

A man joined a neighborhood gang. At a gang meeting, as part of the initiation process, the leader ordered the man to kill a member of a rival gang. The man refused, saying he no longer wanted to be part of the group. The leader, with the approval of the other members, told the man that he had become too involved with the gang to quit and that they would kill him if he did not accomplish the murder of the rival gang member. The next day the man shot the rival gang member to death while he was sitting on his motorcycle outside a restaurant.

The man is charged with first-degree murder. First-degree murder is defined in the jurisdiction as the intentional premeditated killing of another. Second-degree murder is all other murder at common law.

If the man killed the rival gang member because of the threat to his own life, what verdict should the jury render?

- A. Guilty of first-degree murder.
- B. Guilty of second-degree murder.
- C. Not guilty, because of the defense of duress.
- D. Not guilty, because of the defense of necessity.

Explanation:

Duress v. Necessity

Duress Crime (other than murder) committed under imminent threat of serious bodily harm from human force
Reasonable belief crime was necessary to prevent harm to self or others
No reasonable opportunity to escape

Necessity Crime (other than murder) committed to prevent imminent & substantial harm from natural* or human force
No reasonable legal alternative available
Harm caused < harm avoided

*At common law, necessity had to arise from natural forces. But many jurisdictions have now expanded necessity to include natural *and* human forces.

In this jurisdiction (and most others), murder is divided into two degrees:

First-degree murder – a killing committed with (1) the **intent to kill**—the purpose or knowledge that death will result—and (2) **premeditation**—when the defendant plans or reflects on the killing beforehand

Second-degree murder – all other common law murder—ie, an unlawful killing with [malice aforethought](#)

Here, the man intentionally shot and killed a rival gang member to save his own life. And since the man had reflected on the consequences of the killing the day before, his actions were premeditated. Therefore, the man will be convicted of the more serious offense of first-degree murder—unless he has a viable defense (**Choice B**).

The man's decision to kill the rival gang member because of the death threat he received from his own gang raises two possible defenses:

Duress – excuses criminal conduct when a **human threat** caused the defendant to reasonably believe that committing the crime was necessary to **prevent** imminent serious **bodily harm or death**

Necessity – justifies criminal conduct when a **natural or human threat** caused the defendant to reasonably believe that committing the crime was necessary to **prevent a greater harm**

But neither defense is available when the defendant is charged with murder (**Choices C & D**). Therefore, the jury should render a verdict finding the man guilty of first-degree murder.

Educational objective:

In most jurisdictions, an intentional and premeditated killing is categorized as first-degree murder. And neither duress (human threat) nor necessity (natural or human threat) is ever a defense to murder.

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