

State v. Burney
619 P.2d 1336 (Or. Ct. App. 1980)

FACTS: D was a convicted felon. D's friend left a gun in D's truck without D's knowledge. Weeks later, D was confronted by a man (Griffin) holding a pool cue in a parking lot after D won money from Griffin in a game of pool. D reached into the truck for a tire iron to defend himself but felt the gun instead. D pointed the gun at Griffin, and Griffin retreated. Police were called, and when they arrived, Griffin told them that D had a gun. The police spoke with D, searched the truck, found the gun, and arrested him.

PROCEDURAL HISTORY: D was convicted of being a felon in possession of a firearm. The trial court held that the COE defense is not available to defend against the charge of being a felon in possession of a firearm. D appealed the conviction.

ISSUE: Did the trial court err in refusing to consider the COE defense when assessing the evidence presented at trial?

HOLDINGS: (1) The trial court erred because the COE defense is available to a charge of being a felon in possession of a firearm. (2) A new trial is necessary to determine D's intent in retaining the gun after the threat to his safety had ended.

OUTCOME: The appellate court reversed the lower court's decision and remanded case for new trial.

EXPLICIT RULES:

- COE defense (see text of statute: Or. Rev. Stat. § 161.200).
- Elements of defense: In a prosecution for violation of a criminal statute, a defendant is entitled to the COE defense if (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 imminent injury was greater than the need to avoid the injury that the criminal statute seeks to prevent. *State v. Matthews* and *State v. Lawson* (Oregon Court of Appeals decisions).
- The COE defense IS available in a prosecution for being a felon in possession of a firearm.

REASONING:

- The trial court erred in concluding that the COE defense does not apply in prosecutions for being a felon in possession of a firearm.
 - There is no exception in the text of the statute.
 - Policy rationale: People with prior felony convictions are just as entitled as other citizens to defend themselves from an imminent threat of injury.
- The trial court apparently found that all elements of the COE defense were satisfied, but a new trial is necessary because D kept the gun even after the threat to his safety had ended. No one asked D during his first trial why he kept the gun. His guilt or innocence depends on his intent: If D kept the gun merely to avoid disposing of it in a dangerous way, then he is not guilty. But if he kept it for another reason (e.g., so that he could return it to his friend), he is guilty.