



voluntary intoxication, diminished capacity and automatism



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Goals:

- Get the desired jury instruction
 - Preserve the record for appellate review
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State of the law:

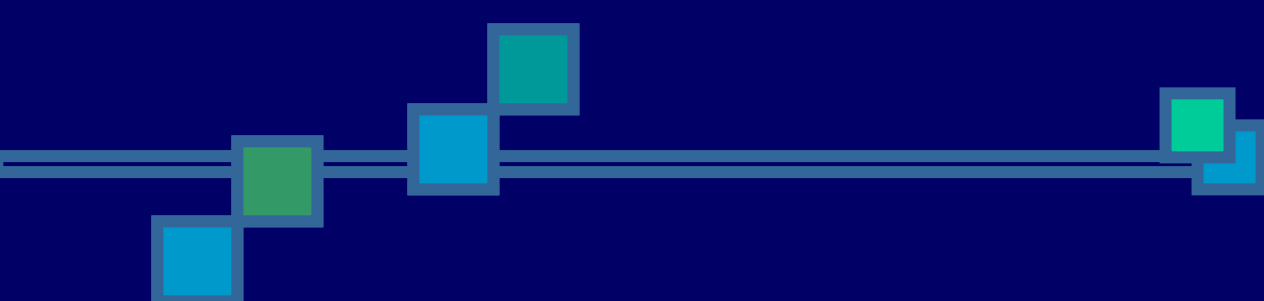

Voluntary intoxication

To get the instruction, defendant must produce substantial evidence that defendant was so intoxicated that he was utterly incapable of forming specific intent.

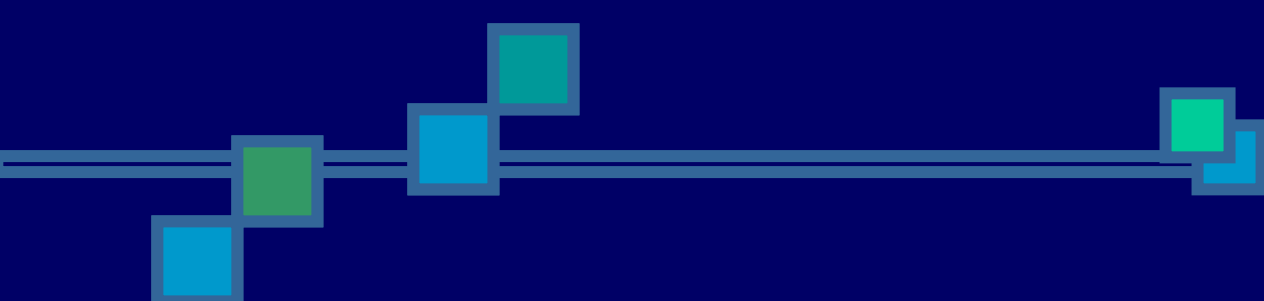
State v. Mash, 323 N.C. 339, 372 S.E.2d 532 (1988).

E.g., instruction available for P&D murder, but not murder by lying in wait, because only available for specific intent crimes.


State v. Baldwin, 330 N.C. 446, 412 S.E.2d 31 (1992.)

