

## Alibi

The defendant has offered evidence that he/she could not have committed the crime because he/she was someplace else at the time the crime was committed. That is called an alibi defense.

It is up to the State of Alabama to prove the defendant's guilt beyond a reasonable doubt, which includes all the elements of the crime, including the defendant's presence at a stated place and the defendant's committing or participating in certain acts at that place at a given time. The alibi evidence that the defendant has placed before you seeks to convince you that the defendant was elsewhere at the time and therefore could not possibly have committed the acts charged. Whether the defendant was or was not present at the scene of the crime, and therefore could or could not have done what the defendant has been charged with doing, is for you to decide, considering all the facts in the case.

The defendant does not have to prove his/her claim that he/she was elsewhere. If, on considering all the evidence, there arises in your minds a reasonable doubt as to the defendant's presence at the scene of the crime when it was committed, then the defendant is entitled to be found not guilty.

The State of Alabama has offered evidence tending to disprove the alibi. This evidence is submitted to you to consider along with all the evidence to decide the truth and your verdict. If you believe from the evidence beyond a reasonable doubt that the alibi evidence is false, then you may consider this as a circumstance against the defendant in connection with all the evidence in the case.

If the alibi evidence, when considered with all the other evidence in this case, does not rise to a reasonable doubt of the defendant's guilt, and you are otherwise convinced beyond a reasonable doubt of the defendant's guilt, then you shall find the defendant guilty.

On the other hand, if the alibi evidence, when considered with all the other evidence in this case, rises to a reasonable doubt of the defendant's guilt or if the State of Alabama has failed to prove any one or more of the other elements of the crime, then you cannot find the defendant guilty.

## Use Notes

An alibi is not an actual defense, but a denial of the State's accusations that the defendant was at a stated place at a stated time. "Alibi evidence is simply evidence tending to prove innocence and it is error for the trial court to instruct the jury that the accused has the burden of proving the alibi." *McElroy's Alabama Evidence*, § 457.04.

See *Nolen v. State*, 376 So. 2d 1145, 1147 (Ala. Crim. App. 1979) (citing *Hatch v. State*, 144 Ala. 50, 40 So. 113 (1906); *Pickens v. State*, 115 Ala. 42, 52, 22 So. 551

(1897); *Carlisle v. State*, 356 So. 2d 702 (Ala. Crim. App.), cert. denied 356 So. 2d 703 (Ala.1978)). See also *Craig v. State*, 526 So. 2d 644 (Ala. Crim. App. 1988).

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