

FELONY [SIC] STEALING—THE CASE OF STATE V. BAZELL

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The Supreme Court of Missouri recently issued an opinion that sent prosecutors across the state scrambling.

Stealing is against the law in the State of Missouri. This likely comes as no surprise. However, you may be surprised to learn that *most* forms of stealing, regardless of the value of the property or services stolen, cannot currently be charged as anything other than a class A misdemeanor—and, it turns out, this has been the case since 2002.

State v. Bazell

In *State v. Bazell*, decided August 23, 2016, the state's highest court reversed the felony stealing convictions of a defendant after determining that the felony enhancement provision of Missouri's stealing statute cannot, as a matter of law, apply to the actions the defendant was convicted of taking.

According to Section 570.030.1 of the Revised Statutes of Missouri,

"A person commits the crime of stealing if he or she appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by

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Five Elements to Obtain a Conviction in Missouri

In other words, the crime of stealing consists of five "elements" that must be proved by the State in order to obtain a conviction.

The State must establish: "(1) an appropriation; (2) of property or services; (3) of another; (4) with the purpose to deprive the other thereof; and (5) accomplished either without the owner's consent or by deceit or coercion."

State v. Page, 309 S.W.3d 368, 375 (Mo. Ct. App. 2010).

Pursuant to Section 570.030.9,

"Any violation of this section for which no other penalty is specified in this section is a class A misdemeanor."

Stated otherwise, under the statute, stealing is, by default, a class A misdemeanor *unless* a different penalty is specified within the section. In steps Section 570.030.3, the so-called "felony enhancement" provision of the stealing statute—or does it?

The enhancement provision provides for the enhancement to a class C felony of "any offense in which the value of property or services is an element" if certain conditions are met. Therein lies the problem—**the value of property or services is simply not an element of the offense of stealing**. Thus, according to the Supreme Court, by its own terms the enhancement provision cannot apply to the offense of stealing. Until 2002, Section 570.030.3 did not contain the "value of property or services is an element" language.

In reversing the defendant's felony convictions, the *Bazell* Court noted,

"We cannot know why the legislature, in 2002, decided to amend section 570.030.3 to add the requirement that only offenses for which 'the value of property or services is an element' may be enhanced to a felony, but this is what the legislature clearly and unambiguously did."

It should be noted that the problematic language contained within the felony enhancement provision of the stealing statute has already been removed from a new version that will take effect January 1, 2017. However, the *Bazell* decision will certainly cast doubt on most felony stealing convictions that were obtained by the State between 2002 and today.

While the precise fallout of the *Bazell* decision remains to be seen, it appears that individuals who were convicted of stealing felonies pursuant to Section 570.030.3 at any time in the past 14 years

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may be entitled to some form of relief. Moreover, the State will be forced to rethink its approach to any pending stealing cases that are, as of yet, unresolved.

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