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Kassa (Abebaw) v. State, 137 Nev., Adv. Op. 16 (Apr. 29, 2021)

Cecilia Diaz

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JUDGMENT OF CONVICTION – APPELLANT GUILTY BUT MENTALLY ILL OF FIRST-DEGREE MURDER AND FIRST-DEGREE ARSON

Summary

Appellant Abebaw Tesfaye Kassa was found to be mentally ill, but nevertheless guilty of first-degree murder and first-degree arson. Kassa was found guilty on the aforementioned charges and contested his conviction arguing that the district court falsely instructed the jury on voluntary intoxication and erred in denying his motion to vacate the jury’s verdict and find him not guilty by reason of insanity. This Court found sufficient evidence in the record to support Kassa’s convictions and the district court did not abuse its discretion in giving the challenged instruction. The district court’s decision is affirmed.

Facts and Procedural History

I.

In 2016 Kassa set fire to the transitional home for persons with mental illness. Kassa had previously lived there for over a month. The residents of the transitional home escaped, but Lolita Budiao, the housekeeper, was trapped by Kassa in a bathroom and suffered severe injuries of which she later died. Kassa fled the scene by escaping through a window as the police arrived. The police gave chase, Kassa resisted arrest, and he was ultimately arrested.

Kassa was charged with first-degree felony murder and first-degree arson, admitted to the facts and Budiao’s death, and raised an affirmative defense of insanity. Kassa alleges he suffered from schizophrenic auditory hallucinations when he set the fire, and introduced expert testimony by two psychiatrists who examined him in the years since the fire to support his defense. The State presented medical records noting that when the prospect of murder charges arose, Kassa reported that he’d been snorting “Spice,” a synthetic version of marijuana with hallucinogenic effects. Kassa reported that the mental effects of Spice left him feeling disturbed and unable to sleep. Partly based on this evidence, the State proposed jury instruction no. 20 explaining to jurors that voluntary intoxication – as opposed to mental disease or defect – did not make resulting conduct “less criminal.”

The jury found Kassa guilty but mentally ill (“GBMI”) on both counts. Under NRS 175.533, a jury can find a defendant GBMI if a defendant is found guilty beyond a reasonable doubt of the offense and due to disease or defect of the mind was mentally ill during the commission of the crime. Finding in such a manner by a jury means that the defendant’s mental illness is not excusing their criminal conduct, the result is not an acquittal, but a guilty verdict signals certain allowances in sentencing.² Kassa moved to have the verdict vacated and not be found guilty by reason of insanity. After a hearing, the district court denied the motion and

¹ By Cecilia Diaz.

² See *Finger v. State*, 117 Nev. 548, 554, 27 P.3d 66, 70 (2001) (noting that with a GBMI verdict, “the district court may suggest that the prison system provide certain types of treatment to the convicted individual”).

sentenced Kassa to serve concurrent prison terms totaling 20 years to life in the aggregate. This appeal followed.

II.

During trial, Kassa conceded to starting the fire intentionally, intending for it to cause deaths, intentionally starting the fire knowing people were inside the home, intentionally holding Budiao captive in the bathroom to prevent her from stopping the fire, and that Budiao died as a result. From the testimony, the jury could have inferred the Kassa committed the crimes charged. This case deals with whether his conduct was excused from criminal liability based on a not guilty by reason of insanity defense (“NGRI”).³ For such a defense to be viable, Kassa’s alleged insanity defense must satisfy the M’Naghten test “[(1) tie to a disease or defect of the mind,” he suffered from delusions such that he did not “(1) [k]now or understand the nature and capacity of his . . . act; or (2) [a]ppreciate that his or her conduct was wrong.”⁴ After his conviction, Kassa moved the district court for a judgment of acquittal pursuant to NRS 175.381(2), on his supposed satisfaction of *M’Naghten*. But NRS 175.381(2) set a higher bar where if the record contains evidence on which any rational juror may convict, then its high standard is not met. The district court found that Kassa did not clear this high standard.⁵

De novo review applies from an order denying a motion for a judgment of acquittal, where appellate court must determine whether the district court applied the correct legal standard in deciding the motion.⁶ Because the district court decides a motion for a judgment of acquittal under NRS 175.381(2) based on a sufficiency of the evidence standard, appellate review of an order denying such a motion is the same as a review of the sufficiency of the evidence.⁷ Kassa’s path to reversal is onerous.

