

## CHAPTER 8: JUSTIFICATIONS

Justifications and excuses are defenses to criminal liability that are called “affirmative defenses.” A defendant can utilize an affirmative defense to absolve or lessen the amount of liability for a particular offense. If a defendant utilizes an affirmative defense, the burden is on him to convince a judge or jury that his actions were justified or should be excused. A justification for a criminal offense is one in which a defendant claims that his action was necessary to protect himself or others from harm. Self-defense is a type of justification and will be discussed shortly. Excuses, on the other hand, are those in which a defendant admits to a criminal act, but claims that he is not responsible for his actions. An example of an excuse is the insanity defense and it will be discussed in Chapter 9.

Ohio law provides an opportunity for defendants to utilize an affirmative defense. Section 2901.05 (A), (C)(1)(2) of the Ohio Revised Code states that,

...the burden of going forward with the evidence of an affirmative defense, and the burden of proof, by a preponderance of the evidence, for an affirmative defense, is upon the accused...an affirmative defense is either of the following: (1) a defense expressly designated as affirmative; (2) a defense involving an excuse or justification peculiarly within the knowledge of the accused, on which he can fairly be required to adduce supporting evidence (1978).

The first definition of affirmative defense states that a defense is one that is “designated as affirmative.” This is reflected in some of the crimes discussed in earlier chapters. For instance, in Chapter 7, the crime of conspiracy was discussed as having two defenses – one was that a defendant thwarted the success of the conspiracy and the second was that a defendant abandoned the conspiracy. Many offenses in the Ohio Revised Code contain a provision about defenses – it is the defendant’s responsibility to show by a preponderance of the evidence that the facts support the defense. In *State v. Melchior*, 52 Ohio St. 2d 15 (1978), the Ohio Supreme Court stated that,

...the proper standard for determining in a criminal case whether a defendant has successfully raised an affirmative defense...is to inquire whether the defendant has introduced sufficient evidence, which, if believed, would raise a question in the minds of reasonable men concerning the existence of such issue (paragraph 1 of the syllabus).

### 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, 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 laid out the criteria for establishing self-defense for the crime of murder:

- the slayer was not at fault in creating the situation giving rise to the affray;
- the slayer has 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.
- the slayer must not have violated any duty to retreat or avoid the danger

(paragraph 2 of the syllabus)

In this definition, a defendant cannot claim self-defense if he was responsible for starting the conflict. A defendant must also reasonably feel that there was an immediate risk of harm and he had no other choice but to act. Finally, the duty to retreat aspect of the defense means that a defendant, in some situations, has a responsibility to avoid the danger if he can. In *State v. Cassano*, 96 Ohio St. 3d 94 (2002), the Ohio Supreme Court stated that a defendant has a duty to retreat when the defendant was at fault in creating the situation at hand or if the defendant did not have reasonable grounds to believe he was in imminent danger. Additionally, as stated in *Robbins*, courts will determine if, based on the circumstances of the offense, there was a reasonable retreat from the situation. Therefore, self-defense must be the ultimate last resort when examining defendant conduct.

Ohio law also provides for the defense of family. According to *Sharp v. State*, 19 Ohio 379 (1850), defense of family was deemed just as important as self-defense: "...it is conceded that a parent and child, husband and wife, master and servant would be excused, should they even kill an assailant in the necessary defense of others" (p. 387). 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, even to the taking of life...there is no duty to retreat from one's home (*State v. Peacock*, 40 Ohio St. 333, 1883, p. 334).

An interesting case dealing with defense of the home was heard by the Ohio Supreme Court in 1997. This case is *State v. Thomas*, 77 Ohio St. 3d 323.

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### **State v. Thomas**

In this case, the defendant shot and killed her live-in boyfriend. The defendant stated that their relationship was violent and controlling; the victim would threaten her, beat her, and, on some occasions, deny her food for days. About three weeks before the shooting, the relationship became more violent. The defendant would awaken at night with the victim's hands over her nose and mouth, prohibiting her breathing. He also discussed how easy it would be to kill the defendant. He also forced her into sexual relations against her will.

The night before the shooting, the defendant and the victim argued; the victim threw flour, sugar, and other materials on the floor and ordered the defendant to clean it up while he was at work the following day. On the following day, the victim came home from work early and sneaked up on the defendant, who had not yet finished cleaning the house. He began yelling at her and threatening her, all the while trying to get into the house. The defendant ran into the bedroom and grabbed a gun, firing two warning shots. The victim continued to threaten the defendant, who then shot the victim four times.

The defendant claimed self-defense at trial. One of the issues was the duty to retreat from one's home and whether it applies when the intruder is a cohabitant who has an equal right to be in the home. Until this time, cases involving a duty to retreat dealt with strangers or other intruders who violated the sanctity of one's home. This case, however, dealt with an individual who has a right to be there. The Ohio Supreme Court ruled that there is no distinction between intruders and cohabitants; individuals who are attacked in their home have no duty to retreat even when the attacker is a cohabitant.

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## Necessity

Defendants can also claim justification for criminal conduct due to necessity or duress. Under Ohio law, these terms are used interchangeably, as they both share the common theme of imminent, immediate danger with no alternate path to take. According to the defense of necessity, it is 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. In *State v. Mogul*, the Court of Appeal for the Ninth Circuit provided the requirements necessary for a successful defense of 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 (2006 Ohio 1878, 2006, paragraph 44 of the syllabus).

As with self-defense, the defense of necessity provides a narrow set of criteria that the defendant must prove in order to be successful.

## REFERENCES

Ohio Revised Code, [www.ohio.gov/ohio/ohiolaws.html](http://www.ohio.gov/ohio/ohiolaws.html)

*Sharp v. State*, 19 Ohio 379 (1850)

*State v. Cassano* 96 Ohio St. 3d 94 (2002)

*State v. Melchior* 52 Ohio St. 2d 15 (1978)

*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. a duty to retreat is required in all situations involving self-defense

2. What is meant by the term “affirmative defense?”
  - a. the prosecutor must prove the defendant does not have an alibi
  - b. the defendant provides reasons for why his conduct should be excused or justified
  - 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. Do you feel that these requirements are too rigid, too lenient, or just right when it comes to proving self-defense? Explain.

### WEB RESOURCES

- [www.csmonitor.com/2006/0224/p02s01-usju.html](http://www.csmonitor.com/2006/0224/p02s01-usju.html) - provides information about Florida’s new self-defense law that removes the “duty to retreat” requirement for self defense
- [www.law.cornell.edu/wex/index.php/Affirmative\\_defense](http://www.law.cornell.edu/wex/index.php/Affirmative_defense) - website of Cornell Law School provides more information about various affirmative defenses