CHAPTER 13

Forgery, Larceny, Embezzlement, False Pretenses and Cheats

ARTICLE 1

Miscellaneous Offenses

**SECTION 16‑13‑10.** Forgery.

 (A) It is unlawful for a person to:

 (1) falsely make, forge, or counterfeit; cause or procure to be falsely made, forged, or counterfeited; or wilfully act or assist in the false making, forging, or counterfeiting of any writing or instrument of writing;

 (2) utter or publish as true any false, forged, or counterfeited writing or instrument of writing;

 (3) falsely make, forge, counterfeit, alter, change, deface, or erase; or cause or procure to be falsely made, forged, counterfeited, altered, changed, defaced, or erased any record or plat of land; or

 (4) willingly act or assist in any of the premises, with an intention to defraud any person.

 (B) A person who violates the provisions of this section is guilty of a:

 (1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the amount of the forgery is ten thousand dollars or more;

 (2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the amount of the forgery is less than ten thousand dollars.

 (C) If the forgery does not involve a dollar amount, the person is guilty of a misdemeanor under the jurisdiction of the magistrates or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

HISTORY: 1962 Code Section 16‑351; 1952 Code Section 16‑351; 1942 Code Section 1211; 1932 Code Section 1211; Cr. C. ‘22 Section 99; Cr. C. ‘12 Section 528; Cr. C. ‘02 Section 373; G. S. 2527; R. S. 295; 1736‑7 (3) 470‑1 Sections 3‑7; 1783 (4) 543; 1801 (5) 397; 1845 (11) 341; 1930 (36) 1203; 1993 Act No. 184, Section 106; 1995 Act No. 7, Part I Section 5; 2010 Act No. 273, Section 16.D, eff June 2, 2010.

CROSS REFERENCES

Accessories before the fact, generally, see Sections 16‑1‑40, 16‑1‑50.

Credit card forgery, see Section 16‑14‑40.

Drawing and uttering fraudulent checks, see Section 34‑11‑60 et seq.

Forgery of discharge from military or naval forces, see Section 30‑15‑50.

Library References

Forgery 1 to 19, 51.

Westlaw Topic No. 181.

C.J.S. Forgery Sections 1 to 37, 74.

Attorney General’s Opinions

Discussion of whether a citizen, employed in a business in any capacity other than a security guard, can make a citizen’s arrest for shoplifting. SC Op.Atty.Gen. (March 24, 2003) 2003 WL 21043496.

A false writing setting forth preferred candidates for political office of the signer of the writing may not be used to prosecute the real maker for forgery. 1963‑64 Op.Atty.Gen., No 1706, p 169 (1964 WL 8328).

One of the essential elements of forgery, either under the common law or the statutory definition, is that the instrument falsely made must have legal efficacy. 1963‑64 Op.Atty.Gen., No 1706, p 169 (1964 WL 8328).

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1. In general

Forgery is still common‑law offense. State v Zimmerman (1908) 79 SC 289, 60 SE 680. McConnell v Kennedy (1888) 29 SC 180, 7 SE 76.

Forgery is a felony. State v Allen (1900) 56 SC 495, 35 SE 204. State v Rowe (1854) 42 SCL 17.

Meaning of “counterfeit” ‑ See First Nat. Bank of S. C. of Columbia v. Glens Falls Ins. Co., 1961, 197 F.Supp. 264, reversed 304 F.2d 866.

This section [Code 1962 Section 16‑351] equates counterfeiting with forgery. First Nat. Bank of S. C. of Columbia v. Glens Falls Ins. Co., 1961, 197 F.Supp. 264, reversed 304 F.2d 866.

As a general rule, forgery cannot be committed by the genuine making of an instrument for the purpose of defrauding; however, the making of a false instrument is as much a forgery as is the false making of an instrument. State v. Lee‑Grigg (S.C.App. 2007) 374 S.C. 388, 649 S.E.2d 41, rehearing denied, certiorari granted, affirmed 387 S.C. 310, 692 S.E.2d 895. Forgery 9; Forgery 13

The purpose of the statute against forgeries is to protect society against fabrication, falsification, and the uttering, publishing and passing of forged instruments. State v. Wescott (S.C.App. 1994) 316 S.C. 473, 450 S.E.2d 598.

In State v Webster (1911) 88 SC 56, 70 SE 422, the court held that the purpose of this section [Code 1962 Section 16‑351] against forgeries is to protect society against fabrication, falsification, and the uttering, publishing, and passing of forged instruments, which, if genuine, would establish or defeat some claim, impose some duty, or create some liability, or work some prejudice in law to another, in his right of person or property. State v. Singletary (S.C. 1938) 187 S.C. 19, 196 S.E. 527. Forgery 1

This section embraces false entry made in public record. State v. Zimmerman (S.C. 1908) 79 S.C. 289, 60 S.E. 680. Forgery 15

This section [Code 1962 Section 16‑351] and other sections of the Code, providing punishment for forgery, were intended to enlarge the offense and regulate the punishment thereof, and the use of the words “any person,” in describing the party defrauded, does not abolish the common‑law crime of forgery when committed with intent to defraud the State. State v. Zimmerman (S.C. 1908) 79 S.C. 289, 60 S.E. 680.

A corporation, state, the United States, and the estate of a decedent, are each regarded as a person; and where the forged instrument is passed to a servant acting as such, the master is the person defrauded. State v. Zimmerman (S.C. 1908) 79 S.C. 289, 60 S.E. 680.

Evidence to support charge of uttering a forged instrument, see State v. Berry (S.C. 1907) 76 S.C. 86, 56 S.E. 662.

This section [Code 1962 Section 16‑351], providing that whoever falsely forges or counterfeits, or assists in forging or counterfeiting, any writing or instrument and utters or publishes the same as true, is guilty of forgery, is within the power of the legislature. State v. Murray (S.C. 1905) 72 S.C. 508, 52 S.E. 189. Forgery 2

2. Constitutional issues

Double jeopardy did not bar defendant’s conviction for forgery following conviction for criminal contempt based on defendant’s forgery of a document in a civil proceeding; each offense required proof of a fact that the other did not as the offense of forgery did not require any interference with judicial proceedings that was calculated to obstruct, degrade, and undermine the administration of justice and the commission of criminal contempt did not require the uttering or publishing of a fraudulent document. State v. Brandt (S.C. 2011) 393 S.C. 526, 713 S.E.2d 591. Double Jeopardy 147

Double jeopardy did not bar convictions for both forgery and insurance fraud, arising from defendant signing another person’s name to “Affidavit of Total Theft of a Motor Vehicle,” which she then faxed to her insurer even though New York authorities had notified her that vehicle had been recovered and was impounded in New York; conviction for forgery required proof that defendant falsely made writing or instrument, which was not element of insurance fraud, and insurance fraud conviction required proof that she intended to obtain undeserved economic benefit, i.e., insurance payment, which was not necessary for forgery conviction. State v. Pace (S.C.App. 1999) 337 S.C. 407, 523 S.E.2d 466. Double Jeopardy 147

3. Conduct within statute

This section embraces alteration of receipt. State v. Floyd (S.C. 1850) 53 Am.Dec. 689.

This section embraces forgery of receipt on back of an indent, with fraudulent intent. State v. Washington (S.C. 1791) 1 Am.Dec. 601.

An alteration, for purposes of forgery, may be accomplished by additions to or subtractions from the instrument, such as erasures or deletions of words, numbers, or symbols that change the instrument’s effect. State v. Lee‑Grigg (S.C.App. 2007) 374 S.C. 388, 649 S.E.2d 41, rehearing denied, certiorari granted, affirmed 387 S.C. 310, 692 S.E.2d 895. Forgery 10

As a general rule, forgery cannot be committed by the genuine making of an instrument for the purpose of defrauding; however, the making of a false instrument is as much a forgery as is the false making of an instrument. State v. Wescott (S.C.App. 1994) 316 S.C. 473, 450 S.E.2d 598. Forgery 1

The crime of forgery may be committed by the signing of a fictitious or assumed name, provided the instrument is made with the intent to defraud; whether the person whose is name signed to the instrument is real or fictitious is a question for the jury, but the state need not prove beyond a reasonable doubt that no such person exists. State v. Wescott (S.C.App. 1994) 316 S.C. 473, 450 S.E.2d 598.

The defendant was guilty of forgery as opposed to writing bad checks even though the check he cashed was a legitimate check, drawn on a legitimate account, signed by the individual authorized to issue checks on that account, since there was an abundance of circumstantial evidence showing that the account was opened with fraudulent intent where the account was in the name of a fictitious person, doing business as a fictitious, albeit licensed, business. State v. Wescott (S.C.App. 1994) 316 S.C. 473, 450 S.E.2d 598.

This section embraces forgery of witness’ pay certificate. State v. Bullock (S.C. 1899) 54 S.C. 300, 32 S.E. 424.

This section [Code 1962 Section 16‑351] embraces forgery of school claims issued by county superintendent of education. State v. Morton (S.C. 1898) 51 S.C. 323, 28 S.E. 945.

