

Destruction of Evidence by Defendant

There has been evidence that the defendant obliterated, destroyed or suppressed evidence of a crime or attempted or desired to do so to avoid prosecution. Evidence of the defendant's destruction of evidence or attempt or desire to do so is admissible for your consideration to prove consciousness of guilt of the defendant. However, this evidence can only be considered by you as evidence of consciousness of guilt, but not as an admission by the defendant of his/her guilt.

When the State of Alabama offers evidence of a defendant's destruction of evidence or attempt or desire to do so, then the defendant has the right to show that the claimed destruction of evidence or attempt or desire to do so was not in fact such. So when considering evidence of destruction of evidence or attempt or desire to do so, you should consider that there may be factors, other than a consciousness of guilt, which could cause the defendant to do so and as such are not proof of consciousness of guilt.

It is up to the jury to decide whether or not the defendant obliterated, destroyed or suppressed evidence of a crime or tried or desired to do so to avoid prosecution and, if so, whether or not the defendant's act was from a consciousness of guilt or for some other reason.

Use Notes

C. Gamble, *McElroy's Alabama Evidence* 190.05; *Watwood v. State*, 389 So. 2d 549, 551 (Ala. Cr. App.), cert. denied, *Ex parte Watwood*, 389 So. 2d 552 (Ala. 1980).

[Approved 04-15-16.]