

Circuit Court for Montgomery County
Case No.: C-15-CR-23-000133

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 2370

September Term, 2023

ABED MIDENCE-LOPEZ

v.

STATE OF MARYLAND

Leahy,
Kehoe, S.
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: November 18, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Abed Midence-Lopez, (“Appellant”), was indicted in the Circuit Court for Montgomery County, Maryland, and charged with attempted murder of Henrys Torres-Flores, and related offenses. Following a jury trial, Appellant was convicted of first-degree assault and conspiracy to commit first-degree assault and acquitted on the remaining counts. The court subsequently sentenced him to 15 years, with all but nine years suspended, for first-degree assault and a concurrent 15 years, all suspended, for conspiracy to commit first-degree assault.

Appellant timely appealed and now asks us to address the following question: “Did the Circuit Court err in refusing to instruct the jury on voluntary intoxication?”

Finding no error, we shall affirm.

BACKGROUND¹

On December 18, 2022, from around 10 a.m. to 1 p.m., Henrys Torres-Flores drank approximately nine beers while watching the World Cup final at a friend’s house. After the game, Torres-Flores and a friend went to Barriles Bar in Takoma Park to drink some more. At some point, Torres-Flores went to the bathroom, but someone was blocking his path, leading to an argument between them.²

Afterwards, Torres-Flores went back to the bar and saw this individual, later identified as Luis Samuel Rios-Rodriguez, go over to talk with the Appellant. Appellant

¹ The background facts are drawn from the evidence presented during Appellant’s trial, which began on August 14 and concluded on August 17, 2023.

² A video of the scene at the bar was admitted into evidence and played for the jury.

and Rios-Rodriguez then approached Torres-Flores and, although he did not remember what they said, Torres-Flores testified that “they wanted to fight.”

After a confrontation at the bar, Appellant and Rios-Rodriguez were told to leave the bar, but they returned shortly thereafter. They went directly to Torres-Flores, exchanged angry words, and then Torres-Flores was shot. He testified that Rios-Rodriguez shot him, not Appellant. He was shot in the hand, his side, and his chest during the altercation.

After that, Torres-Flores and Appellant went down to the ground and continued to fight. At one point, when Torres-Flores was on top of Appellant, he heard Appellant tell Rios-Rodriguez to shoot him. Torres-Flores told the jury that Rios-Rodriguez got closer, pointed the gun at his head, and then Appellant told him “to shoot at me in my head.” Torres-Flores looked at the handgun and heard “click, click,” because the gun was empty. Torres-Flores recounted, through the interpreter, that he was “nervous” and felt like he “was going to lose [his] life[.]” After the shooting, Appellant and Rios-Rodriguez left the bar together.

On cross-examination, Torres-Flores testified that Appellant had approached him at the bar and asked him why he was screaming at his friend. Torres-Flores maintained that Appellant pushed him first. Torres-Flores related that, after Appellant and Rios-Rodriguez were asked to leave, when they returned, Appellant came straight toward him and the two continued to argue. Torres-Flores admitted that he hit Appellant with a chair after the gun failed to fire, that both men were upset, and that Torres-Flores was held back by his friends during the altercation.

Appellant and Rios-Rodriguez were apprehended outside the bar and taken into custody by Takoma Park Police. Appellant had blood on his face and was eventually taken to a nearby hospital. Later that same day, after he was treated, Appellant was transported to the police department for an interview.

Detective Corporal Maxim Glushkov interviewed Appellant at approximately 8:47 p.m., the same day as the shooting. After he was advised of his rights, the interview was recorded and later played for the jury.³ During that interview, Appellant stated that he understood and could speak English, provided his age, his address, telephone number, and his place of work.⁴ Appellant stated that he used cocaine approximately seven hours prior to the interview and that he drank at the bar. However, he stated that he knew what the interview was about and knew that the allegations were “pretty serious.”

Appellant then provided a detailed chronology of the events prior to the fight and the shooting, including who was with him at the bar, whether he left his car at the scene, who started the fight, and provided his opinion that the other individuals at the bar, whom he described in detail, were affiliated with MS-13. Appellant also stated during the interview that he saw a person he knew, identified as “Samuel,” with the gun and that he,

³ The Advice of Rights Form (MCP 50) indicates that Appellant’s “Physical condition” was “OK.” The form also includes a field labelled “Sobriety” which was noted in handwriting simply as “Yes.”

