

310.11 DURESS OR NECESSITY DEFENSE TO ESCAPE FROM DEPARTMENT
OF CORRECTION.¹

There is evidence in this case tending to show that the defendant escaped only because of [duress] [necessity]. The burden of proving duress or necessity as a defense to escape is upon the defendant. It need not be proved beyond a reasonable doubt, but only to your satisfaction. The defendant would not be guilty of escape if:

First, defendant reasonably believed that *he* was faced with [a specific threat of death] [forcible sexual attack] [substantial bodily injury] in the immediate future.

Second, defendant reasonably believed that there was no time for a complaint to the authorities or there existed a history of futile complaints which made any result from such complaints illusory.

Third, defendant reasonably believed that there was no time or opportunity to resort to the courts.

Fourth, the defendant did not use force or violence toward prison personnel or other innocent persons in the escape.

And Fifth, the defendant immediately reported to the proper authorities when *he* attained a position of safety from the immediate threat.

The defendant's assertion of [duress] [necessity] is a denial that *he* has committed any crime. The burden remains on the State to prove the defendant's guilt beyond a reasonable doubt.²

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1. This defense was recognized and its elements set forth in *State v. Watts*, 60 N.C. App. 191 (1982). *S. v. Strickland*, 307 N.C. 274, at 297 (1983), overruled on other grounds by *State v. Johnson*, 317 N.C. 193 (1986), held that duress is an affirmative defense.

2. *State v. Sherian*, 234 N.C. 30 (1951).