

VOLUNTARY INTOXICATION, LACK OF MENTAL CAPACITY—PREMEDITATED AND
DELIBERATE FIRST DEGREE MURDER.

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 the defendant's 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 the defendant 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, the defendant 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.

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).

2. See S. v. Mash, 323 N.C. 339 (1988).

