

A defendant was charged with and tried for murder. At trial, the defendant testified that he had acted in self-defense.

The trial court instructed the jury that the defendant had the burden of proving by a preponderance of the evidence that he had acted in self-defense. The defendant objected, arguing that this instruction violated the constitutional requirement that the prosecution prove the offense beyond a reasonable doubt.

Did the trial court's instruction violate the defendant's federal constitutional rights?

- A. No, because due process does not preclude requiring a defendant to prove self-defense by a preponderance of the evidence.
- B. No, because due process does not regulate the burdens of proof in criminal cases.
- C. Yes, because due process precludes placing any evidentiary burden on a criminal defendant.
- D. Yes, because due process precludes requiring a criminal defendant to bear the burden on an issue that would make an act lawful.

Explanation:

Due process seeks to prevent wrongful convictions by requiring the **government** to prove every element of a **criminal offense beyond a reasonable doubt** (a high evidentiary burden). However, a legislature can place **any burden of proof** on the **defendant** to establish an **affirmative defense**—an assertion that, if proven, will justify or excuse a criminal defendant's actions and defeat the prosecution's claim **(Choice C)**.

Here, the trial court instructed the jury that the defendant had the burden of proving that he acted in self-defense by a preponderance of the evidence. Since self-defense is an affirmative defense—not an element of the charged crime (murder)—this instruction placed a proper burden of proof on the defendant and did not violate due process.

(Choice B) Although due process does not regulate the burden of proof for *affirmative defenses* in criminal cases (eg, self-defense, insanity), it does regulate the burden of proof for criminal *offenses* (eg, murder, rape).

(Choice D) Due process precludes requiring a criminal defendant to bear the burden on an issue necessary to prove an element of a crime (eg, for murder, that the defendant caused the death of another)—not an issue that would make an act lawful. Therefore, a defendant can be required to prove an affirmative defense that would justify or excuse his/her actions and make the act lawful (eg, that the defendant killed another in self-defense).

Educational objective:

Due process requires the prosecution to prove every element of a criminal offense beyond a reasonable doubt. But the defendant can be required to prove an affirmative defense (eg, self-defense, insanity) by any degree of proof.

References

U.S. Const. amend. V (due process clause applicable to the federal government).

U.S. Const. amend. XIV § 1 (due process clause applicable to the states).

Martin v. Ohio, 480 U.S. 228, 233 (1987) (holding that a state can place the burden of proof for self-defense on a defendant).

Copyright © 2019 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Burden of proof hierarchy

