

A man was charged under a state statute criminalizing the commission of "any lewd act which the person knows is likely to be observed by others who would be affronted or alarmed." At trial, it was established that, one evening, the man emerged unclothed on his apartment balcony in full view of his neighbors. The man testified that, on the day of the incident, he had been drinking heavily and was so intoxicated that he believed he was walking into his bedroom and not onto his balcony. The man has asked the court to instruct the jury on the defense of voluntary intoxication.

In a jurisdiction that has adopted the Model Penal Code, should the court grant the man's request?

- A. No, because the man has not been charged with a specific intent crime.
- B. No, because the Model Penal Code does not recognize voluntary intoxication as a defense.
- C. Yes, because a reasonable jury could find that the man's intoxication negated the requisite mental state.
- D. Yes, because the evidence established that the man became intoxicated within the privacy of his home.

Explanation:

Voluntary intoxication

Majority approach	Defense to <i>specific intent</i> crimes—ie, crimes that require defendant to possess subjective desire, specific objective, or knowledge to accomplish prohibited result Defendant must prove that intoxication prevented formation of requisite intent
Model Penal Code approach	Defense to crimes for which required mental state is: <i>purposely</i> – with conscious objective to engage in conduct or cause particular result <i>or</i> <i>knowingly</i> – with awareness that conduct is of nature required by crime or practical certainty that conduct will cause particular result Defendant must prove that intoxication prevented formation of that mental state
Minority approach	Voluntary intoxication is no defense

A court should grant a request for a jury instruction on a defense if a reasonable jury could find evidence to support that defense. Under the **Model Penal Code (MPC)**, [voluntary intoxication](#) is only a defense to crimes for which the requisite mental state is either:

purposely – with a conscious objective to (1) engage in the conduct or (2) cause a particular result *or*

knowingly – with (1) an awareness that the conduct is of the nature required by the crime or (2) a practical certainty that the conduct will cause a particular result **(Choice B)**.

To prevail on this defense, the **defendant must show** that his/her **intoxication prevented the formation** of the **requisite mental state**.

Here, voluntary intoxication is a defense to the charged crime since it requires the commission of a lewd act that the defendant *knew* was likely to be observed by others who would be affronted or alarmed. The man testified that he believed he was walking into his bedroom—not onto his balcony—due to his intoxication. A reasonable jury could find that this evidence negates the requisite mental state, so the court should grant the man's request.

(Choice A) Under the majority approach, voluntary intoxication is a defense only to specific intent crimes. In contrast, the MPC recognizes voluntary intoxication as a defense to crimes requiring that the defendant acted either purposely or knowingly.

(Choice D) The fact that the man became intoxicated within the privacy of his home is irrelevant since it has no bearing on whether he formed the requisite intent to commit the crime.

Educational objective:

Under the Model Penal Code, voluntary intoxication is a defense to crimes that require the defendant to have acted purposely or knowingly. To prevail on this defense, the defendant must prove that his/her intoxication prevented the formation of the requisite mental state.

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