FILED
JAN 25 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	Filed January 25, 1979
vs.	)	
ARNOLD TERRILL BALDWIN, JR.,	)	611 / 61364
Appellant.	)	

Appeal from Lee District Court - Harlan W. Bainter, Judge.

Defendant appeals conviction for escape alleging error in refusal to instruct jury on defense of duress. - Affirmed.

Mr. Greg Johnson, of Johnson & Phelan, Fort Madison, for Appellant.

Mr. Thomas J. Miller, Attorney General of Iowa, Ms. Lona Hansen, Assistant Attorney General, and J. E. Tobey, III, Assistant Attorney General for Appellee.

Submitted to Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant Arnold Baldwin, Jr. appeals conviction for escape in violation of § 745.1, The Code 1977, alleging that trial court erred in failing to instruct the jury on the defense theory of duress. We affirm.

Defendant concedes that he was an inmate at the Iowa State Penitentiary on July 31, 1977, and that he was returned to the Penitentiary on August 30, 1977 after being apprehended in Des Moines, Iowa. Defendant contends, however, that his escape was the result of duress in that he had been assaulted by other prisoners and threatened with homosexual attacks. His proposed instructions would have informed the jury that duress is a defense to the crime of escape and that the State had the burden of showing that defendant's escape was not necessitated by the threatening conduct of another which resulted in defendant harboring a reasonable fear of imminent death or serious bodily harm. The State maintains the proposed instructions were properly refused because intent is not an element of escape under § 745.1, The Code 1977, and therefore, duress is not a defense.

While the defense of duress has been a recognized defense in Iowa, it appears to be a defense which goes to the defendant's state of mind or mens rea. See State v. Clay, 220 Iowa 1191, 1202-03, 264 N.W. 77, 83 (1935). In State v. Reese, No. 61071, slip op. at 5 (Iowa, filed Dec. 20, 1978), the court noted that the escape statute at issue herein does not require the element of intent. We find, therefore, that the duress defense cannot apply to the charge of escape under § 745.1, The Code 1977. In Reese, the court did recognize the defense of necessity to an escape charge under § 745.1 since necessity is not tied to a mental element. Id. In his brief, defendant has sought to treat the defenses of necessity and duress interchangeably. The two theories are closely related. However, as pointed out above, duress is only available as a defense to crimes having the element of intent. Defendant never requested an instruction on the defense of necessity but relied solely on duress. Even if we were to conclude that defendant impliedly sought to interpose the necessity defense, he failed to generate a fact question sufficient to submit that defense to the jury. One of the conditions which must exist before the defense of necessity is available is that the prisoner immediately reports to the proper

authority when he has attained a position of safety. Id. at 6, 7. After his escape on July 31, 1977, defendant went to Missouri and eventually to Des Moines. He testified that he telephoned a Des Moines attorney four days after the escape to discuss the possibility of a transfer of custody to Anamosa. Defendant was finally apprehended by authorities in Des Moines some thirty days after his escape. Under this record, trial court would be correct in refusing to instruct the jury on a defense of necessity. We affirm defendant's conviction.

AFFIRMED.