This section embraces altering words and figures of bank bill. State v. Waters (S.C. 1814). Forgery 10

This section embraces forgery of order for delivery of goods. State v. Holly (S.C. 1800).

4. Elements of crime

Intent to defraud is an essential element of the crime of forgery; one possesses the intent required for a forgery conviction if he willingly acts or assists in any of the proscribed premises, with an intention to defraud any person. State v. Lee‑Grigg (S.C.App. 2007) 374 S.C. 388, 649 S.E.2d 41, rehearing denied, certiorari granted, affirmed 387 S.C. 310, 692 S.E.2d 895. Forgery 5

The crime of “forgery” involves: (1) a false making or material alteration of some written instrument; (2) that is the apparent foundation of some legal liability; and (3) that is uttered or published with the intent to defraud or prejudice another. State v. Lee‑Grigg (S.C.App. 2007) 374 S.C. 388, 649 S.E.2d 41, rehearing denied, certiorari granted, affirmed 387 S.C. 310, 692 S.E.2d 895. Forgery 4

“Forgery” is a false making of an instrument, on its face purporting to be good and valid, with a design to defraud, prejudice, or damage another. State v. Lee‑Grigg (S.C.App. 2007) 374 S.C. 388, 649 S.E.2d 41, rehearing denied, certiorari granted, affirmed 387 S.C. 310, 692 S.E.2d 895. Forgery 4

The three important factors requisite to constitute forgery by uttering or publishing a forged instrument are (1) the instrument must be uttered or published as true or genuine, (2) it must be known by the party uttering or publishing it that it is false, forged, or counterfeited, and (3) there must be intent to prejudice, damage or defraud another person. State v. Wescott (S.C.App. 1994) 316 S.C. 473, 450 S.E.2d 598. Forgery 16

To constitute forgery the name alleged to be forged need not be that of person in existence. It may be wholly fictitious. State v. Orr (S.C. 1954) 225 S.C. 369, 82 S.E.2d 523, certiorari denied 75 S.Ct. 74, 348 U.S. 848, 99 L.Ed. 669. Forgery 8

One found in the possession of a forged instrument of which he purports to be the beneficiary, and applying it to his own use, must, in the absence of explanation satisfactory to the jury, be presumed to have forged it or to have been privy to its forgery. State v. Orr (S.C. 1954) 225 S.C. 369, 82 S.E.2d 523, certiorari denied 75 S.Ct. 74, 348 U.S. 848, 99 L.Ed. 669. Forgery 35

Both under this statute and the common law a person may commit forgery by being present and knowingly aiding and abetting another in the perpetration of the crime. Brown v. Bailey (S.C. 1949) 215 S.C. 175, 54 S.E.2d 769.

The three important factors requisite to constitute forgery by uttering or publishing a forged instrument are: (1) It must be uttered or published as true or genuine; (2) it must be known by the party uttering or publishing it as false, forged, or counterfeited; and (3) it must be with intent to prejudice, damage or defraud another person; and under this section [Code 1962 Section 16‑351] a forgery may be committed, not only by the fraudulent making or altering of a writing, to the prejudice of another’s rights, but by the uttering or publishing of such forged instrument when the three factors are present. State v. Singletary (S.C. 1938) 187 S.C. 19, 196 S.E. 527. Forgery 16

Uttering or publishing as true any false, forged, or counterfeited writing, constitutes the crime of forgery under this section [Code 1962 Section 16‑351]. It is a kindred form of forgery. It is usual to enact that various illegal acts shall constitute the crime of forgery, as will be seen by reference to the statutes of the different states. The legislature is vested with power to enact such statutes. State v. Murray (S.C. 1905) 72 S.C. 508, 52 S.E. 189.

In order to constitute forgery by uttering or publishing a forged instrument or writing, it must be uttered and published as true and must be known by the party uttering or publishing it as false, forged or counterfeited, and the act must be done with intent to prejudice, damage, or defraud another. State v. Murray (S.C. 1905) 72 S.C. 508, 52 S.E. 189. Forgery 16

5. Indictment

Accused’s complaint of the use of the word “counterfeit” in an indictment under this section [Code 1962 Section 16‑351] was without merit. Sanders v. State of S. C. (D.C.S.C. 1969) 296 F.Supp. 563. Forgery 26

One of the established meanings of “counterfeit” is to forge; and in this sense the words “forge” and “counterfeit,” as used in this section [Code 1962 Section 16‑351], are synonymous. It was evident from the indictment that the term “counterfeit” was used in describing the act of the defendant in forging the check in question and did not charge a separate offense. State v. Sanders (S.C. 1968) 251 S.C. 431, 163 S.E.2d 220.

An indictment charging that defendant forged a false entry in a bond registry book, and that he uttered a forged writing, to wit, such entry, and sold bonds which should have been entered as redeemed, “with intent to defraud” the State, is not insufficient as merely charging that the sale was made with intent to defraud, without charging that the acts of forging and uttering were made with such intent. State v. Zimmerman (S.C. 1908) 79 S.C. 289, 60 S.E. 680. Forgery 27

An indictment charging that defendant forged a false entry in a State bond registry book of the redemption and cancellation of a previously redeemed and canceled bond, whereas another bond was redeemed and should have been entered as canceled and that defendant sold such other bond with intent to defraud the State, is not insufficient for failing to aver that the forged writing was one which, if genuine, might injure another. State v. Zimmerman (S.C. 1908) 79 S.C. 289, 60 S.E. 680. Forgery 31

An indictment for forgery need not charge that the forgery was complete in all its parts. The essence of the crime is the intent to defraud, and the indictment cannot be defeated merely because all the steps necessary to perfect the fraud are not set out therein. State v. Zimmerman (S.C. 1908) 79 S.C. 289, 60 S.E. 680. Forgery 26

It must state all circumstances which constitute the offense. State v. Foster (S.C. 1826).

Indictment for “counterfeiting a note of hand, commonly called a promissory note, for the payment of money,” is good if the note be set forth in haec verba. State v. Houseal (S.C. 1807). Forgery 28(2)

6. Questions for jury

Defendant was entitled to jury charge on use of evidence of her good character in forgery prosecution as record contained testimony regarding defendant’s good character and reputation in community, and defendant requested instruction. State v. Lee‑Grigg (S.C.App. 2007) 374 S.C. 388, 649 S.E.2d 41, rehearing denied, certiorari granted, affirmed 387 S.C. 310, 692 S.E.2d 895. Criminal Law 776(1); Criminal Law 824(5)

Defendant was not entitled to jury charge on defense of good faith in forgery prosecution; if one operated with criminal intent, one did not operate in good faith, fraudulent intent was essence of crime of forgery, so consequently, comprehensive jury instruction on what constituted fraudulent intent obviated good faith charge, and instructions given elaborated on willful and knowing commission of wrongful act, emphasizing that act was required to be conscious wrongdoing, passage of instrument as true and genuine, and known by passer to misrepresent, conceal, or otherwise communicate false information, and court explained terms willfully and knowingly described actions of person who knew right from wrong, yet proceeded to do wrongful act in spite of that knowledge. State v. Lee‑Grigg (S.C.App. 2007) 374 S.C. 388, 649 S.E.2d 41, rehearing denied, certiorari granted, affirmed 387 S.C. 310, 692 S.E.2d 895. Criminal Law 829(4)

7. Sentence and penalty

Where accused was given the maximum sentence authorized by South Carolina law for forgery, which is seven years, together with a discretionary fine of $5,000, such sentence was lawful and within the statutory limits. Sanders v. State of S. C. (D.C.S.C. 1969) 296 F.Supp. 563.

South Carolina has no statute requiring that credit shall be given for presentence custody. Sanders v. State of S. C. (D.C.S.C. 1969) 296 F.Supp. 563.

Judgment is warranted upon a verdict which finds the passing of a forged note with knowledge of the forgery. State v. Fuller (S.C. 1792) 1 Am.Dec. 610.

In an offense, such as forgery, the gravity of the offense is often materially affected by the amount involved and the aggravation of the circumstances, and the measure of the punishment therefor is necessarily influenced by numerous factors. And for this reason, among others, the legislature doubtless decided that the maximum amount of the fine to be imposed should rest, under the circumstances in each case, within the sound discretion of the trial court. Singletary v. Wilson (S.C. 1939) 191 S.C. 153, 3 S.E.2d 802.

