



## STATE v. LEONARD

2024 | Cited 0 times | Court of Appeals of Arizona | October 1, 2024

NOTICE: NOT FOR OFFICIAL PUBLICATION. UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE ARIZONA COURT OF APPEALS DIVISION ONE

STATE OF ARIZONA, Appellee,

v.

JAYSEN LEMAR LEONARD, Appellant.

No. 1 CA-CR 23-0247

Appeal from the Superior Court in Maricopa County No. CR2022-110828-001 The Honorable Lisa Ann VandenBerg, Judge

AFFIRMED

COUNSEL

Arizona , Tucson By Karen Moody Counsel for Appellee

Law Office of Stephen M. Johnson Inc, Phoenix By Stephen M. Johnson Counsel for Appellant

MEMORANDUM DECISION

Judge Daniel J. Kiley delivered the decision of the Court, in which Presiding Judge Michael J. Brown and Judge D. Steven Williams joined.

KILEY, Judge:

¶1 Jaysen Leonard appeals his conviction and resulting sentence for misconduct involving weapons. Because he does not establish error, we affirm.

FACTS AND PROCEDURAL HISTORY



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¶2 Viewed in the requisite light most favorable to sustaining the State v. Thompson, 252 Ariz. 279, 287, ¶ 2 n. 3 (2022), the evidence shows that one evening in March 2022, a Phoenix police officer was in the vicinity of 26 th Avenue and Bethany Home Road when he was approached by someone from a nearby bar with a request for assistance. The officer entered the bar and saw a man, later identified as Leonard, lying on the floor being restrained by security guards. Upon seeing the officer, a secur

rights, 1 Leonard admitted that he is a convicted felon and acknowledged that he is not permitted to possess a firearm.

¶3 The State charged Leonard with misconduct involving weapons, a class four felony, in violation of A.R.S. § 13-3102(A)(4) (prohibited possessor).

¶4 At trial, the State presented, inter alia, the testimony of the conviction. Leonard then testified, stating that he arrived at the bar that

evening unarmed when he was approached by two men he did not know. and then man demanded that Leonard turn over his watch to make up for the

1 Miranda v. Arizona, 384 U.S. 436, 471 (1966). purported theft. At that point, Leonard testified, he began to fear he was

¶5

¶6 According to Leonard, one of the two men then sucker-  
and the assailants were gone.

¶7 When the State sought to confirm, during its cross- examination of Leonard, that he took the gun before he was punched, right order, but it was definitely an assault happened and I grabbed his

¶8 Leonard admitted that neither of his assailants threatened him with a weapon. He also admitted that he never told the arresting officer that the gun did not belong to him, that it was given to him by a friend after he arrived at the bar, that he feared for his life, or that he was choked until he passed out. The bar had no surveillance cameras, but the responding -worn camera showed that Leonard was conscious when the officer entered the bar.

¶9 The superior court instructed the jury on necessity as a justification for the charged conduct, see A.R.S. § 13-417, but denied see A.R.S. § 13-412. The court . . based

the



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¶10 Jurors found Leonard guilty, and the superior court have jurisdiction under A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-

4033(A)(1).

DISCUSSION ¶11 Leonard argues he was entitled to a duress instruction and that the superior court violated his federal constitutional right to due process by depriving him of the opportunity to assert a duress defense. We uested instruction for an abuse of discretion. *State v. Richter*, 245 Ariz. 1, 4, ¶ 11 (2018). But we review evidentiary rulings involving constitutional questions de novo. *State v. Armstrong*, 218 Ariz. 451, 458, ¶ 20 (2008). Because Leonard did not raise a due process objection at trial, we review that claim for fundamental error only. *State v. Escalante*, 245 Ariz. 135, 140, ¶ 12 (2018).

¶12 *State v. Ruggiero*, 211 Ariz. 262, 264, ¶

*State v. Vassell*, 238 Ariz. 281, 284, ¶ 9 (App. 2015) (cleaned up). In evaluating whether a justification instruction should have been given, we view the evidence in the light most favorable to the defendant. *State v. King*, 225 Ariz. 87, 90, ¶ 13 (2010).

