In Vino Veritas: An Examination of New Jersey’s Intoxication Defense

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I. INTRODUCTION

For almost 475 years, the intoxication defense has been the subject of judicial interpretation. The defense juxtaposes an individual’s desire to avoid, or mitigate, punishment for the unintended consequences of

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their actions with the responsibility to refrain from being under the influence when their behavior poses harm or injures another.²

The intoxication defense in New Jersey was originally based upon British common law.³ As this former colony began to change, so did its view on intoxication as a defense against criminal liability. Hundreds of years later, this defense has been incorporated into the State’s criminal laws.

The New Jersey Law Revision Commission’s ("Commission" or "NJLRC") statutory mandate is to "promote and encourage the clarification and simplification of the law of New Jersey and its better adaptation to present social needs, secure the better administration of justice and carry on scholarly legal research and work."⁴ The Commission considers "the general and permanent statutory law of this State and the judicial decisions construing it" to discover "defects and anachronisms" and prepares and submits bills to the Legislature designed to remedy defects, reconcile conflicts, clarify confusing language, and eliminate redundancies.⁵ The Commission engages in "a continuous revision of the general and permanent" statutes to maintain them "in [a] revised, consolidated and simplified form."⁶

In 2018, the Commission was invited to work as a Collaborating Organization with individuals affiliated with the Birmingham Law School, University of Birmingham, UK. Commission Staff periodically reviewed materials produced by the Birmingham working group and facilitated contact with individuals and organizations with relevant subject-matter knowledge and experience.⁷ In the Fall of 2019, Dr. John J. Child⁸ invited the Commission to discuss New Jersey’s law on the

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⁴ N.J. STAT. ANN. § 1:12A-8.
⁵ Id.
⁶ Id.
⁷ N.J. STAT. ANN. § 1:12A-8 (providing that "[t]he commission shall... carry on scholarly research and work.").
⁸ A special thanks to Dr. John J. Child for inviting the Commission to participate in this conference. Professor Child is the Senior Lecturer in Criminal Law, Co-Director of Criminal Law Reform Now Network, Co-Director (Law) of the Centre for Crime, Justice and Policing, Deputy Director of Postgraduate Research at the Birmingham Law School, United Kingdom. Professor Child specializes in criminal law, doctrine and theory, and the relationship between criminal law and neuroscience.
intoxication defense during a conference held at the Birmingham Law School.\(^9\)

Understanding New Jersey's present legal framework concerning the intoxication defense necessitates exploring its historical evolution. The examination of the common law helps trace this defense's development while providing an update regarding the current state of the law. This discussion focuses on the historical background of the ancient defense of intoxication, its evolution, and its relevance in contemporary society.

II. HISTORY OF THE INTOXICATION DEFENSE\(^10\)

A. The Common Law and Constitutions

"At common law, intoxication did not excuse or palliate crime."\(^11\)

The earliest pronouncement of this principle is found in *Reniger v. Fogossa*,\(^12\) which reads:

But where a man breaks the words of the law by involuntary ignorance, there he shall not be excused. As if a person that is drunk kills another, this shall be felony, and he shall be hanged for it, and yet he did it through ignorance, for when he was drunk he had no understanding nor memory; but inasmuch as that ignorance was occasioned by his own act and folly, and he might have avoided it, he shall not be privileged thereby. And Aristotle says, that such a man deserves double punishment, because he has doubly offended, viz. in being drunk to the evil example of others, and in committing the crime of homicide. And this act is said to be done ignoranter, for that he is the cause of his own ignorance: and so the diversity appears

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\(^9\) E-mail from Prof. John H. Child, Professor of Crim. L., Univ. of Birmingham (U.K.) to Laura Tharney, Exec. Dir., N.J. Law Rev. Comm’n (Sept. 16, 2019, 10:41 A.M. EST) (on file with the NJLRC). The conference was held at the University of Birmingham, Law School in England, September 15–16, 2023, and involved presentations on issues related to prior fault by academics working in law, philosophy, neuroscience from several different jurisdictions, and the difficulties of law reform.

\(^10\) Unless otherwise indicated, the term "intoxication" as used in this writing refers to "voluntary" or "self-induced" intoxication. *N.J. Stat. Ann.* § 2C:2-8(e)(2) defines "self-induced intoxication" as "intoxication 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..." *Cf.* *N.J. Stat. Ann.* § 2C:2-8(e)(3) defining "pathological intoxication" as "intoxication grossly excessive in degree, given the amount of the intoxicant, to which the actor does not know he is susceptible."


\(^12\) *Reniger v. Fogoosa*, (1551) 1 Plow. 1, 19, 75 Eng. Rep. 1, 31 (Exch. Ch.).
between a thing done ex ignorantia, and ignoranter. (citations omitted).13

The court’s refusal to permit intoxication as a defense may have been grounded in either “the Enlightenment assumption that people are ‘rational agents motivated by self-interest’...” or “a legal system that restricted a defendant’s ability to call witnesses and present evidence.”14 Regardless, an unwillingness to embrace this defense “remained the unwritten law at the time New Jersey attained statehood.”15

The common law of the colonies followed the English common law regarding intoxication. In 1734, the common law provided that, “having been in drink is not any reason to relieve a man against any deed or agreement gained from him in that situation, for that were to encourage drunkenness...”16 The court noted that “[a]lthough he who is drunk is for the time non compos mentis, yet his drunkenness does not extenuate his offence, nor turn to his avail; but it is a great offence in itself, and therefore aggravates his offence, and doth not derogate from the act which he did at the time.”17 This reasoning reflected the strict rule of the common law on the subject of intoxication.18

New Jersey’s legal framework drew heavily upon the common law of England.19 The English common law’s impact upon its former colony is noticeable in the New Jersey State Constitution of 1776. This Constitution provided that “the common law of England, as well as... the statute law, ... practiced in this colony, shall still remain in force, until they shall be altered by a future law of the legislature; such parts only excepted, as are repugnant to the rights and privileges contained in this charter...”20 The New Jersey Legislature also acknowledged the

13 State v. Stasio, 396 A.2d 1129, 1135 (N.J. 1979) (citing Reniger, 1 Plow. at 19); see RU Singh, History of the Defence of Drunkenness in English Criminal Law, 49 L.Q. Rev. 528, 530 (1933).
16 Crane v. Conklin, 1 N.J. Eq. 346, 356 (Ch. 1831) (citing Johnson v. Madlicott (1734), 3 P.Wms. 130 (KB)).
17 Id.
18 See id.
20 N.J. CONST. § XXII (1776); Young, 390 A.2d at 558 (citing Collopy v. Newark Eye and Ear Infirmary, 141 A.2d 276, 287–288 (N.J. 1958) (Heher, J., dissenting) (“The common law of England has a constitutional basis in our jurisdiction.”); see N.J. CONST., art. X, par. 1 (1844); N.J. CONST., art. XI, § I, par. 3 (1947) (incorporating the common law, by reference, into subsequent versions of the State’s Constitution); see also Young, 390 A.2d at 557–58; Stasio, 396 A.2d at 1135.
significance of the common law on the state’s jurisprudence.\textsuperscript{21} In 1796, the Legislature stated that “all offenses of an indictable nature at common law that were not expressly provided for by statute are crimes.”\textsuperscript{22}

