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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. OMAR ALEJANDRO AGUIRRE, Defendant and Appellant.	B272488 (Los Angeles County Super. Ct. No. KA 109895)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mike Camacho, Judge. Affirmed.

Lori Quick, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Noah P. Hill and David W. Williams, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Omar Alejandro Aguirre challenges his conviction for resisting an executive officer in the performance of his duty. He contends that the trial court erred by instructing the jury that voluntary intoxication was not a defense. We affirm.

FACTS AND PROCEEDINGS BELOW

On the evening of June 6, 2015, a 911 caller alerted authorities to a white truck racing through a parking lot in a condominium complex in Pomona. Blair Hornby and Alan Pucciarelli, two Pomona police officers, arrived on the scene about 10 minutes later. They discovered Aguirre in the driver's seat of a white pickup truck that had crashed into two poles in a dirt planter area of the parking lot. The motor was running, but the truck appeared to be stuck.

The "dash cam" on Hornby's police car recorded the officers' encounter with Aguirre. Hornby, who was wearing his police uniform, approached the vehicle and ordered Aguirre to turn off the engine and get out of the truck. Aguirre eventually turned off the engine, but he refused to get out of the truck, and swore and acted belligerently. The officers instructed Aguirre to get out of the truck, but Aguirre replied, "Shut the fuck up." Hornby grabbed Aguirre's arm and began pulling him out of the truck. Hornby testified that he felt Aguirre's arm tense up, and he believed Aguirre was going to resist him, so Hornby decided to "take [Aguirre] to the ground." As Hornby was attempting to do this, Aguirre spun around and punched Hornby in the face. Hornby suffered a broken nose and had to undergo surgery to correct it.

As Hornby attempted to subdue Aguirre, Pucciarelli came to Hornby's aid and hit Aguirre in the stomach with his taser. The taser was only somewhat effective in subduing Aguirre.

Hornby and Pucciarelli managed to roll Aguirre onto his stomach, but he continued to struggle. Pucciarelli again used the taser, this time on Aguirre's back. Aguirre grabbed the taser and Pucciarelli tased him a third time. Only at this point were the officers able to handcuff Aguirre.

At the time of this incident, Aguirre smelled of alcohol, was slurring his words, and had bloodshot eyes. After the officers had taken Aguirre into custody, the dash cam recording captured Aguirre saying, "You act like I'm scared of a cop." Shortly thereafter, he said, "How about that, bitch? . . . I would strike you. How about that?"

The police officers took Aguirre to the hospital, where a blood test revealed that Aguirre had a blood-alcohol content of 0.22 percent. Aguirre testified that he had been at a family party earlier that evening and had drunk approximately 12 mixed drinks, some shots of tequila, and at least one beer. He stated that he remembered nothing that happened between the time he left the party and when he woke up in a hospital bed.

An information charged Aguirre with four counts: (1) battery with injury on a peace officer, in violation of Penal Code section 243, subdivision (c)(2)[1]; (2) resisting an executive officer, in violation of section 69; (3) driving under the influence of an alcoholic beverage, in violation of Vehicle Code section 23152, subdivision (a); and (4) driving with a blood alcohol content of .08 percent or more, in violation of Vehicle Code section 23152, subdivision (b). As to counts 1 and 2, the information alleged that Aguirre inflicted great bodily injury, pursuant to section 12022.7, subdivision (a), and that the offenses were consequently serious felonies, as defined in section 1192.7,

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[1] Unless otherwise specified, subsequent statutory references are to the Penal Code.

subdivision (c). As to counts 3 and 4, the information alleged that Aguirre had a blood-alcohol content of 0.15 percent or greater, and was therefore subject to enhanced penalties pursuant to Vehicle Code section 23578.

The jury convicted Aguirre on all four counts and found all the enhancements true. The court sentenced Aguirre to five years in prison. The sentence consisted of the middle term of two years for count 1, plus three additional years for the great bodily injury enhancement. The court also sentenced Aguirre to two years in prison for count 2, but stayed the sentence pursuant to section 654. The court imposed a six-month concurrent sentence for count 3.

DISCUSSION

Aguirre contends that the trial court erred by instructing the jury that it could not consider evidence of Aguirre's voluntary intoxication with respect to Aguirre's conviction in count 2 for resisting an executive officer in violation of section 69. For a defendant to be convicted of this offense, the prosecution must show that the defendant had actual knowledge that the person he was resisting was an officer engaged in the performance of his or her duty. Aguirre contends that his intoxication was relevant on this point and should have been admitted. We disagree. The Penal Code bars the admission of evidence of voluntary intoxication in general intent crimes, including crimes requiring proof of a defendant's actual knowledge, and in doing so, it does not violate the defendant's right to due process.

