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Criminal Law - Intoxication and Specific Intent in Homicide Prosecution

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equally as innocent in nature as are hypodermic syringes, and it eases the burden of prosecution by placing the burden of proving innocent intention on the possessor.

Lamar E. Ozley, Jr.

CRIMINAL LAW — INTOXICATION AND SPECIFIC INTENT IN HOMICIDE PROSECUTION

In a prosecution for murder[1] there was evidence that the defendants had been drinking intoxicants shortly before the shooting. The trial judge charged the jury that voluntary intoxication could never be a defense to a crime[2] and refused to instruct the jury that they could consider the voluntary intoxication of those defendants who had not actually fired the gun insofar as intoxication might bear on whether or not they are principals.[3] On appeal of the conviction, *held,* reversed. Although the charge requested by the defendants was improper, the charge given by the judge was incomplete and constituted reversible error, for it denied the defendants "the right to have the jury pass on the factual question of whether they were in such an intoxicated condition as to preclude the presence of a specific criminal intent."[4] *State v. Youngblood,* 106 So.2d 689 (La. 1958).

The Louisiana Criminal Code provides that criminal intent may be either general or specific and defines specific criminal intent as "that state of mind which exists when the circumstances indicate that the offender actively desired the proscribed criminal consequences to follow his act or failure to act."[5] The

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cotics sufficient to support a presumption of knowledge, unless defendant could explain or rebut such presumption, was constitutional).

1. LA. R.S. 14:30(1) (1950): "Murder is the killing of a human being, (1) When the offender has a specific intent to kill or to inflict great bodily harm." Felony murder defined in clause (2) of this article is not applicable to this situation.

2. State v. Youngblood, 106 So.2d 689, 690 (La. 1958): "I charge you further that voluntary intoxication is no defense under the law for having committed a crime while so intoxicated."

3. *Ibid.* Trial judge refused the following charge requested by defendants: "However, a partial or total intoxication may be considered by you in weighing the behavior and conduct of the defendants as you may find were not guilty of actually triggering the weapon that killed [the deceased], insofar as such behavior or conduct may bear on whether or not they were aiders, abetters, counsellors, or procurers."

4. *Id.* at 691.

5. LA. R.S. 14:10(1) (1950). Clause (2) of this article defines general intent as being present "whenever there is specific intent, and also when the circumstances indicate that the offender, in the ordinary course of human experience,

crime of murder requires "a specific intent to kill or to inflict great bodily harm."[6] Thus, drunkenness,[7] if it exists to such an extent as to preclude the existence of a specific intent to kill or seriously injure, will constitute a defense.[8] To state broadly that extreme voluntary intoxication is a defense as the statute implies, however, is inaccurate, for the person who has become voluntarily intoxicated is generally held to the same criminal responsibility as the sober man.[9] Rather it should be said that an extreme degree of intoxication may be found to preclude the existence of an element of the crime, i.e., the specific intent which must accompany the proscribed act. Even then, intoxication is treated as a special defense and must be established by the defendant.[10] Certain specific situations must, however, be distinguished from the case where voluntary drunkenness may prevent the existence of the necessary specific intent. If the defendant drinks for the purpose of securing the courage necessary for the perpetration of the crime, or, if having the courage and the specific intent, he incidentally becomes intoxicated, this intoxication will not constitute a defense.[11] In most instances, a person, though intoxicated, is still capable of forming the specific

must have adverted to the prescribed criminal consequences as reasonably certain to result."

Id. 14:11: "The definitions of some crimes require a specific criminal intent, while in others no intent is required. Some crimes consist merely of criminal negligence that produces criminal consequences. However, in the absence of qualifying provisions, the terms 'intent' and "intentional' have reference to 'general criminal intent'."

See State v. Michel, 225 La. 1040, 74 So.2d 207 (1954), aff'd, 350 U.S. 91 (1955), rehearing denied, 350 U.S. 955 (1956) (aggravated rape requires no specific intent, hence intoxication could not be a defense thereto); State v. Johnston, 207 La. 161, 20 So.2d 741 (1945) (aggravated assault requires only a general criminal intent, hence intoxication could not be a defense).

6. See note 7 *supra.*

7. LA. R.S. 14:15 (1950) provides that intoxication may be a defense whether it results from the voluntary use of alcoholic beverages or the voluntary use of narcotics.

8. *Ibid.*: "The fact of an intoxicated or drugged condition of the offender at the time of the commission of the crime is immaterial, except as follows: (1) [involuntary intoxication], (2) Where the circumstances indicate that an intoxicated or drugged condition has precluded the presence of a specific criminal intent or of special knowledge required in a particular crime, *this fact constitutes a defense to a prosecution for that crime.*" (Emphasis added.) See also State v. Alexander, 215 La. 245, 40 So.2d 232 (1949); State v. Ledet, 211 La. 769, 30 So.2d 830 (1947); State v. Johnston, 207 La. 161, 20 So.2d 741 (1945).

9. CLARK & MARSHALL, LAW OF CRIMES 385 (6th ed. 1958).

10. State v. Hill, 46 La. Ann. 27, 14 So. 294 (1894) (intoxication is a special defense and, if relied on, must be proven by the defendant beyond a reasonable doubt. It is not for the state, once evidence of intoxication is introduced, to prove a negative, i.e., that the accused was not so drunk as to preclude the presence of the requisite specific intent, but for the accused to prove that he was intoxicated to that extent).

