

Voluntary Act¹

Liability for criminal conduct requires, at a minimum, the commission of a "voluntary act." A "voluntary act" means a bodily movement performed consciously as a result of effort or determination [and includes the possession of property if the actor was aware of his or her physical possession or control thereof for a sufficient period to have been able to terminate it].

As you are aware, the defendant contends that he/she did not commit a voluntary act because (*specify*; e.g. he/she was administered (*specify*; e.g. alcohol or a drug) against his/ her will) and he/she was thereby

Select appropriate alternative(s)

deprived of the ability to perform a bodily movement consciously as a result of effort or determination;

deprived of the ability to be aware of the physical possession or control of (*specify*) for a sufficient period to have been able to terminate it,

The People must prove beyond a reasonable doubt that the defendant committed a "voluntary act," and in doing so, committed all the elements of (*the crimes charged or specify*). If the People fail to prove beyond a reasonable doubt either that the defendant committed a "voluntary act," or that the defendant committed all of the elements of (*specify*), then you must find the defendant not guilty of that/those crime(s).

¹ See *People v Carlo*, 46 AD2d 764 [1st Dept 1974] ("If the defendant's testimony was believed, the jury could have found that he was acting under the influence of an hallucinogenic drug and was unable to control his behavior. Further, there was evidence to support the conclusion that the drug was taken involuntarily, for it could have been found that the defendant thought that the pill, which he claimed was given to him by the complainant, was in the nature of an aspirin or tranquilizer, and that the complainant, knowing defendant did not intend or wish to take an hallucinogenic drug, nevertheless, intentionally and deceptively, gave the defendant a pill of that character. Moreover, the defense of involuntary intoxication was applicable to both the assault and weapon charges since 'criminal liability' requires at the very least a 'voluntary act'").