By 1847, Sir Matthew Hale’s treatise on the criminal law, \textit{Pleas of the Crown}, had been published in America.\textsuperscript{23} Regarding intoxication, the treatise provided that “[d]runkenness... can never be received as a ground to excuse or palliate an offense: this is not merely the opinion of a speculative philosopher, the argument of counsel, or the obiter dictum of a single judge, but is a sound and long established maxim of judicial policy....”\textsuperscript{24} In the final years of the nineteenth century, the New Jersey Judiciary’s perspective toward intoxication became apparent.

\textbf{B. A Matter of Intent and Degree}

By the late 1800s, the intoxication defense was firmly established in New Jersey’s common law.\textsuperscript{25} In the Fall of 1892, Wesley Warner (“defendant”) had been drinking and took to lying in wait for his consort to return to her home.\textsuperscript{26} Upon seeing her, Mr. Warner rose from the ground, struck, and killed her with a knife.\textsuperscript{27}

At trial, the jury was instructed regarding first-degree murder and the impact of intoxication on such a charge. The jury was instructed that “[i]f the defendant was mentally capable of conceiving a design to take the life of the woman... and he purposely inflicted the fatal blow, then he was guilty of murder in the first degree.”\textsuperscript{28} As to intoxication, the court advised the jury that if the defendant “acted, in striking the fatal blow, not from design, but from... sudden and motiveless... drunken-violence, then he is not guilty of murder in the first degree, but guilty of

\textsuperscript{21} Stasio, 396 A.2d at 1135.
\textsuperscript{23} Ingle, supra note 14, at 615.
\textsuperscript{24} See id. (quoting 1 MATTHEW HALE, PLEAS OF THE CROWN 32 n.33 (1847)).
\textsuperscript{25} See Burroughs v. Richman, 13 N.J.L. 233, 238 (1832) (cautioning against the relaxation of the rule regarding intoxication “beyond the limit of complete and total drunkenness” for fear the exception would become a “prolific source of frauds” and questioning that intoxication is “no excuse from the consequences of crime; why should it be against those acts affecting property?”).
\textsuperscript{26} Warner v. State, 29 A. 505, 505 (N.J. 1894).
\textsuperscript{27} Id.
\textsuperscript{28} Id.
murder in the second degree." The jury convicted the defendant of murder in the first degree.  

The defendant appealed his conviction. He argued “that the jury should [have been] instructed that a killing accomplished with the design to take life... could be reduced to murder in the second degree by the intervention of the partial intoxication of the offender.”

The court disagreed and opined that “drunkenness is no excuse for crime.” The court acknowledged that in states that differentiated murder into degrees, intoxication was permitted to modify the degree of the crime where “actual, specific malice—of an actual intent to take [a] life...” was an essential element of first degree murder. In the absence of such intent, there was no crime to that degree. The court reasoned that this “exceptional immunity” was limited to crimes that required “specific, actual intent.” The court concluded that “[w]hen the degree of intoxication is such as to render the person incapable of entertaining such intent, it is an effective defense. If it falls short of this, it is worthless.” In affirming the defendant’s conviction, the court confirmed that voluntary drunkenness would not “be accorded an efficacy as a shield from crime which is denied to the misfortune of congenital or inherited weaknesses.”

In 1897, New Jersey’s common law recognized that an individual’s mental capacity could be affected by more than just alcohol. In Wilson v. State, the defendant confessed to killing his victim by striking her several times in the head with an ax. At trial, the defendant contended that he had been drinking during the five days prior to the incident.

29 Id.; see State v. Lax, 59 A. 18, 19 (N.J. 1904) (holding that defendant is entitled to have a jury consider certain explanations – i.e., possession of stolen goods; evidence of alibi; good character to show the improbability of guilt; and drunkenness, when introduced to affect the degree of homicide).
31 Id.
32 Id. at 506.
33 Id. at 506–07.
34 Id. at 506 (citing State v. Johnson, 41 Conn. 584 (1874); Roberts v. People, 19 Mich. 401 (1870); Pigman v. State, 1846 WL 70 (Ohio 1846); Shannahan v. Commonwealth, 71 Ky. 463 (1871); Jones v. Com., 75 Pa. St. 403 [full citation unavailable]; Com. v. Dorsey, 103 Mass. 412 (1869).
35 Id.
36 Warner, 29 A. at 506.
37 Id.
38 Id. at 507.
40 Id. at 175.
41 Id. at 176.
The defendant was convicted of murder in the first degree and sentenced to death. He appealed his conviction and sentence.

The court noted “[t]here is no rule of the English common law more firmly settled than that voluntary intoxication does not excuse or palliate crime.” The court acknowledged that drunkenness would be entitled to weight under very limited circumstances, but would not be an excuse for crime. If premeditation and deliberation formed the elements of the crime, and “by reason of drunkenness or any other cause it appears that the prisoner’s mental state [was] such that he [was] incapable of deliberation and premeditation, then the crime has not been committed” because the State will be unable to prove each element of the offense.

The court maintained that evidence of intoxication was “a mere circumstance to be considered in determining whether premeditation was present or absent.” The court commented that “[s]o long as the mind of the criminal [was] capable of conceiving the purpose to kill, he must be held to the responsibility of one who is sober . . . .” Thus, even if “the evidence [was] sufficient to satisfy the jury that the intoxication of the accused . . . was so great as to prostrate his faculties, and render him incapable of forming the specific intent to kill . . . [he would] not be entitled to acquittal, but his offense will be murder in the second degree.”

In affirming the defendant’s conviction, the court cautioned that “no undue or dangerous immunity or license be given to crime by persons whose passions are inflamed by drink.”

