Approved 2-27-89

EFFECT OF INTOXICATION ON JURY'S CONSIDERATION OF LESSER OFFENSES INVOLVING RECKLESSNESS[1]
(2C: 2-8b)

I have already explained that evidence that the defendant ingested [intoxicant(s)] may be considered by you in determining whether the State has proven beyond a reasonable doubt that the defendant acted purposely or knowingly with respect to the offense (s) of offense(s) requiring purpose or knowledge to which intoxication defense applies).

I have also explained that if you find the State has failed to prove beyond a reasonable doubt that the defendant acted with purpose or knowledge, you must go on to consider whether the State has proven beyond a reasonable doubt the elements of (lesser included offense(s) requiring reckless mental state).

In determining whether the State has proven that the defendant acted recklessly,[2] you are not to consider whether the defendant's use of [intoxicant(s)] prevented (him/her) from consciously disregarding a substantial and unjustifiable risk. You are not to consider whether the use of [intoxicant(s)] made the defendant unaware of a risk of which (he/she) would have been aware if (he/she) had been sober. In other words, the State does not have to prove that the defendant was, in fact, aware of the risk. Rather the State need only prove that the defendant would have been aware of the risk if (he/she) has been sober at the time of the offense. This means that if you find that the defendant was intoxicated, you are not to consider (his/her) actual intoxicated mental state in determining whether (he/she) acted recklessly. Instead, you are to view defendant's conduct as if (he/she) had been sober, and determine whether (he/she) would have been aware of a risk of such a nature and degree that, considering the nature and purpose of the defendant's conduct and the circumstances that would have been known to (him/her) had

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[1] The language of this charge is taken directly from State v. Warren, 104 N.J. 571, 577, 578 (1986).

Placement of this charge will depend on the facts of the case. For example, in a murder case, if aggravated manslaughter and manslaughter are appropriate lesser included offenses irrespective of the introduction of intoxication evidence, the basic 2C:2-8a self-induced intoxication charge might appropriately be placed after the charges on murder, aggravated manslaughter and manslaughter, with this charge placed directly after the 2C:2-8a self-induced charge. If, however, the sole basis for submitting the lesser included offenses is the evidence of intoxication, the 2C:2-8a self-induced intoxication charge should be placed after the murder charge but before the charges on aggravated manslaughter and manslaughter and this charge should be placed after the aggravated manslaughter and manslaughter instructions.

[2] It is presumed that recklessness has already been explained to the jury.

(he/she) been sober, the disregarding of such risk involved a gross deviation from the standard of conduct that a reasonable person would observe in the defendant's situation.[3]

[3] See N.J.S.A. 2C:2-2b(3).