Discussion

A.

The record supports the district court’s decision that if a reasonable juror looked at the evidence, they would have concluded that Kassa did not satisfy *M’Naghten*. Whether or not Kassa has a mental illness, the State’s case benefits from an initial presumption of legal sanity. Kassa had the burden of rebutting this presumption by a preponderance of the evidence.⁸ This presumption operates most critically during the time the offense was committed.⁹ The State did

³ See *Finger v. State*, 117 Nev. at 568, 27 P.3d at 80 (stating that “legal insanity simply means that a person has a complete defense to a criminal act”).

⁴ NEV. REV. STAT. § 174.035(6)(b); see *Finger*, 117 Nev. at 556-57, 27 P.3d at 72-73 (discussing *M’Naghten’s* Case, 8 Eng. Rep. 718, 722, 10 Cl. & Fin. 200, 209-10 (1843), and describing the resulting test).

⁵ *Purcell v. State*, 110 Nev. 1389, 1394, 887 P.2d 276, 279 (1994).

⁶ See *Evans v. State*, 112 Nev. 1172, 1193, 926 P.2d 265, 279 (1996); *United States v. Gagarin*, 950 F.3d 596, 602 (9th Cir. 2020) (noting that the court reviews de novo a denial of a motion for acquittal under analogous Fed. R. Crim. P. 29).

⁷ *Purcell*, 110 Nev. at 1394, 887 P.2d at 279; See *Evans*, 112 Nev. at 1193, 926 P.2d at 279. See also *United States v. Johns*, 686 F.3d 438, 446 (7th Cir. 2012).

⁸ NEV. REV. STAT. § 174.035(6). See *Clark v. State*, 95 Nev. 24, 26, 588 P.2d 1027, 1028 (1979).

⁹ *Ford v. State*, 102 Nev. 126, 135, 717 P.2d 27, 33 (1986).

not deny the proffered evidence of Kassa's history of delusions and hallucination. Neither the evidence nor his psychiatric diagnosis established legal insanity for the NGRI defense – *M’Naghten* hinges on the temporal and causal connection between Kassa's mental illness and the crime.¹⁰

If the jury had credited the testimony given by Kassa’s psychiatrists, then an NGRI might have been reached, but as Kassa’s conceded during oral argument: the jury was not obligated to accept the expert’s testimony.

The psychiatrists testified that Kassa denied using drugs two years before the crime had occurred. However, in opening and closing arguments, the State noted that medical records from two days after the fire show Kassa giving a detailed account of using Spice. The reports state the Kassa used Spice and had a history of using it and felt disturbed and unable to sleep after he consumed the drug.

A reasonable jury could have elevated these medical records over the testifying expert opinions, because they were self-serving information Kassa supplied two years after the event.¹¹ Notably, one of Kassa’s experts agreed that his use of Spice could not be ruled out at the time the fire was set. To the extent the jury reasonably believed that Kassa's use of Spice created delusions or led to arson, they likewise correctly rejected his NGRI defense where *M’Naghten's* causal requirement holds that the operative delusion result from a “mental disease or defect,” and would not be satisfied under such conditions Kassa sets forth.¹²

B.

There is no need to rely on Kassa’s use of Spice because sufficient evidence alternatively supports Kassa’s failure to meet the *M’Naghten* test.¹³ *M’Naghten* sets a narrow standard where delusional beliefs are grounds for legal insanity when the delusions, if true, justify the commission of the crime.¹⁴ Even at face value, accepting Kassa suffered delusions, and that they were caused by a defect of the mind rather than his use of Spice, a reasonable jury could conclude that he did not meet the *M’Naghten* requirement.