The discretion of the trial court in its determination of the amount of the penalty, where the maximum amount of the fine is not fixed by the statute as in this section [Code 1962 Section 16‑351], must be subject to be reviewed on appeal to the Supreme Court, if clearly abused, under SC Const, Art I, Section 19. Singletary v. Wilson (S.C. 1939) 191 S.C. 153, 3 S.E.2d 802. Criminal Law 1156.10

8. Sufficiency of evidence

State failed to present sufficient evidence to establish value of letter that was forged for purposes of defendant’s legal malpractice action against attorney who had represented defendant in a real estate transaction so as to render forgery conviction a felony; only evidence concerning value of letter was speculative testimony that indicated that the letter would have increased the value of defendant’s claim against attorney substantially more than $5,000 and increased defendant’s probability of winning the lawsuit. State v. Brandt (S.C. 2011) 393 S.C. 526, 713 S.E.2d 591. Forgery 44(.5)

Evidence was sufficient to support finding that defendant was aware that forged letter used in legal malpractice action against attorney who had represented defendant in a real estate transaction was forged, as necessary to support conviction for forgery; defendant presented letter to his attorney and an expert witness, and letter was not discovered until approximately two years after legal malpractice action was filed, despite extensive discovery. State v. Brandt (S.C. 2011) 393 S.C. 526, 713 S.E.2d 591. Forgery 44(1)

Forged letter created for purposes of a legal malpractice action against attorney who had represented defendant in a real estate transaction had legal efficacy so as to support forgery conviction; forgery was not limited solely to negotiable instruments, and letter was evidence of attorney’s alleged knowledge of a conflict of interest that gave rise to malpractice claim. State v. Brandt (S.C. 2011) 393 S.C. 526, 713 S.E.2d 591. Forgery 12(2)

Evidence was sufficient to establish that document was falsely made so as to support conviction for forgery; defendant applied to obtain reimbursement for expenses she admittedly did not incur, by her signature, she attested that application document was true representation of costs, in support of her request for reimbursement, she attached receipts that she stated she altered, if she had successfully obtained reimbursement, city might have been precluded from recovering its expenses or funds would have wrongly been reimbursed twice, and defendant document misrepresented, concealed, or otherwise communicated false information. State v. Lee‑Grigg (S.C.App. 2007) 374 S.C. 388, 649 S.E.2d 41, rehearing denied, certiorari granted, affirmed 387 S.C. 310, 692 S.E.2d 895. Forgery 44(2)

9. Harmless error

Error, in failing to give jury charge on use of evidence of defendant’s good character, was harmful in forgery prosecution; linchpin of defense was defendant’s claim she lacked criminal intent necessary to constitute forgery, she repeatedly testified that her claim for reimbursement was authorized by individual, individual’s testimony neither confirmed, nor denied her assertion, because she relied on individual’s authorization, she contended she did not have intent to defraud, jury struggled with case, and it seemed fair to conclude struggle centered around whether State proved critical element of criminal intent, and element of intent was inextricably connected to defendant’s character. State v. Lee‑Grigg (S.C.App. 2007) 374 S.C. 388, 649 S.E.2d 41, rehearing denied, certiorari granted, affirmed 387 S.C. 310, 692 S.E.2d 895. Criminal Law 776(5); Criminal Law 1173.2(9)

**SECTION 16‑13‑15.** Falsifying or altering transcript or diploma; fraudulent use of falsified or altered transcript or diploma; penalty.

 (A) It is unlawful for any person to falsify or alter a transcript, a diploma, or the high school equivalency diploma known as the GED from any high school, college, university, or technical college of this State, from the South Carolina Department of Education, or from any other transcript or diploma issuing entity.

 (B) It is also unlawful for any person to use in this State a falsified or altered transcript, diploma, or high school equivalency diploma known as the GED from the South Carolina Department of Education, or from any in‑state or out‑of‑state high school, college, university, or technical school, or from any other transcript or diploma issuing entity with the intent to defraud or mislead another person.

 (C) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year, or both.

HISTORY: 1982 Act No. 295; 2002 Act No. 219, Section 1, eff April 22, 2002.

Library References

Forgery 1 to 19, 51.

Westlaw Topic No. 181.

C.J.S. Forgery Sections 1 to 37, 74.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Colleges and Universities Section 22, Discipline Matters.

**SECTION 16‑13‑30.** Petit larceny; grand larceny.

 (A) Simple larceny of any article of goods, choses in action, bank bills, bills receivable, chattels, or other article of personalty of which by law larceny may be committed, or of any fixture, part, or product of the soil severed from the soil by an unlawful act, or has a value of two thousand dollars or less, is petit larceny, a misdemeanor, triable in the magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days.

 (B) Larceny of goods, chattels, instruments, or other personalty valued in excess of two thousand dollars is grand larceny. Upon conviction, the person is guilty of a felony and must be fined in the discretion of the court or imprisoned not more than:

 (1) five years if the value of the personalty is more than two thousand dollars but less than ten thousand dollars;

 (2) ten years if the value of the personalty is ten thousand dollars or more.

HISTORY: 1962 Code Section 16‑353; 1952 Code Section 16‑353; 1942 Code Section 1160; 1932 Code Section 1160; Cr. C. ‘22 Section 53; Cr. C. ‘12 Section 203; Cr. C. ‘02 Section 164; G. S. 2498; R. S. 160; 1866 (13) 407; 1887 (19) 820; 1964 (53) 1725; 1981 Act No. 76, Section 4; 1993 Act No. 171, Section 5; 1993 Act No. 184, Section 107; 2010 Act No. 273, Section 16.E, eff June 2, 2010.

CROSS REFERENCES

Making away with produce before paid for, see Sections 46‑1‑60, 46‑1‑80.

Prohibited acts A, narcotics, penalties, see Section 44‑53‑370.

Stealing crops from the field, see Section 46‑1‑20.

Stealing melons or fruit, see Section 46‑1‑30.

Theft of tobacco plants from beds, see Section 46‑1‑40.

Library References

Larceny 23, 88.

Westlaw Topic No. 234.

C.J.S. Larceny Sections 79 to 87.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Animals Section 2, Domestic Animals.

S.C. Jur. Appeal and Error Section 72, Exceptions to the First Requirement of Raising Issues Below.

S.C. Jur. Appeal and Error Section 77, Pleadings.

Attorney General’s Opinions

Possible charges that could be brought for a stolen automobile. SC Op.Atty.Gen. (March 28, 1995) 1995 WL 803348.

Inasmuch as a court’s jurisdiction of cases involving the offense of breach of trust with fraudulent intent is governed by statutory provisions applicable to the offense of larceny, such cases are triable in a magistrate’s court where the value of the property taken is less than two hundred dollars. 1987 Op.Atty.Gen., No 87‑31, p 91 (1987 WL 245440).

(1) Petit larceny is not a lesser included offense of the crime of shoplifting where the value of the shoplifted goods is less than fifty ($50.00) dollars; (2) A store security guard does not have the authority to nol. pros. a shoplifting case for the purpose of prosecuting for petit larceny; (3) A complainant in a shoplifting case may not reduce the value of the shoplifted goods from retail to wholesale price in order to reduce the value of the goods for purposes of prosecution. 1976‑77 Op.Atty.Gen., No 77‑324, p 257 (1977 WL 24663).

Persons apprehended in the act of shoplifting may be arrested by the person who sees the act being committed, even though the value of the goods is less than $50 and regardless of whether or not the person who viewed the act of shoplifting is a private citizen or a police officer. 1970‑71 Op.Atty.Gen., No 3207, p 187 (1971 WL 17581).

The penalty set forth in this section [Code 1962 Section 16‑353] as amended by 1964 Act No. 695 [1964 (53) 1725] is probably not valid in any instance where its application would result in a penalty of $200 fine, that is, in counties where criminal jurisdiction of magistrates has been increased by legislative act to $200 fine, and 30 days imprisonment, at least until the criminal jurisdiction of magistrates is made the same in all counties. Application of the section as it now stands would result in different maximum penalties in different counties for the same crime. In view of this apparent constitutional defect in this section [Code 1962 Section 16‑353] as amended, the maximum penalty that may be imposed for petit larceny anywhere in the State is $100 fine or 30 days imprisonment. 1963‑64 Op.Atty.Gen., No 1758, p 270 (1964 WL 8376).

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1. In general

Petit larceny is not a felony, but only a misdemeanor. Cherry v McCants (1875) 7 SC 224. State v Clary (1886) 24 SC 116.

Larceny may be committed of goods obtained by delivery from owner, animo furandi. State v. Gorman (S.C. 1819) 10 Am.Dec. 576. Larceny 13

Trial court properly denied counsel’s motion to be relieved, which counsel submitted after suspecting his client was about to present perjured testimony, as any new attorney would have been confronted with the same dilemma, and the motion came nearly half way through a very serious trial on first degree burglary, grand larceny, and weapons charges. Lucas v. State (S.C. 2002) 352 S.C. 1, 572 S.E.2d 274, rehearing denied. Criminal Law 1832

The State was not required to elect between the charges of robbery and larceny since distinct criminal offenses may arise from a single act and, therefore, there was no error in the trial court submitting both charges to the jury. State v. Austin (S.C. 1989) 299 S.C. 456, 385 S.E.2d 830. Criminal Law 29(3)

In a prosecution for housebreaking and grand larceny, defendant’s act in moving three tires at least 33 feet from a tire rack constituted asportation under Section 16‑13‑30. State v. Moultrie (S.C. 1984) 283 S.C. 352, 322 S.E.2d 663.

