

**INTOXICATION PATHOLOGICAL OR NOT SELF-INDUCED
(N.J.S.A. 2C:2-8d)**

There is evidence in this case concerning the intoxication of the defendant.

Intoxication means a disturbance of mental or physical capacities resulting from the introduction of substances into the body. [(N.J.S.A. 2C:2-8e (1))].

Our law provides that intoxication which (1) is not self-induced or (2) is pathological is an affirmative defense if by reason of such intoxication the actor at the time of his/her conduct did not know the nature and quality of the act he/she was doing, or if he/she did know it, then he/she did not know what he/she was doing was wrong.

The defendant has the burden of proving the affirmative defense of intoxication by clear and convincing evidence.

Intoxication is self-induced when it is:

.....caused by substances which the actor knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know (unless he introduces them pursuant to medical advice or under such circumstances as would afford a defense to a charge of crime). (charge if appropriate) N.J.S.A. 2C:2-8e (2)

Pathological intoxication means:

intoxication grossly excessive in degree, given the amount of the intoxicant, to which the actor does not know he is susceptible. N.J.S.A. 2C:2-8e(3) "Pathological intoxication is intended to cover the situation where an intoxicating substance is knowingly taken into the body and due to bodily abnormality, extreme and unusual intoxication results.¹

Clear and convincing evidence is that which produces in your mind a firm belief or conviction as to the truth of the facts sought to be proven and is evidence so clear, direct, weighty and convincing as to enable you to come to a clear conviction, without hesitancy, of the truth of the particular facts in issue.²

Therefore, to establish intoxication as a defense to the criminal charge in this case, the defendant must prove by clear and convincing evidence that he/she was intoxicated so as not to know the nature of and quality of what he/she was doing, or if he/she did know it, that he/she did

¹ Commentary, Tent. Draft MPC No. 4 p. 69.

² In re. Broadwalk, 180 N.J. Super 324 (App. Div. 1981).

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not know what he was doing was wrong, [and that the intoxication was not self-induced] [and that the intoxication was pathological] [Charge appropriate phrase].

Keep in mind, however, that although the burden rests upon the defendant to establish the defense of intoxication by clear and convincing evidence, the burden of proving the defendant guilty of the offense charged here, beyond a reasonable doubt, is always on the State, and that burden never shifts.

If you find that the defendant has sustained his/her burden of proof by clear and convincing evidence, then he/she has established the defense of intoxication and your verdict must be not guilty.

If, however, you find that the State has met its burden and has proven, beyond a reasonable doubt, every element of the offense charged and that the defendant has not sustained his/her burden of proving the defense of intoxication by clear and convincing evidence, then your verdict must be guilty.