1983 WL 181802 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
March 17, 1983

***1** George M. Stuckey, Jr., Esquire
County Attorney
P. O. Drawer 568
Bishopville, SC 29010-0568

Dear Mr. Stuckey:
In a letter to this Office, you questioned whether the following situation constitutes petty larceny:
Mr. Charles E. Morris went into the local Pik Quik on a Sunday morning and bought some gas and paid for the gas. He then picked up a six pack of beer and walked up to the counter with it and gave the clerk $5.00 for the beer, which costs approximately $3.63. The clerk informed him that she could not sell him the beer as it was Sunday and he then replied 'well here is $5.00, just ring it up Monday' and he then walked out with the beer after he laid the $5.00 on the counter. The clerk took the $5.00 and put it up under the counter and told her boss about it when he came in to work at which time he then took out a warrant against Mr. Morris for Petty Larceny.

In State v. Teal, 225 S.C. 472, 82 S.E.2d 787 (1954), the South Carolina Supreme Court determined that crucial elements of the offense of larceny are the loss of the property by the owner and the loss by a felonious taking. Furthermore, in State v. Williams, 237 S.C. 252 at 260, 116 S.E.2d 858 (1960), the Court stated that:
. . . to make out the offense of larceny, there must be a felonious purpose. The taking must be done animo furandi—with a view of depriving the true owner of his property and converting it to the use of the offender. 237 S.C. 252 at 260.

Such statement was made in discussing the question of whether the lower court erred in refusing the particular appellant's motion for a directed verdict on a larceny charge on the basis that the State had failed to prove intent on the part of Appellant to steal a pistol. The Court concluded in Williams that the question of felonious intent was a determination to be made by the jury. As to the matter of intent generally, it has been stated that '. . . if the existence of a state of mind is incompatible with an intent to steal, it will preclude a conviction of larceny. . . .' 52A C.J.S., Larceny, Section 25(a).

Referencing the situation as described in your letter, it appears that if there was a showing of intent to feloniously take the beer, the offense of petty larceny could have been committed. Therefore, in answer to your question, petty larceny would be the proper charge. However, the question of intent would have to be resolved at trial.

If there are any questions, please advise.
Sincerely,

Charles H. Richardson
Assistant Attorney General

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