STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

Case No. 2019AP886-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CHIDIEBELE PRAISES OZODI,

Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION, ENTERED IN WALWORTH COUNTY CIRCUIT COURT, THE HONORABLE KRISTINE E. DRETTWAN, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Page

Statutes

Other Authorities

ISSUE PRESENTED

Has Chidibele Praises Ozodi shown that the circuit court erroneously instructed the jury about how it could consider the effect of his voluntary intoxication on his criminal intent?

The circuit court answered no.

This Court should answer no.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither. The parties' briefs will fully develop the issues presented, which can be resolved by applying well-established law.

INTRODUCTION

Ozodi took LSD, stole and crashed a car, and tried to sexually assault a woman. At trial, the circuit court instructed the jury that Ozodi's voluntary intoxication was not a defense to his crimes, though it "may be relevant evidence."

On appeal, Ozodi claims that this instruction misstated the law and denied him his constitutional right to present a defense because it prevented the jury from considering how his intoxication affected his intent.

Ozodi is wrong. The jury instructions as a whole allowed the jury to consider the effect of Ozodi's intoxication on his intent. Ozodi also presented evidence about his intoxication and argued that it showed that he did not act intentionally. Ozodi thus received what he claims the law owed him, and he is not entitled to relief.

STATEMENT OF THE CASE

A jury convicted Ozodi of attempted second-degree sexual assault, operating a motor vehicle without the owner's

consent, and disorderly conduct. (R. 54.) The circuit court placed him on probation. (R. 54.)

Ozodi has never disputed that he committed the actions that led to the charges. In October 2016, Ozodi and a friend, both students at UW-Whitewater, took LSD. (R. 72:206; 73:62–64.) Ozodi later drove his friend's mother's car, crashed into a tree, and fled the accident while naked. (R. 72:118–19, 124–26, 198–200, 210–12.) Ozodi ran to a group of people standing near an athletic field. (R. 72:163–65.) A woman gave him shorts and a shirt to wear. (R. 72:174.) Ozodi then pushed the woman to the ground and told her that he was going to have sex with her. (R. 72:165, 175.) A man pulled Ozodi off the woman. (R. 72:175.) Ozodi then ran to the center of the athletic field, where he began masturbating before police arrested him. (R. 72:127–30, 190–92.)

Ozodi's defense was that he did not commit these acts intentionally. Before trial, Ozodi requested that the court allow a witness to testify that Ozodi had good moral character and would not sexually assault anyone. (R. 17.) In response, the State requested a jury instruction saying that Ozodi's voluntary intoxication was not a defense to the charges. (R. 71:5.) *See* 2013 Wisconsin Act 307 (amending Wis. Stat. § 939.42 to eliminate voluntary intoxication as a defense). The State explained that it was concerned that Ozodi would use the character evidence "in a roundabout way" to establish an intoxication defense. (R. 72:13–14.)

The court ruled that it would allow the witness to testify "that [Ozodi] is a good moral person and that he would not harm or sexually assault someone." (R. 72:15.) But, the court said, the witness could not say that Ozodi had that reputation in the community. (R. 72:15–16.) It also determined that the witness could not say "that it was the drugs that made him act this way." (R. 72:16–17.)

During trial, the parties and the court discussed the State's proposed instruction on voluntary intoxication. (R. 72:222–23.) That instruction read:

> Evidence has been presented which, if believed by you, tends to show that the defendant was voluntarily intoxicated at the time of the alleged offense(s). Voluntary intoxication of any witness may be relevant evidence and may have bearing on the credibility of that witness. However, a defendant's voluntary intoxication is not a defense and cannot be used to show that the defendant lacked the necessary knowledge to commit the alleged offense(s) or that the defendant did not intend to commit the alleged offense(s).

(R. 18:2.)

Ozodi challenged the part of the last sentence saying that his voluntary intoxication was not relevant to his intent. (R. 72:222.) He acknowledged that the Legislature had eliminated the affirmative defense of voluntary intoxication. (R. 73:3–4.) But, he argued, the jury should still be allowed to consider how his intoxication affected his intent. (R. 73:4–6.) Ozodi also argued that giving the State's instruction might violate his Sixth Amendment right to present a defense. (R. 73:5–7.)