C. Any Other Cause – Worry, Drugs, or Disease

In 1930, the New Jersey Court of Errors and Appeals examined the meaning of the phrase “or any other cause” in connection with the crime

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42 Id. at 171.
43 Id.
44 Wilson, 60 N.J.L. at 183 (noting that this maxim was too firmly established by a long series of cases both in England and in this country to now be a subject of controversy.).
45 Id. at 184.
46 Id. (emphasis added) (noting “when the character and extent of a crime is made by law to depend upon the state and condition of the defendant’s mind at the time, with reference to the act done, intoxication… is a proper subject of inquiry and consideration by the jury.”).
47 Id.
48 Id. at 185.
49 Id.; see also, e.g., State v. Mangano, 72 A. 366, 368 (N.J. 1909); State v. Mack, 90 A. 1120, 1121 (N.J. 1914); State v. Martin, 108 A. 306, 308 (N.J. 1919).
50 Wilson, 60 N.J.L. at 185; see also State v. Treficanto, 146 A. 313, 316 (1929).
of murder—whose essential elements included deliberation and premeditation.\textsuperscript{51}

On February 23, 1929, Henry Colin Campbell\textsuperscript{52} shot Mrs. Benjamin Mowry in the head, dumped her body on Springfield Avenue in Cranford, New Jersey, and set her on fire.\textsuperscript{53} At trial, the defendant’s sole defense was that he lacked premeditation and deliberation and therefore could only be found guilty of second degree murder.\textsuperscript{54} The jury found the defendant guilty of first degree murder and sentenced him to death.\textsuperscript{55} The defendant appealed his conviction and sentence.\textsuperscript{56}

On appeal, the defendant did not plead “prostration of mental faculties by reason of intoxication, but by reason of \textit{other matters}....” — primarily drugs.\textsuperscript{57} The court considered these “\textit{other causes}” using the Wilson court’s prostration of faculties analysis.\textsuperscript{58}

Similar to the effects of intoxication, the court opined that evidence of these “\textit{other causes}” must be “sufficient to satisfy the jury that the intoxication of the accused, at the time of the homicide, was so great as to prostrate [the defendant’s] faculties and render him incapable of forming the specific intent to kill.”\textsuperscript{59} In affirming the defendant’s conviction, the court cautioned that, like with alcohol, the prostration of faculties rule “should be applied with caution” in the context of drug-induced intoxication.\textsuperscript{60}

On July 24, 1957, LeRoy White entered a local grocery store with a revolver.\textsuperscript{61} When the owner resisted, White struck him in the head and killed him.\textsuperscript{62}

\textsuperscript{51} State v. Close, 148 A. 764 (1930).
\textsuperscript{52} Id. at 766 (defendant also known as Henry Campbell Close, Henry Colin Campbell, Richard M. Campbell, and Richard Morton Campbell).
\textsuperscript{53} Id. at 765.
\textsuperscript{54} Id.
\textsuperscript{55} Id. at 766.
\textsuperscript{56} Id. at 765.
\textsuperscript{57} State v. Close, 148 A. 764, 766, (N.J. 1930) (emphasis added) (“something for headaches ... codein tablets; ... medicine to make him sleep, [and] bromide and chloral.”).
\textsuperscript{58} Id. at 768 (noting that prostration of the mind considered where “liquor [had] been the exciting, or the deadening, cause” and considering whether \textit{worry, drugs, or disease} could prostrate the mind to negate elements of premeditation and deliberation) (emphasis added).
\textsuperscript{59} Id.
\textsuperscript{60} Id. at 332; see Wilson v. State, 60 N.J.L. 171, 185 (N.J. 1897) (stating that “this rule should be applied with caution, that no undue or dangerous immunity or license be given to crime by persons whose passions are inflamed by drink.”).
\textsuperscript{61} State v. White, 142 A.2d 65, 67 (N.J. 1958).
\textsuperscript{62} Id.
The court acknowledged that Mr. White had been dependent upon daily injections of heroin. Mr. White’s testimony “reveal[ed] a clear appreciation and recollection of the crime” in which he “recounted the planning and perpetration of the robbery and attack in detail.” After a trial, Mr. White was convicted of first degree murder and sentenced to death. On appeal, the New Jersey Supreme Court addressed the intersection of drug use and criminal activity.

The court characterized the case as one “in which drugs were voluntarily taken and in which defendant again had free choice ... to turn himself in for treatment at all times when by virtue of the taking of drugs his behavior was restored to ‘normal’ ...” The court pronounced that “[t]he general rule is that the voluntary use of drugs, like the voluntary use of alcohol, is not a defense to murder ... although in some situations it may be pertinent with respect to the degree of the crime by negating the existence of the specific intent to kill.” The court further opined “that voluntary intoxication is no defense to murder, but where the state’s thesis is that the killing was willful, deliberate and premeditated, intoxication which so prostrates the faculties as to prevent the formation of the specific intent to kill, will hold the crime to murder in the second degree.” The court noted that “[t]he same rule [has been] applied with respect to the influence of narcotics ...”

Ultimately, the defendant’s conviction was reversed and remanded for further proceedings.

63 Id.
64 Id. at 68; see State v. Roach, 197 A. 33, 34 (N.J. 1938) (holding that intoxication was not a defense to felony murder and cannot reduce the crime from first to second degree).
65 Id. at 67.
66 Id. at 68.
69 Id. at 69 (citing State v. Close, 148 A. 764, 768–69 (N.J. 1930)).
70 Id. at 77.
1. Drug-Induced Insanity

During the Summer of 1969, Gary Maik ("defendant") took LSD on two separate occasions and smoked hashish once a week.\(^\text{71}\) That fall, he was diagnosed as psychotic.\(^\text{72}\) The defendant and a college friend each purchased hunting knives and handcuffs and set off to track down "dope pushers."\(^\text{73}\) During their search, Mr. Maik stabbed his companion sixty-six times.\(^\text{74}\)

During the trial, evidence was adduced that the defendant had schizophrenia and that his voluntary use of LSD or hashish triggered the psychotic episode.\(^\text{75}\) The defendant was convicted of second-degree murder.\(^\text{76}\) The Appellate Division reversed the defendant's conviction and remanded the matter for a hearing.\(^\text{77}\) The New Jersey Supreme Court granted the State's petition for certification.\(^\text{78}\)

On appeal, the court considered whether the voluntary use of drugs supports a defense of insanity.\(^\text{79}\) Heretofore, a defendant would "not be relieved from criminal responsibility because he was under the influence of intoxicants or drugs voluntarily taken."\(^\text{80}\) Under such circumstances, "the intentional use of the stimulant or depressant" supplied the required element of "badness."\(^\text{81}\) The court, however, noted that the rule was not without its exceptions.

The Maik court recognized four exceptions to its general rule. The first exception was applicable "when drugs being taken for medication produce unexpected or bizarre results . . . [because] no public interest [would be] served by punishing the defendant since there is no likelihood of repetition."\(^\text{82}\) Next, "if intoxication so impairs a defendant's mental faculties that he does not possess the willfulness, deliberation and premeditation necessary to prove first degree murder, a homicide cannot be raised to first degree murder . . . [nor] reduce[d] below . . .

