

State v. Olson
719 P.2d 55 (Or. Ct. App. 1986)

FACTS: Police officer observed D (drunk) and woman (sober) arguing in restaurant parking lot. Officer suggested that woman drive away with D in D's car. Shortly thereafter, woman stopped car at intersection and exited vehicle. D moved to driver's seat and drove car out of intersection before the officer stopped and arrested him.

PROCEDURAL HISTORY: D was charged with driving while under the influence of intoxicants (DUII). D argued that he chose the lesser evil of moving the car out of the intersection instead of leaving it in traffic. The trial court found D guilty and reasoned that D could not rely on the COE defense because he had failed to show that he acted to protect human or animal life.

ISSUE: Did the trial court err in rejecting the D's COE defense?

HOLDING: Yes, the trial court incorrectly rejected the D's defense. The D's evidence was sufficient to support the COE defense, and on remand, the trial court must determine whether the prosecution rebutted the defense beyond a reasonable doubt.

OUTCOME: Conviction vacated, and case remanded for further evaluation of the facts.

RULES:

- COE defense as described in statute (Or. Rev. Stat. § 161.200)
- Element-specific rule [**Element 1 – threat of injury**]
 - A defendant may use the COE defense when he has acted to protect either life or property. *State v. Haley* (Court of Appeals 1983). [**i.e. the D can satisfy this element by showing the existence of a threat of injury to human life OR animal life OR merely to property.**]
- If the evidence is sufficient to support the defendant's COE defense, the prosecution must rebut that defense beyond a reasonable doubt. Source: other Oregon statutes.

REASONING:

- The text of section 161.200 indicates that the conduct must be necessary to avoid “an imminent public or private injury,” and that the injury must be grave enough that it is more desirable and urgent to avoid it than to avoid the injury sought to be prevented by the criminal statute under which the defendant is charged. A threatened injury to property can fall into this category.
- The D's evidence was sufficient to support the COE defense. The trial court now must evaluate the evidence to determine whether the prosecution has disproved the defense beyond a reasonable doubt.