

State v. Seamons
13 P.3d 573 (Or. Ct. App. 2000)

FACTS: A police officer recruited D, a heroin addict, to sell heroin at a high price. D could not sell all of the heroin and began using it instead. Although D could not produce all of the money owed, the officer continued to give D heroin, and D used most of it himself. Eventually, the officer gave D four days to come up with the \$400 that D owed. The officer also promised to “check up” on D by phone. D evaded the officer for a while but eventually rescheduled their meeting. The day before the meeting, D used a toy gun to rob a postal annex of \$500.

PROCEDURAL HISTORY: At trial, D notified the state that he intended to rely on the COE defense, on the theory that he had no choice but to rob the annex to prevent the officer from harming him. The state filed a motion *in limine* to preclude D from relying on the defense. The trial court concluded that D could not rely on the defense because he had failed to establish any evidence of an imminent threat. D was convicted and appeals the trial court’s decision on the motion *in limine*.

ISSUE: Did the trial court err in granting the state’s motion and concluding that D had failed to provide any evidence of an imminent threat?

HOLDING/OUTCOME: The trial court did not err. Judgment affirmed.

EXPLICIT RULES:

- The appellate court reviews a lower court’s ruling on use of a defense to determine whether there is any evidence as to each element of the defense. *State v. Brown* (Or. 1988).
- COE defense in statute (section 161.200) (refer to opinion for complete language)
- 3 elements of COE defense: (1) D’s conduct was necessary to avoid a threatened injury, (2) the threatened injury was imminent, and (3) it was reasonable for D to believe that the threatened injury was greater than the potential injury of his illegal actions. *State v. Boldt* (Or. Ct. App. 1992).
- To establish the COE defense, the D must offer evidence that the threat was “present, imminent[,] and impending.” *State v. Fitzgerald* (Or. Ct. App. 1973). [**Note to self: “Present” seems most relevant to first element of defense; “imminent and impending” seem more relevant to second element. Do other cases clarify?**]

REASONING: D did not provide any evidence of an imminent threat. D argued that the court could infer an imminent threat from the fact that D was working with a police officer, but D’s feeling of intimidation is not enough to establish an imminent threat. He provided no evidence that the officer ever threatened him with anything. [**Note to self: Reasoning seems more relevant to first element b/c court concludes that D offered no evidence that a threat even existed. Correct?**]

IMPLICIT RULE: Evidence of feelings of intimidation, standing alone, is insufficient to prove the existence of an imminent threat.