Kassa presented contradictory testimony, where one psychiatrist reported that Kassa, under some delusion, had lit the fire “to die fully” and escape his reanimated body. Another psychiatrist

¹⁰ *Id.* at 136, 717 P.2d at 33.

¹¹ *See Clark*, 95 Nev. at 28, 588 P.2d at 1029–30 (finding that the jury reasonably rejected an NGRI defense where “[t]he expert opinions were largely based on information supplied to the psychiatrists by appellant over a year subsequent to the commission of the crime, which information was markedly sharp in contrast to statements given police more proximate to [the crime]”).

¹² *State v. Fisko*, 58 Nev. 65, 79, 70 P.2d 1113, 1118 (1937) (stating that “voluntary intoxication furnishes no excuse for crime committed under its influence”) (quoting 1 Joel Prentiss Bishop, *Commentaries on the Criminal Law* § 400 (7th ed. 1882)), *overruled in part on other grounds by Fox v. State*, 73 Nev. 241, 316 P.2d 924 (1957). *See NEV. REV. STAT.* § 174.035(10)(a) (stating that an exonerating “[d]isease or defect of the mind” for purposes of Nevada's *M’Naghten* test “does not include a disease or defect which is caused solely by voluntary intoxication”).

¹³ *Cf. Rhyne v. State*, 118 Nev. 1, 10, 38 P.3d 163, 169 (2002) (noting “that a jury may return a general guilty verdict on an indictment charging several acts in the alternative even if one of the possible bases of conviction is unsupported by sufficient evidence”).

¹⁴ *Finger v. State*, 117 Nev. 548, 577, 27 P.3d 66, 85 (2001).

suggested that under his delusions some outside forces had directed him to set the fire. In either case, Kassa understood the “nature and capacity of his . . . act” and knew he was setting a fire because he added clothing and furniture as kindling that caused the home to burn and those in it – intending the fire to be deadly.¹⁵ It is unsurprising that one of Kassa’s psychiatrists testified that Kassa did not show impairment and knew he was setting fires that burned to burn his reanimated body. The evidence presented is enough for a jury to reject Kassa’s NGRI under *M’Naghten*.¹⁶

As to the second part of the *M’Naghten* test, a jury could have inferred that Kassa appreciated that his conduct was wrongful, specifically because he trapped Budiao in a bathroom despite her screaming to be let out and knowing she’d attempt to stop the fire. Although one of Kassa’s psychiatrists noted that the smell of smoke might have triggered a survival instinct in him, Kassa nevertheless escaped the fire himself and resisted arrest. Thus, a reasonable jury could infer that Kassa knew the wrongfulness of his actions.¹⁷

Even if a jury believed that Kassa was suffering from delusions, a defect of the mind, or some other condition not borne from Spice use, the facts support that Kassa was aware of his actions and that the fire would harm those occupying the home and is not sufficient to establish legal insanity.¹⁸ Further, any suggestion that the testimony by experts necessitates an acquittal is misdirected the factfinder may discredit their testimony and rely on other probative evidence to infer the Kassa’s sanity.¹⁹ The district court did not err in denying Kassa’s motion for acquittal.

III.

Kassa’s second argument in favor of reversal centers on jury instruction no. 20 which instructed that an act committed by a person while voluntarily intoxicated is not deemed less criminal, even if the intoxication is so severe as to make the person unconscious of what they’re doing or even make them temporarily insane.²⁰

The district court has broad discretion in settling matters regarding jury instructions, and this court reviews the lower court’s decision for an abuse of discretion or judicial error.²¹ This Court reviews de novo whether a jury instruction is a correct statement of law.²² Even if the instruction is given in error, reversal is not required unless a different result would be likely.²³

¹⁵ NEV. REV. STAT. § 174.035(6)(b)(1).

¹⁶ See *Buford v. State*, 793 S.E.2d 91, 94 (Ga. 2016) (holding that evidence was sufficient to support rejection of defendant’s NGRI defense where one of two testifying experts was uncertain as to whether the defendant met the test’s requirements).

