

5.11 Diminished Capacity

Evidence has been admitted that the defendant may have [been intoxicated] [suffered from diminished capacity] at the time that the crime charged was committed. [Intoxication can result from being under the influence of alcohol or drugs or both.]

You may consider evidence of the defendant's [intoxication] [diminished capacity] in deciding whether the government has proved beyond a reasonable doubt that the defendant acted with the intent required to commit [specify crime charged].

Comment

A defense based on voluntary intoxication is available only for specific intent crimes. *United States v. Gracidas-Ulibarry*, 231 F.3d 1188, 1195 (9th Cir. 2000); *United States v. Dare*, 425 F.3d 634, 641 n.3 (9th Cir. 2005) (“Voluntary intoxication is not a defense to a general intent offense.”). However, a voluntary intoxication instruction may be appropriate where the jury also receives an attempt instruction—even if the completed crime is a general intent crime—because “attempt includes an element of specific intent even if the crime attempted does not.” *United States v. Sneezzer*, 900 F.2d 177, 179-80 (9th Cir 1990); see *Gracidas-Ulibarry*, 231 F.3d at 1193 (“When the defendant’s conduct does not constitute a completed criminal act, . . . a heightened intent requirement is necessary to ensure that the conduct is truly culpable.” (citing *Sneezzer*, 900 F.2d at 180)).

Likewise, diminished capacity is a defense only when specific intent is at issue. *United States v. Twine*, 853 F.2d 676, 679 (9th Cir. 1988). The diminished capacity defense is “concerned with whether the defendant possessed the ability to attain the culpable state of mind which defines the crime.” *Id.* at 678. Evidence that the defendant suffers from some mental illness is insufficient by itself to require a diminished capacity instruction. *United States v. Christian*, 749 F.3d 806, 815 (9th Cir. 2014), *overruled on other grounds by United States v. Bacon*, 979 F.3d 766 (2020) (en banc). Rather, there must be some evidence (however weak) of a link between the defendant’s mental illness and his ability to form a specific intent. *Id.* (citing *United States v. Washington*, 819 F.2d 221, 225 (9th Cir. 1987)).

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