⁴ A Spanish interpreter was present during the interview, but Appellant spoke in English and did not request to speak in Spanish.

Appellant, only heard the gunshots.⁵ He knew that Samuel had a gun with him “all the time” and he knew that, after they were ejected from the bar initially, “Samuel” retrieved the gun before they went back inside. He admitted that “Samuel” shot the victim inside the bar thereafter. Appellant denied using a gun or any weapon during the fight but admitted he kept fighting the victim even after the shooting.

Appellant testified at trial on his own behalf. He admitted he was with Luis Samuel Rios-Rodriguez on the day in question, along with a man he only knew by the nickname “Mecca,” and that they bought a bucket of beers when they arrived. He remembered getting into an argument with the shooting victim, Torres-Flores. After the argument, Appellant went back to his car momentarily, then returned to the bar. After the ensuing fight, Appellant explained that he “could not stand up by myself” and that he was carried out of the bar.

Appellant denied that he told Rios-Rodriguez to shoot Torres-Flores. He denied telling Rios-Rodriguez to use the gun and claimed he did not know that he had the gun with him.

On cross-examination, Appellant confirmed that he drove his car to the bar, and that Rios-Rodriguez accompanied him. They were together earlier that day, for approximately three hours, watching a game at a different bar. He also confirmed that he confronted Torres-Flores because he wanted him to stop “bothering” Rios-Rodriguez. He agreed that he became upset though as the confrontation continued.

⁵ Detective Glushkov testified “Samuel” was part of the name for “Luis,” and there is no claim that this is anyone other than Rios-Rodriguez.

Appellant stated that he and Rios-Rodriguez left the bar, that they were not ejected, and that they returned approximately two minutes later after they went to Appellant’s car. Appellant then approached Torres-Flores and made a “gang sign,” believing Torres-Flores to be a gang member. Appellant had previously testified that he was not afraid of gang members. He denied knowing that Rios-Rodriguez shot Torres-Flores until he heard the gunshots when he was down on the floor.

On further cross-examination, Appellant confirmed that he is seen standing and walking inside the bar, as depicted on the surveillance video recording, but that he was unable to stand after the shooting and fight that followed.

We shall include additional detail in the following discussion.

DISCUSSION

Appellant contends the trial court erred by not giving the pattern instruction on voluntary intoxication. He argues that there was some evidence he was under the influence of cocaine and alcohol at the time of the shooting and that he “lost control of his mental faculties.” The State responds that the evidence was insufficient to generate the voluntary intoxication defense and that the trial court properly exercised its discretion in declining to give the instruction. We concur.

At the close of all the evidence, the court asked for argument on the voluntary intoxication instruction, asking the Appellant to identify the evidence of intoxication. The court observed that Appellant said he ingested cocaine seven hours before the police interview and that he and his companions bought a bucket of beers at the bar, but it was not clear if the Appellant was even “drinking at the bar[.]” Defense Counsel responded,

“[h]e mixed alcohol and cocaine together, which is sufficient enough to prove that there is a level of voluntary intoxication.” Defense Counsel continued that “he was intoxicated to a point where he couldn’t form specific intent” and that it was a jury question. After further discussion, the court noted the following:

Sure. I’m looking at *Bazzle v. State* where the court says: In light of the high degree of intoxication required to negate a specific intent, we agree with the reasoning of the Court of Special Appeals in *Lewis* that that mere consumption of alcohol, with no evidence as to the effect of that alcohol on the defendant, would not permit a jury reasonably to conclude that he had lost control of his mental faculties to such an extent as to render him unable to form intent.

And they’re not -- so they’re not entitled to the instruction unless he can point to some evidence that would allow the jury to rationally conclude that the intoxication made him incapable of forming the intent necessary to constitute the crime. And first it would be rationally conclude that there was intoxication, but also that it was such that made him incapable of forming the intent. And there hasn’t even been a showing that he was drunk in this case. It’s not even drunkenness. It’s just consumption.