¹⁷ See *Edwards v. State*, 90 Nev. 255, 260, 524 P.2d 328, 332 (1974) (noting that an attempt to flee the scene of a crime “is a circumstance supportive of an inference of guilt”).

¹⁸ See *Finger*, 117 Nev. at 576, 27 P.3d at 85 (explaining that defendant is entitled to acquittal under the *M’Naghten* test only “if the facts as he believed them to be in his delusional state would justify his actions”).

¹⁹ 2 Catherine Palo, CRIMINAL LAW DEFENSES § 173 (Supp. 2020). See *Clark v. State*, 95 Nev. 24, 28, 588 P.2d 1027, 1029 (1979) (noting that expert “testimony is not binding on the trier of fact, and the jury was entitled to believe or disbelieve the expert witnesses”).

²⁰ Nev. Rev. Stat. § 193.220; *State v. Fisko*, 58 Nev. 65, 79, 70 P.2d 1113, 1118 (1937).

²¹ *Newson v. State*, 136 Nev. 181, 185, 462 P.3d 246, 249-50 (2020).

²² *Hager v. State*, 135 Nev. 246, 257, 447 P.3d 1063, 1072 (2019).

²³ *Allred v. State*, 120 Nev. 410, 416, 92 P.3d 1246, 1251 (2004).

Kassa suggests that a court may not allow jury instructions that vary from applicable statutory language, which is untenable, and argues that the district court should not have permitted any instruction on voluntary intoxication and its impact on the NGRI defense.²⁴ Kassa failed to raise any objections to instructions no. 14 and no. 17, both dealing with the effect of voluntary intoxication on the NGRI defense and cover the same matter as instruction no. 20.²⁵

Further, Kassa could not show prejudice from the district court's inclusion of these instructions.²⁶ The instructions given opened an avenue for the jury to acquit Kassa, had Kassa argued on the alleged facts because arson is a specific intent crime which can be defeated by proving involuntary intoxication.²⁷ Kassa may also have intended to object to instruction no. 20 to argue that the phrase "temporary insanity" was prejudicially confusing. NGRI defenses only require that the defendant be legally insane at the time of the offense but have no bearing on whether the alleged insanity was temporary or long-running. Instruction no. 20 integrates only a related statement of law.²⁸ Read as a whole, instructions no. 20 distinguishes mental disease or defect from voluntary intoxication, where only the former can result in acquittal under *M'Naghten*.²⁹

The State also clearly and correctly used the language in instruction no. 20 and explained that to be legally insane, the mental state must be derived from mental defect or disease and not borne out of drug use.³⁰ Kassa argues that the State also bears the burden of proving a theory of intoxication. Here, Kassa already stipulated to the admission of medical records proving his drug use in statements made two days after the fire. Kassa's experts also spoke on the effects of Spice on a person's mental state and that the use of Spice could have caused his alleged delusions. For these reasons, the district court's judgment is affirmed.

Conclusion

Kassa was found guilty but mentally ill on the charges and contests his conviction arguing that the district court misinstructed the jury on voluntary intoxication and erred in denying his motion to vacate the jury's verdict and find him not guilty by reason of insanity. This Court found sufficient evidence in the record to support Kassa's convictions and the district court did not abuse its discretion in giving the challenged instruction. The district court's decision is affirmed.

²⁴ See *Runion v. State*, 116 Nev. 1041, 1050-51, 13 P.3d 52, 58-59 (2000) (admonishing district courts to tailor instructions to the case, rather than merely quote applicable statutes)

²⁵ Instruction no. 14 (instructing that in the NGRI context, "[v]oluntary use of drugs or alcohol do not constitute a severe mental disease or defect. The voluntary use of drugs or alcohol must be disregarded") and instruction no. 17 (instructing that a "[d]isease or defect of the mind' does not include a disease or defect which is caused solely by voluntary Intoxication").

²⁶ *Allred v. State*, 120 Nev. 410, 416, 92 P.3d 1246, 1251 (2004).