11. See State v. Kraemer, 49 La. Ann. 766, 22 So. 254, 62 Am. St. Rep. 664 (1897); State v. Trivas, 32 La. Ann. 1086 (1880).

intent to kill or to inflict great bodily harm. In fact, this particular mental state seems to be encouraged by the consumption of intoxicants.[12]

The instant case is in accord with a number of early Louisiana cases[13] decided prior to the adoption of the Louisiana Criminal Code of 1942, and with cases decided subsequent to 1942. These cases clearly establish the principle that voluntary intoxication to a degree sufficient to preclude the presence of a specific intent will constitute a defense to those crimes requiring a specific criminal intent.[14] However, as pointed out above, the defendant's burden of proof will be extremely difficult to meet. There is, also, the practical consideration that a jury may be hesitant to allow voluntary intoxication to relieve the accused of criminal responsibility. Some juries may well feel, especially in crimes of force and violence, that drunkenness aggravates the crime, though this is not the law.[15]

In a prosecution for murder where the jury finds that the

12. See State v. Newman, 157 La. 564, 102 So. 671 (1925) (drunkenness is often the cause of a crime).

13. State v. Hogan, 117 La. 863, 42 So. 352 (1906) (in absence of evidence of premeditation, intoxication may be invoked to negative malice or deliberate intent, but it must be of such a character as to create a state of mental confusion, precluding a specific intent to take life). See also State v. Trivas, 32 La. Ann. 1086 (1880), which was relied on in the *Hogan* case.

State v. Kraemer, 49 La. Ann. 766, 771, 22 So. 254, 256, 62 Am. St. Rep. 664, 668 (1897), where the court relied on Bishop's theory that the wrongful intent to become intoxicated will supply the criminal intent needed to convict for a crime committed as a direct result of the intoxication, but also recognized that this fiction could not supply the element of specific intent. See generally BISHOP, CRIMINAL LAW c. 27, paras. 397-410 (6th ed. 1877). When a man "not meaning to commit a homicide, becomes so drunk as to become incapable of intending to do it, and then, in this condition, kills a man [it cannot be murder in the first degree because there is no specific intent to take life]."

State v. Willis, 43 La. Ann. 407, 9 So. 11 (1891) (judge properly charged to effect that if accused was so drunk as to be incapable of having the specific intent charged he could not be found guilty, but if he had mind enough to comprehend his actions and to know right from wrong, drunkenness is not an excuse).

14. State v. Michel, 225 La. 1040, 74 So.2d 207 (1954), aff'd, 350 U.S. 91 (1955), rehearing denied, 350 U.S. 955 (1956) (objection to statement made by defense that drunkenness was a defense to crime of aggravated rape properly sustained on the theory that aggravated rape was not such crime as required a specific intent); State v. Alexander, 215 La. 245, 254, 40 So.2d 232, 234 (1949) (drunkenness "is a defense when there is mania and in certain cases provided it can be used to negative an intent where a specific intent is required"); State v. Ledet, 211 La. 769, 30 So.2d 830 (1947) (murder conviction affirmed, though trial judge simply read R.S. 14:15 to jury and refused to give a charge which was not incorrect); State v. Johnston, 207 La. 161, 20 So.2d 741 (1945) (conviction of aggravated assault affirmed on grounds that assault requires only a general criminal intent, hence accused was not entitled to invoke R.S. 14:15 (intoxication) as a defense).

15. State v. Newman, 157 La. 564, 102 So. 671 (1925) (murder conviction set aside because judge charged jury to effect that drunkenness, when voluntary, aggravates the crime in the sense of making it a worse crime).

defendant was so intoxicated as to preclude the presence of a specific intent to kill or inflict great bodily harm, the appropriate verdict might well be manslaughter. Manslaughter is defined as "a homicide without any intent to cause death or great bodily harm when the offender is engaged in the perpetration or attempted perpetration . . . of any intentional misdemeanor directly affecting the person."[16] Thus, if death results from a battery, either aggravated or simple, the elements of the crime of manslaughter are present. Intoxication could not be used as a defense to the battery which would be the basis of the manslaughter charge because battery requires only a general criminal intent, which under the law is not precluded by intoxication. Therefore, any charge to the jury on intoxication would be misleading if it did not include an explanation of its application to this responsive verdict. The Louisiana Supreme Court has approved the practice of simply reading R.S. 14:15 to the jury in order to instruct them on the law relative to intoxication as a defense.[17] However, this is an area where a bare statement of the law is likely to confuse a jury. It will greatly facilitate a proper jury understanding of the issues involved if the judge elaborates upon the application of the intoxication article to the crime charged and to the crimes which may be responsive verdicts.

Allen B. Pierson, Jr.

EVIDENCE — GENERAL HUSBAND-WIFE PRIVILEGE IN FEDERAL CRIMINAL TRIALS

Defendant was convicted, under the Mann Act,[1] for transporting the prosecutrix from Arkansas into Oklahoma for immoral purposes. During the trial defendant's wife was allowed, over his objection, to testify that she was a prostitute and that the prosecutrix was coming to Oklahoma to go into business with her. Defendant claimed the husband-wife privilege and the government contended that the wife's testimony was allowable because it was given voluntarily. The Tenth Circuit Court of Appeals upheld the district court in allowing the wife to testify voluntarily. On certiorari, the Supreme Court, *held*, reversed. In the interests of fostering peace in the family, a spouse will not be permitted to testify against the other, even voluntarily,

16. LA. R.S. 14:31(2a) (1950). Clauses (1) and (2b) defining manslaughter in other ways are not applicable here.
17. State v. Ledet, 211 La. 769, 30 So.2d 830 (1947).
1. 18 U.S.C. § 2421 (1949).