Proof that there was puddle of new oil on concrete surface located in front of store which had been broken into and that 3 sets of bicycle tire tracks, each of different size, ran through oil, and that there was set of tennis shoe footprints leading from oil to broken window and that defendants returned to store next day, each riding bicycles with tires of different widths, that defendants carefully examined premises, and that upon signal from lookout, one defendant proceeded to break storefront window with beer bottle was insufficient to prove that defendants committed larceny and housebreaking when window was first broken, but was sufficient to establish delinquency after second breaking. In Interest of Simmons (S.C. 1979) 273 S.C. 288, 255 S.E.2d 848.

One who steals property in another state and brings it into this State is subject to prosecution for larceny here. State v. Rutledge (S.C. 1957) 232 S.C. 223, 101 S.E.2d 289, 67 A.L.R.2d 747. Larceny 22

Justice of the peace has jurisdiction. State v. Cooler (S.C. 1889) 30 S.C. 105, 8 S.E. 692.

Where two are jointly indicted verdict may be rendered against only one of the defendants. State v. Lee (S.C. 1888) 29 S.C. 113, 7 S.E. 44.

Prior to its amendment in 1887 magistrates did not have jurisdiction of petit larceny under this section [Code 1962 Section 16‑353]. State v. Williams (S.C. 1880) 13 S.C. 546.

2. Construction and application

Amendment to larceny statute redefining grand larceny as larceny of goods or other personalty in excess of $2,000, instead of $1,000,as set forth in pre‑amendment version of statute, did not apply retroactively to defendant, in prosecution for grand larceny, as the amended version of statute contained a savings clause evincing legislature’s intent to avoid disrupting pending or ongoing criminal prosecutions, in that it provided that amendment to statute did not affect liability incurred under prior version of statute. State v. Brown (S.C. 2013) 402 S.C. 119, 740 S.E.2d 493. Larceny 2

3. Constitutional issues

Even if police detective acted recklessly in omitting from arrest warrant affidavit fact that vehicle belonged to defendant’s live‑in‑girlfriend, the affidavit and supplemental sworn oral testimony still supplied probable cause to issue arrest warrant for grand larceny; affidavit and testimony supplied information that victim, who owned vehicle, had been missing for four days, that defendant was driving victim’s vehicle alone in Texas, that defendant would not have been allowed to drive victim’s vehicle, and after defendant was stopped while trying to cross border into Canada, whereabouts of vehicle were unknown. State v. Lynch (S.C.App. 2015) 412 S.C. 156, 771 S.E.2d 346, rehearing denied, certiorari denied. Searches and Seizures 112

Omission of information from arrest warrant affidavit, including information that car that murder and larceny defendant was driving belonged to his live‑in girlfriend, did not warrant Franks hearing to challenge veracity of warrant affidavit, where police detective did not intentionally or recklessly omit the allegedly exculpatory information, in that he could not have informed the magistrate of the omitted information at time affidavit was made. State v. Lynch (S.C.App. 2015) 412 S.C. 156, 771 S.E.2d 346, rehearing denied, certiorari denied. Searches and Seizures 199

Defendant was not deprived of a fair trial on burglary and other charges because trial court denied counsel’s motion to be relieved on ground that he suspected defendant was about to present perjured testimony and counsel revealed the suspected perjury to the court; defendant’s request to be appointed co‑counsel was granted at outset of trial, he decided to cross‑examine his witnesses, and counsel filed all appropriate motions and presented a closing argument to the jury. Lucas v. State (S.C. 2002) 352 S.C. 1, 572 S.E.2d 274, rehearing denied. Criminal Law 1166.10(1)

4. Elements

Grand larceny is the felonious taking and carrying away of the goods of another, where the value exceeds $1,000. State v. Parker (S.C. 2002) 351 S.C. 567, 571 S.E.2d 288. Larceny 23

To make out the offense of larceny, the taking must be done animo furandi, or with a view of depriving the true owner of his property and converting it to the use of the offender. State v. Condrey (S.C.App. 2002) 349 S.C. 184, 562 S.E.2d 320. Larceny 3(1)

The “corpus delicti” in larceny consists of two elements, the loss of the property by the owner and the loss by a felonious taking. State v. Teal (S.C. 1954) 225 S.C. 472, 82 S.E.2d 787. Larceny 56

Larceny may be committed when goods, taken and carried away without felonious intent, are afterwards feloniously appropriated. State v. Davenport (S.C. 1893) 38 S.C. 348, 17 S.E. 37.

5. Value of goods

Conviction of grand larceny must be reversed where state presents no evidence of value of stolen item nor evidence that such item was worth more than $50. State v. Smith (S.C. 1980) 274 S.C. 622, 266 S.E.2d 422.

If article is of any value, the exact value need not be shown to sustain a conviction for petit larceny. State v. Slack (S.C. 1829). Larceny 40(2)

6. Nature of goods

A partner cannot be convicted of larceny of partnership property. Patterson v. Bogan (S.C. 1973) 261 S.C. 87, 198 S.E.2d 586.

Rule that partner cannot be convicted of larceny of partnership property has not been changed by the Uniform Partnership Act. Patterson v. Bogan (S.C. 1973) 261 S.C. 87, 198 S.E.2d 586. Fraud 68; Larceny 27

This section does not include trees. State v. Collins (S.C. 1938) 188 S.C. 338, 199 S.E. 303.

A dog is a chattel within the meaning of this section [Code 1962 Section 16‑353]. —State v. Langford (S.C. 1899) 55 S.C. 322, 33 S.E. 370, 74 Am.St.Rep. 746.

This section [Code 1962 Section 16‑353] does not include stealing of livestock. State v. Moore (S.C. 1889) 30 S.C. 69, 8 S.E. 437.

7. Lesser included offenses

Grand larceny is not a lesser‑included offense of robbery or armed robbery; overruling State v. Lawson, 279 S.C. 266, 305 S.E.2d 249, Young v. State, 259 S.C. 383, 192 S.E.2d 212, and State v. Ziegler, 274 S.C. 6, 260 S.E.2d 182. State v. Parker (S.C. 2002) 351 S.C. 567, 571 S.E.2d 288. Indictment And Information 191(9)

Grand larceny is not a lesser‑included offense of robbery or armed robbery; overruling State v. Lawson, 279 S.C. 266, 305 S.E.2d 249, Young v. State, 259 S.C. 383, 192 S.E.2d 212 (1972), and State v. Ziegler, 274 S.C. 6, 260 S.E.2d 182. Joseph v. State (S.C. 2002) 351 S.C. 551, 571 S.E.2d 280. Indictment And Information 191(9)

Trial court limitation of the scope of defense counsel’s closing argument, in which defense counsel attempted to argue that the State charged defendant with the wrong offense by arguing the law of receiving stolen goods, was proper; allowing defense counsel to present argument regarding receiving stolen goods when defendant had been charged with larceny would have improperly presented receiving stolen goods as a lesser‑included offense of larceny, and receiving stolen goods was not a lesser‑included offense of larceny. State v. Condrey (S.C.App. 2002) 349 S.C. 184, 562 S.E.2d 320. Criminal Law 2087

Because grand larceny has the element of “in excess of one thousand dollars” it is not a lesser‑included offense of armed robbery, which has no monetary element. State v. Parker (S.C.App. 2001) 344 S.C. 250, 543 S.E.2d 255, rehearing denied, certiorari granted, affirmed on other grounds 351 S.C. 567, 571 S.E.2d 288. Indictment And Information 191(5)

Larceny is a lesser included offense within robbery, and punishment for both offenses arising out of the same incident is impermissible. State v. Austin (S.C. 1989) 299 S.C. 456, 385 S.E.2d 830. Criminal Law 29(11)

8. Indictment

Failure to state value of vehicle as over $1000 did not render indictment for grand larceny defective, so as to deprive trial court of subject matter jurisdiction; caption stated charge was for grand larceny and cited to relevant statute. State v. Barnett (S.C.App. 2004) 358 S.C. 199, 594 S.E.2d 534, rehearing denied, certiorari denied. Indictment And Information 21; Indictment And Information 108

Single count indictment charging armed robbery was insufficient to apprise defendants that they could be convicted of grand larceny. State v. Parker (S.C.App. 2001) 344 S.C. 250, 543 S.E.2d 255, rehearing denied, certiorari granted, affirmed on other grounds 351 S.C. 567, 571 S.E.2d 288. Indictment And Information 71.4(8)

The Circuit Court lacked jurisdiction to accept the defendant’s plea to grand larceny where the indictment failed to allege that the value of the items stolen was greater than $200, which is an element of the offense of grand larceny. Johnson v. State (S.C. 1995) 319 S.C. 62, 459 S.E.2d 840, rehearing denied. Criminal Law 92; Criminal Law 1167(5); Larceny 31

The circuit court lacked the jurisdiction to accept the defendant’s plea of guilty to grand larceny where the indictment alleged that the property stolen had a value of more than $50, but the grand larceny statute in effect at the time the offense was committed required the value of the property allegedly stolen to exceed $200. Slack v. State (S.C. 1993) 311 S.C. 415, 429 S.E.2d 801. Larceny 23

Where indictment charged theft on a specified date from a retail store of three dresses of itemized values which aggregated $26.18, the only meaning of which the indictment is reasonably susceptible is that the taking of the three dresses was one act. Thus, the total value of them made the crime grand larceny, and such crime could not be petit larceny. State v. Huffstetler (S.C. 1948) 213 S.C. 319, 49 S.E.2d 585.

