Good example of research paper on defenses against proof of criminal intent

Law, Criminal Justice

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(School/University)

Defenses used to Challenge Criminal Intent:’

Entrapment

Cole and Smith (2007, p. 69) states that the defense of “ entrapment” can be used by counsel to prove that the defendant is bereft of criminal intent. Under this defense, the law would exclude the defendants when it is proven that law enforcement officials coaxed the person to commit the crime. However, this limitation does not preclude the use of the undercover agents to trap the criminals, nor does it mean that the police should create opportunities or situations for criminals to commit crimes. Nevertheless, the defense can be availed of when the police clearly motivated the criminal to

commit the offense.

The defense of “ entrapment” is founded upon the postulate that inappropriate application of the law by the police must be levied punitive sanctions. The defense may be used even if the person conducting the trap is not a police officer, meaning that even individuals can be cited as conducting an illegal entrapment.

The premise here is that at times, it would be extremely difficult criminal activity unless police are allowed a certain amount of leeway to initiate on the possibility by way of solicitation. The type of crime that is listed in the protections against possible entrapment is those that recur over the daily “ business” of the suspect.

Self-Defense

When an individual believes that he/she is in imminent danger of being inflicted grievous bodily harm by an assailant, the person may use force to ward off the attacker and neutralize the threat of the attacker. This is the concept of the self-defense principle. Majority of the state laws recognize the right of individuals to defend themselves from attackers, to safeguard one’s property, and to prevent criminal activities.

However, there is a limitation to the use of the self defense principle. In successfully invoking self defense, the degree of the threat to the victim must not go over the person’s “ reasonable expectation of the threat. For example, a person is entitled to use a firearm against a robber who is waving a gun or threatening to use a gun against the victim; however, homeowners do not have the legal right in shooting intruders who are unarmed who has

already left the scene of the crime or is leaving the crime scene (Cole and Smith, 2007, p. 69)

Necessity

Any pressure for the individuals to reasonably believe that the commission of his/her actions is the sole option left to prevent immediate public disaster or imminent death to him/herself or to another individual, can be used as a defense in crimes save for murder (Wisconsin Legislature-Legislative Council, 1953, p. 42).

As compared to the strategy of self defense, where the defendants holds to the belief that the only avenue available to neutralize the threat of the attacker is to use force, the defense of necessity is invoked as a strategy when the intended victim/s must commit an offense with the objective of saving themselves or to thwart the infliction of additional harm. For example, a driver who speeds through a red light at a traffic intersection in order to get a sick child to the hospital, or illegally enters a building to find refuge from a storm can claim this defense of violating the law out of need.

In The Queen v. Dudley and Stephens (1884), four sailors, after their ship sank, were stranded on the high seas without supplies. After four days, two of the sailors, Thomas Dudley and Edwin Stephens, killed the youngest of the four, and ate the flesh. After being rescued and returned to include, the two were convicted of murder as the court refused to acknowledge their defense that they needed to eat the victim in order to survive. However, after the court reviewed the case, the sentence of the two was lowered from the death penalty to six months in prison.

However, as in the case of coercion, the defense of necessity is limited in scope and application. To be able to utilize the defense, counsel must be able to prove that the infliction of the harm being avoided is imminent and of a significant force if evaluated by the standard of a reasonably logical, thinking man. In addition, as in coercion, the defense of necessity is not a defense for the crime of murder; however, necessity as a defense in cases of murder can be used as a mitigating factor (Wisconsin Legislature-Legislative Council, 1953, p. 42).

Duress

Coercion can be used as a defense for the accused is defined as a " threat by a person other than the actor's co-conspirator which causes the actor in a reasonable manner to believe that the act is the only means of preventing imminent death or great bodily harm to him or another". In the context of married individuals, the defense is unavailable if there is a claim that the command is done under the command of the spouse, or is there a defense of coercion when the offense is done by the spouse in front of the other (Wisconsin Legislature-Legislative Council, 1953, p. 41).

