

A defendant was tried for armed robbery. The state introduced evidence that a man, identified by witnesses as the defendant, entered a convenience store at 11:00 p.m. on March 5, threatened the clerk with a gun, and took \$75 from the cash register.

The defendant did not testify, but his sister did. She testified that on March 5, at the time of the robbery, the defendant was with her in a city 300 miles away. On cross-examination, the sister admitted having given a statement to the police in which she had said that the defendant was not with her on March 5, but she claimed that the earlier statement was mistaken.

The court instructed the jurors that in order to convict the defendant, they had to find all of the elements of the crime beyond a reasonable doubt.

As to the defendant's claim of alibi, which of the following additional instructions would be proper?

- A. Alibi is a matter of defense and so must be established by the defendant; however, the burden of persuasion is by a preponderance of the evidence, not beyond a reasonable doubt.
- B. Before you may consider the defendant's claim of alibi, you must decide whether he has produced sufficient evidence to raise the issue.
- C. If the defendant's evidence has caused you to have a reasonable doubt as to whether he was the robber, you must find him not guilty.
- D. If you have a reasonable doubt as to whether the defendant was present at the convenience store at about 11:00 p.m. on March 5, you must find him not guilty.

Explanation:

Criminal defenses: burdens & standards of proof

Negation defense	Challenges element of crime (eg, alibi, lack of intent) Fifth Amendment assigns burden to prosecution to prove element beyond a reasonable doubt
Affirmative defense	Justifies or excuses criminal conduct, but does not challenge element of crime (eg, entrapment, self-defense, duress) Statute assigns burden (prosecution or defense) & standard of proof (eg, preponderance, clear & convincing, beyond a reasonable doubt)

Due process requires that the prosecution prove every element of a **criminal offense beyond a reasonable doubt**. Therefore, when a defendant asserts a defense that **negates an element** of the crime (eg, an alibi defense), the prosecution bears the burden of proof—not the defendant. However, the prosecution is not required to disprove an **affirmative defense** (eg, self-defense, duress) since it justifies or excuses the defendant's criminal conduct but does not negate an element of the crime.

Here, the defendant was on trial for armed robbery, which requires proof that he was at the convenience store at about 11:00 p.m. on March 5. Since the defendant's sister testified that he was with her 300 miles away when the crime occurred, her alibi testimony challenges an element of the crime that the prosecution must prove beyond a reasonable doubt. Therefore, the trial court should instruct the jury that if it has a reasonable doubt as to whether the defendant was at the convenience store, it must find him not guilty.

(Choice A) The burden of proof can be placed on the defendant only for affirmative defenses—not for defenses that challenge an element of the criminal offense (eg, alibi, lack of intent). Additionally, any level of proof can be imposed—eg, preponderance of the evidence, clear and convincing evidence, beyond a reasonable doubt.

(Choice B) A defendant must produce sufficient evidence to raise an affirmative defense, but not to raise an alibi defense since it negates an element of the charged crime. Instead, the prosecution must produce sufficient evidence to establish all elements of the criminal offense beyond a reasonable doubt.

(Choice C) Although the jury must find the defendant not guilty if it has a reasonable doubt as to whether he was the robber, this jury instruction wrongfully places the burden of proof for an element of the crime on the defendant.

Educational objective:

The prosecution must prove every element of a criminal offense beyond a reasonable doubt. Therefore, the prosecution bears the burden of proof when a defendant raises a defense that challenges an element of the offense.

References

U.S. Const. amend. XIV § 1 (due process clause).

In re Winship, 397 U.S. 358, 364 (1970) (stating that the prosecution must prove every element of a criminal offense beyond a reasonable doubt).

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