\(^{72}\) Id. at 719.
\(^{73}\) Id.
\(^{74}\) Id. at 717.
\(^{75}\) Id. at 719.
\(^{76}\) Id. at 717.
\(^{77}\) State v. Maik, 287 A.2d 715, 717 (N.J. 1972) (determining that the defendant should have been acquitted because he was insane at the time of the homicide).
\(^{78}\) Id.
\(^{79}\) Id. at 720.
\(^{80}\) Id. (emphasis added).
\(^{81}\) Id. at 721.
\(^{82}\) Id.
murder in the second degree.” Further, a felony homicide will be reduced to second degree murder when intoxication precludes formation of the underlying felonious intent. The final exception provided that the defense of insanity was applicable when the individual voluntarily consumed an intoxicant or drug that led to a persistent state of insanity even after the effects of the intoxicant or drug had subsided.

Ultimately, the court determined that the defendant may have fallen into the fourth category—drug-induced insanity. The court therefore modified the judgment of the Appellate Division and ordered a new trial.

2. The Intoxication Defense and Non-Homicide Offenses

Thomas Stasio ("defendant") arrived at a bar to play billiards and drink alcohol one fall afternoon in 1975. Mr. Stasio was arrested after he unsuccessfully attempted to rob the bar.


Maik, 287 A.2d at 721 (reasoning that since voluntary intoxication does not eliminate responsibility for the felony, it could be contended that the defendant should remain liable for first degree felony murder but noting that considerations of fairness indicate that such a defendant should be treated the same as one charged with ordinary first degree homicide requiring premeditation).

85 Id. at 721 (determining that the mental condition was required to satisfy the M’Naghten test, and that the threat to further harm was vitiated "by securing the offender so long as the insanity persists.").

86 Id. at 719–20.

87 Id. at 720–21, 724 (noting that the "trial court charged the jury that if the [defendant’s] psychosis was triggered by the voluntary use of LSD or hashish, the defense of insanity could not stand; [and]… defendant would be guilty at least of murder in the second degree."); see Com. v. Campbell, 284 A.2d 798, 801 (Pa. 1971) (noting that in determining responsibility for a criminal act, "the overwhelming view… of jurisprudential thought in this Country… supports… the [proposition] that there should be no legal distinction between the voluntary use of drugs and the voluntary use of alcohol…" and finding voluntary ingestion of LSD, or similar drugs, does not constitute a complete legal defense and has the same legal effect as voluntary intoxication from alcohol) (citing State v. Trantino, 209 A.2d 117 (N.J. 1965) (voluntary consumption of Dexedrine and liquor cannot lead to an acquittal)); White, 142 A.2d at 68 (voluntary use of drugs not a defense to murder); 1 Francis Wharton, Criminal Law and Procedure (12th ed. 1957); Henry Weihofen, Mental Disorder as a Criminal Defense 124–29 (1954); 1 Francis Wharton & Moreton Stille, Medical Jurisprudence § 245 (4th ed. 1884).


89 Id. at 1130–31.
During an unrecorded, in-chambers conference, defense counsel informed the court that the defendant was going to rely upon the defense of intoxication.\textsuperscript{90} The court, in response, stated that it would charge the jury that "voluntary intoxication was not a defense to any act by the defendant in this matter."\textsuperscript{91} Based on the court's position, the defendant elected not to testify in his own defense and was forced to undertake a different defensive strategy.\textsuperscript{92} The jury found the defendant guilty.\textsuperscript{93} The defendant appealed his conviction and his suspended prison term.\textsuperscript{94}

The Appellate Division reversed the defendant's convictions and ordered a new trial.\textsuperscript{95} The court reasoned that "specific intent [was] an essential element of the crime of assault with intent to rob and that voluntary intoxication may be shown to negate the element of the offense."\textsuperscript{96} The New Jersey Supreme Court granted the State's petition for certification.\textsuperscript{97}

The court reaffirmed its general rule regarding voluntary intoxication as set forth in \textit{Maik}.\textsuperscript{98} The court opined that "voluntary intoxication will not excuse criminal conduct" unless one of the exceptions to the general rule was applicable.\textsuperscript{99} The court stated that the intoxication defense and each of its exceptions applied to \textit{all crimes} committed in the State of New Jersey.\textsuperscript{100} The court reasoned that "[t]he need to protect the public from the prospect of repeated injury and the public policy demanding that one who voluntarily subjects himself to intoxication should not be insulated from criminal responsibility are strongly supportive of this result."\textsuperscript{101}

The court opined that an analysis of voluntary intoxication in the context of specific and general intent crimes was "based on an

\textsuperscript{90} \textit{Id.} at 1131.
\textsuperscript{91} \textit{Id.}
\textsuperscript{92} \textit{Id.}
\textsuperscript{93} \textit{Id.} at 1130.
\textsuperscript{94} \textit{Stasio}, 396 A.2d at 1130.
\textsuperscript{95} \textit{Id.} at 1131.
\textsuperscript{96} \textit{Id.}
\textsuperscript{98} \textit{Stasio}, 396 A.2d at 1132.
\textsuperscript{99} \textit{Id.; see also State v. Atkins}, 396 A.2d 1122, 1125 (N.J. 1979) (reversing "the Appellate Division's holding that voluntary intoxication was available . . . to disprove a charge of breaking and entering with intent to steal" for the reasons stated in \textit{Stasio} (decided the same day)).
\textsuperscript{100} \textit{Stasio}, 396 A.2d at 1132.
\textsuperscript{101} \textit{Id.}
unworkable dichotomy [that] gave rise to inconsistencies and ignore[d] the [public] policy expressed in Maik.”

3. The Repudiation of Specific and General Intent

The New Jersey Judiciary has long considered the distinction between “specific intent” and “general intent” to be “quite elusive.”

The idea that voluntary intoxication might be a defense to a crime if it prevented the formation of a specific intent was found in the common law. The court was not, however, convinced that any of the State’s judicial opinions rested upon this distinction.

In an attempt to bring clarity to this distinction, the Stasio court examined scholarly works. The court noted that “neither common experience nor psychology knows any such actual phenomenon as ‘general intent’ that is distinguishable from ‘specific intent.’”

The court determined that the differentiation between specific and general intent leads to inconsistent outcomes by permitting intoxication to serve as a defense for specific intent crimes but not general intent crimes.

Following this logic to its illogical terminus, the court contemplated whether “the criminal liability of the grossly intoxicated offender [would then] depend upon the crime fortuitously committed while incapacitated.”