In determining the claim if the person was acting under duress, and whether the belief of the individual in the reasonableness of the action, there must be a thorough consideration as these were presented to and understood by the defendant during the time of the incident, and then consider what a reasonable thinking person would act if placed in the same position. In addition, the claim that it was necessary for the violation of the law would result in the prevention of future harm is not a plausible factor in citing this

defense, as the threat of harm must be imminent. In addition, akin to the composition of the defense of necessity as inapplicable to frustrate claims of murder, duress cannot be used as a defense or even as a mitigating factor against cases of murder, as stated in People v Anderson (2002) 28 Cal. 4th 767, 783-785 (Justia, 2014, p. 1).

Immaturity

The operation of Anglo American law excuses children under seven years old on the premise that these are immature and as such, have a lack of distinguishing responsibility for their actions. Here, the principle of mens rea is absent. In the application of common law, children that are within the 7-14 age range are not legally accountable; nevertheless, prosecutors have traditionally been asked to present evidence in court to examine and evaluate the mental ability of the child to be able to form mens rea. However, there are cases that will elevate the case of the child to adult court if the circumstances warrant it. In addition, juries are amenable to treating children suspects as adult offenders if these can be given evidence that these are recidivists, or concealed evidence or committed bribery against witnesses. In general, as the child grows older, the defense of immaturity looses much of its strength and potency (Cole and Smith, 2007, p. 70).

Mistake of Fact

Courts of law have traditionally held the perception that “ ignorance of the law” is not an excuse for the commission of an offense against the law. However, if there is a “ mistake of fact”, and the fact must be of a critical significance to the case, then this can serve as a defense in court. To cite an

example, a group of youths ask permission from a homeowner to plant a garden behind the homeowner’s lot. The homeowner, believing it is an innocent act, helps the youths by watering the plants and removing the weeds in the lot.

However, the youths were actually planting marijuana in the lot. The homeowners did not know since he/she was not aware what the plant looks like. The possibility of the homeowner either being convicted or acquitted in the case is dependent on the particular level of knowledge of the homeowner, and the intention of the prosecution to prove the guilt of the homeowner. In addition, the chances of the accused to be acquitted or convicted will rest with the level that the jury can sympathize with the error of the accused (Cole and Smith, 2007, p. 72).

Intoxication

Intoxication can be used as a defense to criminal responsibility in two manners. One, the degree of intoxication of the person makes the person unable to differentiate right and wrong, and it is only a defense when the intoxication is unwillingly produced, and two, the level of the intoxication will render it impossible for the creation of a criminal state of mind regardless whether the intoxication is deliberate or involuntarily done (Wisconsin Legislature-Legislative Council, 1953, p. 42).

In the context of Canada, the case for intoxication as an avenue for disproving criminal intent was changed twice. In the initial change, the Supreme Court of Canada, in a benchmark decision, allowed the use of intoxication as a defense in court for the first time, under a specific set of

circumstances for “ general intent” criminal acts. The second event was the Canadian government moved to adopt legislation that will limit the use of this defense in cases where bodily harm is a factor (Bondy, 2014, p. 1). However, the law does not provide protection of the actions of the person if the person who deliberately intoxicated themselves in an attempt to rid them of any criminal liability. However, intoxication can be invoked as a defense when there is no act to deliberately get drunk, as when an individual is deceived into drinking something not knowing that the drink is laced with something intoxicating. In 1996, a Montana law that prohibited the use of intoxication as a defense in court narrowly gained the nod of the United States Supreme Court, even in the case of suspects who state that their intoxicated condition restricted them to form the “ specific intent” that is a critical component in forming guilt, as stated in the case of Montana v. Egelhoff (Cole and Smith, 2007, p. 72).

Insanity

The United States Supreme Court, in 2006, decided that Arizona’s law on the use of the “ insanity defense” in court is in conforming to the “ due process” clause in the United States Constitution. In Clark v Arizona, with the High Court ruling 6-3, Justice David Souter affirmed the so-called “ Mott ruling” in Arizona, banning the use of psychiatric evidence to state a mental illness that falls short of invoking insanity to disprove the assertion of the prosecution of criminal intent on the part of the accused (Treatment Advocacy Center, 2011, p. 1).

All but four states, namely Montana, Idaho, Utah and Nevada, have the

insanity defense in their law books. However, the opposition in the use of this strategy is that it allows the criminal to escape punishment owing to the skillful presentation of data stating that the criminal was incapable of distinguishing their actions. However, this defense is very rare and is only used where there are no other available defenses open to the defense (Cole and Smith, 2007, p. 72).

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