ALAN WILSON
ATTORNEY GENERAL

April 6, 2011

The Honorable Tony Davis
Sheriff, Greenwood County
528 Edgefield Street
Greenwood, SC 29646

Dear Sheriff Davis:

We have received your letter concerning "a rash of catalytic converters stolen (sawed off under the carriage) from vehicles" in Greenwood County and other counties throughout South Carolina. You request an opinion from this office "as to whether this crime falls under the jurisdiction of Section 16-13-160 of the South Carolina Code of Laws." In the alternative, you request advice regarding "the appropriate charge for sawing off and stealing catalytic converters from vehicles."

Law/Analysis

S.C. Code Ann. §16-13-160 ["Breaking into motor vehicles or tanks, pumps and other containers wherein fuel or lubricants are stored"] provides:

> (A) It is unlawful for a person to:
>
> > (1) break or attempt to break into a motor vehicle or its compartment with the intent to steal it or anything of value from it, or attached or annexed to it, or used in connection with it or in the perpetration of any criminal offense; or
> >
> > (2) break or attempt to break any tank, pump, or other vessel where kerosene, gasoline, or lubricating oil is stored or kept with intent to steal any such product.

A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than one thousand dollars, or both. Section 16-13-160 (B).

We have previously advised the cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578, 581 (2000). "The Legislature's intent should be ascertained primarily from the plain language of the statute. Words must be

given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation." State v. Landis, 362 S.C. 97, 606 S.E.2d 503, 505 (Ct. App. 2004). Moreover, "[w]here the language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the Court has no right to impose another meaning." Pee Dee Reg'l Transp. v. S.C. Second Injury Fund, 375 S.C. 60, 650 S.E.2d 464, 465 (2007). See Ops. S.C. Atty. Gen., July 1, 2008; December 20, 2007; June 22, 2007.

In State v. Gore, 318 S.C. 157, 456 S.E.2d 419 (Ct. App. 1995), the South Carolina Court of Appeals addressed circumstances similar to those outlined in your request letter. In Gore, a police officer patrolling a neighborhood on another call heard "clanging noises" from a used auto sales lot. In the parking lot, the officer observed a Mustang with "feet sticking out both sides of it." After the officer identified himself, one suspect came out from under the vehicle, while Gore remained on the ground. Assisting officers quickly arrived on the scene, and pulled Gore from beneath an adjacent car under which he had apparently rolled. A wrench, a flashlight, and a bag of marijuana were found on the ground under the adjacent car. A second flashlight, C-clamp, and three bolts were found under the Mustang. There was no evidence of broken glass or sign of entry into the passenger compartment, trunk, gas tank, or hood of the Mustang, nor were any items missing from inside the car. However, the manager of the car lot testified that bolts were removed from the drive shaft and the drive shaft housing was damaged. A set of car keys belonging to another car was also found on Gore. He was convicted of, *inter alia*, attempted breaking into of a motor vehicle pursuant to §16-13-160. Gore, 456 S.E.2d at 421.

On appeal, the South Carolina Court of Appeals reversed Gore's conviction. The court explained:

> [t]he plain language of the statute requires a breaking or attempted breaking into the vehicle itself or one of its compartments.

Id. [Emphasis in original]. The court rejected the State's contention that attempting to steal any single part of a car constitutes an attempt to break into the car itself, if not one of the compartments of the car, thus satisfying the requirements of the statute. The court stated:

> [c]riminal statutes must be strictly construed against the State and in favor of the defendant. Williams v. State, 306 S.C. 89, 410 S.E.2d 563 (1991). As we read the statute, it is clear that the word "vehicle" refers to the passenger area of the car. However, there was no evidence that Gore was attempting to gain entry into the passenger area. Therefore, to sustain the conviction, Gore's actions must have amounted to an attempted breaking into a compartment of the vehicle.

Gore, 456 S.E.2d at 421.The court further explained:

> [i]n general usage, a "compartment" refers to a separate area, section, or chamber of a larger area. See, *e.g.*, American Heritage Dictionary 300 (2d College ed.). In the context of the statute, therefore, "compartment" must refer to a separate area or chamber of the vehicle itself, and would include the trunk

> area, the engine compartment, and the gas tank. A breaking is "any act of physical force, however slight, whereby any obstruction to entering is forcibly removed. . . . If any force be required and employed to remove or displace that which has been placed there to close the opening, this is enough." State v. Maxey, 218 S.C. 106, 114-15, 62 S.E.2d 100, 104 (1950) (emphasis added).

Gore, 456 S.E.2d at 421-22.

The court determined that while there was ample evidence to show that Gore was attempting to remove the drive shaft, there was no evidence that the drive shaft in any way closes an opening to the engine compartment. Thus, "attempting to remove the drive shaft did not amount to attempting to break into the engine compartment, just as breaking off an antenna does not amount to breaking into the trunk, nor does removing a sideview mirror amount to breaking into the passenger compartment." Id., 456 S.E.2d at 422.