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102 Id. Compare State v. Del Vecchio, 361 A.2d 579, 5801 (N.J. Super. App. Div. 1976) (finding that when specific intent was an element of an offense, voluntary intoxication may negate the existence of that intent and an acquittal might be in order), with Atkins, 396 A.2d at 728 (Allcorn, J.A.D., dissenting) (surmising from Maik that that voluntary intoxication is not a defense to any criminal offense regardless of whether specific or general intent is an element of the offense).

103 Stasio, 386 A.2d at 1132 (citing Maik, 287 A.2d at 721).


105 Stasio, 386 A.2d at 1132.

106 Id. at 1132–33 (quoting J. HALL, GENERAL PRINCIPLES OF CRIMINAL LAW 142 (2d ed. 1960)); see also People v. Hood, 462 P.2d 370, 377 (Cal. 1969) (referencing G. WILLIAMS, CRIMINAL LAW THE GENERAL PART 49 (2d ed. 1961)).

107 Stasio, 386 A.2d at 1133 (quoting Jerome Hall, Intoxication and Criminal Responsibility, 57 HARV. L. REV. 1045, 1064 (1944) [https://doi.org/10.2307/1334681]).

108 Id. (noting that a defendant could be found incapable of formulating the specific intent necessary to be convicted of assault with intent to rob and be found guilty of the lesser included general intent crime of assault with a deadly weapon; and by contrast, “if the specific intent to rob were not demonstrated because of intoxication, then the defendant may have no criminal responsibility since assault with intent to rob would also be excused.”); id. at 1138 (Handler, J., concurring) (agreeing with the minority that the differentiation between specific and general intent was an “unhelpful, misleading and often confusing distinction.”).

109 Id. at 1133 (citing Note, Volitional Fault and the Intoxicated Criminal Offender, 36 U. CIN. L. REV. 258, 276 (1967)).
The *Stasio* court stated that strict adherence to concepts of intent when confronted with the defense of intoxication would “undermine[ ] the criminal law’s primary function of protecting society from the results of behavior that endangers the public safety.”\(^{110}\) Emphasizing the need to protect the public from the harm done by those who consume alcohol, the court reasoned that “if a person casts off the restraints of reason and consciousness by a voluntary act, no wrong is done to him if he is held accountable for any crime which he may commit in that condition. Society is entitled to this protection.”\(^{111}\) The *Stasio* court affirmed the judgment of the Appellate Division.\(^{112}\)

Justice Handler maintained, in his concurring opinion, that the rejection of specific and general intent did not necessitate the rejection of intoxication as a factual defense.\(^{113}\) In those cases involving an intoxicated individual, “the question should always be whether under particular circumstances a defendant ought to be considered responsible for his conduct.”\(^{114}\) Reasonable doubt, under this formulation of the defense, would require “that it be shown that [the defendant] was so intoxicated that he could not think, or that his mind did not function with consciousness or volition.”\(^{115}\)

The concurring opinion did not share the concern expressed by the majority of the court that the New Jersey Code of Criminal Justice (“Code”) would excuse criminal conduct where knowledge or purpose was an element of the offense.\(^{116}\) To assuage any anxiety the majority may have felt regarding the intoxication defense, Justice Handler would “impose[ ] a heavy burden of proof upon defendants to show a degree of intoxication capable of prostrating the senses.”\(^{117}\) It followed that

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\(^{110}\) *Id.*

\(^{111}\) *Id.* at 1134 (citing *McDaniel v. State*, 356 So.2d 1151, 1160–1161 (Miss.1978)).

\(^{112}\) *Id.* at 1137 (expressing concern over trial court ruling which prevented defendant from testifying in his own defense and noting that “[p]ermitting defendants to withhold evidence because of an expected jury instruction focuses the trial on appellate review rather than on producing the evidence at trial.”) (Clifford, J. joined in this opinion).

\(^{113}\) *Stasio*, 396 A.2d at 1138.

\(^{114}\) *Id.*


\(^{116}\) *Id.* at 1139.

\(^{117}\) *Id.*
“[d]runkenness which [did] not have this effect [would] not dimmish responsibility and [would] not serve to excuse criminality.”\textsuperscript{118}

The Code was signed into law in 1978 and took effect on September 1, 1979.\textsuperscript{119} Prior to the Code’s effective date, the Judiciary adhered to the Maik principle—absent one of four exceptions, intoxication would not constitute a defense to any crime.\textsuperscript{120}

\section*{III. The New Jersey Code of Criminal Justice}

\subsection*{A. As Originally Enacted}

In 1978, the New Jersey Legislature enacted an “Act to adopt a New Jersey Code of Criminal Justice to be known as Title 2C of the New Jersey Statutes . . .”\textsuperscript{121} This Act “revise[d] and repeal[ed] portions of the statutory law . . . and . . . provide[d] for the effect and operation of . . . Title 2C.”\textsuperscript{122} Henceforth, all “[c]rimes in New Jersey [would be] defined by the Code of Criminal Justice . . .”\textsuperscript{123} Consistent with the constitutional principles of fundamental fairness and due process,\textsuperscript{124} each offense in the Code was defined to “forbid, prevent, and condemn

\textsuperscript{118} Id.
\textsuperscript{119} L. 1978, c. 95, § 2C:2-1, eff. Sept. 1, 1979.
\textsuperscript{120} Stasio, 396 A.2d at 1131–32, 1135 (relying on the Deputy Attorney General’s suggestion during oral argument that the Legislature would be requested to modify the provisions dealing with intoxication and the belief that the Code would permit intoxication to be a complete defense to an attempted sexual assault (rape) but not to a completed sexual assault the court elected to adhere to the principle enunciated in Maik); see, e.g., State v. Roman, 403 A.2d 24, 26–27 (N.J. Super. App. Div. 1979), State v. Selby, 443 A.2d 1076, 1082 (N.J. Super. App. Div. 1981); see also State v. Cameron, 514 A.2d 1302, 1305–06 (N.J. 1986).
\textsuperscript{121} L. 1978, c. 95, § 2C:2-1, eff. Sept. 1, 1979.
\textsuperscript{122} Id.; see also N.J. Stat. Ann. § 2C:1-5(a) (providing for the abolition of all common law crimes and that “no conduct constitutes an offense unless the offense is defined by this code or another statute of this state.”).
conduct that unjustifiably and inexcusably inflicts or threatens serious harm to individual or public interests. . .". 125

As originally enacted, New Jersey Statute Section 2C:2-8 rejected the common law distinction between specific and general intent. 126 Although the Code did not employ common law terminology, the statutory defense of intoxication was drafted to achieve an outcome consistent with these common law principles. 127 Pursuant to the Code, "[t]hat which the cases now describe as a ‘specific intent’ can be equated, for this purpose, with that which the Code defines as ‘purpose’ and ‘knowledge.’ A ‘general intent’ can be equated with that which the Code defines as ‘recklessness,’ or criminal ‘negligence.’" 128

