

### 310.12 NECESSITY<sup>1</sup>

There is evidence in this case tending to show that the defendant acted only because of necessity. The burden of proving necessity is on the defendant.<sup>2</sup> It need not be proved beyond a reasonable doubt, but only to your satisfaction. The defendant would not be guilty of [crime charged] if the defendant proves to your satisfaction the following three things:

First, the action of the defendant was reasonable.

Second, the action was taken to protect the life, limb, or health of the defendant (or of some other person).

And Third, there were no other acceptable choices available to the defendant.<sup>3</sup>

The defendant's assertion of necessity is a denial that the defendant has committed any crime. The burden remains on the State to prove the defendant's guilt beyond a reasonable doubt.<sup>4</sup>

If the defendant has proven to your satisfaction that the defendant (describe action of the defendant) at the time of the alleged offense because of necessity as I have defined that term for you, you will not consider this case further and it would be your duty to return a verdict of not guilty.

However, if you do not so find then you must decide if the defendant is guilty of (name offense). If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant (give final mandate for offense charged), then you would return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

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1 *State v. Miller*, \_\_ N.C. App. \_\_, \_\_, 812 S.E.2d 692, 694 (2018), (explaining that “the affirmative defense of necessity is available to defendants charged with driving while under the influence”).

2 *State v. Caddell*, 287 N.C. 266, 289 (1975).

3 *State v. Miller*, \_\_ N.C. App. \_\_, \_\_, 812 S.E.2d 692, 694 (2018).

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