I. Relevant Trial Court Proceedings

In instructing the jury regarding the charge of resisting an executive officer in the performance of his or her duty, the trial court gave the jury a modified version of the standard jury

instruction for this offense. The court instructed the jury as follows:

"To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant unlawfully used force or violence to resist an executive officer;

2. When the defendant acted, the officer was performing his lawful duty;

AND

3. When the defendant acted, he knew the executive officer was performing his duty."

The language quoted above is taken directly from the pattern jury instruction CALCRIM No. 2652. The court went on, using language from this same pattern instruction, to define for the jury the term "executive officer," and to describe the duties of a police officer and the consequences of an officer's use of unreasonable or excessive force in arresting or detaining a defendant. At the end of the instruction, the court added the following sentence, which is not part of the pattern instruction: "Voluntary intoxication is not a defense to resisting an executive officer with force or violence."

Aguirre's attorney objected to this additional language, which the trial court included in counts 1 and 2.[2] The trial court overruled the objection.

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[2] Aguirre contends that it was error to add language regarding voluntary intoxication only with respect to count 2, the charge of resisting an executive officer. He does not challenge the court's addition of the same language on count 1.

II. Legal Analysis

Aguirre contends that voluntary intoxication is indeed a defense to the offense of resisting an executive officer. Although Aguirre concedes that the crime with which he was charged in count 2 was a general intent offense, and that the Penal Code bars the admission of evidence of voluntary intoxication except with respect to specific intent crimes, he nevertheless contends that his voluntary intoxication was relevant and admissible on the question of whether he had the actual knowledge that the officers who arrested him were acting in the furtherance of their duty when he resisted them. We disagree.[3]

Section 29.4, subdivision (a), establishes that "[n]o act committed by a person while in a state of voluntary intoxication is less criminal by reason of his or her having been in that condition. Evidence of voluntary intoxication shall not be admitted to negate the capacity to form any mental states for the crimes charged, including, but not limited to, . . . [the] knowledge . . . with which the accused committed the act." The law establishes one exception: "Evidence of voluntary intoxication is admissible solely on the issue of whether or not the defendant actually formed a required specific intent." (§ 29.4, subd. (b).) Courts have applied the language of this statute and concluded that "[e]vidence of voluntary intoxication is inadmissible to negate the existence of general criminal intent." (*People v. Atkins* (2001) 25 Cal.4th 76, 81 (*Atkins*).)

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[3] The People contend that Aguirre forfeited this issue by failing to raise the specific argument before the trial court. Because we agree that Aguirre's argument fails on the merits, we need not decide the question of forfeiture.

Although "[s]pecific and general intent have been notoriously difficult terms to define and apply" (*People v. Hood* (1969) 1 Cal.3d 444, 456 (*Hood*)), our Supreme Court has settled on definitions. " 'A crime is characterized as a "general intent" crime when the required mental state entails only an intent to do the act that causes the harm; a crime is characterized as a "specific intent" crime when the required mental state entails an intent to cause the resulting harm.' " (*Atkins*, *supra*, 25 Cal.4th at p. 86.)

There are two ways to violate section 69, subdivision (a): First, one may "attempt[], by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law." Alternatively, one may "knowingly resist[], by the use of force or violence, the officer, in the performance of his or her duty." (§ 69, subd. (a).) The first type of violation is a specific intent offense, because it requires that the perpetrator act with the intent to cause harm by preventing an officer from performing a duty. (*People v. Rasmussen* (2010) 189 Cal.App.4th 1411, 1420.) The second type of violation is a general intent offense, because it requires only that the perpetrator act with the knowledge that the victim is an officer acting in furtherance of his or her duty. (*Id.* at pp. 1419-1421.)

Aguirre does not dispute that he was charged with the second, general intent, form of the offense. The information alleged that Aguirre knowingly resisted Hornby in the performance of his duty. Thus, it would appear that this argument can be resolved as a matter of simple logic. Voluntary intoxication is not a defense to general intent crimes. Aguirre was charged with a general intent crime. Therefore, the trial court was correct to instruct the jury that voluntary intoxication was not a defense.

Aguirre attempts to resist this conclusion by arguing that evidence of voluntary intoxication is relevant and admissible in general intent offenses in which the defendant's actual knowledge is an element of the offense. In support of this contention, he cites two cases.[4] In the first, *People v. Foster* (1971) 19 Cal.App.3d 649, the court ruled that voluntary intoxication was relevant to a defense of possession of heroin, a general intent crime with a knowledge requirement. (*Id.* at p. 655.) That case, however, was decided under a predecessor statute of section 29.4 under which evidence of voluntary intoxication was admissible " 'whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute any particular species or degree of crime.' " (*People v. Foster*, *supra*, 19 Cal.App.3d at p. 654, quoting the then-current version of section 22, the predecessor of section 29.4.) The current version of section 29.4, subdivision (a), specifies that evidence of voluntary intoxication is not admissible to "negate the capacity to form any mental states for the crimes charged, including, but not limited to, purpose, intent, [or] knowledge." (§ 29.4, subd. (a).) Thus, the opinion in *People v. Foster* is no longer good law on this issue.

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[4] Aguirre argues that a third case, *People v. Hendrix* (2013) 214 Cal.App.4th 216, supports his position. In fact, Aguirre cites this case only for the proposition that in order to obtain a conviction for resisting an executive officer, "the prosecution was required to prove, among other things, that when defendant resisted [the officer], defendant knew that he was dealing with a police officer and that he knew [the officer] was performing his duty." (*Id.* at p. 237.) This is a correct statement of the law, but it does not show whether evidence of voluntary intoxication is admissible.