¶13 Duress and necessity are both justification defenses set forth in A.R.S. Title 13, Chapter 4. The duress defense is codified in A.R.S. § 13- 412(A), which provides that

[c]onduct which would otherwise constitute an offense is justified if a reasonable person would believe that he was compelled to engage in the proscribed conduct by the threat or use of immediate physical force against his person or the person of another which resulted or could result in serious physical injury which a reasonable person in the situation would not have resisted.

¶14 The use or threat of force necessary to support a duress as to induce a well-grounded apprehension of death or serious bodily

*State v. Jones*, 119 Ariz. 555, 558 (App. 1978). Significantly, however, the defense of duress is distinct from self- defense. *State v. Lamar* duress is not available as a substitute for self- duress immediate physical violence to commit a crime against another person or the

property of another person *Id.* (emphasis added). The duress defense applies, *Richter*, 245 Ariz. at 8, ¶ 31. ¶15 Leonard testified that he accepted the gun proffered by a friend and put it in his pocket because he was in fear for his own safety. He *Lamar*, 144 Ariz. at 497. No evidence was presented, nor did the State allege,

testimony thus could not possibly support a duress defense, and the trial



## STATE v. LEONARD

2024 | Cited 0 times | Court of Appeals of Arizona | October 1, 2024

court properly declined to instruct the jury on duress. See State v. Speers, 209 when it instructs on an issue or theory that is not supported by evidence

because it invites the jury to speculate as to possible non-existent

¶16 In any event, even if the facts of this case could be said to jurors on duress entitles Leonard to no relief because the necessity

instruction adequately covered the issue of whether Leonard was justified in taking possession of the gun when confronted by two aggressors. State v. Almeida, 238 Ariz. 77, 81, ¶ give a requested jury instruction if its other instructions adequately cover

¶17 The court gave the jurors the following instruction on the defense of necessity:

Now, the defendant was justified in engaging in conduct that constituted the offense of misconduct involving weapons if

compelled to engage in the conduct;

And 2, the defendant had no reasonable alternative to avoid imminent public or private injury greater than the injury the defendant reasonably believed might have resulted from the conduct constituting the offense;

And, the defendant, 3, did not intentionally, knowingly, or recklessly place himself in a situation in which it was probable that the defendant would have to engage in the conduct constituting the offense.

reasonable person in the situation would have believed. The

State has the burden of proving beyond a reasonable doubt that the defendant did not act with such justification. If the State fails to carry this burden, then you must find the defendant not guilty of the charge.

¶18 The standard instruction on the defense of duress provides in mpelled to commit such

physical injury that a reasonable person in the situation would not have

see also A.R.S. § 13- 412(A).

¶19 characterizing duress as coercion by compelled by a non-human force. United States v. Bailey, 444 U.S. 394, 409



## STATE v. LEONARD

2024 | Cited 0 times | Court of Appeals of Arizona | October 1, 2024

Id. at 410. Under the circumstances here, under duress was encompassed by the necessity instruction. Under either defense, Leonard had just two options:

in his

13- justified by duress, jurors would need to make essentially the same finding:

13-412(A).

Under the circumstances presented in this case, the necessity instruction duress. Cf. Bailey and necessity] one principle remains constant: if there was a reasonable,

legal alternative to violating the law . .

¶20 Leonard submits that a duress instruction was warranted

inherent danger of the situation, rendered him incapable of resisting the Leonard could make that same argument

closing with the alleged assailants, defense counsel asked the jurors whether they would feel a weapon if started position would have felt compelled to take possession of the gun, the

no relief. Almeida, 238 Ariz. at 81, ¶ 17.

¶21 duress instruction deprived him of due process. See State v. Lehr, 227 Ariz.

140, 150, ¶ California v.

Trombetta, 467 U.S. 479, 485 (1984)). instructional error dooms his constitutional claim. Because the necessity instruction encompassed his claim of duress, Leonard was not deprived of an opportunity to present a complete defense at trial. See State v. Reaves, 252 Ariz. 553, 565, ¶¶ 31 refusal to give a requested instruction did not deprive the defendant of a

complete defense when the instruction given adequately addressed the law claim thus fails.

CONCLUSION

¶22