Indictment for stealing chickens of the value of five dollars from fowl house charges only petit larceny. State v. Johnson (S.C. 1896) 45 S.C. 483, 23 S.E. 619.

This offense being exclusively a statutory one, an indictment at common law will not lie; and the indictment, therefore, must conclude, “contrary to the form of the statute,” etc. State v. Gray (S.C. 1867) 14 Rich. 174.

Where two are jointly indicted, one cannot be convicted of petit larceny and the other of grand larceny. State v. Wilson (S.C. 1825). Larceny 23

On indictment for grand larceny jury may find petit larceny. State v. Wood (S.C. 1817). Indictment And Information 189(9)

9. Questions for jury

Circumstantial evidence introduced by State in burglary trial raised fact issue for jury as to defendant’s guilt; forensic evidence placed defendant within community center and, more specifically, at the two places where the crimes had occurred, his fingerprint was found on a manipulated television set in community room where a window had been broken, his blood was recovered just beneath spot a stolen television had been mounted, and testimony suggested that defendant would have no reason to be in the community room because he was not involved in any of the groups that met there. State v. Bennett (S.C. 2016) 415 S.C. 232, 781 S.E.2d 352. Burglary 45

Defendant was not entitled to a directed verdict on the charge of grand larceny; evidence favorable to the State established that defendant asked co‑defendant to get him some shoes, that defendant met co‑defendant at a truck stop and picked up some shoes, that defendant sold the shoes at a flea market, and that defendant was aware that co‑defendant had stolen the shoes. State v. Condrey (S.C.App. 2002) 349 S.C. 184, 562 S.E.2d 320. Criminal Law 753.2(3.1)

10. Instructions

Denial of murder and larceny defendant’s requested circumstantial evidence charge, based on “reasonable hypothesis” language found in Edwards, and stating, inter alia, that “[c]ircumstantial evidence has to be complete,” was not reversible error, since state Supreme Court held in Logan that Edwards language was unnecessary. State v. Lynch (S.C.App. 2015) 412 S.C. 156, 771 S.E.2d 346, rehearing denied, certiorari denied. Criminal Law 784(7)

Supreme Court has consistently disapproved instructions in larceny prosecutions which place the burden on the defendant to explain how he came into possession of recently stolen goods. State v. Gaines (S.C. 1978) 271 S.C. 65, 244 S.E.2d 539.

Trial court erred in instructing jury in larceny prosecution that a person found in possession of recently stolen goods must give some satisfactory explanation of his possession or else the law presumes him to be the thief. State v. Gaines (S.C. 1978) 271 S.C. 65, 244 S.E.2d 539.

11. Sufficiency of evidence

Conviction for grand larceny was supported by substantial circumstantial evidence, including testimony from multiple witnesses that larceny victim loved her car and would not allow anyone to drive it, testimony from victim’s mother that victim gave her a spare set of keys because she did not want defendant to drive it, evidence that defendant was stopped for speeding while driving victim’s car alone in Texas, and testimony from police detective that defendant later admitted he took victim’s car without her permission. State v. Lynch (S.C.App. 2015) 412 S.C. 156, 771 S.E.2d 346, rehearing denied, certiorari denied. Larceny 55

State did not present substantial circumstantial evidence to reasonably prove defendant’s guilt, but at most, the evidence presented merely raised a suspicion that defendant committed the crimes, and thus, evidence was not sufficient to support defendant’s convictions for burglary in the second degree, petty larceny, and malicious injury to real property; defendant was a frequent visitor to community center prior to the crime, spending much of his time in the computer room, and thus, it would not be unexpected to find defendant’s DNA in the computer room and his fingerprint in the community room, and though the exact locations of the DNA and fingerprint evidence raised a suspicion of defendant’s guilt, the evidence did not rise above suspicion. State v. Bennett (S.C.App. 2014) 408 S.C. 302, 758 S.E.2d 743, certiorari granted, reversed 415 S.C. 232, 781 S.E.2d 352. Burglary 41(6); Criminal Law 566

Sufficient evidence supported conclusion that value of each of two vehicles stolen by defendant was over $1,000, as element of grand larceny; owners of vehicles each testified s to value of vehicles, and, their testimony alone was sufficient to support convictions. State v. Brown (S.C. 2013) 402 S.C. 119, 740 S.E.2d 493. Larceny 59

A property owner’s testimony as to the value of her property alone is sufficient to support a conviction for grand larceny. State v. Brown (S.C. 2013) 402 S.C. 119, 740 S.E.2d 493. Larceny 59

Where defendant forcibly entered an apartment occupied by three roommates and took property belonging to each, and where the value of property taken from each did not exceed $200, but the aggregate value of property taken exceeded $200, evidence was sufficient to support a conviction under Section 16‑13‑30, on the basis that the State could properly aggregate the value of property taken from different owners and prosecute defendant for a single larceny. State v. Waller (S.C. 1984) 280 S.C. 300, 312 S.E.2d 552.

12. Review

Defendant failed to preserve issue of whether border patrol’s seizure of items from his possession while he was detained at United States/Canada border was unlawful, in murder and grand larceny prosecution, where defendant conceded, at bench trial, that the initial search of his bags by the border patrol was valid. State v. Lynch (S.C.App. 2015) 412 S.C. 156, 771 S.E.2d 346, rehearing denied, certiorari denied. Criminal Law 260.4

Defendant failed to preserve for appellate review issue of whether amendment of grand larceny statute applied retroactively to his prosecution for grand larceny, where defense counsel explicitly stated that he had no objection to trial court’s instruction on elements of grand larceny at time defendant committed the offense. State v. Brown (S.C. 2013) 402 S.C. 119, 740 S.E.2d 493. Criminal Law 1137(1)

Defendants could raise for first time on appeal their claim that trial court lacked subject matter jurisdiction to convict defendants of grand larceny because it was not lesser‑included offense of charged offense of armed robbery. State v. Parker (S.C.App. 2001) 344 S.C. 250, 543 S.E.2d 255, rehearing denied, certiorari granted, affirmed on other grounds 351 S.C. 567, 571 S.E.2d 288. Criminal Law 1033.1

**SECTION 16‑13‑35.** Presumed value of credit card subject to larceny.

 Notwithstanding any other provision of law, in any criminal prosecution where a credit card currently in force is the subject of a larceny, the value of the same shall be prima facie presumed to be greater than fifty dollars.

 As used in this section “credit card” shall mean an identification card, credit number, credit device or other credit document issued to a person by a business organization which permits such person to purchase or obtain goods, property or services on the credit of such organization.

HISTORY: 1978 Act No. 526.

CROSS REFERENCES

Theft and unauthorized use of credit cards, see Section 16‑14‑10 et seq.

Library References

False Pretenses 7(1).

Larceny 6.

Westlaw Topic Nos. 170, 234.

C.J.S. False Pretenses Sections 9, 12, 15 to 16, 19, 39.

C.J.S. Larceny Sections 18 to 19.

RESEARCH REFERENCES

Encyclopedias

81 Am. Jur. Proof of Facts 3d 113, Identity Theft and Other Misuses of Credit and Debit Cards.

**SECTION 16‑13‑40.** Stealing of bonds and the like.

 (A) It is unlawful for a person to steal or take by robbery a bond, warrant, bill, or promissory note for the payment or securing the payment of money belonging to another.

 (B) A person who violates the provisions of this section is guilty of a:

 (1) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, if the instrument stolen or taken has a value of two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days;

 (2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years if the value of the instrument stolen or taken is more than two thousand dollars but less than ten thousand dollars;

 (3) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years if the instrument stolen or taken has a value of ten thousand dollars or more.

HISTORY: 1962 Code Section 16‑354; 1952 Code Section 16‑354; 1942 Code Section 1142; 1932 Code Section 1142; Cr. C. ‘22 Section 36; Cr. C. ‘12 Section 181; Cr. C. ‘02 Section 147; G. S. 2486; R. S. 144; 1737 (3) 470; 1993 Act No. 184, Section 108; 2010 Act No. 273, Section 16.F, eff June 2, 2010.

Library References

Larceny 5, 88.

Robbery 4, 30.

Westlaw Topic Nos. 234, 342.

C.J.S. Larceny Sections 18 to 31.

C.J.S. Robbery Sections 5 to 12, 101 to 105, 109, 125, 130, 140.

Attorney General’s Opinions

Theft of a check constitutes a violation of this section [Code 1962 Section 16‑354]. 1969‑70 Op.Atty.Gen., No 2957, p 218 (1970 WL 12234).