Next, Aguirre cites *People v. Reyes* (1997) 52 Cal.App.4th 975 (*Reyes*), in which the court held that evidence of voluntary intoxication was admissible in a case involving the receipt of stolen property. The court reasoned that the defendant's purpose with respect to the stolen goods was relevant to the defendant's guilt: " '[T]he mere receipt of stolen goods with knowledge they have been stolen is not itself a crime if the property was received with intent to restore it to the owner without reward or with any other innocent intent.' " (*Id.* at p. 985.) For that reason, the court concluded that "with regard to the element of knowledge, receiving stolen property is a 'specific intent crime' " for purposes of a voluntary intoxication defense. (*Ibid.*) By contrast, resisting an executive officer involves no separate or ultimate purpose. The mere fact of knowingly resisting an officer in the performance of his or her duty is sufficient. To define it as a specific intent crime for purposes of section 29.4 would effectively mean that all crimes involving an element of knowledge were specific intent offenses. This would be contrary to the longstanding precedent: "A requirement of knowledge is not a requirement that the act be done with any specific intent." (*People v. Calban* (1976) 65 Cal.App.3d 578, 584.)

By enacting section 29.4, the legislature deliberately decided not to allow defendants to introduce evidence of voluntary intoxication to challenge the requirement of actual knowledge. The statutory language is clear: "Evidence of voluntary intoxication shall not be admitted to negate the capacity to form any mental states for the crimes charged, including, but not limited to, . . . knowledge." (§ 29.4, subd. (a).) As our Supreme Court has explained, the decision to limit evidence of voluntary intoxication was an attempt "to reconcile two competing theories of what is just in the treatment of those who commit crimes while intoxicated. On the one hand, the

moral culpability of a drunken criminal is frequently less than that of a sober person effecting a like injury. On the other hand, it is commonly felt that a person who voluntarily gets drunk and while in that state commits a crime should not escape the consequences." (*Hood*, *supra*, 1 Cal.3d at p. 455.) In *Hood*, the Supreme Court reasoned that "[a] significant effect of alcohol is to distort judgment and relax the controls on aggressive and anti-social impulses." (*Id.* at p. 458.) An intoxicated person "is more likely to act rashly and impulsively and to be susceptible to passion and anger. It would therefore be anomalous to allow evidence of intoxication to relieve a man of responsibility for the crimes of assault with a deadly weapon or simple assault, which are so frequently committed in just such a manner." (*Ibid.*)

We interpret *Reyes* as applying not to all cases where actual knowledge is an element of an offense, but rather at most to cases in which the defendant's actions would be entirely innocent if not for the knowledge of a relevant circumstance. As our Supreme Court has stated, "[u]ltimately, the designation of a mental state as specific or general for these purposes is a policy decision. 'The key is whether policy considerations permit the introduction of voluntary intoxication evidence to negate an element of the crime.' " (*People v. Mendoza* (1998) 18 Cal.4th 1114, 1127 (*Mendoza*).) In *Mendoza*, our Supreme Court held that evidence of voluntary intoxication is admissible in cases alleging that the defendant is guilty under an aiding and abetting theory in part because "the act of the aider and abettor is not inherently criminal" without the knowledge that the act will aid someone else in doing something illegal. (*Id.* at p. 1129.) In the same way, the act of receiving stolen property, as in *Reyes*, is innocent if the perpetrator does not know that the property is stolen. In this case, by contrast, Aguirre's action was still repugnant even if he was unaware of the identity of the person

he was punching. Furthermore, the rashness and lack of impulse control he displayed were a typical result of excess alcohol consumption. It would be anomalous to allow a defendant to escape responsibility for attacking an officer simply because he drank himself into a condition in which he was no longer capable of realizing that the person he was attacking was a uniformed police officer attempting to fulfill his duty by arresting him.

Aguirre argues that voluntary intoxication must be admissible whenever the defendant's knowledge is an element of a general intent crime as a matter of due process. He contends that to hold otherwise would contravene the principle that "[a]ll criminal defendants have the right to 'a jury determination that the defendant is guilty of every element of the crime with which he is charged, beyond a reasonable doubt.' " (*People v. Merritt* (2017) 2 Cal.5th 819, 824.) We disagree. In *Montana v. Egelhoff* (1996) 518 U.S. 37, 41 (*Egelhoff*), the United States Supreme Court held that state law may bar the admission of evidence of voluntary intoxication without violating the defendant's right to due process. The Montana statute that the Supreme Court upheld in *Egelhoff* went further than section 29.4 and provided that voluntary intoxication could not be taken into account with regard to the mental state required of any criminal offense, regardless of whether the offense involved specific or general intent. (See *Egelhoff*, *supra*, 518 U.S. at p. 39.) The trial court's refusal to admit evidence of voluntary intoxication on Aguirre's mental state, and the subsequent jury instruction, thus did not violate his due process rights.

DISPOSITION

The judgment of the trial court is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

LUI, J.