After Defense Counsel argued that there was “some evidence” of intoxication, the court heard from the State. The State responded that there was no evidence of Appellant’s demeanor or consumption that would indicate the effect of any intoxicants on his person, explaining:

In this case, there is none of that. The defendant was on the stand. He didn’t testify: I was drunk. I couldn’t stand up straight. I was confused. He didn’t testify about how much cocaine he took, how much he had consumed in alcohol. He didn’t testify that he was -- that was the first time he used cocaine or he is a regular cocaine user. There was no evidence presented whatsoever about what effect, if any, cocaine had on him. Furthermore, none of the officers testified that he appeared to be under the influence of alcohol or drugs. On the MCP-50, he indicates that he is sober.

So there is absolutely no evidence that would warrant this voluntary intoxication instruction to even be given to the jury. ...

Defense Counsel maintained that there was “some evidence” sufficient to generate the instruction, and the State answered, “It’s not just some evidence of consumption. It’s some evidence that the defendant was intoxicated by that drug.” The court agreed, ruling as follows:

We have no idea what he consumed -- I mean, the extent of what he consumed, no idea of the level of it, no idea. He said he had some cocaine. I don't know what that means. I don't know if that means a drop. I don't know if that means a couple of ounces. I don't know how -- what he drank -- how much he drank, excuse me. Or, more importantly, there is no indication that he was intoxicated by whatever it is he drank. There was no evidence of intoxication. There was evidence of some consumption. Perhaps, if there was evidence of consumption of extreme amounts or something like that, but that's not in this case. So I don't think there is sufficient evidence to generate that instruction. I am not going to give it.^[6]

Maryland Rule 4-325(c) requires a trial court to give a requested jury instruction when “(1) it ‘is a correct statement of the law’; (2) it ‘is applicable under the facts of the case’; and (3) its ‘content . . . was not fairly covered elsewhere in the jury instruction[s] actually given.’” *Johnson v. State*, 266 Md. App. 518, 530 (2025) (citations omitted). “Unless the trial court has made an error of law, we review its decision to give a jury instruction for abuse of discretion.” *Id.* “[W]e review without deference . . . whether the jury instruction was a correct statement of the law.” *Id.* (citations omitted).

We are concerned in this case with whether the voluntary intoxication instruction was applicable under the facts of the case. A jury instruction is applicable if “the evidence is sufficient to permit a jury to find its factual predicate.” *Rainey v. State*, 480 Md. 230,

⁶ Although Appellant did not object after the court finished instructing the jury, the State does not argue that this issue is unpreserved. See Md. Rule 4-325 (f) (requiring a timely objection after the court instructs the jury).

255 (2022) (quoting *Bazzle v. State*, 426 Md. 541, 550 (2012)). The instruction must be given if there is “some evidence” to support it. *Joiner v. State*, 265 Md. App. 546, 566 (2025) (citations omitted). This standard is a “‘fairly low hurdle[,]’ and ‘calls for no more than what it says—‘some,’ as that word is understood in common, everyday usage.’” *Id.* at 566-67 (citations omitted).

The pattern instruction provides:

You have heard evidence that the defendant acted while intoxicated by [drugs] [alcohol]. Generally, voluntary intoxication is not a defense and does not excuse or justify criminal conduct. However, when charged with an offense requiring a specific intent, the defendant cannot be guilty if the defendant was so intoxicated, at the time of the act, that (pronoun) was unable to form the necessary specific intent.

A specific intent is a state of mind in which the defendant intends that (pronoun) act will cause a specific result. In this case, the defendant is charged with (offense requiring a specific intent), which requires the State to prove that the defendant acted with the specific intent to (specific intent).

In order to convict the defendant of (list specific intent offenses), the State must prove, beyond a reasonable doubt, that the defendant’s degree of intoxication did not prevent the defendant from acting with that specific intent. A person can be [drinking] [taking drugs] and can even be intoxicated, but still have the necessary mental faculties to act with a specific intent.

[Voluntary intoxication is not a defense to charges that do not require specific intent. In this case, the defendant is charged with (list offenses) that do not require proof of specific intent.]

Md. Crim. Pattern Jury Instr. 5:08 at 1183 (3d ed. 2024) (“MPJI-Cr”).

To generate an instruction on voluntary intoxication, a defendant must “point to ‘some evidence’ that ‘would allow a jury to rationally conclude’ that his intoxication made him incapable of ‘form[ing] the intent necessary to constitute the crime[.]’” *Bazzle*, 426 Md. at 555 (citations omitted).

