p. 10 (La. 4/3/01), 803 So.2d 916, 923 (“In general intent crimes, like aggravated rape, the criminal intent necessary to sustain a conviction is established by the very doing of the proscribed acts.”); *State v. Smith*, 2007-2028, p. 10 (La. 10/20/09), 23 So.3d 291, 298 (“Under present law, armed robbery is a general intent, not specific intent, crime.”).

Accordingly, we affirm the ruling of the court of appeal.

AFFIRMED