

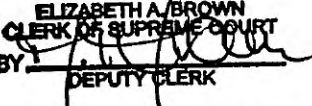
IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS EDWARD DIREAUX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86325

FILED

AUG 14 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of residential burglary. Eighth Judicial District Court, Clark County; Jasmin D. Lilly-Spells, Judge.

The State charged appellant Thomas Direaux with one count of home invasion and one count of residential burglary after he allegedly broke into Leticia Sanchez's house. Direaux pleaded not guilty and the case proceeded to trial. *Id.* Witnesses testified at trial that in the middle of the day, Direaux knocked loudly on Sanchez's side door and begged to be let in because someone was trying to kill him. Despite Sanchez telling him he could not come in, Direaux kicked the locked door open and entered the house. Direaux followed Sanchez through the laundry room into the kitchen. At that point, Sanchez and her son left the house and called the police. Direaux also called the police and expressed concern that the officers who had arrived were not law enforcement. Direaux surrendered roughly 20 minutes later. An officer located Sanchez's ID in Direaux's pocket and four of Sanchez's \$100 bills on or around Direaux in the police vehicle.

At trial, Direaux requested a mistake-of-fact jury instruction to aid the jury in judging Direaux's intent "with regard to the necessity defense," which applied only to the home invasion count. In denying the request, the district court stated that "[t]he mistake of fact [defense] could

only go to the burglary because that's a specific intent crime, not to the home invasion, which is a general intent crime here." Direaux did not object or request the instruction be given with respect to the burglary charge. Following trial, the jury acquitted Direaux of home invasion and convicted him of residential burglary.

The district court did not abuse its discretion in denying Direaux's request for a mistake-of-fact jury instruction

Direaux argues that the district court should have given the mistake-of-fact jury instruction. While a defendant has a right to have the jury instructed on their theory of the case as disclosed by the evidence, this right does not include instructions that are misleading, inaccurate, or duplicative. *Crawford v. State*, 121 Nev. 744, 751, 754, 121 P.3d 582, 586, 589 (2005). When the mistake-of-fact defense applies, it excepts from criminal liability "[p]ersons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent, where a specific intent is required to constitute the offense.". NRS 194.010(5). The defense only applies to specific intent crimes because it can operate to negate the mens rea element of such a crime. *Jenkins v. State*, 110 Nev. 865, 868, 877 P.2d 1063, 1065 (1994).

After the district court explained its reason for declining to give the mistake-of-fact instruction, Direaux failed to raise a specific objection or request that the court provide the instruction for the burglary charge. Thus, our review is precluded unless the failure to give the instruction was patently prejudicial. *See McKenna v. State*, 114 Nev. 1044, 1052, 968 P.2d 739, 745 (1998) ("Failure to object to or request a jury instruction precludes appellate review, unless the error is patently prejudicial and requires the court to act sua sponte to protect the defendant's right to a fair trial."). Direaux's alleged mistake of fact was that he entered the house to gain

shelter because he believed that someone was trying to kill him. The specific intent the State sought to prove was that Direaux unlawfully entered or remained in Sanchez’s house with the intent to commit larceny. NRS 205.060(1)(a) (A person is guilty of residential burglary when they unlawfully enter or remain in any “[d]welling with the intent to commit grand or petit larceny . . . or to obtain money or property by false pretenses”). While Direaux’s mistake of fact could provide the basis for his entry into the house—to escape someone trying to follow him—it does not foreclose specifically the possibility that he entered or remained in the house with the intent to commit larceny. Because the mistake-of-fact instruction is appropriate where the mistake itself disproves the required criminal intent, the district court properly determined the instruction did not apply here, and no patent prejudice resulted.

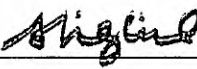
The State presented sufficient evidence to sustain a conviction for residential burglary

Direaux argues that the State failed to present sufficient evidence to prove the intent element of residential burglary. Evidence is sufficient to support a criminal conviction if “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt” when the evidence is viewed in a light most favorable to the prosecution. *Belcher v. State*, 136 Nev. 261, 275, 464 P.3d 1013, 1029 (2020) (quoting *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992)). To satisfy the specific intent element of residential burglary, the State had to prove that Direaux had the intent to commit larceny when he unlawfully entered or remained in Sanchez’s home. NRS 205.060.

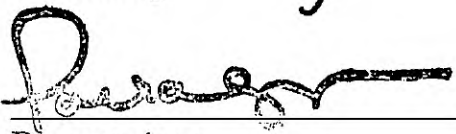
The State presented evidence that Direaux forcibly entered Sanchez’s house without her permission through her side door and followed Sanchez without her permission through the laundry room into the kitchen.

No evidence was presented that Direaux attempted to barricade himself in the house or even that he ensured the doors were shut behind him. Instead, the evidence showed that Direaux proceeded from the kitchen into Sanchez's bedroom where he dumped out the contents of Sanchez's purse and took possession of her ID and four \$100 bills. Because a rational trier of fact could have found that Direaux either unlawfully entered Sanchez's house or unlawfully remained in her house with the intent to commit larceny on these facts, we reject Direaux's argument that the State failed to prove intent.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Stiglich


_____, J.
Pickering


_____, J.
Parraguirre

cc: Law Office of Rachael E. Stewart
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹To the extent Direaux raises other arguments, we have fully considered them and conclude they do not warrant a different outcome.