**SECTION 16‑13‑50.** Stealing livestock; confiscation of motor vehicle or other chattel.

 (A) A person convicted of the larceny of a horse, mule, cow, hog, or any other livestock is guilty of a:

 (1) felony and, upon conviction, must be imprisoned not more than ten years or fined not more than twenty‑five hundred dollars, or both, if the value of the livestock is ten thousand dollars or more;

 (2) felony and, upon conviction, must be imprisoned not more than five years or fined not more than five hundred dollars, or both, if the value of the livestock is more than two thousand dollars but less than ten thousand dollars;

 (3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, if the value of the livestock is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both.

 (B) A motor vehicle or other chattel used by or found in possession of a person engaged in the commission of a crime under this section is subject to confiscation and must be confiscated and sold under the provisions of Section 27‑21‑10.

HISTORY: 1962 Code Section 16‑355; 1952 Code Section 16‑355; 1942 Code Section 1144; 1932 Code Section 1144; Cr. C. ‘22 Section 38; Cr. C. ‘12 Section 183; Cr. C. ‘02 Section 149; G. S. 2489; R. S. 146; 1878 (16) 632; 1929 (36) 101; 1954 (48) 1705; 1964 (53) 1722; 1971 (57) 478; 1993 Act No. 171, Section 6; 1993 Act No. 184, Section 109; 2010 Act No. 273, Section 16.G, eff June 2, 2010.

CROSS REFERENCES

Use of horse, mare or mule without permission, see Section 47‑9‑30.

Use of vehicle without permission, see Sections 16‑21‑60, 16‑21‑70.

Library References

Animals 46.

Forfeitures 49.

Westlaw Topic Nos. 28, 180.

C.J.S. Animals Sections 81 to 82, 238 to 240.

C.J.S. Forfeitures Sections 1, 15 to 33, 44, 49 to 78.

C.J.S. RICO (Racketeer Influenced and Corrupt Organizations) Sections 47 to 48, 50.

C.J.S. Weapons Sections 70 to 71.

NOTES OF DECISIONS

In general 1

1. In general

Proof of commission of crime at any time prior to finding of indictment is sufficient. State v Anderson (1901) 59 SC 229, 37 SE 820. State v Reynolds (1897) 48 SC 384, 26 SE 679.

Word “mare” was held to be included in the term “horse.” ‑ State v. Dunnavant (S.C. 1811) 5 Am.Dec. 530.

A mortgagor of personal property in possession after condition broken has such ownership as will sustain indictment alleging ownership in him. State v. Stokes (S.C. 1910) 84 S.C. 579, 66 S.E. 993. Larceny 32(1)

And it may be alleged in an agent for another. State v. Philips (S.C. 1906) 73 S.C. 236, 53 S.E. 370.

Instruction containing definition of grand larceny held valid. State v. Garvin (S.C. 1897) 48 S.C. 258, 26 S.E. 570.

Proof must sustain the allegation of ownership. State v. Thomas (S.C. 1867) 14 Rich. 163.

Applicability of section to colts. State v. Major (S.C. 1866) 14 Rich. 76.

But it is not necessary to prove the time as laid in the indictment. State v. Porter (S.C. 1856) 10 Rich. 145.

Chasing and shooting hog, without removing it after it is shot, held not larceny. State v. Seagler (S.C. 1844) 1 Rich. 30, 42 Am.Dec. 404. Larceny 12

As to repeal of all former acts on the subject, see State v. Corley (S.C. 1880) 13 S.C. 1.

The property may be laid in one who has merely the lawful possession. State v. Addington (S.C. 1829). Larceny 32(5)

**SECTION 16‑13‑60.** Stealing dogs.

 (1) It shall be unlawful for any person to steal a dog in which any other person has a right of property.

 (2) Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed five hundred dollars or imprisoned for a term not to exceed six months, or both, in the discretion of the court.

HISTORY: 1962 Code Section 16‑355.1; 1972 (57) 2354.

Library References

Animals 46.

Westlaw Topic No. 28.

C.J.S. Animals Sections 81 to 82, 238 to 240.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Animals Section 2, Domestic Animals.

**SECTION 16‑13‑65.** Aquaculture operations; stealing or damaging products or facilities.

 (A) All wildlife including finfish, shellfish, crustacean, and plant species held and cultivated by bonafide aquaculture operations remain the private property of the culturist until sold, traded, or bartered.

 (B) It is unlawful for a person to steal or attempt to steal or otherwise take without prior authorization any cultured wildlife including finfish, shellfish, crustacean, or plants from a bonafide aquaculture operation, posted as such, in this State.

 (C) It is unlawful for a person to transfer, damage, vandalize, poison, or attempt to transfer, damage, vandalize, or poison the product or facilities of a bonafide aquaculture operation, posted as such, in this State. No person may cast or cause to be cast poison, impurities, or other substances which are injurious to aquaculture species into the waters or water supply of a bonafide aquaculture operation, posted as such, in this State. No person may attempt to impair or impede an aquaculturist or his employees while in pursuit of lawful activities associated with aquaculture.

 Nothing in this section precludes the enforcement of or the applicability of a statute contained in Title 50.

HISTORY: 1989 Act No. 121, Section 1.

Library References

Fish 13(1).

Westlaw Topic No. 176.

C.J.S. Fish Sections 31 to 40.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Poisons Section 11, Agriculture, Aquaculture, Fish and Game.

**SECTION 16‑13‑66.** Penalties for violating Section 16‑13‑65.

 (A) A person violating the provision of Section 16‑13‑65 is guilty of a misdemeanor and, upon conviction:

 (1) for the first offense, must be fined an amount not to exceed one thousand dollars or imprisoned for a term not to exceed one year, or both, and shall pay restitution to the culturist an amount determined by the court. Notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, an offense punishable under this item may be tried in magistrates or municipal court.

 (2) for a second offense, must be fined an amount not to exceed two thousand dollars or imprisoned for a term not less than two months and thirty days community service nor more than one year, or both, and shall pay restitution to the culturist an amount determined by the court. Furthermore, all equipment, including, but not limited to, vehicles, fishing devices, coolers, and nets must be seized and forfeited to the court.

 (3) for a third or subsequent offense, must be fined an amount not to exceed five thousand dollars or imprisoned for a term not less than six months nor more than two years, or both, and shall pay restitution to the culturist an amount determined by the court. Furthermore, all equipment, including, but not limited to, vehicles, fishing devices, coolers, and nets must be seized and forfeited to the court.

 (B) If the value of such property stolen or damaged is less than two hundred dollars, the case shall be tried in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, and the punishment shall be a fine of not more than one thousand dollars or imprisonment for not more than thirty days, or both.

HISTORY: 1989 Act No. 121, Section 2; 2010 Act No. 273, Section 16.H, eff June 2, 2010.

Library References

Fish 15.

Westlaw Topic No. 176.

C.J.S. Fish Sections 48 to 51.

**SECTION 16‑13‑70.** Stealing of vessels and equipment; payment of damages.

 (A) It is unlawful for a person to steal, take away, or let loose any boat, piragua, or canoe; or steal or take away any grappling, painter, rope, sail, or oar from any landing or place where the owner or person in whose service or employ the thing stolen, taken away, or let loose was last attached or laid, except boats or canoes let loose from another boat, canoe, or vessel.

 (B) A person who violates the provisions of this section is guilty of a:

 (1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years if the value of the property is ten thousand dollars or more;

 (2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years if the value of the property is more than two thousand dollars but less than ten thousand dollars;

 (3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, if the value of the property is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than thirty days.

 (C) In addition to the punishment specified in this section, the person must make good to the person injured all damages sustained and, if the matter be a trespass only, the person committing the offense shall make good to the person injured all damages that accrued.

HISTORY: 1962 Code Section 16‑356; 1952 Code Section 16‑356; 1942 Code Section 1143; 1932 Code Section 1143; Cr. C. ‘22 Section 37; Cr. C. ‘12 Section 182; Cr. C. ‘02 Section 148; G. S. 2488; R. S. 145; 1695 (2) 105; 1897 (22) 422; 1963 (53) 551; 1993 Act No. 184, Section 110; 2010 Act No. 273, Section 16.I, eff June 2, 2010.

Library References

Larceny 5, 88.

Westlaw Topic No. 234.

C.J.S. Larceny Sections 18 to 31.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 117, Stealing Vessels.

**SECTION 16‑13‑80.** Larceny of bicycles.

 The larceny of a bicycle is a misdemeanor and, upon conviction, the person must be punishable at the discretion of the court. When the value of the bicycle is less than two thousand dollars, the case is triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, and, upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than thirty days.

HISTORY: 1962 Code Section 16‑357; 1952 Code Section 16‑357; 1942 Code Section 1145; 1932 Code Section 1145; Cr. C. ‘22 Section 39; Cr. C. ‘12 Section 184; Cr. C. ‘02 Section 150; 1901 (23) 749; 1919 (31) 215; 1931 (37) 343; 1964 (53) 1720; 1981 Act No. 76, Section 5; 1993 Act No. 171, Section 7; 2010 Act No. 273, Section 16.J, eff June 2, 2010.

CROSS REFERENCES

Applicability of provisions pertaining to use of uniform traffic ticket, see Section 56‑7‑10.

Library References

Larceny 5, 88.

Westlaw Topic No. 234.

