

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TRINA M. CHATFIELD,

Defendant-Appellant.

UNPUBLISHED

June 1, 1999

No. 207872

Recorder's Court

LC No. 96-005561

Before: Collins, P.J., and Jansen and White, JJ.

MEMORANDUM.

Defendant was convicted by a jury of felonious assault, MCL 750.82; MSA 28.277, and intentional discharge of a firearm at a dwelling, MCL 750.234b; MSA 28.431(2). She was sentenced to one year's probation. She appeals as of right. We affirm.

Defendant's only issue on appeal is that the trial court erred when it ruled that she could not present a defense of voluntary intoxication on the ground that she failed to file a notice of intent to present the defense. We conclude that defendant has failed to establish error requiring reversal.

"[T]he notice of insanity defense statute does not apply to the defense of voluntary intoxication as negating specific intent." *People v Wilkins*, 184 Mich App 443, 447; 459 NW2d 57 (1990). Therefore, the trial court could not properly exclude defendant from presenting a defense of voluntary intoxication on the ground that defendant failed to file a notice of intent pursuant to MCL 768.20a; MSA 28.1043(1). However, "[a] defense of intoxication is only proper if the facts of the case could allow the jury to conclude that the defendant's intoxication was so great that the defendant was unable to form the necessary intent." *People v Mills*, 450 Mich 61, 82; 537 NW2d 909, modified on other grounds 450 Mich 1212 (1995). Defense counsel stated to the trial court:

. . . . I don't wish to speak about intoxication in terms of insanity or inability to know what she was doing or not and I think the insanity [sic intoxication] might show restricted motor skills and things like that. I don't wish to persuade the jury that she was incognizant of what was going on because of her intoxication.

I'm more concerned with the ancillary effect of the drunkenness and I think it should come in and I don't think that case says that, that I have to file notice of intent to use that defense in a case like this.

Therefore, because defense counsel conceded that he would not argue that defendant was unable to form the necessary intent, defendant could not properly present a defense of voluntary intoxication. *Mills, supra*, 450 Mich 82.

Further, a witness for the defense testified that defendant became voluntarily intoxicated prior to the incident. Defendant's husband testified that defendant was clearly intoxicated at the time of the incident. Defendant's intoxication was discussed by the prosecutor and defense counsel during closing arguments. And, the trial court instructed the jury on voluntary intoxication as a defense. Thus, even assuming error, such error would be harmless because the defense of voluntary intoxication was presented to the jury. *People v Mateo*, 453 Mich 203, 215; 551 NW2d 891 (1996).

Affirmed.

/s/ Jeffrey G. Collins
/s/ Kathleen Jansen
/s/ Helene N. White