

Ala. Code 1975, § 13A-3-30

Duress Defense

One of the issues in this case is the defense of duress.

It is a defense to prosecution that the actor engaged in the alleged crime because he/she was compelled to do so by the threat of imminent death or serious physical injury to **[himself/herself/another]**.

A person's actions that would otherwise be illegal are legally justified if he/she acted under duress. It is a complete defense to certain crimes, including **[insert charge and any lesser-included offenses]**.

After you have considered all of the evidence in this case, if you find that the State has proved beyond a reasonable doubt each element of **[insert charge and any lesser-included offenses]**, you must then consider whether or not the defendant acted under duress. The defense of duress applies to the charge(s) of **[insert applicable crimes]**.

To convict, the State, in addition to the elements of the crime charged, must prove beyond a reasonable doubt, that at the time of the commission of the alleged crime, the defendant did not engage in the alleged criminal conduct because he was compelled to do so by the threat of imminent death or by the threat of serious physical injury to **[himself/herself/another]**.

A defendant acts under duress only, if at the time of the offense charged:

1. There was an immediate threat of death or serious bodily injury to **[the defendant/a family member of the defendant]** if the defendant did not **[commit/participate in the commission of]** the crime;
2. The defendant had a well-grounded fear that the threat of death or serious bodily injury would be carried out; **(AND)**
3. The defendant had no reasonable alternative to violating the law by avoiding the threatened harm.

The defendant must have been coerced to act by the use or threat to use immediate physical force against **[him/her/another person]** by **[insert name[s] of other person(s)]**.

The defendant must have actually believed in and been frightened by the likelihood of the threatened harm. If there was a reasonable, legal alternative to violating the law, for example, a chance to refuse to do the criminal act and also to avoid the threatened harm, you must find that the defendant was not under duress. If the

defendant would have engaged in the alleged criminal activity whether or not there was a threat, then his/her actions were not caused by that threat.

[Read as appropriate- Intent or Recklessness]:

To convict, the State, in addition to the elements of the crime charged, must prove beyond a reasonable doubt that when the crime happened, the defendant did not commit the crime alleged because of duress.

However, the State is not required to bear this burden of proof if the defendant **[intentionally/recklessly]** put himself/herself in a situation in which it was probable that he/she would be subjected to duress.

If you find that the state has proved beyond a reasonable doubt that the defendant **[intentionally/recklessly]** placed himself/herself in such a situation, then he/she cannot claim that he/she acted under duress, and you need not consider the defense.

[Read as appropriate - Negligence]

To convict, the State, in addition to the elements of the crime charged, must prove beyond a reasonable doubt that when the crime happened, the defendant did not commit the crime alleged because of duress.

However, the State is not required to disprove duress for a crime that requires only proof of negligence if the defendant negligently put himself/herself in a situation in which it was probable that he/she would be subjected to duress.

If you find that the State has proved beyond a reasonable doubt that the defendant negligently placed himself/herself in such a situation, then he/she cannot claim that he/she acted under duress, and you need not consider the defense.

Use Notes

The defense is unavailable in murder and capital murder charges. (13A-3-30(d)) See *Boyd v. State*, 715 So. 2d 825, 837 (Ala. Cr. 1997).

This charge should be given only when sufficient evidence tending to establish such a defense has been raised by the defendant.

A duress defense is not available under Alabama law if there is no evidence indicating that the defendant “surrendered himself to the proper authorities after attaining a position of safety with reference to the threatened harm.” *Mayes v. State*, 453 So. 2d 767, 769 (Ala. Crim. App. 1984); *Flowers v. State*, 922 So. 2d 938, 957 (Ala. Crim. App. 2005).

In order for duress to excuse a criminal act, it “must be present, imminent and impending, and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done.” *Trammell v. Disciplinary Bd. of the Alabama State Bar*, 431 So. 2d 1168, 1170 (Ala. 1983); *Ballou v. State*, 365 So. 2d 352, 356 (Ala. Crim. App. 1978); *Browning v. State*, 31 Ala. App. 137, 13 So. 2d 54 (Ala. Ct. App. 1943). See *Allison v. City of Birmingham*, 580 So. 2d 1377, 1383-84 (Ala. Cr. 1991).

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