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Legislators seek to ease claims of self-defense

Proposed retroactive changes could aid 2 men tied to killings

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CAPITOL MEDIA SERVICES

PHOENIX — State lawmakers are working to overturn one man's murder conviction and make it easier for a Tucson man facing similar charges to escape prosecution — all in the name of self-defense.

The Senate Judiciary Committee is to consider legislation today to retroactively add language to a change in a self-defense law approved last year. The new wording would say last year's law applies to any case that had not yet gone to the jury.

Most immediately that would nullify a jury's guilty verdict in the case of Harold Fish, a retired Tolleson schoolteacher convicted of the 2004 murder of a hiker in Coconino County. The jury rejected Fish's arguments that he was acting in self-defense.

That case was conducted under law in effect when the murder took place — rules that required a defendant to prove he or she had no choice but to use physical force. The law was changed effective April 24, 2006, to put the burden instead on prosecutors to prove a defendant did not act in self-defense.

That was before Fish's trial started. But the judge said Fish could not avail himself of the new law — a law that defense attorney Melvin McDonald said would have resulted in his client's acquittal. His conviction now is on appeal.

The change also would overturn the indictment of David Rene Garcia, awaiting trial in the 2004 shooting of Alexis Samaniego in Garcia's Tucson apartment.

Police said they believe Garcia and Samaniego were out the previous evening. When the two men returned to Garcia's apartment in the 5000 block of North First Avenue, a fight ensued, police said, and Samaniego was shot.

As in the Fish case, the trial judge ruled Garcia was not entitled to the benefit of last year's law. But the Court of Appeals concluded otherwise, and the trial has been held up while the state Supreme Court studies the matter.

Approval of the proposed law, SB 1302, would make the high court's decision irrelevant.

Prosecutors in both cases said it is improper for lawmakers to interfere with murder cases. But

Sen. Linda Gray, R-Glendale, who crafted the new legislation, said it will spell out to judges who may be confused that lawmakers really wanted last year's law to apply to cases that had not yet gone to the jury — and, specifically, to people such as Fish and Garcia.

"So just in case you're not clear, Mr. Judge, this is what it meant," Gray said. "What didn't you understand?"

Gray said Fish is a constituent of hers.

But Deputy Coconino County Attorney Michael Lessler, who successfully prosecuted Fish, said the 2006 law already is quite clear.

He acknowledged that lawmakers approved that measure with an emergency clause, meaning it took effect on April 24, 2006, when signed by Gov. Janet Napolitano. But Lessler noted the measure, sponsored by current Senate President Tim Bee, R-Tucson, did not have any language spelling out that it applied to cases pending at that time — as opposed to crimes committed after that date — the language Gray's bill would now retroactively include.

"The Legislature is presumed to know its own law," he said.

Rick Unklesbay, Pima County's chief criminal deputy county attorney, agreed.

"If the Legislature had wanted to make it retroactive, they had the ability to do that," said Unklesbay, who hopes to get the Supreme Court to allow Garcia to be tried under the pre-2006 law. But that, he said, is not the way the law was crafted or approved.

"Our position is they should leave it up to the courts ... and not try to fix it after they have seen how their law is applied."

Even if SB 1302 becomes law, that would not end the court battles. Lessler said he might challenge whether lawmakers have the right to retroactively change criminal law that way.

And Lessler would get another chance to convict Fish, albeit this time with him having to disprove Fish's claim that he acted in self-defense.

Fish told investigators that two dogs belonging to victim Grant Kuenzli rushed him at a trailhead. Fish said he fired a warning shot at them and, when Kuenzli charged him, Fish shot him three times in the chest.

There were no witnesses to the shooting. But both the medical examiner who performed an autopsy on Kuenzli and firearms experts testified the victim's wounds likely were defensive.

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