

2672A LAW NOTE: THE "JUSTIFICATION" DEFENSE

The Wisconsin Supreme Court has recognized that the defense of "justification" is available to excuse what would otherwise be a speeding violation. In State v. Brown, 107 Wis.2d 44, 318 N.W.2d 370 (1982), the defendant was convicted of the civil forfeiture offense of speeding under § 346.57(4)(h). He claimed the trial court erred when it refused to submit an instruction on the defendant's claim of legal justification, that is, that his conduct was excusable on the grounds of self-defense, necessity, coercion, or entrapment. The supreme court held "that where a violation of § 346.57(4)(h) occurs, the actor may claim the defense of legal justification if the conduct of a law enforcement officer causes the actor reasonably to believe that violating the law is the only means of preventing bodily harm to the actor or another and causes the actor to violate the law." 107 Wis.2d at 56.

The court noted that the defense of justification is available even though speeding is considered to be a "strict liability" offense in the sense that a culpable state of mind is not an element of the offense. In deciding whether to extend defenses to strict liability traffic offenses, the court said it must weigh the public interest in efficient enforcement of the traffic law against other public interests which are protected by the possible defenses. The court found that "[w]here the violation of the speeding law is caused by the state itself through the actions of a law enforcement officer, . . . the public interest in allowing the violator to claim a defense outweighs the public interest in ease of prosecution." 107 Wis.2d 44 at 55.

The court made specific note that it was not deciding whether the defense of justification might be available to a defendant in a case where the alleged causative force is someone or something other than a law enforcement officer. In Brown, the defendant's testimony was that the traffic officer operated his own vehicle in such an erratic and harassing manner that the defendant felt compelled to increase his own speed in order to get away from the officer.

COMMENT

Wis JI-Criminal 2672A was originally published in 1985 as part of the Comment to Wis JI-Criminal 2676. It was republished as JI 2672A Law Note in 2009.