²⁷ *Ewish v. State*, 110 Nev. 221, 228, 871 P.2d 306, 311 (1994), on reh'g, 111 Nev. 1365, 904 P.2d 1038 (1995). See NEV. REV. STAT. § 193.220.

²⁸ NEV. REV. STAT. § 193.220. See *Fisko*, 58 Nev. at 79, 70 P.2d at 1118.

²⁹ *Tanksley v. State*, 113 Nev. 844, 849, 944 P.2d 240, 243 (1997).

³⁰ *Nunnery v. State*, 127 Nev. 749, 786, 263 P.3d 235, 259 (2011) (finding district court did not abuse its discretion in issuing particular jury instruction "[b]ecause three other instructions informed the jury that the State bore the burden of proof and the same need not be stated in every instruction").

Dissenting Opinion Summary

SILVER, J., with whom HARDESTY, C.J., and STIGLICH, J., agree, dissenting:

The judgment of conviction should be reversed and remanded for a new trial. The district court abused its discretion by instructing the jury on voluntary intoxication because the State did not present enough evidence to give the instruction.³¹ At the suggestion of the State the district court gave a confusing instruction because the instruction implies that Kassa could be found insane and criminally liable of the offense committed.³² Instruction no. 20 contradicts other instructions (no. 14 and no. 17). The majority correctly notes that the test for legal insanity is demanding and requires a jury to be instructed correctly on the *M'Naghten* standard.³³ The instructional error was not harmless because the contradictory instructions likely confused the jury.

Dissenting Opinion Facts and Procedural History

In 2016 Kassa lived in a community-based group home for individuals with mental illness where he resided without incident for a month. On July 27, 2016, Kassa started a fire where the live-in caretaker died. Kassa was charged with first-degree arson and felony murder and pled not guilty by reason of insanity (“NGRI”). Kassa bears the burden of proving to that due to mental disease he was delusional during the time he committed the offense resulting in his inability to understand the nature of his conduct or appreciate his wrongful behavior.³⁴

Before trial Kassa was evaluated by psychiatric experts and determined incompetent to stand trial. After six months of treatment and medication Kassa regained competence for trial. One of Kassa’s experts testified and diagnosed him as schizophrenic and concluded he was legally insane when he started the fire. Kassa filed an NGRI, and the State obtained an independent psychological evaluation where the State’s expert reached the same conclusion as Kassa’s expert witness.

Kassa’s expert witness explained that individuals with schizophrenia develop symptoms during their mid-to-late 20s, and mental health professionals first diagnosed Kassa in 2011 with reports of hallucinations since 2008. Kassa’s witness detailed several episodes Kassa had showing symptoms of schizophrenia such as hearing voices, incoherent screaming, and a variety of hallucinations, ruling out malingering. Kassa’s expert explained that during the fire, Kassa experienced two types of delusions where Kassa believed himself to have been in a car accident and that he was unable to control his body because external forces were animating his dead body. In his delusion, Kassa understood the concept of fire and used it to destroy his already dead body. Kassa’s expert believed that his delusions prevented him from understanding his actions were wrong, and that he meets the NGRI standard.

³¹ *Nevius v. State*, 101 Nev. 238, 249, 699 P.2d 1053, 1060 (1985).

³² *Cf.* NEV. REV. STAT. § 194.010(4) (excepting from criminal liability “[p]ersons who committed the act charged or made the omission charged in a state of insanity”).

³³ *Finger v. State*, 117 Nev. 548, 577, 27 P.3d 66, 85 (2001).

³⁴ NEV. REV. STAT. § 174.035(6)(a)–(b).

The State's psychiatrist reached the same conclusions and added that Kassa believed he was already dead and in heaven. While the State's expert found that Kassa understood he was starting a fire, he concluded that Kassa did not understand that other people could be harmed or that the fire would have serious consequences. The State's expert concluded that Kassa, in the depths of his psychotic delusion, did not appreciate the wrongfulness of his actions.

