

COURT OF APPEALS OF OHIO, SIXTH APPELLATE DISTRICT, ERIE
COUNTY

State v. Sherburne

2026-Ohio-2112 · No. E-25-022 · Decided June 5, 2026

SUMMARY

The Ohio Sixth District Court of Appeals affirmed Derek Sherburne’s convictions for aggravated drug possession, aggravated drug trafficking, and related fentanyl offenses. The court held that Sherburne failed to prove the affirmative defense of duress by a preponderance of the evidence because the alleged threats were not imminent and he was at fault in bringing about the situation.

CASE DETAILS

COURT	Court of Appeals of Ohio, Sixth Appellate District, Erie County
WRITING FOR THE COURT	Thomas J. Osowik; Thomas J. Osowik, P.J.; Gene A. Zmuda, J.; Charles E. Sulek, J.
JURISDICTION	Ohio Court of Appeals, Sixth Appellate District, Erie County
DECIDED	June 5, 2026
DOCKET	E-25-022
DISPOSITION	affirmed
PROCEDURAL POSTURE	After a bench trial, Sherburne was convicted of aggravated possession of drugs, aggravated trafficking in drugs, possession of a fentanyl-related compound, trafficking in a fentanyl-related compound, and major drug offender specifications. He appealed, challenging the trial court's rejection of his affirmative defense of duress.
STANDARD OF REVIEW	The court reviewed the trial court's assessment of the duress defense and its factual and credibility determinations for abuse of discretion, while recognizing that the trial court determines whether the defendant's belief regarding imminent danger was objectively reasonable based on the evidence.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals decision
PARTIES	Derek M. Sherburne v. State of Ohio

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QUESTIONS PRESENTED

1. Whether the trial court erred in rejecting Sherburne's affirmative defense of duress.
2. Whether Sherburne proved by a preponderance of the evidence that he faced an imminent threat of death or serious bodily injury leaving no reasonable alternative.
3. Whether Sherburne proved by a preponderance of the evidence that he was without fault in bringing about the situation.

HOLDINGS

1. A defendant asserting duress must prove, by a preponderance of the evidence, that the threatened harm was present, imminent, immediate, and impending, leaving no alternative course of action; fear of future harm is insufficient.
2. The accused bears the burden of proving the affirmative defense of duress by a preponderance of the evidence.
3. A defendant cannot establish duress without proving by a preponderance of the evidence that he was without fault in bringing about the situation.

KEY QUOTATIONS

“The affirmative defense of duress is strictly and extremely limited in application and will probably be effective only in very rare occasions.” (¶ 27)

“This is hardly indicative of someone who is under the immediate and continuous threat of violence from which he could not safely withdraw.” (¶ 35)

FACTUAL BACKGROUND

Sherburne followed codefendant Marvin Parker in a Jeep to a gas station and then to a Comfort Inn as part of a drug-trafficking operation. Police arrested Sherburne alone in the Jeep and recovered 223.01 grams of methamphetamine and 109.54 grams of fentanyl. Sherburne claimed Parker had previously threatened him and had associates assault and rob him, but he acknowledged that no weapon was displayed, no one physically restrained him, he had several opportunities to leave, and he possessed three phones with which he could have sought assistance. Officers testified that Sherburne did not report threats or coercion and said he was paid to participate.

PROCEDURAL HISTORY

An Erie County grand jury indicted Sherburne on four felony drug counts and two major drug offender specifications. Sherburne waived a jury trial, and the Erie County Court of Common Pleas found him guilty on

all counts and specifications. The trial court imposed an aggregate sentence of 14 to 19 and one-half years, and Sherburne timely appealed. The Sixth District Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Zhang, 2016-Ohio-975, ¶¶ 17, 19 (6th Dist.)
- State v. Flinders, 2012-Ohio-2882, ¶ 30 (9th Dist.)
- State v. Poole, 33 Ohio St.2d 18, 19 (1973)
- State v. Vargo, 116 Ohio St. 495, 507 (1927)
- Calabrese L. Firm v. Christie, 2024-Ohio-579, ¶ 42
- Croone v. Arif, 2014-Ohio-5546, ¶ 18 (8th Dist.)
- State v. Stumpf, 32 Ohio St.3d 95, 102 (1987)
- State v. Cross, 58 Ohio St.2d 482, 483 fn. 2, 487-488 (1979)
- State v. Hackley, 1990 WL 119292, *5 (2d Dist. Aug. 15, 1990)
- State v. Good, 110 Ohio App. 415, 419 (10th Dist. 1960)
- State v. Simes, 2016-Ohio-7300, ¶ 40 (8th Dist.)
- State v. Jones, 2019-Ohio-239, ¶ 12 (2d Dist.)
- State v. Hayes, 2019-Ohio-1629, ¶ 26 (5th Dist.)
- State v. Nelson, 2024-Ohio-5750, ¶¶ 27-28 (12th Dist.)
- State v. Broughton, 1993 WL 38178, *3 (12th Dist. Feb. 16, 1993)
- State v. Harkness, 75 Ohio App.3d 7, 11 (6th Dist. 1991)
- State v. Lawson, 2008-Ohio-1311, ¶¶ 20-21 (2d Dist.)
- State v. Robinson, 132 Ohio App.3d 830, 836 (1st Dist. 1999)

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