The State argued that the court should give its instruction because, since voluntary intoxication was no longer a defense, Ozodi's intoxication was not relevant to whether he had the required mental states for his crimes. (R. 73:7–8.) It acknowledged that the evidence of intoxication was relevant to "somebody's credibility or their memory of what happened." (R. 73:9.) But, the State said, "it can't be used as a defense by a defendant to try to show that they didn't intend or know what they were doing." (R. 73:9.)

The court decided to give the State's instruction, but it removed the language that Ozodi had objected to. (R. 73:12–13.) The court explained that "the real question here" was how

far the Legislature's repeal of the voluntary intoxication defense went. (R. 73:11.) It noted that a post-repeal comment to the pattern jury instruction on voluntary intoxication said that "questions remain" whether the repeal categorically prohibited "evidence relevant to the nonexistence of the mental element." (R. 73:10–11.) *See* Wis. JI–Criminal 765 (2015).

Giving the instruction with the language removed, the court said, would tell the jury that voluntary intoxication was not a defense. (R. 73:13.) But, it added, the instruction "also allows the defense to present their case in showing that, yes, there is this voluntary intoxication but look at all these facts and circumstances that negate the mental state in addition to the voluntary intoxication." (R. 73:13.)

The instruction that the court gave at trial said:

> Evidence has been presented which if believed by you tends to show that the defendant was voluntarily intoxicated at the time of the alleged offenses. Voluntary intoxication of any witness may be relevant evidence and may have bearing on the credibility of that witness. However, a defendant's voluntary intoxication is not by itself a defense.

(R. 73:117.)

Ozodi appeals. (R. 63.)

STANDARD OF REVIEW

This Court will not reverse "[t]he decision to give or not to give a requested jury instruction . . . absent an erroneous exercise of discretion." *State v. Hubbard*, 2008 WI 92, ¶ 28, 313 Wis. 2d 1, 752 N.W.2d 839 (citation omitted). This Court affirms discretionary decisions if the court, relying on the facts of record and the applicable law, used a demonstrable rational process to reach a reasonable decision. *State v. Doss*, 2008 WI 93, ¶ 19, 312 Wis. 2d 570, 754 N.W.2d 150. But whether an instruction is appropriate under the case's facts

is a legal issue that this Court reviews independently. *State v. Sanders*, 2011 WI App 125, ¶ 13, 337 Wis. 2d 231, 806 N.W.2d 250

ARGUMENT

Ozodi has not shown that circuit court erroneously instructed the jury about his voluntary intoxication, and the court's instruction did not deny him his right to present a defense.

A. This Court will not reverse a court's decision regarding jury instructions unless the instructions as a whole misstated the law.

"A circuit court has broad discretion in deciding whether to give a requested jury instruction." *Hubbard*, 313 Wis. 2d 1, ¶ 28 (citation omitted). The court exercises this discretion "based on the facts and circumstances of the case." *State v. Roubik*, 137 Wis. 2d 301, 308, 404 N.W.2d 105 (Ct. App. 1987). The court's "discretion extends to both choice of language and emphasis." *Id.*

"On review, the challenged words of jury instructions are not evaluated in isolation." *State v. Ellington*, 2005 WI App 243, ¶ 7, 288 Wis. 2d 264, 707 N.W.2d 907. "Rather, jury instructions 'must be viewed in the context of the overall charge.'" *Id.* (citation omitted). "Relief is not warranted unless the court is 'persuaded that the instructions, when viewed as a whole, misstated the law or misdirected the jury.'" *Id.* (citation omitted). "[J]ury instructions that, considering the 'proceedings as a whole,' adequately give to the jury the appropriate legal principles will be upheld even though they may not be phrased" precisely or elegantly. *Sanders*, 337 Wis. 2d 231, ¶ 13 (citation omitted).

B. Ozodi's claim fails because the instructions as a whole allowed the jury to consider his voluntary intoxication's effect on his intent.

Ozodi argues that the jury instruction on voluntary intoxication misstated the law and violated his right to present a defense. (Ozodi's Br. 11–14.) It did this, he claims, because it told the jury "that it *may not* consider voluntary intoxication as it bears on Ozodi's intent." (Ozodi's Br. 13.) But the instructions allowed the jury to consider the effect of Ozodi's intoxication on his intent. So, assuming that the law allows such consideration, Ozodi got exactly what he wanted. He is thus not entitled to relief from this Court.