C.J.S. Larceny Sections 18 to 31.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 22, Jurisdiction.

**SECTION 16‑13‑100.** Stealing crude turpentine.

 Whoever shall steal any crude turpentine of the value of five dollars, whether dipped or scraped from the trees or not or whether barreled or not, from any place whatsoever shall be guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine of not more than one hundred dollars or imprisonment not exceeding thirty days.

HISTORY: 1962 Code Section 16‑359; 1952 Code Section 16‑359; 1942 Code Section 1207; 1932 Code Section 1207; Cr. C. ‘22 Section 95; Cr. C. ‘12 Section 257; Cr. C. ‘02 Section 197; R. S. 184; 1893 (21) 506.

Library References

Larceny 5, 88.

Westlaw Topic No. 234.

C.J.S. Larceny Sections 18 to 31.

**SECTION 16‑13‑105.** Definitions; shoplifting and similar offenses.

 When used in Sections 16‑13‑110, 16‑13‑120 and 16‑13‑140 the terms listed below shall have the following meanings:

 (1) “Conceal” means to hide merchandise on the person or among the belongings of a person so that, although there may be some notice of its presence, it is not visible through ordinary observation.

 (2) “Full retail value” means the merchant’s stated or advertised price of merchandise.

 (3) “Merchandise” means any goods, chattels, foodstuffs or wares of any type and description, regardless of value.

 (4) “Merchant” means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee or independent contractor of the owner or operator.

 (5) “Store or other retail mercantile establishment” means a place where merchandise is displayed, held, stored or sold or offered to the public for sale.

HISTORY: 1978 Act No. 507 Section 1.

CROSS REFERENCES

“Store or other retail mercantile establishment”, as defined in this section, reference in anti‑shoplifting statute, see Section 15‑75‑40.

Library References

Larceny 21.

Westlaw Topic No. 234.

C.J.S. Larceny Section 41.

**SECTION 16‑13‑110.** Shoplifting.

 (A) A person is guilty of shoplifting if he:

 (1) takes possession of, carries away, transfers from one person to another or from one area of a store or other retail mercantile establishment to another area, or causes to be carried away or transferred any merchandise displayed, held, stored, or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use, or benefit of the merchandise without paying the full retail value;

 (2) alters, transfers, or removes any label, price tag marking, indicia of value, or any other markings which aid in determining value affixed to any merchandise displayed, held, stored, or offered for sale in a store or other retail mercantile establishment and attempts to purchase the merchandise personally or in consort with another at less than the full retail value with the intention of depriving the merchant of the full retail value of the merchandise;

 (3) transfers any merchandise displayed, held, stored, or offered for sale by any store or other retail mercantile establishment from the container in which it is displayed to any other container with intent to deprive the merchant of the full retail value.

 (B) A person who violates the provisions of this section is guilty of a:

 (1) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than thirty days if the value of the shoplifted merchandise is two thousand dollars or less;

 (2) felony and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than five years, or both, if the value of the shoplifted merchandise is more than two thousand dollars but less than ten thousand dollars;

 (3) felony and, upon conviction, must be imprisoned not more than ten years if the value of the shoplifted merchandise is ten thousand dollars or more.

HISTORY: 1962 Code Section 16‑359.1; 1956 (49) 1770; 1978 Act No. 507 Section 2; 1985 Act No. 67; 1993 Act No. 171, Section 8; 1993 Act No. 184, Section 111; 2010 Act No. 273, Section 16.K, eff June 2, 2010.

CROSS REFERENCES

Shoplifting, punishable under this section, defined, see Section 15‑75‑40.

Use of uniform traffic ticket for offense committed in officer’s presence, domestic violence arrests and incident report, see Section 56‑7‑15.

Library References

Larceny 21, 88.

Westlaw Topic No. 234.

C.J.S. Larceny Section 41.

RESEARCH REFERENCES

ALR Library

84 ALR 5th 487 , What Constitutes Crime Involving “Dishonesty or False Statement” Under Rule 609(A)(2) of the Uniform Rules of Evidence or Similar State Rule‑Nonviolent Crimes.

Encyclopedias

28 Am. Jur. Proof of Facts 2d 571, Customer’s Willful Concealment of Merchandise.

Attorney General’s Opinions

Offense of shoplifting would be crime involving moral turpitude within purview of Article VI, Section 8 of State Constitution. 1990 Op.Atty.Gen. No 90‑31 (1990 WL 482419).

(1) Petit larceny is not a lesser included offense of the crime of shoplifting where the value of the shoplifted goods is less than fifty ($50.00) dollars; (2) A store security guard does not have the authority to nol. pros. a shoplifting case for the purpose of prosecuting for petit larceny; (3) A complainant in a shoplifting case may not reduce the value of the shoplifted goods from retail to wholesale price in order to reduce the value of the goods for purposes of prosecution. 1976‑77 Op.Atty.Gen., No 77‑324, p 257 (1971 WL 17581).

Persons apprehended in the act of shoplifting may be arrested by the person who sees the act being committed, even though the value of the goods is less than $50 and regardless of whether or not the person who viewed the act of shoplifting is a private citizen or a police officer. 1970‑71 Op.Atty.Gen., No 3207, p 187 (1971 WL 17581).

Prior conviction for shoplifting in another state does not constitute prior offense within meaning of this section [Code 1962 Section 16‑359.1]. 1965‑66 Op.Atty.Gen., No 1969‑B, p 361 (1966 WL 8652).

NOTES OF DECISIONS

In general 1

Sentence and punishment 2

1. In general

Larceny is implicit within the crime of shoplifting. State v. Moore (S.C.App. 2007) 374 S.C. 468, 649 S.E.2d 84, rehearing denied, certiorari denied, denial of post‑conviction relief affirmed 399 S.C. 641, 732 S.E.2d 871. Larceny 21

Basically, person is guilty of shoplifting if person (1) takes, carries away, or transfers to another person or store area any merchandise with intention of depriving merchant of possession, use, or benefit of merchandise without paying full retail value; (2) alters, transfers, or removes any label or price tag of any merchandise and attempts to purchase merchandise at less than full retail value with intention of depriving merchant of that value; or (3) transfers any merchandise from its container with intent to deprive merchant of its full retail value. State v. Shaw (S.C.App. 1997) 328 S.C. 454, 492 S.E.2d 402. Larceny 1

Prior conviction for shoplifting was crime of dishonesty that may be used to impeach credibility of defendant. State v. Shaw (S.C.App. 1997) 328 S.C. 454, 492 S.E.2d 402. Witnesses 337(16)

Merchant’s reasonable cause to believe that customers had committed crime of shoplifting, entitled merchant to requested jury instruction of statutory definition of shoplifting in damages suit by customers for false imprisonment, slander, and conversion, existed when customer removed merchandise from store after receiving money from merchant to stop payment on check previously used to pay for merchandise. Peters v. K‑Mart Corp. (S.C. 1996) 322 S.C. 404, 472 S.E.2d 248. False Imprisonment 40

2. Sentence and punishment

Defendant’s three‑year sentence for shoplifting with four prior shoplifting convictions did not exceed statutory maximum penalty for crime; he could have been imprisoned for up to ten years after third or subsequent offense for which term of imprisonment was contingent upon value of property involved. State v. Lewis (S.C.App. 1996) 325 S.C. 324, 478 S.E.2d 696. Sentencing And Punishment 1416

**SECTION 16‑13‑111.** Reports of shoplifting convictions.

 A first offense shoplifting prosecution or second offense resulting in a conviction shall be reported by the magistrate or city recorder hearing the case to the Communications and Records Division of the South Carolina Law Enforcement Division which shall keep a record of such conviction so that any law enforcement agency can inquire into whether or not a defendant has a prior record.

HISTORY: 1978 Act No. 507 Section 3.

Library References

Records 32.

Westlaw Topic No. 326.

C.J.S. Bankruptcy Sections 830 to 834.

C.J.S. Records Sections 80, 82 to 90.

**SECTION 16‑13‑120.** Shoplifting; presumptions from concealment of unpurchased goods.

 It is permissible to infer that any person wilfully concealing unpurchased goods or merchandise of any store or other mercantile establishment either on the premises or outside the premises of the store has concealed the article with the intention of converting it to his own use without paying the purchase price thereof within the meaning of Section 16‑13‑110. It is also permissible to infer that the finding of the unpurchased goods or merchandise concealed upon the person or among the belongings of the person is evidence of wilful concealment. If the person conceals or causes to be concealed the unpurchased goods or merchandise upon the person or among the belongings of another, it is also permissible to infer that the person so concealing such goods wilfully concealed them with the intention of converting them to his own use without paying the purchase price thereof within the meaning of Section 16‑13‑110.

HISTORY: 1962 Code Section 16‑359.2; 1956 (49) 1770; 1987 Act No. 95 Section 3.

Library References

Larceny 21, 41.

Westlaw Topic No. 234.

C.J.S. Larceny Sections 41, 138 to 150.

