

20-5921
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH J. CRAIG
Petitioner,

v.

STATE OF KANSAS
Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of the State of Kansas

PETITION FOR A WRIT OF CERTIORARI

FILED
SEP 23 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Joseph J. Craig #115909
Ellsworth Correctional Facility
Po Box 107
Ellsworth, Kansas 67439-0107
(785) 472-6332
Pro Se

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QUESTIONS PRESENTED FOR REVIEW

Did the Kansas Supreme Court deny the defendants rights to a fair trial under the Due Process Clause when it should have ruled the defendant was entitled to a voluntary intoxication jury instruction for his defense?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Joseph J. Craig (herein after Craig) respectfully prays that a *Writ of Certiorari* be issued to review the judgement of the Supreme Court of the State of Kansas.

OPINION BELOW

The opinion of the Supreme Court of Kansas is published at *State v. Craig*, 462 P.3d 173 (Kan. 2020) A copy of the opinion is attached as Appendix A.

JURISDICTION

The Kansas Supreme Courts Decision was entered on May 1st, 2020. This petition is timely filed under Order, 2020 U.S. dated March 19th, 2020 authorizing 150 days from day of final judgement to file a *Writ of Certiorari* due to COVID-19. This Courts certiorari jurisdiction is invoked under 28 USC § 1257 (a)

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment States in part that a criminal defendant shall have his "compulsory process"

The Fourteenth Amendment Section I, provides in part:... "nor shall any State deprive any person of life, liberty, or property, without due process of law"

STATEMENT OF THE CASE

In *Hopt v. People*, 104 U.S. 631, 26 L.Ed. 873 (1881) this court held that evidence that the accused was in a state of voluntary intoxication at the time of the killing was competent for the consideration of the jury upon the question whether he was in such a condition as to be capable of deliberate premeditation, constituting murder in the first degree under the statute. *Id* at 633-34. The *Due Process Clause* requires the admission of all relevant evidence from the statements in Craigs case. *Chambers v. Mississippi*, 410 U.S. 284, 294, 35 L. Ed. 2d 297, 93 S. Ct. 1038 (1973)

When dealing with involuntary intoxication, Kansas law permits the use of a voluntary intoxication to negate the intent element of specific intent crimes. *K.S.A. 2019 Supp. 21-5205(b)* states:

"An act committed while in a state of voluntary intoxication is not less criminal by reason thereof, but when a particular intent or other state of mind is a necessary element to constitute a particular crime, the fact of intoxication may be taken into consideration in determining such intent or state of mind."

FACTS RELEVANT TO THE TRIAL

Joseph Craig, Gabrielle Williams, (Williams) Robyn Brown,(Brown) and a fourth person were drinking alcohol and smoking marijuana one evening at Williams' apartment in Junction City. *State v. Craig*, 462 P.3d 173, 175 (2020) After a plan was decided by Williams to rob and kill the victim the events took a terrible turn and eventually the victim was dead from three gunshots. *Id* at 175

FACTS RELEVANT TO THE APPEAL

Eventhough witnesses testified Craig was intoxicated prior to the shooting *Id* at 180-81 The Kansas Supreme Court ruled that there was not enough facts in the record,

to warrant a voluntary intoxication jury instruction. *Id* at 181

REASON FOR GRANTING CERTIORARI

Voluntary intoxication is a negative defense to specific intent crimes and a high degree of intoxication can conceivably, under limited circumstances, render the defendant incapable of attaining the required state of mind to commit the crime. *United States v. Fazzini*, 871 F.2d 635, 641 (7th Cir. 1989), cert. denied, 493 U.S. 1095, 110 S. Ct. 1173, 107 L. Ed. 2d 1075 (1990); see also *United States v. Brownlee*, 937 F.2d 1248, 1253 (7th Cir. 1991). Most courts across the United States agree that there must be some evidence to show a diminished capacity to form the required intent of the crime. See *United States v. Jackson*, 213 F.3d 1269, 1291 (10th Cir. 2000) A defendant is not guilty of a specific intent offense if voluntary intoxication prevented the defendant from forming the specific mens rea required for that crime. *Id*

In Kansas a defendant is entitled to a voluntary intoxication instruction if there is evidence supporting such a defense. See *State v. Betancourt*, 299 Kan. 131, 141 322 P.3d 353 (2014) Unless the State or the defendant presents sufficient evidence showing intoxication to the extent of impairing the ability to form the requisite intent, a court is not required to instruct the jury on the defense of voluntary intoxication. *Id* at 141.

