

Document: C.R.S. 18-1-708

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Colorado Revised Statutes Annotated **Title 18. Criminal Code (Arts. 1 – 26)** **Article 1. Provisions Applicable to Offenses Generally (Pts. 1 – 11)** **Part 7. Justification and Exemptions from Criminal Responsibility (§§ 18-1-701 – 18-1-714)**

18-1-708. Duress.

A person may not be convicted of an offense, other than a class 1 felony, based upon conduct in which he engaged at the direction of another person because of the use or threatened use of unlawful force upon him or upon another person, which force or threatened use thereof a reasonable person in his situation would have been unable to resist. This defense is not available when a person intentionally or recklessly places himself in a situation in which it is foreseeable that he will be subjected to such force or threatened use thereof. The choice of evils defense, provided in section 18-1-702, shall not be available to a defendant in addition to the defense of duress provided under this section unless separate facts exist which warrant its application.

History

Source: L. 71:R&RE, p. 411, § 1. **C.R.S. 1963:**§ 40-1-808. L. 88:Entire section amended, p. 712, § 15, effective July 1.

▼ Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 18

C.R.S. Title 18, Art. 1

State Notes

ANNOTATION

Defense of choice of evils is very similar to duress

and the foundation requirements set forth in the choice of evils statute was intended as a safeguard against abuse of the defense. *People v. Strock*, 623 P.2d 42 (Colo. 1981).

Defense available where imminent threat of use of unlawful force.

Generally, where the threat of unlawful use of force is alleged, this defense is available only if the threat is one of present, impending, and imminent use of force, and a threat of future injury is not enough. *People v. Maes*, 41 Colo. App. 75, 583 P.2d 942 (1978).

Defendant must show specific and imminent threat.

The defense of duress is unavailable unless a defendant shows a specific and imminent threat of injury to his person under circumstances which leave him no reasonable alternative other than the violation of the law for which he stands charged; mere speculation that injury may occur is not sufficient. *Bailey v. People*, 630 P.2d 1062 (Colo. 1981); *People v. Speer*, 255 P.3d 1115 (Colo. 2011).

A defendant must make a threshold showing of: (1) An immediate threat of death or bodily injury; (2) a well-grounded fear the threat will be carried out; and (3) no reasonable opportunity to escape the threatened harm. *People v. Preciado-Flores*, 66 P.3d 155 (Colo. App. 2002); *People v. Speer*, 255 P.3d 1115 (Colo. 2011).

Any threat must be more than mere speculation

or a veiled threat of unspecified future harm. *People v. Trujillo*, 586 P.2d 235 (Colo. App. 1978); *People v. Preciado-Flores*, 66 P.3d 155 (Colo. App. 2002).

Prosecution to establish lack of duress.

Because duress is an affirmative defense, the prosecution must establish, beyond a reasonable doubt, the defendant's guilt as to that issue. *Bailey v. People*, 630 P.2d 1062 (Colo. 1981).

When an accused presents some credible evidence on the issue of duress, the prosecution must establish beyond a reasonable doubt the defendant's guilt as to that issue as well as all other elements of the offense. *People v. Quintana*, 665 P.2d 605 (Colo. 1983).

Whether threat is imminent is question of fact.

The question whether a threat is imminent is, in all but the clearest of cases, to be decided by the trier of fact after considering all of the surrounding circumstances, including the defendant's opportunity and ability to avoid the harm. *People v. Maes*, 41 Colo. App. 75, 583 P.2d 942 (1978);

People v. Speer, 216 P.3d 18 (Colo. App. 2007).

Where defendant improperly denied opportunity to present evidence on issue.

Where a defendant was allowed to testify only about the most recent of a series of events occurring over a five-month period, he was unreasonably deprived of the opportunity to detail the evidence that would lend credence to his affirmative defense under this section. People v. Trujillo, 41 Colo. App. 223, 586 P.2d 235 (1978).

Where evidence goes to defendant credibility rather than submissibility of defense.

Where a defendant testifies that he was specifically threatened with injury to himself and to his family if he refused to hold contraband or if he reported the incident to the authorities, his failure to identify the person who threatened him goes to the credibility of the explanation, rather than to the submissibility of the defense to the jury. People v. Maes, 41 Colo. App. 75, 583 P.2d 942 (1978).

Defense not available to escapee unless he immediately reports duress,

or choice of evils, which he faced to the proper authorities when a position of safety is reached. People v. Handy, 198 Colo. 556, 603 P.2d 941 (1979).

The trial court erred in allowing jury instruction on the affirmative defense of duress

in a contract for murder case where a wife claiming that she suffered from battered woman syndrome hired her husband's killers. There was no evidence that the defendant acted at the direction of another person. Although this section did not require that person act at the direction of another person at the time of the murder, case law required such a condition to exist. People v. Yaklich, 833 P.2d 758 (Colo. App. 1992).

No error in district court's rejection of defendant's proffered jury instruction concerning duress.

Where it was undisputed that defendant had a gun and drove himself to the scene of the crime, the court found that there was no evidence from which a reasonable jury could conclude that defendant acted under duress. People v. Speer, 255 P.3d 1115 (Colo. 2011).

The common-law theory

that control by the husband is presumed was abolished by statute. The law of this state requires the coercion by the husband to be proved. Dalton v. People, 68 Colo. 44, 189 P. 37 (1920) (decided under R. S. 08, § 1616).

Applied

in People v. DeJesus, 184 Colo. 230, 519 P.2d 944 (1974); People v. Bailey, 41 Colo. App. 385, 590 P.2d 508 (1978).

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