Both psychiatric experts concluded that Kassa was legally insane, the State presented no further evidence to rebut this testimony, and instead the State argued that Kassa was not insane but under the influence of Spice. The State's expert did not opine that Kassa's use of Spice caused his psychotic episodes, but the State persisted in arguing that Kassa was temporarily insane due to his intoxication. This point of argument by the State created confusion between insanity and voluntary intoxication. Kassa objected to the State's language where voluntary intoxication causes "temporary insanity" because it would confuse the jury.

This Court explained that to warrant a voluntary intoxication instruction the evidence must show that the defendant consumed an intoxicant and the intoxicating effects of the substances on the defendant's mental state.³⁵ In *Nevius*, the defendant testified that he had wine and smoked marijuana but did not establish the intoxicating effects of those substances on his mental state resulting in the district court properly rejecting the defendant's voluntary intoxication instruction.³⁶ The *Nevius* standard should apply to the State as well, and in this case they have not met the burden of proof.

Here, the State did not even establish that Kassa consumed Spice. The State relied solely on Kassa's medical records and paraphrased it during closing arguments that Kassa admitted to using some sort of substance which made him feel agitated afterwards. The State's account of Kassa's alleged intoxication is problematic. First, Kassa's use "of using some type of substance" fails to show what substance, if any, Kassa ingested. Although the medical records referred to Spice, the State's own expert witness posited that Kassa described being "anointed with some kind of an incense or perfume" the day prior, which casting Kassa's Spice use as part of his delusions. Second, even assuming Kassa ingested Spice, the State presented no compelling evidence that established the intoxicating effects. Because Kassa suffered under a delusion that he was already dead and his body was animated by external forces, his description of "feeling disturbed and unable to sleep" sheds little light on his mental state.³⁷ the State did not establish what, if any, substance Kassa consumed, the amount ingested, or how the effects he described related to the offense. The district court abused its discretion by instructing the jury on voluntary intoxication.

While the instruction on voluntary intoxication should not have been given, the district court failed to ensure that the instruction given was correct. Instruction no. 20 misstated the law and confused the narrow standard applied to the insanity defense.³⁸ Although the instruction largely tracks NRS 193.220, part of the instruction does not appear in the statute. Parts of the instruction imply that temporary insanity is not a defense. That is incorrect, as Nevada law allows

³⁵ *Nevius v. State*, 101 Nev. 238, 249, 699 P.2d 1053, 1060 (1985).

³⁶ *Id.*

³⁷ *Nevius*, 101 Nev. at 249, 699 P.2d at 1060.

³⁸ NEV. REV. STAT. § 193.220.

the insanity defense to be based on insanity during a temporary interval of time, i.e., temporary insanity.³⁹ The defendant can be legally sane before or after the criminal act and legally insane at the time of the offense.

The record indicates that the State and district court relied on *State v. Fisko* for part of instruction no. 20, but that case confused the defenses of temporary insanity and diminished capacity.⁴⁰ In *Miller* this Court explained that those defenses are mutually exclusive because diminished capacity is present only in the absence of insanity, and temporary insanity requires proof of insanity.⁴¹ The language the State used from *Fisko* implies that intoxication can create temporary insanity, but Nevada law states that voluntary intoxication cannot alone result in legal insanity.⁴² This Court should overrule *Fisko* to the extent it implies that voluntary intoxication alone can cause temporary insanity, therefore instructing the jury that “voluntary intoxication” can “create a temporary insanity” is an erroneous statement of law and abuse of discretion by the district court.

The relationship between the insanity defense and voluntary intoxication is significant. Kassa presented expert testimony that he was legally insane at the time of the crimes and the State contended that it presented evidence that Kassa ingested an intoxicating substance before the crimes. That relationship was concisely and clearly addressed in jury instruction no. 17, which followed an instruction explaining that the insanity defense requires proof of a disease or defect of the mind that does not include a disease or defect caused by voluntary intoxication. Instruction no. 20 confused the jurors even more by suggesting that intoxication on its own could give rise to temporary insanity, and implied that temporary insanity is not a defense. Instruction #14 further confused the jurors by telling them that the voluntary use of substances must be disregarded when determining if the defendant could appreciate the nature and quality of his acts. In Nevada voluntary intoxication cannot be the only cause of mental disease to support an insanity defense, but it can be a contributing factor.