As enacted, New Jersey Statute Section 2C:2-8(a) permits evidence of intoxication to be used as a defense to crimes requiring "purposeful" or "knowing" mental states. 129 Where the mental element of the offense involves recklessness or criminal negligence, evidence of intoxication is immaterial. 130 The post-Code formulation of the intoxication defense provides that "when the requisite culpability for a crime is that the

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131 Cameron, 514 A.2d at 1307 (noting that N.J. Stat. Ann. § 2C:2-8(a) “permits evidence of intoxication as a defense to crimes requiring either ‘purposeful’ or ‘knowing’ mental states but excludes evidence of intoxication as a defense to crimes requiring mental states of recklessness or negligence.”).
person act ‘purposely’ or ‘knowingly,’ evidence of voluntary intoxication is admissible to disprove that requisite mental state.”\textsuperscript{132}

In addition to voluntary intoxication, the Code also covered situations in which an individual became intoxicated in the absence of any voluntary action on their part.\textsuperscript{133} Where the resulting intoxication was involuntary and meets the standard for lack of criminal responsibility, the Code provided the individual with an affirmative defense.\textsuperscript{134}

Although enacted in 1978, the first post-Code appellate division case to interpret the intoxication defense was not decided until 1985.

\textbf{B. The Judiciary’s Interpretation of the Intoxication Defense}

Salvatore Merlino had been sitting in the driver’s seat of a stationary automobile when a police lieutenant arrested Mr. Merlino for driving while intoxicated.\textsuperscript{135} En route to the police station, he repeatedly suggested to the officer that he could do the officer “some good” if the officer would release him.\textsuperscript{136} Mr. Merlino then made several entreaties to the officer to let him go.\textsuperscript{137} It is not disputed that Mr. Merlino was intoxicated at the time.\textsuperscript{138} The defendant was charged with bribery and other criminal offenses.\textsuperscript{139} The matter was tried without a jury and the

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\textsuperscript{132} Cameron, 514 A.2d at 1308 (noting that the legislative history and the language of the statute make it “unmistakably clear” and lend support to the minority opinions in both \textit{Stasio} and \textit{Atkins}).
\textsuperscript{133} N.J. \textsc{stat. ann.} § 2C:2-8(d)(1).
\textsuperscript{134} \textit{Id.}; \textsc{Code Commentary, supra} note 129, at 69; \textit{see} N.J. \textsc{stat. ann.} § 2C:1-13 and \textsc{Cannel, supra} note 123, at cmt. 5 to N.J. \textsc{stat. ann.} § 2C:2-8 (providing that a defendant “essentially confesses commission of the offense but seeks to avoid criminal responsibility” by demonstrating, by a preponderance of the evidence, that the resulting intoxication was involuntary or unexpected).
\textsuperscript{136} \textit{Id.}
\textsuperscript{137} \textit{Id.} (twenty-seven minute videotaped encounter in which he offered the officer both money and his watch).
\textsuperscript{138} \textit{Id.}
\textsuperscript{139} \textit{Id.} at 148 (charging Merlino with violating N.J. \textsc{stat. ann.} §§ 2C:27-2(c), 2C:5-1(a)(2), and 2C:27-6(b)).
\end{flushleft}
defendant was found guilty.\textsuperscript{140} The defendant appealed his conviction and his four-year State prison term.\textsuperscript{141}

On appeal, the defendant maintained that he did not have the requisite mental state to commit the crime.\textsuperscript{142} He argued that it would have been “foolhardy for him to have offered the bribe after being told he was being videotaped.”\textsuperscript{143} The court rejected this argument because it rested on the “premise that a defendant may not be found guilty of an offense committed while he is intoxicated if he would not have committed the offense when sober.”\textsuperscript{144} The court then analyzed the law as set forth in the Code.

Intoxication, defined by the Code, is “a disturbance of mental or physical capacities.”\textsuperscript{145} The court considered the level of intoxication necessary to negate an element of the criminal offense.\textsuperscript{146} For intoxication to serve as a valid defense, it must be “so severe that a defendant cannot form the requisite culpable mental state to commit the offense.”\textsuperscript{147} For guidance, the court turned to Justice Handler’s concurring opinion in \textit{Stasio}.\textsuperscript{148}

Although \textit{Stasio} was a pre-Code opinion, the court approved its interpretation of the intoxication defense. Following the adoption of the Code, a defendant proffering the intoxication defense would bear the “heavy burden of proof . . . to show a degree of intoxication capable of \textit{prostrating the senses},”\textsuperscript{149} This formulation required that the “defendant’s intoxication [be] sufficiently extreme so as to deprive him of his will to act and ability to reason, and prevent him in fact from having” the requisite mental element to commit the alleged crime.\textsuperscript{150}

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{140}] Merlino, 505 A.2d at 157; see Cannel, supra note 123, at cmt 3 to N.J. Stat. Ann. § 2C:2-8 (observing that “the State retains the obligation to disprove the defense of intoxication beyond a reasonable doubt.”); State v. Kabete, No. A-0867-12T1, 2013 WL 2459854, *5 (N.J. Super. Ct. App. Div. June 10, 2013) (holding that when sufficient evidence of intoxication is presented at trial to make the defense available, the jury should be instructed that the State must prove beyond a reasonable doubt that intoxication did not render defendant incapable of acting with the required mental state).
\item[\textsuperscript{141}] Merlino, 505 A.2d at 157.
\item[\textsuperscript{142}] Id. at 157–58.
\item[\textsuperscript{143}] Id. at 158.
\item[\textsuperscript{144}] Id.
\item[\textsuperscript{146}] Merlino, 505 A.2d at 157–58.
\item[\textsuperscript{147}] Id. at 159.
\item[\textsuperscript{148}] Id. (citing State v. Stasio, 396 A.2d 1129, 1139 (N.J. 1979) (Handler, J. concurring)).
\item[\textsuperscript{149}] Id. (citing \textit{Stasio}, 396 A.2d at 1139 (Handler, J. concurring) (emphasis added)).
\end{itemize}
\end{footnotesize}
Given the defendant’s “awareness of his situation and a fairly high level of reasoning, despite his intoxication” the Appellate Division affirmed the judgment of the trial court.\textsuperscript{151}

C. The Post-Code Supreme Court

On June 6, 1981, Michele Cameron (“defendant”) attacked and permanently injured Joseph McKinney with a broken bottle while McKinney was playing cards in a vacant lot.\textsuperscript{152} She was charged with aggravated assault, possession of a weapon, and resisting arrest.\textsuperscript{153} At trial, every witness, including the defendant, testified that she was either intoxicated or under the influence of something.\textsuperscript{154} The trial court judge did not charge the jury regarding the defendant’s intoxication and the defendant appealed her guilty verdict.\textsuperscript{155}

