

CHAPTER 8: JUSTIFICATIONS

As discussed in the text, a justification is an “affirmative defense.” Affirmative defenses can be used by defendants to absolve themselves of liability.

Justification is a type of affirmative defense. When raising justification as an affirmative defense, a defendant has the burden of convincing a judge or jury that his actions were necessary to protect himself or others from harm. Self-defense and necessity are two common kinds of justification.

Self-defense

Self-defense is perhaps the most well known justification for criminal conduct. It is typically seen in cases where a defendant was required to use force, usually deadly force, to protect himself or others. The criterion for establishing self-defense in Ohio, however, is quite narrow, making it difficult for defendants to prove. In *State v. Robbins*, 58 Ohio St. 2d 74 (1979), the Ohio Supreme Court held that for a defendant to establish self-defense, he or she must prove the following three things:

- 1) that the defendant was not at fault in creating the situation giving rise to the affray;
- 2) that the defendant had a bona fide belief that he was in imminent danger of death or great bodily harm and that his only means of escape from such danger was in the use of such force; and

- 3) that the defendant did not violate any duty to retreat or avoid the danger.

When interpreting this statute, Ohio courts have traditionally held that in most cases, a defendant may not use deadly force if he or she has a reasonable means of retreating. However, Ohio courts also hold that there is no duty to retreat, even if a reasonable means exists to do so, if a defendant is attacked in his or her own home (the so-called Castle doctrine discussed in the text). This holds true even if the attacker also lives in the home. Thus, in *State v. Thomas*, 77 Ohio St. 3d 323, the Ohio Supreme Court held that a victim of domestic violence was justified and acted in self defense when she killed her live-in boyfriend. The boyfriend had beaten, raped, and choked the defendant while she slept for several weeks. After a particularly violent fight, the boyfriend came home, startled the defendant while she was in the house, yelled at her, and attempted to enter the home. The defendant fired two warning shots before shooting him. The court explained that it made no difference that the boyfriend had a right to be in the home. When attacked, it matters not who is doing the attacking-- an intruder or a cohabitant. Thus, the defendant girlfriend had no duty to retreat before using deadly force to protect herself. Moreover, her belief that she was in imminent danger was reasonable given the circumstances.

In September of 2008, the Ohio legislature passed a new law dealing with the duty to retreat. Specifically, it passed a law that provides:

For purposes of any section of the Revised Code that sets forth a criminal offense, a person who lawfully is in that person's residence has no duty to retreat before using force in self-defense, defense of another, or defense of that person's residence, and a person who lawfully is an occupant of that person's vehicle or who lawfully is an occupant in a vehicle owned by an immediate family member of the person has no duty to retreat before using force in self-defense or defense of another (Ohio Revised Code, § 2901.09, 2008, available at <http://codes.ohio.gov/orc/2901.09>).

It appears that legislature intended to extend the so-called Castle doctrine to cars. No Ohio court has issued a written opinion interpreting the effect of with this new statute.

Additionally, Ohio law also provides for the defense of the home. Called the Peacock rule, this defense states that,

...where one is assaulted in his home, or the home itself is attacked, he may use such means as are necessary to repel the assailant from the house, or to prevent his forcible entry, or material injury to his home,

State v. Peacock, 40 Ohio St. 333(1883)

Necessity

Defendants can also claim justification for criminal conduct due to necessity or duress. When arguing the defense of necessity, a defendant must show that it was necessary to violate the law to avoid harm. An example of necessity would be when a person violates numerous traffic laws to get an injured person to the hospital.

Courts in Ohio hold that there are five element a defendant must prove to show necessity:

(1) the harm must be committed under the pressure of physical or natural force, rather than human force; (2) the harm sought to be avoided is greater than, or at least equal to that sought to be prevented by the law defining the offense charged; (3) the actor reasonably believes at the moment that his act is necessary and is designed to avoid the greater harm; (4) the actor must be without fault in bringing about the situation; and (5) the harm threatened must be imminent, leaving no alternative by which to avoid the greater harm State v. Mogul, 2006 Ohio 1878 (2006) (

As with self-defense, the defense of necessity is quite narrow.

REFERENCES

Ohio Revised Code, <http://codes.ohio.gov/orc>

State v. Mogul, 2006 Ohio 1878, (2006)

State v. Peacock, 40 Ohio St. 333 (1883) State v. Robbins, 58 Ohio St. 2d 74 (1979) State v. Thomas, 77 Ohio St. 3d 323 (1997)

REVIEW QUESTIONS

1. Which of the following is true regarding the self-defense laws in Ohio?
 - a. Ohio law does not consider defense of others as a defense to criminal liability
 - b. Ohio law does not consider defense of home as a defense to criminal liability
 - c. self-defense must be the ultimate last resort when considering defendant conduct
 - d. there is no duty to retreat when a defendant is attacked in his or her home
2. What is meant by the term “affirmative defense?”
 - a. the prosecutor must prove the defendant does not have an alibi
 - b. a means to absolve oneself of liability
 - c. the prosecutor must poke holes in the defendant’s testimony

- d. the defendant must provide a defense to his conduct when charged

DISCUSSION QUESTION

When examining the requirements for self-defense in the Ohio Revised Code, it appears that the law makes self-defense difficult to prove. Are these requirements too rigid, too lenient, or just right when it comes to proving self-defense? Explain.

WEB RESOURCES

- http://www.opd.ohio.gov/RC_Casebook/affirmative_defenses_in_general.htm - website of the Ohio Public Defender's Office with information about affirmative defenses in Ohio
- www.law.cornell.edu/wex/index.php/Affirmative_defense - website of Cornell Law School provides more information about various affirmative defenses