The jury was faced with internally inconsistent and confusing instructions, and this Court should not expect jurors to be legal experts or make legal inferences regarding the meaning of the law.⁴³ The majority highlights this data argument that Kassa’s delusional mental state must be from mental defect and cannot be derived from the ingestion of Spice. However, the state negating that principle by first telling the jury in closing argument that instruction no. 20 says that no act

³⁹ NEV. REV. STAT. § 174.035(6)(a) (requiring the defendant to prove he “was in a delusional state at the time of the alleged offense”) (emphasis added); *Miller v. State*, 112 Nev. 168, 174, 911 P.2d 1183, 1186–87 (1996) (“[A] person can benefit from the *M’Naghten* insanity defense if he shows he was insane during the temporal period that coincides with the time of the crime. Technically and semantically, such a finding is temporary insanity.” (citation omitted)).

⁴⁰ 58 Nev. 65, 78–79, 70 P.2d 1118 (1937) (describing defendant’s diminished capacity defense based on voluntary intoxication as “temporary insanity” that “furnishes no excuse for [the] crime committed” (quoting 1 JOEL PRENTISS BISHOP, COMMENTARIES ON THE CRIMINAL LAW § 400 (7th ed. 1882))).

⁴¹ *Miller v. State*, 112 Nev. 168, 173–74, 911 P.2d 1183, 1186–87 (1996). See also *Diminished Capacity*, Black’s Law Dictionary (11th ed. 2019) (defining “diminished capacity” as “[a]n impaired mental condition—short of insanity—that is caused by intoxication, trauma, or disease and that prevents a person from having the mental state necessary to be held responsible for a crime”).

⁴² *State v. Fisko*, 58 Nev. 65, 79, 70 P.2d 1113, 1118 (1937); See NEV. REV. STAT. § 174.035(10)(a) (“Disease or defect of the mind’ [for purposes of the insanity defense] does not include a disease or defect which is caused solely by voluntary intoxication.”).

⁴³ *Crawford v. State*, 121 Nev. 744, 754, 121 P.3d 582, 588 (2005).

committed by a person while in a state of voluntary intoxication shall be deemed less criminal. Instruction no. 20 allowed the jury to conclude that Kassa was both temporarily insane and criminally liable.⁴⁴

The voluntary intoxication instruction did not benefit Kassa, while it's true that voluntary intoxication may negate specific intent, it also opened a door for the State to confuse the jury and persuade him to disregard evidence of classes legal insanity by focusing on his consumption of Spice.⁴⁵ The error in giving jury instruction number 20 was not harmless beyond a reasonable doubt, the misplaced emphasis on the alleged use of spies certainly affected the jury's verdict.⁴⁶

Dissenting Opinion Conclusion

The district court erred in giving a voluntary intoxication instruction and further confuse that error by giving an instruction that misstated and confused the intricate and precise standard for legal insanity, thus making jury instruction no. 20 more injurious than instructive. The instruction likely affected the jury's verdict and therefore was not harmless beyond a reasonable doubt. Accordingly, the district court's judgment should be reversed and remanded for new trial based on the instructional error.

⁴⁴ See *Finger v. State*, 117 Nev. 548, 568, 27 P.3d 66, 80 (2001) (providing that “legal insanity simply means that a person has a complete defense to a criminal act based upon the person's inability to form the requisite criminal intent”).

⁴⁵ *Nevius*, 101 Nev. at 249, 699 P.2d at 1060

⁴⁶ *Miller v. State*, 112 Nev. 168, 175, 911 P.2d 1183, 1187 (1996) (reversing a conviction where the prosecution and district court misinterpreted the insanity defense and hopelessly confused the jury).