

1977 S.C. Op. Atty. Gen. 257 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-324, 1977 WL 24663

Office of the Attorney General

State of South Carolina

Opinion No. 77-324

October 18, 1977

*1 TO: Neal Forney
Assistant Director
S. C. Court Administration

QUESTIONS PRESENTED:

1. Is petit larceny a lesser included offense of the crime of shoplifting where the value of the shoplifted goods is less than fifty (\$50.00) dollars?
2. Do store guards have authority as prosecutorial officers for the State to make a motion to nolle prosequi a shoplifting case or amend the warrant for the purpose of prosecuting the accused for petit larceny where the value of the shoplifted goods is less than fifty (\$50.00) dollars?
3. Can a complainant in a shoplifting offense reduce the value of the shoplifted goods from the sale price to the wholesale price in order to reduce the value of the shoplifted goods for the purpose of prosecution?

AUTHORITIES:

Act No. 765 of 1956;

Section 16–13–30 of the 1976 Code of Laws of South Carolina;

Section 16–13–110 of the 1976 Code of Laws of South Carolina;

Section 16–13–130 of the 1976 Code of Laws of South Carolina;

[State v. Charles](#), 183 S.C. 188, 190 S.E. 466 (1937);

[People v. Irrizari](#), 156 N.E.2d 69 (N.Y. 1959);

1952–1953 Ops.Atty.Gen., pp. 64–65;

22 CJS, Criminal Law, Section 328, pp. 839–840;

52(A) CJS, Larceny, Section 1(1), p. 393;

52 (A) CJS, Larceny, Section 1(5), p. 406;

52 (A) CJS, Larceny, Section 60(2), p. 489; and

[90 ALR2d 811](#).

DISCUSSION:

You have presented three (3) questions regarding the offense of shoplifting which will be discussed in the order posed.

1. You first ask whether petit larceny is a lesser included offense of shoplifting where the value of the goods is less than fifty (\$50.00) dollars. For the reasons which follow, it is our opinion that it is not.

Section 16–13–110 of the 1976 Code of Laws of South Carolina defines ‘shoplifting’ and declares its punishment as follows: Any person who shall wilfully take possession of any goods, wares or merchandise offered for sale by any store or other mercantile establishment with the intention of converting such goods, wares or merchandise to his own use without paying the purchase price thereof, shall be guilty of the offense of shoplifting and, for a first offense, shall be punished by a fine of not more than three hundred dollars or imprisonment for not more than six months, or both. Any person found guilty of a second offense of shoplifting as defined in this section shall be punished by a fine of not more than five hundred dollars or imprisonment for not more than one year or both. Any person found guilty of a third offense of shoplifting shall be punished by imprisonment for not less than one year nor more than five years.

Section 16–13–30 of the 1976 Code of Laws of South Carolina declares the larceny of an article of personal property having a value of less than fifty (\$50.00) dollars to be petit larceny and triable in the magistrates' courts as a misdemeanor. Therefore, petit larceny in South Carolina may be defined as the taking and carrying away from any place, at any time, of the personal property of another, without his consent, by a person not entitled to the possession thereof, feloniously, with intent to deprive the owner of his property permanently, and to convert it to the use of the taker as of some person other than the owner, the value of said goods being less than fifty (\$50.00) dollars. See 52(A) CJS, Larceny, Section 1(1), p. 393, and 1952–1953 Ops. Atty. Gen., p. 64–65.

*2 Our research discloses that the statutory crime of shoplifting in South Carolina was created in 1956. Act No. 756 of 1956. Prior to that time shoplifting had been prosecuted under the general law of larceny which too often presented difficulties in proof, particularly as to the element of felonious intent. [90 ALR2d 811](#). Shoplifting today does not have a requirement of proof in that respect and consequently makes more certain the apprehension and conviction of shoplifters as well as the protection of the consuming public and merchants.

As to the particular question presented, our Supreme Court has not had occasion to render an opinion. However, it has been stated generally in this regard:

Such statute creates a separate and distinct offense from that denounced by the general larceny or theft statute, although ‘shoplifting’ is included within the offense of larceny, in popular usage of the term. So, a statute denouncing shoplifting has been held, where the larceny is from a mercantile establishment, to be an alternative charge to larceny from a building. (Emphasis Added.) 52(A) CJS, Larceny, Section 1(5), p. 406.

Furthermore, Section 16–13–130 of the 1976 Code of Laws of South Carolina states:

The offense created by Section 16–13–110 and the presumptions provided in Section 16–13–120 shall not be exclusive and shall be in addition to previously existing offenses and such rights and presumptions as were heretofore provided by law.

Due to the different requirements of proof and the express provisions of Section 16–13–130, it must be concluded that larceny, whether petit or grand, and shoplifting are separate and distinct offenses.

CONCLUSION:

Therefore, it is the opinion of this Office that petit larceny is not a lesser included offense within the crime of shoplifting where the value of the shoplifted goods is less than fifty (\$50.00) dollars, larceny and shoplifting being separate and distinct offenses.

2. You have next asked whether store guards have authority as prosecutorial officers for the State to nol pros a shoplifting case for the purpose of prosecuting the accused for petit larceny where the value of the shoplifted goods is less than fifty (\$50.00) dollars. It is our opinion that such action is impermissible in this State.

Although the management and security guards of a store may have some initial degree of discretion in such cases because they must necessarily decide whether or not to make a case against a given individual, once a shoplifting warrant has been issued or an indictment handed down, the discretion to nol pros the charge rests solely with the Solicitor in the circuit or county courts. [State v. Charles](#), 183 S.C. 188, 190 S.E. 466 (1937).

Similarly, a warrant may be amended upon motion of the State's representative and with the permission of the court, only when said amendment involves immaterial irregularities in the warrant. However, an amendment striking the offense charged and inserting another generally cannot be permitted unless authorized by statute and no prejudice to the accused results. 22 CJS, [Criminal Law](#), Section 318, p. 839–840. Parenthetically, it should be noted that since shoplifting and larceny, petit or grand, are separate and distinct offenses, separate process charging the individual with larceny would be necessary in order to vest the appropriate court with jurisdiction once an indictment for shoplifting has been nol pros or a warrant dismissed. Nevertheless, there appears to be no legal prohibition against initially charging both offenses in the same or companion process.

CONCLUSION:

*3 Therefore, it is the conclusion of this Office that store guards do not have authority to nol pros shoplifting cases for the purpose of prosecuting the accused for petit larceny where the value of the shoplifted goods is less than fifty (\$50.00) dollars, said authority being vested in the Solicitor.

3. You have asked whether a complainant in a shoplifting offense may reduce the value of the shoplifted goods from the sale price to the wholesale price in order to reduce the value of shoplifted goods for the purpose of prosecution. It is our opinion that he may not.

The authorities are clear that such a reduction in the price of a shoplifted item is not permitted.

. . . [W]here theft is from department store neither replacement cost nor wholesale value is appropriate measure and listed retail price is ordinarily determinative . . . [People v. Irrizari](#), 156 N.E.2d 69 (N.Y. 1959).

More generally it has been said:

In the absence of statutes providing otherwise, the measure of the value of a subject of larceny is its fair market value at the time and place where the alleged crime was committed . . . 52(A) CJS, [Larceny](#), Section 60(2), p. 489.

Since South Carolina has no statute regulating the measure of value in such situations, the rule stated above would be applicable to shoplifting cases.

CONCLUSION:

Therefore, it is the opinion of this Office that a complainant in a shoplifting offense may not reduce the value of the shoplifted goods from the sale price to the wholesale price for purposes of prosecution.

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