

310.12 NECESSITY¹

*NOTE WELL: The trial judge is reminded that this instruction must be combined with the substantive offense instruction in the following manner: (1) the jury should be instructed on the elements of the charged offense; (2) the jury should then be instructed on the definition of necessity set out in this instruction below; (3) the jury should be instructed on the mandate for necessity as set out below in this instruction; and (4) the jury should then be instructed on the mandate of the charged offense. **The failure to charge on all of these matters constitutes reversible error.***

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.² 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.³

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.⁴

NECESSITY MANDATE

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, 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).

1. *State v. Miller*, 258 N.C. App. 325, 327, 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*, 258 N.C. App. 325, 327, 812 S.E.2d 692, 694 (2018).

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