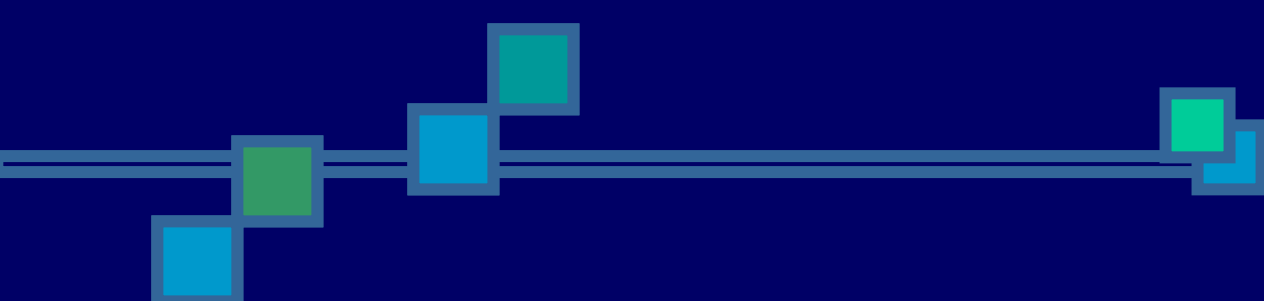

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- Error for the court to instruct the jury that it must find the defendant was “utterly incapable” of forming specific intent.
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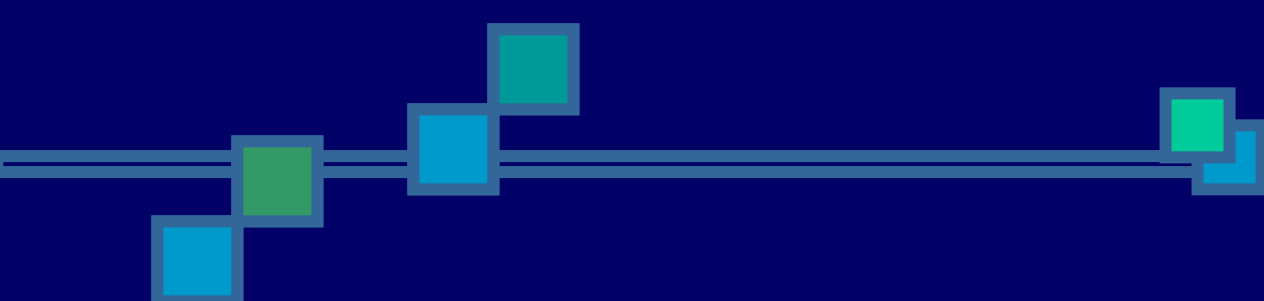

State v. Mash, 323 N.C. 339, 372 S.E.2d 532 (1988), **State v. McQueen**, 324 N.C. 118, 377 S.E.2d 38 (1989).



PJI 305.10, 305.11- voluntary intoxication

- If, considering evidence of voluntary intoxication, you have a reasonable doubt as to whether the defendant formulated the specific intent required [for the crime], you will return a verdict of not guilty of [that crime].
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- Evidence of “mere intoxication” is not sufficient to get the instruction; must show “utterly incapable”
 - Not a legal defense, in that it does not excuse the crime, but a question of fact for the jury *State v. Gerald*, 304 N.C. 511 (1981)
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- depends not on amount of alcohol consumed, but on its effect on defendant's ability to form specific intent to kill after premeditation and deliberation
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State v. Cagle, 346 N.C. 497 (1997)

Sufficient evidence for voluntary intoxication instruction:

- *State v. Keitt*, 153 N.C. App. 671 (2002) New trial ordered in first-degree burglary case for failing to instruct on voluntary intoxication. Witness testified that, 5 hours before the burglary, Δ was so drunk he couldn't ride a bike or walk on his own; brother testified that when W brought Δ home, he could barely stand on his own; V testified she smelled alcohol on Δ and Δ had trouble navigating when he was trying to leave; LEO smelled alcohol on Δ next morning when he went to arrest him.

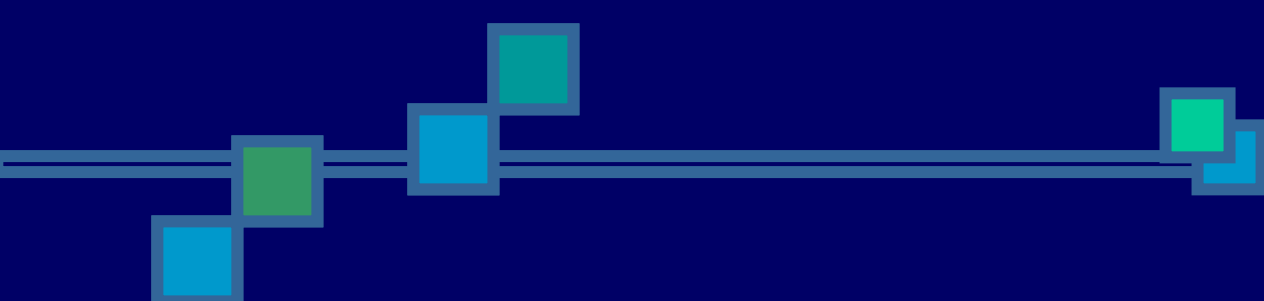
- *State v. Golden*, 143 N.C. App. 426 (2001) felony murder by RWDW; error not to instruct on voluntary intoxication as to the RWDW where substantial evidence indicated that defendant was intoxicated from consuming a number of beers, a 1/2 of a fifth of gin and two rocks of crack cocaine in roughly four hours, couldn't remember the details of the killing or what he did afterwards; expert in fields of addiction medicine and psychiatry testified that this amount of alcohol, combined with defendant's past alcohol abuse, drug use and low I.Q. would impair defendant's ability to form the specific intent to rob