When a crime requires a specific intent, voluntary intoxication may constitute a defense if the defendant was so intoxicated that he lacked the capacity to form the requisite specific intent. *Wood v. State*, 209 Md. App. 246, 306-07 (2012), *aff'd*, 436 Md. 276 (2013). Voluntary intoxication is not, however, a defense to a general intent crime. *See Newman v. State*, 236 Md. App. 533, 565 (2018) (“[V]oluntary intoxication, no matter how severe, is no defense to a crime requiring a mere general intent. Both depraved heart murder and involuntary manslaughter of the gross criminal negligence variety are mere general intent crimes on which voluntary intoxication would have no erosive effect.”). *Accord Harris v. State*, 353 Md. 596, 603 (1999) (“It has long been the law in Maryland that while voluntary intoxication is a defense to a specific intent crime, it is not a defense to a general intent crime.”).

Even with respect to specific intent crimes, the evidence must show that the defendant was so intoxicated that he could not form the requisite specific intent. *See Bazzle*, 426 Md. at 555. As the Supreme Court of Maryland has made clear, “mere intoxication is insufficient to negate a specific intent.” *Id.* at 553. Further:

Evidence of drunkenness which falls short of a proven incapacity in the accused to form the intent necessary to constitute the crime merely establishes that the mind was affected by drink so that he more readily gave way to some violent passion and does not rebut the presumption that a man intends the natural consequence of his act.

Id. at 553-54 (quoting *Hook v. State*, 315 Md. 25, 31 n.9 (1989)).⁷

In *Bazzle*, *supra*, the Court explained that certain phenomena, like a high blood alcohol content or illogical behavior and memory loss, while undoubtedly “some evidence”

⁷ “[T]here is no logical and, therefore, no doctrinal distinction between voluntary intoxication induced by alcohol and voluntary intoxication induced by the use of drugs.” *Cirincione v. State*, 75 Md. App. 166, 176, *cert. denied*, 313 Md. 611 (1988).

that the defendant was drunk, were “not evidence that he was unable to form a specific intent, and [were] therefore insufficient to raise a jury issue on voluntary intoxication as a defense to a specific intent crime.” 426 Md. at 556. In other words, the law requires “some evidence” that the defendant had “lost control of his mental faculties to such an extent as to render him unable to form the intent,” and not just “some evidence” of drunkenness. *Id.*

In *Newman, supra*, this Court held that a voluntary intoxication instruction was generated by the evidence where the defendant (1) was one of three persons who consumed a water bottle filled with vodka, half a bottle of wine, and a major part of another gallon of vodka; and (2) was described by multiple people as being “under the influence,” “flat out drunk,” and “blacked out.” *Newman*, 236 Md. App. at 565-66. Based on this evidence and the fact that the defendant’s intoxication “was the very heart of the defense case,” this Court held that “the evidence overwhelmingly generated the instruction.” *Id.* at 566.

Appellant argues there was some evidence that he was voluntarily intoxicated because he: (1) used cocaine and drank alcohol earlier that day; (2) was unable to stand during the incident; and (3) was fighting with the victim even after shots were fired inside the bar. The State responds that, although there was some evidence that Appellant used cocaine and drank alcohol, the evidence “did not show the sort of heavy intoxication that would support a voluntary intoxication defense, particularly when [Appellant] did not himself attribute any memory issues to intoxication.” Appellant’s testimony that he was unable to stand after the bar fight, according to the State, was more readily understood as Appellant “referring to the effect of his injuries from the fight.” Here, the State highlights that Appellant had been struck in the head and received treatment for his injuries at the hospital.

We are persuaded by the State’s arguments. Although there was some evidence that Appellant had used cocaine and bought a bucket of beers inside the bar, there was no evidence that he was so intoxicated that he was either unaware of his surroundings, or “had lost control of his mental faculties to such an extent as to render him unable to form the intent[.]” *Bazzle*, 426 Md. at 555. The standard is not simply some evidence of intoxication but some evidence of a degree of intoxication that would preclude a finding of specific intent. *Id.* (“Mere drunkenness does not equate to the level of intoxication necessary to generate a jury instruction on intoxication as a defense to a crime.”). We conclude that evidence of lack of specific intent is lacking in this case and the trial court properly exercised its discretion in declining to give a voluntary intoxication instruction.

**JUDGMENTS OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**