I The Kansas Supreme Court Ruling Against Craig is Contrary to the Due Process Clause and Craigs Right to Present a Defense

It is this courts view that the *Due Process Clause* requires the admission of all relevant evidence from the statement in *Chambers v. Mississippi*, 410 U.S. 284, 294, 35 L. Ed. 2d 297, 93 S. Ct. 1038 (1973), It is Craigs right that the right of an accused in a criminal trial to *Due Process* is, in essence, the right to a fair opportunity to defend against

the State's accusations. The *Due Process Clause* requires proof beyond a reasonable doubt of every fact necessary to constitute the charged crime, *In re Winship*, 397 U.S. 358, 364, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970) This Court recognized that the Sixth Amendment "grants to the accused personally the right to make his defense." *Faretta v. California*, 422 U.S. 806, 819 95 S. Ct. 2525, 45 L.Ed.2d 562 (1975), The Kansas Supreme Court denied Craigs appeal when there was evidence, not from Craig, but from the States own witnesses to show diminished capacity to form the required intent to commit murder.

In its opinion the Kansas Supreme Court identified witness statements that Craig was intoxicated. First, Gabrielle Williams, (Williams) the alleged mastermind of the robbery and killing *Craig* 462 P.3d at 175 testified that everyone was smoking marijuana and drinking alcohol, and when she was in the bathroom with Craig just before the shooting, he was "mumbling to himself." *Id* at 180. However, the Kansas Courts then make a determination, without any additional facts about the amount of marijuana and alcohol was in Craigs system. *Id* Ms. Williams testified that everyone was "high" *Id*

Second, Jeremiah Warren testified to Craigs impairment follows:

"Pretty drunk. He was sitting down." Counsel then asked "do you mean that he was so intoxicated he couldn't stand up?" Warren responded "he was on the bed laying down with his eyes closed. I had to nudge him a little bit to get up. So, I don't know if he was just tired and drunk at the same time, or if he was just that drunk." *Id* at 181

The Seventh Circuit had held that:

A bald statement that the defendant had been drinking or was drunk is insufficient -- insufficient not because it falls short of the quantum of evidence necessary, but because it is not evidence of the right thing. In order to merit an intoxication instruction . . . the defendant must point to some evidence of mental impairment due to the consumption of intoxicants sufficient to negate the existence of the [specific] intent[.]" (quotation and citation omitted). *United States v. Boyles*, 57 F.3d 535, 542 (7th Cir. 1995)

Under Kansas law the fact of intoxication "may be taken into consideration" see *K.S.A. 2019 Supp. 21-5205 (b)*

In this case you have independant corroborating witnesses testifying that Craig was impaired, to the point that one witness testified that he was more or less passed out. The "mumbling" is another sign of a persons inability to properly function ones motor skills. Some of the eyewitness evidence contradicts the States version of the events, in either case, It is up to the jury whoes version of events to believe. The jury also had for its consideration second degree murder, which is a lesser included offense of 1st degree Murder. Craig was entitled to a jury instruction of voluntary intoxication, with a jury instruction of intoxication, there would be evidence of reasonable doubt as to Craings "intent" which is a element of the crime and would be contrary to this courts holding in *Winship* and its prior holdings under the Sixth Amendment. Accordingly, this court should reverse Craigs conviction and remand for a new trial.

CONCLUSION

For the foregoing reasons, Petitioner, Joseph J. Craig, respectfully prays that a *Writ of Certiorari* be issued to review the judgement of the Kansas Supreme Court.

Respectfully Submitted,

Joseph J. Craig # 115909
Ellsworth Correctional Facility
PO Box , 107
Ellsworth, Kansas 67439
Pro Se