

State v. Webber
736 P.2d 220 (Or. Ct. App. 1987).

FACTS: The Δ, a cattle rancher and hay producer, had repeated problems with deer feeding at his haystacks. He had previously sought help from the local Fish and Wildlife Department and had successfully used haystack panels provided by the Department for several years, until deer began eating the hay again despite the panels. The Δ knew that he could apply to the Department for a permit to kill the deer. However, he did not apply, because he found the permit's dress/skin/disposal requirements "costly and inconvenient," though he had the financial means and time to comply with them. One day, a neighbor reported the Δ to the local police after the Δ shot at and killed some deer.

PROCEDURAL HISTORY: The trial court refused the Δ's request to instruct the jury on the COE defense, and the jury convicted the Δ of killing and wasting six deer.

ISSUE: Did the trial court err in refusing to instruct the jury on the COE defense?

HOLDING AND OUTCOME: The trial court did not err in refusing to issue a COE instruction to the jury. The appellate court affirmed the conviction.

- **Subholding(s):** The evidence would not permit a jury to find that the Δ's killing of the deer was necessary to prevent a threatened injury.

EXPLICIT RULES:

- Global Rules
 - What is the COE defense?
 - Section 161.200(1) of the Oregon Revised Statutes creates the COE defense: Criminal conduct is justifiable when it is necessary as an emergency measure to avoid an imminent private injury, if the threatened injury is of such gravity that "the desirability and urgency of avoiding the injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue."
 - A defendant may invoke the COE defense if the defendant has acted to protect either life or property, because the statutory language does not limit the defense to actions taken to protect life.
 - A defendant is entitled to a jury instruction on the COE defense if "there is some evidence from which the jury could find that (1) his conduct was necessary to avoid a threatened injury, (2) the threatened injury was imminent[,] and (3) it was reasonable for [the] defendant to believe that the need to avoid the threatened injury was greater than the need to avoid the injury that the law under which he was prosecuted seeks to prevent."
 - Procedural rules about the COE defense
 - "A criminal defendant is entitled to present his theory of defense to a jury if the available evidence could support that theory."

- The court must review the statutory requirements for establishing the defense when it evaluates whether the evidence entitles a defendant in a particular case to a jury instruction on that defense.
 - Once the defendant has properly raised the defense, the State must disprove it beyond a reasonable doubt.
- Element-specific rules: None

REASONING:

- Necessity element subholding: The evidence would not allow a jury to infer that the Δ's killing of the deer was necessary to prevent the threatened injury to his hay.
 - There was a logical relationship between the killing of the deer and the harm to the defendant's property, because the deer were feeding at the haystacks.
 - Killing the deer could have abated the harm, because "if the deer are dead, they can no longer feed."
 - The evidence would not allow a jury to infer that the defendant had no reasonable alternative but to kill the deer without a permit.
 - He never sought a permit.
 - He was capable of complying with the permit requirements. He failed to seek a permit only because he did not want to comply with them.

POTENTIAL RULES IMPLICIT IN *WEBBER*:

- To evaluate whether a defendant can offer evidence that would allow a jury to find that the defendant's actions were necessary to avoid a threatened harm, the court will consider whether the defendant's conduct bore a logical relationship to the ongoing harm, whether his conduct could have prevented the harm, and whether he had no reasonable alternative but to commit the crime.
 - This rule appears as an explicit rule in later COE cases!!
- An available legal alternative is not unreasonable merely because the defendant thinks that it is inconvenient or expensive.