

5.7 Duress, Coercion, or Compulsion (Legal Excuse)

The defendant contends [he] [she] acted under [duress] [coercion] [compulsion] at the time of the crime charged. [Duress] [coercion] [compulsion] legally excuses the crime of [specify crime charged].

The defendant must prove [duress] [coercion] [compulsion] by a preponderance of the evidence. A preponderance of the evidence means that you must be persuaded that the things the defendant seeks to prove are more probably true than not true. This is a lesser burden of proof than the government's burden to prove beyond a reasonable doubt each element of [specify crime charged].

A defendant acts under [duress] [coercion] [compulsion] only if at the time of the crime charged:

First, there was a present, immediate, or impending 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;

Second, the defendant had a well-grounded fear that the threat of death or serious bodily injury would be carried out; [and]

Third, the defendant had no reasonable opportunity to escape the threatened harm[.] [; and]

[Fourth, the defendant surrendered to authorities as soon as it was safe to do so.]

If you find that each of these things has been proved by a preponderance of the evidence, you must find the defendant not guilty.

Comment

The bracketed fourth element should be used only in cases of prison escape. *See United States v. Solano*, 10 F.3d 682, 683 (9th Cir. 1993). “[I]n order to be entitled to an instruction on duress or necessity as a defense to the crime charged, an escapee must first offer evidence justifying his continued absence from custody as well as his initial departure[.]” *United States v. Bailey*, 444 U.S. 394, 408 (1980). Although not an element in non-escape cases, whether the defendant surrendered to authorities upon reaching a point of safety is nevertheless relevant to whether the third element is satisfied. *United States v. Zaragoza-Moreira*, 780 F.3d 971, 978 (9th Cir. 2015) (citations omitted).

In *Dixon v. United States*, 548 U.S. 1, 7-8 (2006), the Supreme Court held that when a statute is silent on the question of an affirmative defense and when the affirmative defense does not negate an essential element of the offense, the burden is on the defendant to prove the

elements of the defense by a preponderance of the evidence. “Like the defense of necessity, the defense of duress does not negate a defendant’s criminal state of mind when the applicable offense requires a defendant to have acted knowingly or willfully; instead, it allows the defendant to ‘avoid liability . . . because coercive conditions or necessity negates a conclusion of guilt even though the necessary mens rea was present.’” *Id.* (quoting *Bailey*, 444 U.S. at 402).

Use this instruction when the defendant alleges that he or she committed the alleged criminal act under duress, coercion, or compulsion. See *United States v. Meraz-Solomon*, 3 F.3d 298, 299 (9th Cir. 1993) (in prosecution for importation of cocaine, burden is on defendant to prove duress, coercion, or compulsion by a preponderance of the evidence). A defendant is not obligated to admit guilt to a crime as a precondition for raising the affirmative defense of duress. See *United States v. Haischer*, 780 F.3d 1277, 1284 n.1 (9th Cir. 2015) (clarifying that defendant does not have to admit knowing or intentional commission of crime to assert duress defense).

“[A] defendant is not entitled to present a duress defense to the jury unless the defendant has made a prima facie showing of duress in a pre-trial offer of proof.” *United States v. Vasquez-Landaver*, 527 F.3d 798, 802 (9th Cir. 2008). The phrase “present, immediate, or impending threat” in the first element of the instruction was used in *Vasquez-Landaver*, 527 F.3d at 802.

Expert testimony about Battered Women’s Syndrome may be relevant to both the second and third elements of the duress defense, as well as in rehabilitating a defendant’s credibility. See *United States v. Lopez*, 913 F.3d 807, 822-23 (9th Cir. 2019).

Duress is not a defense to murder, nor will it mitigate murder to manslaughter. *United States v. LaFleur*, 971 F.2d 200, 206 (9th Cir. 1991). In cases where duress-like evidence may be admitted on the issue of a defendant’s mental state, a clarifying instruction may be appropriate “to help guide the jury on the parameters for which it could consider the duress-like evidence.” *United States v. Justus*, 162 F.4th 962 (9th Cir. 2025).

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