

Best Criminal Defenses and Strategies

A criminal act requires two essential elements: (1) criminal intention (*mens rea* or “a guilty mind”) and (2) a criminal act (*actus reus*) in furtherance of that intention. If one or both elements can either be defeated or justified, a defendant will be found “not guilty” or, alternatively, receive a reduced sentence.

Criminal intention involves planning and deliberation (i.e., the formulation of intent). Therefore, if a criminal defense attorney can negate intent, the prosecution cannot meet its burden of proof beyond a reasonable doubt.

The following defenses negate the element of intent:

A. Mistake Defenses

Mistake of Fact: This signifies that the defendant was oblivious to a crucial fact or facts in issue, such that if the defendant had known the truth, he or she would not have engaged in the act. For example, if a defendant is accused of burglarizing someone’s home (i.e., breaking and entering), but actually breaks into his/her own dwelling due to mitigating circumstances (e.g., keys were lost or stolen), the act does not constitute the crime of burglary.

Mistaken Identity: Mistaken identity occurs when the wrong defendant has been identified as the perpetrator of the crime in question. Clearly, a case of mistaken identity exonerates the wrongfully accused.

Note: mistake of law is not a defense.

B. Factual Exonerations

False Accusations: As a corollary of mistaken identity, a wrongful accusation negates intent in the absence of physical evidence to corroborate it.

Accident: By its very definition, an act that occurs accidentally obliterates the element of deliberation necessary for a criminal act.

Alibi Defense: If a defendant can prove that he was nowhere near the scene of the crime at the time it occurred, the alibi defense may lead to a not-guilty verdict.

C. Extrinsic Influences

Due to Duress or Imminent Risk of Harm: If, under the circumstances, a defendant reasonably believes in the possibility of imminent risk of danger, harm, or death either to him/herself or another, the element of “a guilty mind,” as a precursor to the criminal

act, and the act itself may not be considered criminal. Similarly, if the defendant is placed under duress, the same result may ensue.

Entrapment: This defense is somewhat analogous to coercion. If a defendant can prove that he or she did not have a propensity to commit the crime in question, but law enforcement persuaded the defendant, either by stealth or cunning, to violate the law, the defense applies. Instances of entrapment typically arise with regard to drug or sex crimes.

Law Enforcement Misconduct: Unfortunately, law enforcement, those to whom we look for protection, sometimes do not properly enforce the law. Incidents of police misconduct, therefore, may lead to a dismissal or reduction of charges. Defendants would can prove a Fourth Amendment violation have this defense. For example, police officers who enter a dwelling or place of business without a warrant that particularizes the specific nature and scope of the search have engaged in a Fourth Amendment violation. As a corollary of such misconduct, if the police seize evidence outside the scope of the search, such evidence is deemed to be “fruit of the poisonous tree,” and therefore, inadmissible at trial.

Other types of police misconduct include the following:

- Lying or exaggerating facts in reports or during testimony
- Evidence tampering
- Undue use of force
- Coercion or excessive interrogation

Lack of Probable Cause: In order to stop, search, and arrest a suspect, law enforcement must have “specific, articulable facts” that point to a finding of “probable cause” (*Terry v. Ohio*, 1968). Absent a finding of probable cause, evidence seized during an unlawful stop and search can be suppressed and result in the dismissal of charges.

D. Justification—Affirmative defenses

If an accused claims justification for the act committed, he or she asserts that the act did, in fact, take place, but there is a justification for it. The accused has the burden of proof by a preponderance of the evidence, such that if proven, defendant’s contention would, more likely than not, produce a favorable result for the defense.

Defense of Self or Others: If a defendant reasonably believes that force is necessary to avert existing or imminent harm to him/herself or to another, that use of force is justifiable. If someone unlawfully intrudes upon defendant’s *property*, defendant’s use of force must be proportionate to the defendant’s reasonable expectation of harm (i.e., a defendant must only use that amount of force equal to that exerted upon or reasonably likely to injure him or her).

Ohio adheres to the “castle doctrine.” That is, the defendant does not have a duty to retreat if the intrusion occurs within his or her dwelling, place of business, or vehicle. However, if the use of force occurs on someone else’s real property or within another’s vehicle, the defendant may only use force if a means of escape is not feasible. The defendant may, however, entertain a civil action for battery (i.e., a non-consensual, unlawful touching, sometimes resulting in injury) or assault (i.e., the imminent threat of a battery).

Necessity: There was some larger purpose or reason for the action. Defendant has the burden of proof by a preponderance of the evidence (i.e., evidence that, if proven, would most likely lead to a result in the defendant’s favor).

Involuntary Intoxication: If the defendant can prove involuntary intoxication by either drugs or alcohol, a complete negation of “specific intent” would occur. The key here is involuntariness, and the defendant must show lack of inclination or intent to ingest *any* substance whatsoever.

Insanity: This defense asserts that the individual charged with a crime had a documentable mental defect or impairment, such that he or she was unable to appreciate the nature and consequences of the criminal act and that the act failed to conform to the law (per the *M’Naghten* rule).

Abandonment/Renunciation: Essentially, defendant asserts that even though the crime was going to be committed, the accused voluntarily and completely withdraws from or renounces the crime and notifies the police. Proof must be provided that none of defendant’s actions either prior or subsequent to the crime contributed to its commission in any way.

Consent: This defense claims that although the defendant committed the act, the victim’s consent negated *mens rea* or “criminal mind.” Note: Statutory rape is a crime resulting in per se liability, for which consent is *not* available as a defense.

E. Prosecutorial Errors

Statute of Limitations: The defense alleges that charges must be dropped due to the prosecution’s failure to bring charges in a timely manner.

Lack of Proof Beyond a Reasonable Doubt: The prosecution has the formidable task of proving its case beyond a reasonable doubt—the highest proof, given the potential life-altering effects of a conviction. The evidence must be so overwhelming that reasonable people can only come to one conclusion under the circumstances: a finding of guilt. If a scintilla of doubt remains in the jurors’ mind, a conviction *cannot* stand.

Double Jeopardy: The United States Constitution's Double Jeopardy Clause of the Fifth Amendment precludes placing a defendant twice in jeopardy of life and limb. Even if new evidence comes to light, therefore, a defendant cannot be tried twice for the same offense for which he was either acquitted or convicted in a prior trial.

For more information on defense strategies, contact a [criminal defense attorney](#).