

S.B. NO. 2663

JAN 25 2010

A BILL FOR AN ACT

RELATING TO DEFENSES TO THEFT PROSECUTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 708-834, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

3 "(1) It is [a] an affirmative defense to a prosecution for
4 theft that the defendant:

5 (a) Was unaware that the property or service was that of
6 another; or

7 (b) [~~Believed~~] Acted under a reasonable belief that the
8 defendant was entitled to the property or services
9 under a claim of right or that the defendant was
10 authorized, by the owner or by law, to obtain or exert
11 control as the defendant did."

12 SECTION 2. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

BY REQUEST

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Report Title:

Defenses to Theft Prosecution

Description:

Clarifies the claim of right defense to a theft prosecution by making it an affirmative defense that requires a rational link between defendant's alleged unlawful conduct and defendant's claim of right to the property.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO DEFENSES TO THEFT PROSECUTION.

PURPOSE: To clarify the claim of right defense to a theft prosecution by making it an affirmative defense that requires a rational link between defendant's alleged unlawful conduct and defendant's claim of right to the property.

MEANS: Amend section 708-834(1), Hawaii Revised Statutes (HRS).

JUSTIFICATION: As currently written, section 708-834(1)(b) has led to an absurd and confusing result. This bill is intended to correct the flaw in the law by adopting certain language from the Model Penal Code version of the claim of right law, as referenced by the Intermediate Court of Appeals (ICA), in its decision in State v. Stenger, 119 Haw. 336 (2008).

Section 708-834(1)(b) currently provides a defense to a prosecution for theft if the defendant "believed that the defendant was entitled to the property or services under a claim of right."

The claim of right defense is based on the idea that the intent to deprive another of property is an essential element of the offense of theft, and a good faith belief that the actor has a right or claim to the property negates such intent.

In Stenger, however, the court's interpretation of section 708-834(1)(b) broadened the scope of the claim of right defense. Stenger's theft charge was based on her alleged use of deception to obtain over \$20,000 in welfare benefits. The State alleged that Stenger falsified critical

information or withheld critical information from the Department of Human Services that would have affected her eligibility for welfare benefits. Despite being informed of her duty to report the information, Stenger failed to report income she had received from various sources, and falsified information about the number of dependent children in her household. At trial, defense counsel requested a claim-of-right defense jury instruction, and argued that Stenger believed she was entitled to the benefits that she obtained and exerted control over. The trial court refused to give the jury instruction and concluded that the claim-of-right defense did not apply to Stenger's situation as she never expressly indicated that she believed she was entitled to the benefits she received because she had complied with all the reporting requirements.

On appeal, the ICA found that the trial court had erred in failing to give the claim-of-right instruction to the jury. The ICA vacated the conviction and remanded the case for a new trial. The ICA based its decision on its interpretation of section 708-834. The court reasoned:

Unlike HRS § 708-834(1)(b), the Model Penal Code (MPC) version of the claim-of-right defense requires a **link** between the defendant's conduct and his or her claim of right. The MPC provides that "[i]t is an affirmative defense to prosecution for theft that the actor: ... **acted under** an honest claim of right to the property or services involved or that he had a right to acquire or dispose of it as he did [.]" Model Penal Code § 223.1(3)(b) (1980) (emphasis added). **Stenger does not contend that she acted (failed to accurately disclose material information) because of a claim of right to welfare benefits.** Instead,

she asserts that she did not disclose the information that the State alleges she deceptively concealed because she did not believe or know she was required to report such information.

Because there was no link between Stenger's claim of right and her alleged unlawful conduct, Stenger would not have a claim-of-right defense under the MPC.

The HRS § 708-834(1)(b) version of the claim-of-right defense, however, is broader than the MPC version.

HRS § 708-834(1)(b) does not require that the defendant's claim of right prompted his or her conduct, but provides a defense to a theft charge if the defendant "[b]elieved that [he or she] was entitled to the property or services under a claim of right." Stenger's theory of defense was that she did not obtain the welfare benefits by deception because she honestly believed she had complied with the reporting requirements. Stenger either disputed the information the State alleged she dishonestly concealed or contended that she did not believe or know she was required to report such information We conclude that Stenger adduced sufficient evidence to warrant an instruction on her claim-of-right defense.

The State was required to prove as an essential element of Stenger's charged theft offense that Stenger obtained by deception welfare benefits to which she was not entitled. Thus, to prove the theft charge, the State would necessarily have to refute Stenger's contention that she believed she was entitled to the contested welfare benefits under a claim of right because

she honestly believed she had complied with the reporting requirements.

The ICA decision brought to light a flaw in section 708-834(1)(b). Contrary to the trial court's interpretation of that law, the ICA has allowed the claim-of-right defense to be raised in a welfare fraud prosecution. As a result, there is a greater chance of confusing the jury with an awkwardly raised claim-of-right defense that could result in an unjust verdict.

Usually, a claim-of-right defense might be raised when a defendant commits the alleged unlawful conduct to assert control over certain property alleged to belong to another. The defendant justifies the conduct based on an honest and reasonable belief that the defendant has a right to the property. The MPC version of the claim-of-right defense makes this concept clear. However, as the court noted in Stenger, section 708-834(1)(b) is subject to a different interpretation, probably one that was not anticipated when the law was enacted.

Contrary to the MPC version of the law, section 708-834(1)(b) does not require a link between the defendant's conduct and the defendant's claim of right, such that the claim of right prompts the defendant's alleged unlawful conduct. Therefore, under section 708-834(1)(b), Stenger was allowed to raise a claim-of-right defense simply by asserting a belief that she was entitled to the welfare benefits because she believed she **had complied** with the reporting requirements. She did not have to assert that she committed a taking of property under a claim of right.

It should be noted that if the MPC version of the law were in place for a case like Stenger, then the defendant would not be allowed to raise the claim-of-right defense.

A defendant's assertions, that the defendant believed the defendant was entitled to welfare benefits because the defendant believed the defendant had complied with the reporting requirements, would go directly to the issue of the defendant's requisite state of mind at the time of the alleged offense.

It should also be noted that on April 23, 2009, the Hawaii Supreme Court denied an application for writ of certiorari in the Stenger case. The Court rejected an opportunity to review the ICA's decision in Stenger regarding the claim-of-right law.

Impact on the public: This bill will clarify the claim-of-right defense to a theft prosecution. Jurors and defendants should have a better understanding of the law.

Impact on the department and other agencies: State and county law enforcement officers, prosecutors, and public defenders should have a clearer understanding of the claim-of-right defense and be able to properly apply the law.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Judiciary, county police, county prosecutors, and the Office of the Public Defender.

EFFECTIVE DATE: Upon approval.