The court instructed the jury that evidence of voluntary intoxication "may be relevant evidence." (R. 73:117.) It also instructed the jury about intent on the sexual-assault and operating-without-consent charges. (R. 73:107–08.) Those instructions told the jury that "[y]ou cannot look into [Ozodi's] mind to find intent." (R. 73:107–08.) Instead, they said that "[i]ntent must be found, if found at all, from the defendant's acts, words, statements, if any, and from all the facts and circumstances in this case bearing on intent." (R. 73:107.)

These instructions together informed the jury that it could consider Ozodi's intoxication when determining if he acted intentionally. The court said that his intoxication could be relevant evidence. And the jury knew that it needed to consider "all the facts and circumstances" in the case when determining intent. (R. 73:107.) If the jury found the evidence of Ozodi's intoxication relevant to his intent, the instructions told the jury that it could consider that evidence. Thus, if Ozodi is right that evidence of his intoxication is still relevant evidence, then the court's instructions were correct. Ozodi has shown no error.

Ozodi contends that the court's instructions misstated what he believes is the law. He says that the repeal of the

voluntary intoxication defense did not, as the State argued below, make evidence of a defendant's voluntary intoxication irrelevant to intent. (Ozodi's Br. 12–13.) And he complains that the State's instruction prevented the jury from considering the evidence in this way. (Ozodi's Br. 13.)

But these arguments ignore that the circuit court removed the State's proposed language that would have prevented the jury from considering the effect of Ozodi's intoxication on his intent. They also ignore that the rest of the jury instructions allowed the jury to consider how Ozodi's intoxication affected his intent. Perhaps Ozodi thinks that the court had an affirmative duty to directly tell the jury that it must consider the effect of his intoxication of his intent. But this argument would be forfeited because Ozodi never asked for that instruction. *See Bergeron v. State*, 85 Wis. 2d 595, 605, 271 N.W.2d 386 (1978).

Ozodi also says that the court's instruction, "A defendant's voluntary intoxication is not by itself a defense," incorrectly states the law. (Ozodi's Br. 10.) He is wrong. The Legislature eliminated voluntary intoxication as an affirmative defense. *See* 2013 Wisconsin Act 307; Wis. Stat. § 939.42. The court was thus correct to tell the jury that it was not a defense to Ozodi's crimes. And the State fails to see how this instruction kept the jury from considering the effect of Ozodi's voluntary intoxication on his intent. As explained, the court's other instructions told the jury that his intoxication, along with all the other circumstances, could be relevant evidence of his intent.

Next, Ozodi contends that the instruction limited the jury's consideration of his intoxication to credibility. (Ozodi's Br. 14.) The instructions as a whole did not do that. They told the jury to consider all facts and circumstances when assessing Ozodi's intent and said that intoxication may be relevant evidence. And while the court also said that evidence of intoxication was relevant to witness credibility, it did not

limit the jury's consideration of the evidence only to credibility.

Ozodi also argues that the instructions violated his right to present a defense because they did not let the jury consider his intoxication's effect on his intent. (Ozodi's Br. 13–14.) This claim should fail because, as argued, the instructions did not do that.

Moreover, Ozodi ignores that he was allowed to present evidence of his intoxication and argue that it showed he did not have criminal intent. Ozodi elicited testimony about his strange behavior and statements during and after the crimes from several witnesses. (R. 72:136–37, 150–53, 175, 191, 195–97.) He also presented testimony that he normally was not a danger to women. (R. 73:41–45.) Ozodi questioned an expert about the effects of LSD on a person's perception of reality. (R. 73:26–31.) And Ozodi testified about the effects the LSD had on him and claimed that he remembered almost nothing about the day. (R. 73:63, 69–73, 78–81.) Ozodi's counsel also discussed the intoxication's effect on Ozodi's intent in both her opening statement and closing argument. (R. 72:114–16; 73:137–43.) She specifically asked the jury during the latter to consider Ozodi's intoxication when determining if the State had proven that he acted intentionally. (R. 73:140–41.)

Thus, Ozodi is wrong that the court's instruction stopped him from presenting evidence of his intoxication's effect on his intent. And he is also wrong that the instruction prevented the jury from considering that evidence. Ozodi got what he wanted from the circuit court. He has shown no error.

CONCLUSION

This Court should affirm the circuit court's judgment of conviction.

Dated this 11th day of October 2019.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 2238 words.

Dated this 11th day of October 2019.

_____
AARON R. O'NEIL
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 11th day of October 2019.

_____
AARON R. O'NEIL
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