State v. Mash, 323 N.C. 339 (1988)

Witnesses described defendant as “definitely drunk” and “pretty high” by 9:30 p.m. He swerved while driving his automobile to obtain more beer. Δ left by himself for thirty or forty minutes. Upon returning, he appeared “changed all the way around” and “drunker, wilder and out of control.” Δ’s eyes were dilated, his complexion had changed, he was sweating and had difficulty speaking or walking. Unprovoked, he inexplicably and viciously assaulted a girlfriend and several strangers. The fatal assault was likewise unprovoked and inexplicable.

Evidence not sufficient for
voluntary intoxication instruction:

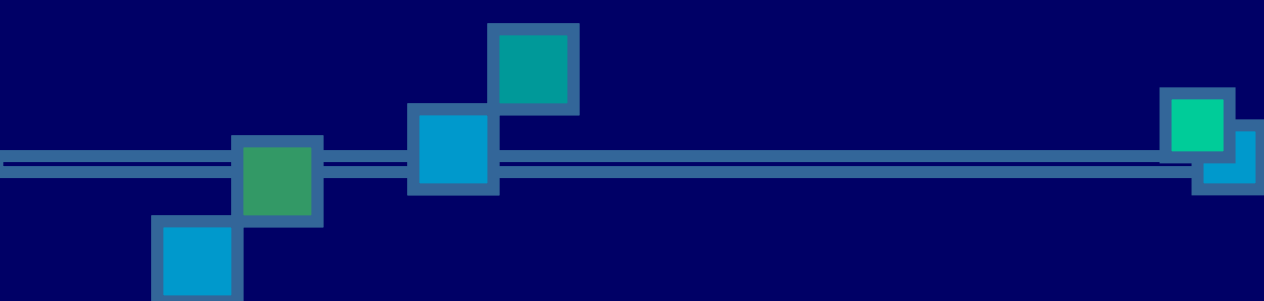

- *State v. Long*, Δ “substantially impaired” when found, but no evidence of his condition at time of the crime
- *State v. Muhammad*, Δ drank straight tequila and 3-4 beers over 1 ½ hours, but could drive and talk with people
- *State v. Yang*, Δ took ecstasy the night before and theory was self-defense
- *State v. Torres*, Δ had been drinking and taking drugs for hours, but said he was looking for someone to rob

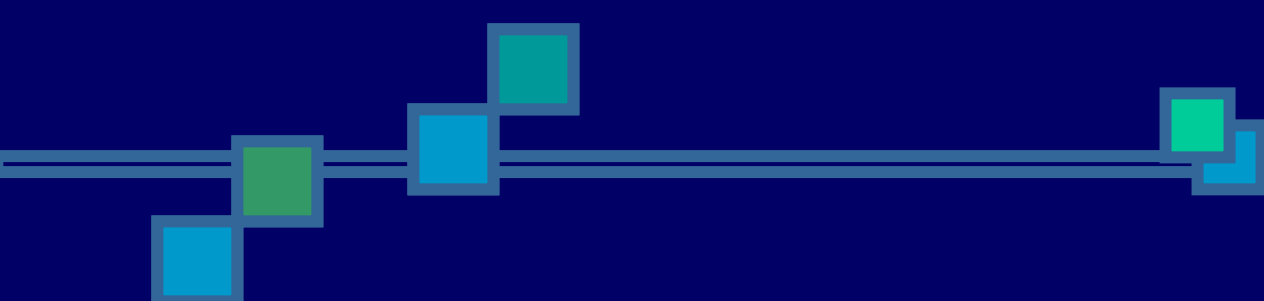


State of the law: Diminished capacity


- Get the instruction when “the evidence of defendant's mental condition is sufficient to cause a reasonable doubt in the mind of a rational trier of fact as to whether the defendant was capable of forming the specific intent to [commit the offense charged.]”