The Appellate Division reversed the defendant’s conviction after concluding “that the circumstances disclosed by the evidence ... required that the issue of ... intoxication be submitted to the jury.”\textsuperscript{156} The New Jersey Supreme Court granted the State’s petition for certification\textsuperscript{157} and the defendant’s cross-petition for certification.\textsuperscript{158}

Both parties asked the court to determine the level of intoxication that “must be demonstrated before a trial court is required to submit the issue to a jury.”\textsuperscript{159} The court determined that to qualify as a defense, the intoxication must negate an element of the underlying offense and must be of an extremely high level.\textsuperscript{160} The court stated that “[w]hat is required is a showing of such a great prostration of the faculties that the requisite mental state was totally lacking.”\textsuperscript{161} In terms of frequency, the court noted that “[s]uch a state of affairs will likely exist in very few

\textsuperscript{151} Id. at 159.
\textsuperscript{152} See State v. Cameron, 514 A.2d 1302, 1303 (N.J. 1986).
\textsuperscript{153} Id. (charging defendant with violations of N.J. STAT. ANN. § 2C:12-1(b)(1) (aggravated assault), § 2C:39-4(d) (possession of a weapon), and § 2C:29-2 (resisting arrest)).
\textsuperscript{154} Cameron, 514 A.2d at 1304 (defendant said she felt “pretty intoxicated,” “pretty bad,” and “very intoxicated”).
\textsuperscript{155} Id. at 1303.
\textsuperscript{156} Id. at 1304.
\textsuperscript{157} Id. at 1303.
\textsuperscript{158} Id.
\textsuperscript{159} Id. at 1308; see also N.J. STAT. ANN. § 2C:2-8(e)(1) (defining intoxication as “a disturbance of mental or physical capacities resulting from the introduction of substances into the body.”).
\textsuperscript{160} Cameron, 514 A.2d at 1309.
\textsuperscript{161} Id. at 1308 (quoting State v. Stasio, 396 A.2d 1129, 1142 (N.J. 1979) (Pashman, J., concurring and dissenting). The “prostration of faculties” requirement was first discussed by the Court in Wilson, 37 A. 954, 959 (N.J. 1897); and subsequently quoted in State v. Treficanto, 146 A. 313, 316 (N.J. 1929).
cases.” The court then turned to the question of how the standard could be satisfied.

The court examined cases in which the defendant’s intoxication was considered significant enough to warrant a jury’s consideration. These cases were distinguished from those in which the evidence was deemed insufficient to merit a jury instruction.

162 Cameron, 514 A.2d at 1308–09 (quoting Stasio, 396 A.2d at 1142 (Pashman, J., concurring and dissenting) (noting next that because the prostration of faculties requirement for the intoxication defense was “so firmly fixed in our case law” that the Legislature could not have intended otherwise in its definition of intoxication).

163 Id. at 1309.

164 Id. at 1309 (citing State v. Frankland, 238 A.2d 680, 682 (N.J. 1968) (defendant testified “he had consumed fifteen drinks of scotch and water and could not remember the events of the evening.”); State v. Polk, 397 A.2d 330, 332 (N.J. Super. Ct. App. Div. 1977) (noting that the defendant drank beer and wine from 9 a.m. until sometime in the afternoon; the amount of alcoholic beverages consumed was “substantial”; defendant acted irrationally, hitting baby with his fist and throwing baby down onto a porch; investigator found beer cans strewn around the scene of the killing); State v. Holzman, 424 A.2d 454 (N.J. Super. Ct. Law Div. 1980) (noting that the defendant consumed a total of four Fiorinal tablets (a mild sedative) with one-to-two Black Russian drinks prior to her crime; displayed unusual and irrational behavior at the police station; and denied all recollection of events occurring one hour prior to her crime); see also State v. Bey, 548 A.2d 887, 896 (N.J. 1988) (defendant “consumed one hundred and twenty ounces of malt liquor and some straight rum and smoked a considerable amount of marijuana’’); State v. Klich, 729 A.2d 432, 438 (N.J. Super. Ct. App. Div. 1999) (when intoxication is an issue, court must explain to the jury how it relates to each charge); State v. Nutter, 609 A.2d 65, 75 (N.J. Super Ct. App. Div. 1992) (bizarre actions and memory loss after he stabbed and killed his wife with a single stab wound following a drunken fight); State v. Van Hise, No. A-12-17, 2010 WL 2696835, at *3–4 (N.J. Super. Ct. App. Div. July 9, 2010) (over the course of two hours defendant drank a bottle and a half of tequila with his wife and had no recollection of the events of participating in the alleged offenses); State v. Morello, No. A-31-14, 2013 WL 3811656, at *3 (N.J. Super. Ct. App. Div. July 24, 2013) (jury charge was appropriate where defendant had an undisputed BAC reading of 0.354, and “witnesses, including a police officer testified that defendant had been extremely intoxicated since at least the prior day.”).

165 Cameron, 514 A.2d at 1309 (citing State v. Selby, 433 A.2d 1076, 1078 (N.J. Super. Ct. App. Div. 1981) (defendant shared a marijuana pipe with three others for about ten minutes, as a result of which he felt “high” and “pretty good”); State v. Moore, 429 A.2d 397, 399 (N.J. Super. Ct. App. Div. 1981) (defendant shared half of a pint bottle of vodka with her co-defendant, then “had to . . . get another drink to get [her] nerves back up” before joining in the crime, as to the events preceding, during, and following which she had almost total recall’’); State v. Kinlaw, 374 A.2d 1233, 1234 (N.J. Super. Ct. App. Div. 1977) (defendant drank beer between 11 a.m. and 2 p.m. and described himself as “drunk’’); State v. Ghau, 334 A.2d 65, 67 (N.J. Super. Ct. App. Div. 1975) (defendant testified he had been “drinking all day,” police officer noted odor of alcohol on defendant’s breath, though his driving was impaired, but “[d]efendant’s own testimony indicated he could think clearly,” he could describe the pertinent events, had “sufficient presence of mind to take over the driving and to lie to the police. . . .’’)); see also State v. Micheliche, 533 A.2d 41, 46 (N.J. Super. Ct. App. Div. 1987) (stating “the mere fact that defendant had consumed large quantities of alcohol” was insufficient to demonstrate prostration of faculties); State v. Zola, 548 A.2d 1022, 1042–43 (1988) (charge not given
After conducting this examination, the court set forth several relevant factors essential to establishing the level of intoxication that satisfies the “prostration of faculties” test. These factors include: “the quantity of intoxicant consumed, the period of time involved, the actor’s conduct as perceived by others . . . , any odor of alcohol or other intoxicating substance, the results of any tests to determine blood-alcohol content, and the actor’s ability to recall significant events.”