The State in Gore further argued that Gore broke into the engine compartment simply because he entered the engine compartment, comparing Gore's crime to burglary, where an unlawful entry without a breaking is sufficient for a burglary conviction because the burglary statutes no longer include breaking as an element. See §§ 16-11-311 through 313. However, the court noted §16-13-160 "explicitly requires a breaking; mere entry is not enough." Gore, 456 S.E.2d at 422. [citing State v. Dunbar, 282 S.C. 169, 318 S.E.2d 16 (1984) (under former housebreaking statute, breaking requirement was not satisfied where the defendant entered the house via a carport without opening any doors or removing obstructions)]. The court concluded:

> [t]hus, even if it could be said that Gore entered the engine compartment by going under the car, the entry is not enough to sustain the conviction. Because Gore removed no obstruction to gain entry to the engine compartment, the statute's breaking requirement was not satisfied.

Gore, 456 S.E.2d at 422. [Emphasis added]. The court reversed Gore's conviction under §16-13-160, "because the State failed to produce sufficient evidence of a breaking or attempted breaking into the vehicle or one of its compartments." Id., 456 S.E.2d at 421, 422.

Also relevant to your request letter, we note the court in Gore stated, however, that Gore could have been charged under South Carolina's tampering with a vehicle statute which prohibits, *inter alia*, the damaging or removal of any parts or components of a vehicle. Id., 456 S.E.2d at 422. Specifically, §16-21-90 ["Damaging or tampering with vehicle"] provides:

> A person who, with intent and without right to do so, damages a vehicle or damages or removes any of its parts or components is guilty of a misdemeanor.
>
> A person who, without right to do so and with intent to commit a crime, tampers with a vehicle or goes in or on it or works or attempts to work any of

> its parts or components or sets or attempts to set it in motion is guilty of a misdemeanor.

To satisfy the first paragraph of the auto-tampering statute, one must either intentionally damage a vehicle or intentionally damage or remove vehicle parts. The second paragraph of the auto-tampering statute lists four additional means by which an individual can violate the statute: (1) tampering with the vehicle; (2) going in or on the vehicle; (3) working or attempting to work any of the vehicle's parts or components; and (4) setting or attempting to set the vehicle in motion. See State v. Arthur, 357 S.C. 566, 593 S.E.2d 522, 523-24 (Ct. App. 2004) [distinguishing the auto-breaking statute from the auto-tampering statute relating to submitting an auto-tampering charge for the jury's consideration at a trial for breaking into a vehicle]. We note for purposes of this opinion that in Arthur, the defendant broke into the driver's side rear window of one vehicle and he was caught while leaning into a passenger window of another vehicle. Id., 593 S.E.2d at 523. In other words, there was evidence of a "breaking" in Arthur that was clearly absent in Gore.

Depending on the specific facts, there also exists grand larceny as well as petit larceny, which are proscribed by §16-13-30. In South Carolina, larceny is not defined by statute. Rather, we have advised that South Carolina continues to rely on the common-law definition of larceny as the felonious or trespassory taking (without proper authorization) and carrying away of the property of another with the intent to steal. Ops. S.C. Atty. Gen., January 26, 2001; September 13, 1968; see, McAninch and Fairey, The Criminal Law of South Carolina, p. 246 (1996 3rd ed.) [citing State v. Sweat, 221 S.C. 270, 70 S.E.2d 234 (1952)]. Grand larceny is now defined in §16-13-30 (B) as larceny of "goods, chattels, instruments, or other personalty valued in excess of two thousand dollars . . ." If several items are taken in one act of theft, their value may be aggregated to denominate a grand larceny charge. See State v. Waller, 280 S.C. 300, 312 S.E.2d 552, 553 (1984) [holding that "the larceny of property from different owners at the same time and at the same place shall be prosecuted only as a single larceny"]. It has also been stated that:

> [t]he "value of an item, for purposes of the distinction between grand and petit larceny, means fair market value, not the price at which the owner would be willing to sell. . . . For used items the fair market value is said to be the reasonable selling price of the time in its condition at the commencement of the theft and at the time and place of the theft, and not the original cost or special value to the owner. If a used item is taken for which there is no ascertainable market value, replacement cost less depreciation is the appropriate standard. . . [Citations omitted].

McAninch and Fairey, at 254.

Conclusion

Consistent with the above and as referenced by the South Carolina Court of Appeals in Gore, in the opinion of this office there must be sufficient evidence of a breaking or an attempted breaking into a vehicle or one of its compartments to support a violation for §16-13-160. We refer also to §16-21-90, which proscribes the damaging or removal of any parts or components of a vehicle, and larceny. These

offenses would certainly be available, depending upon the facts. By stating these offenses, however, we do not suggest to exclude any others depending upon the complete facts and circumstances of the case.

This office further adheres to its long-standing policy that the judgment call as to whether to prosecute a particular individual is warranted, or is on sound legal ground in an individual case, is a matter within the discretion of the Circuit Solicitor. Ops. S.C. Atty. Gen., October 29, 2004; April 20, 2004; February 3, 1997.The Solicitor is the person on the scene who can weigh the strength or weakness of a particular case. Op. S.C. Atty. Gen., August 14, 1995. Thus, while this office has provided to you the relevant law in this area, we must defer to the Solicitor's judgment as to whether or not to prosecute an individual in question.

Very truly yours,

N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General