State v. Clark, 324 N.C. 146 (1989).

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- Burden of production is less rigorous than “utterly incapable” for voluntary intoxication. *State v. Clark*, 324 N.C. 146 (1989)
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PJI 305.10, 305.11- diminished capacity

- If, considering evidence of defendant's lack of mental capacity, you have a reasonable doubt as to whether he formulated the specific intent required for conviction of [the crime], you will return a verdict of not guilty of [the crime].
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N.C.P.I.--Crim. 305.11 VOLUNTARY INTOXICATION, LACK OF MENTAL CAPACITY--PREMEDITATED AND DELIBERATE FIRST DEGREE MURDER.

Replacement May 2003

Strong: *Homicide* §§ 8, 28

You may find there is evidence which tends to show that the defendant was [intoxicated] [drugged] [lacked mental capacity] at the time of the acts alleged in this case.

Generally, [voluntary intoxication] [a voluntary drugged condition] is not a legal excuse for crime.

However, if you find that the defendant [was intoxicated] [was drugged] [lacked mental capacity], you should consider whether this condition affected his ability to formulate the specific intent which is required for conviction of first degree murder.¹ In order for you to find the defendant guilty of first degree murder, you must find, beyond a reasonable doubt, that he killed the deceased with malice and in the execution of an actual, specific intent to kill, formed after premeditation and deliberation. If as a result of [intoxication] [a drugged condition] [lack of mental capacity] the defendant did not have the specific intent to kill the deceased, formed after premeditation and deliberation, he is not guilty of first degree murder.²

Therefore, I charge that if, upon considering the evidence with respect to the defendant's [intoxication] [drugged condition] [lack of mental capacity], you have a reasonable doubt as to whether the defendant formulated the specific intent required for conviction of first degree murder, you will not return a verdict of guilty of first degree murder.

FOOTNOTES


FOOTNOTE 1. If there is evidence of lack of mental capacity to premeditate or deliberate, see S. v. Shank, 322 N.C. 243, 250-251 (1988); S. v. Rose, 323 N.C. 455 (1988); and S. v. Weeks, 322 N.C. 152 (1988).

Evidence sufficient for diminished capacity instruction:

- *State v. Duncan*, IAC not to request instruction where he had drunk a pint of wine, 40 oz beer, had hx of hospitalization for “nerves”, took Rx for nerves; witnesses described strange behavior before and after shooting
- *State v. Williams*, 3 experts testified that he couldn’t form specific intent to kill



Evidence not sufficient:

- *State v. Lancaster*, evidence of beer and crack consumed, but expert testified only that Δ “could have” been impaired, but couldn’t testify about his ability to think
 - *State v. Garcia*, Δ testified he had taken Demerol and felt like he was in a fog
 - *State v. Staten*, Δ gave detailed statement about crime
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- Voluntary intoxication

Produce substantial evidence that defendant was so intoxicated that he was utterly incapable of forming specific intent.

- Diminished capacity


Produce sufficient evidence to cause a reasonable doubt in the mind of a rational trier of fact as to whether the defendant was capable of forming specific intent.