After applying the facts of the case to these factors the judgment of the Appellate Division was reversed and the matter remanded.

It would be seven years before the Judiciary would consider the effects of involuntary intoxication on criminal responsibility.

D. Involuntary Intoxication

Mark Sette (“defendant”) worked in the gardening and landscaping industry, where he was exposed to “pesticides, herbicides and chemicals.” During the period of March 15–21, 1988, the defendant drank heavily and snorted “uncharacteristically large amounts of cocaine with unusual frequency.” While experiencing suicidal

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Cameron, 514 A.2d at 1309 (“prostration of faculties test” is a “shorthand expression used . . . to indicate a condition of intoxication that renders the actor incapable of purposeful or knowing conduct.”).

166 Id. at 1310.
167 Id. at 1311; see State v. R.T., 16 A.3d 365, 377 (N.J. 2011) (stating that if a defendant “requests the charge it will be given if there is a rational basis evidence to do so. Where counsel does not request the instruction, the ‘clearly indicated’ standard will apply in which the “charge must ‘jump off’ the page.”).
168 Id. at 1131 (noting that defense of intoxication is divided between voluntary and involuntary, the latter being intoxication that is either not self-induced or is pathological).
169 Id. at 1131 (noting that level and concentration of exposure to these chemicals was disputed).
170 Id. at 1132 (noting that Sette frequently used cocaine on weekends).
ideation, he ingested cocaine and a significant quantity of Co-Tylenol.\(^{172}\) He subsequently killed one of his roommates with a knife, stabbed another, and then menaced and chased the surviving roommate and his neighbors with the knife before being arrested.\(^ {173}\)

During the “booking” process the defendant demonstrated appropriate and accurate responses to questions regarding his pedigree information.\(^ {174}\) He exhibited no difficulty walking and voluntarily signed a waiver of rights.\(^{175}\) The defendant also provided details about how he had stabbed one roommate and slashed the other.\(^ {176}\) A psychiatrist sent to the county jail by the defendant’s father concluded that the defendant had been “delusional and acutely psychotic during the killing spree” and that the defendant “did not know the nature and quality of his acts.”\(^ {177}\) The defendant was indicted for murder and other charges arising from the events of March 21, 1988.\(^ {178}\)

At trial, the State’s psychiatrist testified that the defendant was not psychotic and acted in a knowing, purposeful, and goal-directed manner.\(^ {179}\) The parties presented divergent opinions from multiple pharmacologists regarding the impact of the defendant’s occupational exposure to pesticides and chemicals and how these substances might interact with cocaine, marijuana, and Co-Tylenol to influence the defendant’s behavior.\(^ {180}\)

The defendant was found guilty of first-degree murder and sentenced to “forty years without parole, minimum, to life plus thirty-four years, maximum.”\(^ {181}\) He appealed.\(^ {182}\)

\(^{172}\) *Id.*

\(^{173}\) *Id.* at 1133–34.

\(^{174}\) *Id.* at 1134.

\(^{175}\) *Sette*, 611 A.2d at 1134.

\(^{176}\) *Id.*

\(^{177}\) *Id.*


\(^{179}\) *Sette*, 611 A.2d, at 1134.

\(^{180}\) *Id.*

\(^{181}\) *Id.* at 1135 (defendant also guilty of attempted murder, aggravated assault, possession of a weapon, possession of a weapon for an unlawful purpose, aggravated assault of a police officer, and resisting arrest).

\(^{182}\) *Id.*
On appeal, the defendant maintained “pathological intoxication” as his “primary defense.” This was the first time that the Appellate Division discussed this defense. The court was asked to consider whether the trial court judge erred in refusing to allow the jury to “consider whether [the] defendant's behavior was the result of an exaggerated intoxication” caused by his drug use and the chemicals he was exposed to while at work.

The court distinguished between the two types of intoxication found in the Code. A proffer of voluntary intoxication seeks to negate an offense’s purposeful or knowing element. By contrast, involuntary intoxication is either not self-induced or is pathological. For intoxication to be pathological, the defendant must present “proof by clear and convincing evidence: (1) that the defendant's intoxication indeed was pathological in nature and (2) that the level of intoxication rose to the M’Naghten standard (unable to appreciate the nature and quality of his acts).”

The court examined the common law on pathological intoxication from several jurisdictions and concluded that “a court should resist allowing consideration of a pathological intoxication defense when intoxication results from a combination of voluntary ingestion of illegal intoxicants, or of legal intoxicants from which a person should reasonably expect an adverse reaction, or both, and a pathological hypersensitivity to those intoxicants.” The court opined that “[t]o absolve [the] defendant of criminal behavior by the complete defense of pathological intoxication, he had the burden to show such intoxication, the source of which was not in any way voluntary . . . .”

The court reasoned that the defendant would be required to prove his intoxication resulted solely from pesticide poisoning “or from that in combination with moderate amounts of legal drugs or alcohol.”

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183 Id. at 1136.
184 Id. at 1138; see State v. Holzman, 424 A.2d 454, 455 (N.J. Super. Ct. Law Div. 1980) (finding that defendant failed to establish involuntary intoxication where her intoxication was self-induced by combining fiorinal, a mild sedative, and a Black Russian cocktail and that a “reasonable person ought to know that mixing medicine and alcohol can produce irrational behavior.”).
185 Id. at 1141 (discussing case law from multiple jurisdictions on the subject of pathological intoxication.).
186 Id. at 1142.
187 Id.
Unable to do that, the court affirmed the trial court’s instructions to the jury.\textsuperscript{192}

\textbf{IV. Conclusion}

Examining the evolution of New Jersey’s intoxication defense enhances the comprehension of the legal standard, burden of proof, considerable and historic policy consideration, and precedents that formed the current incarnation of this defense. This knowledge equips legislators, attorneys, scholars, and individuals seeking justice with a comprehensive understanding of the statutory and common law on this subject.

The New Jersey Law Revision Commission, consistent with its statutory mandate to “carry on scholarly legal research and work,”\textsuperscript{193} wishes to share this work for the benefit of the State, its citizens, and fellow Commissions. The Commission will continue to engage in scholarly legal research in an ongoing effort to improve New Jersey’s statutory law.

\textsuperscript{192} \textit{Id.} at 1138 (finding that the trial judge’s instructions were appropriate because the defendant willingly consumed significant quantities of both illegal and legal drugs, so he could not claim that he experienced an unforeseen and violent reaction to those substances as a result of an unknown underlying pathological condition affecting him).