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State of Wisconsin
Court of Appeals
District 2
Appeal No. 2019AP000886-CR

State of Wisconsin,

Plaintiff-Respondent,

v.

Chidiebiele Praises Ozodi,

Defendant-Appellant.

On appeal from a judgment of the Walworth County Circuit Court, The Honorable Kristine E. Drettwan, presiding

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Defendant-Appellant's Reply Brief

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Argument

I. The "instructions as a whole" do not "fully and fairly" inform the jury of the proper way to use the evidence of intoxication.

The state argues that, as a whole, the court's instructions fully and fairly informed the jury as to how to use the evidence of intoxication. According to the state:

> 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.

The state might be right if the jury had been made up of twelve Philadelphia lawyers. Unfortunately, the jury was actually made up of twelve lay persons without any particular knowledge of the law.

> "The purpose of a jury instruction is to fully and fairly inform

> the jury of a rule or principle of law applicable to a particular case. [internal citations omitted] The objective of "an instruction is not only to state the law accurately but also to explain what the law means to persons who usually do not possess law degrees." *Id.* (citation and internal quotation marks omitted).

State v. Hubbard, 2008 WI 92, ¶ 26, 313 Wis. 2d 1, 13–14, 752 N.W.2d 839, 845

So, we can narrow the question down to whether the court's instructions, taken as a whole, fully and fairly informed a jury of laypersons that evidence of Ozodi's intoxication may be considered in deciding whether Ozodi-- that is, the *defendant*-- formed the requisite criminal intent.

In order to answer this question, we must first put the "may be relevant evidence" phrase into its proper context. In this part of the instruction, the judge 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". (emphasis provided; R:73-117)[1]

In order to reach the conclusion suggested by the state, that intoxication may have a bearing on Ozodi's intent, one must be able to reasonably understand the words of the court's

[1] Really, if this instruction is read as a whole, it can only be understood to mean that the jury could consider Ozodi's intoxication insofar as it bore upon his credibility, but it cannot be used to excuse his criminal behavior.

instruction to mean that voluntary intoxication has relevance *beyond* its applicability to the "credibility of witnesses".

A layperson is very likely to understand the court's instruction to mean that the only relevance of voluntary intoxication is that it bears on the credibility of any witness who was intoxicated at the time of the incident. This is so because the instruction makes explicit reference to the "Voluntary intoxication of any *witness"* and then goes on to explain that intoxication may have bearing on the *witness's* credibility. In that regard, then, the instruction is decidedly unhelpful to Ozodi since he was the only trial witness who was intoxicated at the time of the incident.

Significantly, the instruction does not inform the jury that, "evidence of voluntary intoxication may also have a bearing on the defendant's ability to form the requisite criminal intent." To this extent, then, the instruction did not *fully* explain the law to the jury.

Rather, what the instruction told the jury was that, "A defendant's voluntary intoxication is not by itself a defense."

Again, any lay person is likely to understand this statement to mean that, categorically, intoxication is not an excuse for criminal behavior. Under the state's wholistic theory of jury instructions, a layperson ought to be able to discern that the modifying phrase "by itself" leaves open the possibility that voluntary intoxication, combined with certain other factors, may,

in fact, be a defense. That is a lot to ask of someone with no particular knowledge of the law.

But, more importantly, this is not an accurate statement of the law. Voluntary intoxication can "by itself" be a defense if the defendant is able to present sufficient evidence to establish that he was unable to form the requisite criminal intent. As mentioned in his opening brief, the fact that the legislature withdrew voluntary intoxication as an affirmative defense has only procedural implications. That is, it means that, where the defendant produces some evidence of intoxication, the state no longer must negate the fact beyond a reasonable doubt.

Thus, the court's instruction falls far short of fully and fairly explaining the law to laypersons.

Dated at Milwaukee, Wisconsin, this _____ day of October, 2019.

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Jeffrey W. Jensen