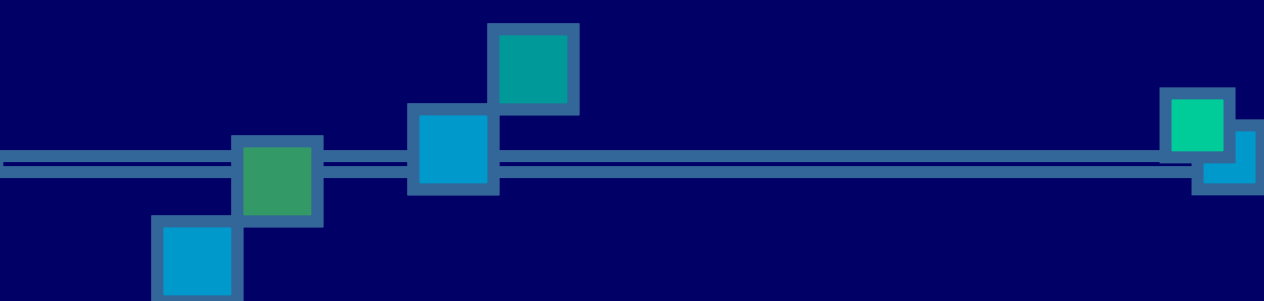



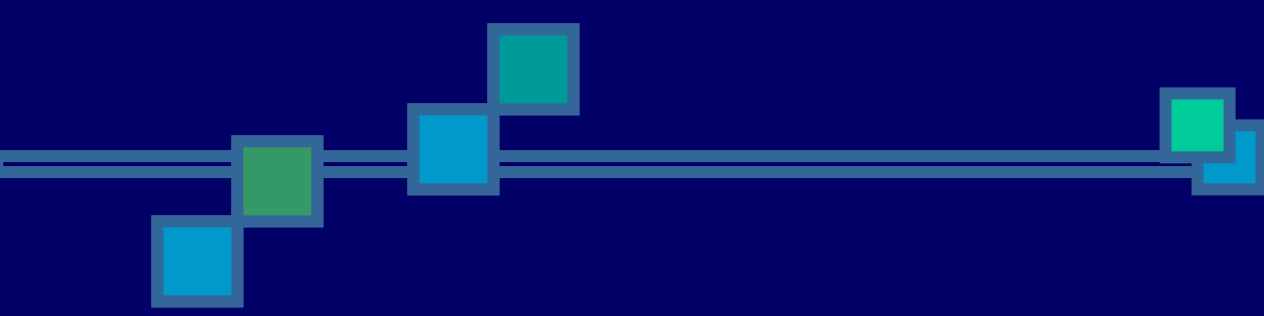
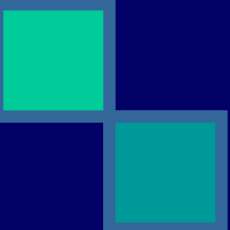



State of the law:

Unconsciousness/automatism

- A complete, affirmative defense
 - Burden on defendant to establish the defense unless it arises out of the state's case
 - Burden is to "the satisfaction of the jury"
State v. Caddell, 297 N.C. 266 (1975)
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- Defendants are entitled to an instruction where the evidence shows either he acted while asleep (*Bush*) or no direct evidence that the defendant was awake (*Connell*)
 - But sleep not required; evidence that defendant was in a “disassociative” state sufficient for instruction (*Fields*)
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- Somnambulism
 - Delirium of fever
 - Epilepsy
 - Blow to the head
 - Involuntary intoxication from drugs or alcohol
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State v. Mercer, 275 N.C. 108 (1969)

Evidence sufficient for unconsciousness instruction:


- *State v. Fields*, Expert testimony that Δ was unable to control his actions, that he had PTSD and was in a disassociative state; family testified that he was “in his own world”
- *State v. Snyder*, 3 cts 2nd degree murder; Δ drinking, got in a fight, hit his head on the door, drove, killed 3 people; BAC .32 at hospital; evidence of unconsciousness improperly excluded
- *State v. Bush*, child sex case; evidence that defendant was asleep during the incident
- *State v. Connell*, indecent liberties; no direct evidence that Δ was awake

Evidence not sufficient for unconsciousness instruction:

- *State v. McLean*, unconsciousness based on voluntary intoxication
- *State v. Andrews*, doctor's testimony of serotonergic syndrome not enough to show he acted unconsciously
- *State v. Boyd*, Δ testified that he had trouble recalling events, but gave detailed statement to LEOs




Getting an instruction and preserving your record:

- Client interview, records collection, investigation
 - Discovery, interviews
 - Expert testimony
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CLIENT interview:

- Head injuries (ever or at time of event)
 - Mental health treatment
 - Medical conditions, treatment
 - Recollection of events
 - Witnesses to client's conduct before, during and after event
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Records collection:

- Medical records
 - Mental health records
 - School records
 - Court records (other case files, involuntary commitment proceedings)
- 




Investigation:

- Witnesses to client's conduct before, during, and after event
 - Evidence of client's behavior on other occasions
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Expert testimony:

- How does this substance/condition affect the brain/nervous system?
 - How does it affect this defendant's brain/nervous system?
 - Was this happening at the time of the event?
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A Lisa Miles Production

