

DEFENSES CHECKLIST

Antique Firearm

- It's not a firearm
- Affirmative defense to federal firearm charge
- 18 U.S.C. § 912(a)(3) and (16)
- *United States v. Smith*, 981 F.2d 887 (6th Cir. 1992).

Alibi

- I couldn't have done it because I wasn't there.

Coercion/Duress

- They made me do it
- Including battered spouse syndrome
- *United States v. Campbell*, 675 F.2d 815 (6th Cir. 1982).
- *United States v. Solano*, 10 F.3d 682 (9th Cir. 1993).

Consent

- They said I could do it

Diminished Capacity

- I didn't really know I was doing it, or my actions were involuntary, but I'm not insane
- Including involuntary intoxication; battered spouse syndrome
- MPC § 2.08; *United States v. Pholot*, 827 F.2d 889 (3rd cir. 1987), *cert. denied*, 484 U.S. 1011 (1988).
- 18 U.S.C.A. § 17
- *State v. Phipps*, 883 S.W.2d 138 (Tenn. Cr. App. 1994).
- *United States v. Cameron*, 907 F.2d 1051, 1067 (11th Cir.1990).

Entrapment

- The government made me do it.

Good Faith

- I really didn't intend to do it.
- Applies in fraud cases; *United States v. Dunn*, 961 F.2d 648 (7th Cir. 1992).
- *United States v. Preston*, 634 F.2d 1285, 1294 (10th Cir.1980), *cert. denied*, 455 U.S. 1002 (1982).

Impotency

- I couldn't have done it even if I was there
- Other disabilities rendering it doubtful defendant could have committed this particular crime

Insanity

- I didn't know or don't understand that I did it
- 18 U.S.C. § 17

- MPC § 4.01

Mere presence/Association

- I was just hanging around when they did it.

Mistake of Law or Fact

- I didn't know I couldn't do it or I thought I was doing something else.
- Currency Transactions – *United States v. Aversa*, 984 F.2d 493 (1st Cir. 1993) (en banc)
- Tax Laws – *Cheek v. United States*, 498 U.S. 192 (1991); *United States v. Hughes*, 308 Fed. Appx. 882 (6th Cir. 2009).
- Remember “conscious avoidance” of knowledge is sufficient for finding knowledge. *United States v. Jewell*, 532 F.2d 697 (9th Cir. 1976), *cert. denied*, 426 U.S. 951; *United States v. Lawson*, 535 F.3d 434 (6th Cir. 2008).
- Structuring Currency Transaction to avoid reporting requirements – knowledge of illegality is required *Ratzlaf v. United States*, 510 U.S. 135 (1994).

Necessity

- I had to do it.
- Choice of evils, justification. *United States v. Newcomb*, 6 F.3d 1129 (6th Cir. 1993); *United States v. Bailey*, 444 U.S. 394 (1980); *United States v. Singleton*, 902 F.2d 471 (6th Cir.), *cert. denied*, 498 U.S. 872 (1990); *United States v. Ridener*, 512 F.3d 846, 850 (6th Cir. 2008).
- Necessity for medicinal reasons not an exception in possession of marijuana case. *United States v. Oakland Cannabis Buyers' Cooperative*, 523 U.S. 483 (2001).

Outrageous or Unconscionable Police Conduct

- Look what they did.
- *United States v. Russell*, 411 U.S. 423 (1973); *United States v. Tucker*, 28 F.3d 1420, 1422-23 (6th Cir. 1994).

Self Defense

- I did it to them because they were gonna do it to me
- Including battered spouse syndrome
- Defense of others
- And defense of property
- 54 AMERICAN LAW REPORTS 5th 141 (1998).

Statute of Limitations

- I did it too long ago.