RESEARCH REFERENCES

Encyclopedias

28 Am. Jur. Proof of Facts 2d 571, Customer’s Willful Concealment of Merchandise.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

When facts referred to in this section are proved, they should be considered along with all other circumstantial and direct evidence. State v. Burriss (S.C. 1984) 281 S.C. 47, 314 S.E.2d 316.

2. Constitutional issues

Defendant was deprived of his right to due process of law by trial judge’s instruction that, where customer in store conceals merchandise, presumption arises that it was willful concealment, that is, for purpose of converting item to his own use without paying for it. The defendant was entitled to have jury determine question of concealment and inferences to be drawn therefrom in light of all attendant circumstances, notwithstanding that he introduced no testimony. State v. Wells (S.C. 1984) 282 S.C. 12, 316 S.E.2d 409. Constitutional Law 4638

South Carolina shoplifting statute that creates presumption of guilt based on shopper’s willful concealment of merchandise either on or off store premises is unconstitutional. State v. Burriss (S.C. 1984) 281 S.C. 47, 314 S.E.2d 316.

**SECTION 16‑13‑130.** Sections 16‑13‑110 and 16‑13‑120 cumulative.

 The offense created by Section 16‑13‑110 and the inferences provided in Section 16‑13‑120 are not exclusive and are in addition to previously existing offenses and those rights and presumptions as were heretofore provided by law.

HISTORY: 1962 Code Section 16‑359.3; 1956 (49) 1770; 1987 Act No. 95 Section 4.

Attorney General’s Opinions

(1) Petit larceny is not a lesser included offense of the crime of shoplifting where the value of the shoplifted goods is less than fifty ($50.00) dollars; (2) A store security guard does not have the authority to nol. pros. a shoplifting case for the purpose of prosecuting for petit larceny; (3) A complainant in a shoplifting case may not reduce the value of the shoplifted goods from retail to wholesale price in order to reduce the value of the goods for purposes of prosecution. 1976‑77 Op.Atty.Gen., No 77‑324, p 257 (1977 WL 24663).

**SECTION 16‑13‑131.** Product code creation to fraudulently obtain goods or merchandise for less than the actual sales price; penalties.

 (A) It is unlawful for a person to create or conspire with another person to create a product code for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price.

 (B) It is unlawful for a person to commit or conspire with another person to commit larceny against a merchant by affixing a product code created for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price.

 (C) A person who violates this section:

 (1) for a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years, or both; and

 (2) for a second or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than ten years, or both.

HISTORY: 2013 Act No. 82, Section 1, eff June 13, 2013.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Receiving Stolen Properties Section 31, Goods and Services Fraudulently Obtained.

**SECTION 16‑13‑135.** Retail theft; penalties.

 (A) As used in this section:

 (1) “Retail property” means a new article, product, commodity, item, or component intended to be sold in retail commerce.

 (2) “Retail property fence” means a person or business that buys retail property knowing or believing that the retail property is stolen.

 (3) “Theft” means to take possession of, carry away, transfer, or cause to be carried away the retail property of another with the intent to steal the retail property.

 (4) “Value” means the retail value of an item as offered for sale to the public by the affected retail establishment and includes all applicable taxes.

 (B) It is unlawful for a person to:

 (1) commit theft of retail property from a retail establishment, with a value exceeding two thousand dollars aggregated over a ninety‑day period, with the intent to sell the retail property for monetary or other gain, and sell, barter, take, or cause the retail property to be placed in the control of a retail property fence or other person in exchange for consideration;

 (2) conspire with another person to commit theft of retail property from a retail establishment, with a value exceeding two thousand dollars aggregated over a ninety‑day period, with the intent to:

 (a) sell, barter, or exchange the retail property for monetary or other gain; or

 (b) place the retail property in the control of a retail property fence or other person in exchange for consideration; or

 (3) receive, possess, or sell retail property that has been taken or stolen in violation of item (1) or (2) while knowing or having reasonable grounds to believe the property is stolen. A person is guilty of this offense whether or not anyone is convicted of the property theft.

 (C) Acts committed in different counties that have been aggregated in one count may be indicted and prosecuted in any one of the counties in which the acts occurred. In a prosecution for a violation of this section, the State is not required to establish and it is not a defense that some of the acts constituting the crime did not occur within one city, county, or local jurisdiction.

 (D) Property, funds, and interest a person has acquired or maintained in violation of this section are subject to forfeiture pursuant to the procedures for forfeiture as provided in Section 44‑53‑530.

 (E) A person who violates this section:

 (1) for a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years, or both; and

 (2) for a second or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than twenty years, or both.

HISTORY: 2013 Act No. 82, Section 2, eff June 13, 2013.

**SECTION 16‑13‑140.** Defense to action for delay to investigate ownership of merchandise.

 In any action brought by reason of having been delayed by a merchant or merchant’s employee or agent on or near the premises of a mercantile establishment for the purpose of investigation concerning the ownership of any merchandise, it shall be a defense to such action if: (1) The person was delayed in a reasonable manner and for a reasonable time to permit such investigation, and (2) reasonable cause existed to believe that the person delayed had committed the crime of shoplifting.

HISTORY: 1962 Code Section 16‑359.4; 1965 (54) 537.

Library References

False Imprisonment 11.

Westlaw Topic No. 168.

C.J.S. False Imprisonment Sections 22 to 25, 28.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assault and Battery Section 51, Lack of Probable Cause.

S.C. Jur. False Imprisonment Section 16, Justification.

S.C. Jur. False Imprisonment Section 23, Issues of Law and Fact.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina: False Imprisonment. 31 S.C. L. Rev. 150.

Attorney General’s Opinions

Discussion of whether a citizen, employed in a business in any capacity other than a security guard, can make a citizen’s arrest for shoplifting. SC Op.Atty.Gen. (March 24, 2003) 2003 WL 21043496.

Persons apprehended in the act of shoplifting may be arrested by the person who sees the act being committed, even though the value of the goods is less than $50 and regardless of whether or not the person who viewed the act of shoplifting is a private citizen or a police officer. 1970‑71 Op.Atty.Gen., No 3207, p 187 (1971 WL 17581).

NOTES OF DECISIONS

In general 1

Admissibility of evidence 5

False imprisonment 2

Instructions 6

Probable cause 3

Questions for jury 4

Sufficiency of evidence 7

1. In general

What is “reasonable” under Section 16‑13‑140 is ordinarily a question of fact for the jury. Mains v. K Mart Corp. (S.C.App. 1988) 297 S.C. 142, 375 S.E.2d 311.

The protection afforded merchants under this section is also available to employers who reasonably delay employees in an attempt to determine the ownership of property. Faulkenberry v. Springs Mills, Inc. (S.C. 1978) 271 S.C. 377, 247 S.E.2d 445.

2. False imprisonment

An award of damages for false imprisonment, arising out a detention to investigate an alleged shoplifting, in the amount of $75,000 actual and $100,000 punitive damages, was not necessarily motivated by caprice, passion, prejudice or other improper motives where the plaintiff was emotionally upset for several days afterward and continued to be upset, she experienced discomfort going into stores, she moved her residence as a result of the incident, and the net worth of the merchant was over $5 billion. Caldwell v. K‑Mart Corp. (S.C.App. 1991) 306 S.C. 27, 410 S.E.2d 21, certiorari denied.

3. Probable cause

“Probable cause,” in the context of the merchant’s defense to a false imprisonment claim, is defined as a good faith belief that a person is guilty of a crime when the belief rests on such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise. Lynch v. Toys ““R” Us‑Delaware, Inc. (S.C.App. 2007) 375 S.C. 604, 654 S.E.2d 541, rehearing denied, certiorari granted, opinion vacated, appeal dismissed 384 S.C. 511, 682 S.E.2d 824. False Imprisonment 11; False Imprisonment 13

It cannot be said as matter of law that probable cause existed or that delay of plaintiff was reasonable for purposes of Section 16‑13‑140, where agent of merchant who delayed plaintiff never saw her put anything in her pockets, and where plaintiff was delayed for about one hour and subjected to full pat‑down body search. Gathers v. Harris Teeter Supermarket, Inc. (S.C.App. 1984) 282 S.C. 220, 317 S.E.2d 748.

4. Questions for jury

The determination of whether probable cause exists to support a merchant’s defense to a false imprisonment claim is ordinarily a jury question; however, it may be decided as a matter of law when the evidence yields but one conclusion. Lynch v. Toys ““R” Us‑Delaware, Inc. (S.C.App. 2007) 375 S.C. 604, 654 S.E.2d 541, rehearing denied, certiorari granted, opinion vacated, appeal dismissed 384 S.C. 511, 682 S.E.2d 824. False Imprisonment 39

Whether retail store had probable cause to detain shopper on suspicion of shoplifting was a question for the jury on shopper’s false imprisonment claim. Lynch v. Toys ““R” Us‑Delaware, Inc. (S.C.App. 2007) 375 S.C. 604, 654 S.E.2d 541, rehearing denied, certiorari granted, opinion vacated, appeal dismissed 384 S.C. 511, 682 S.E.2d 824. False Imprisonment 39

5. Admissibility of evidence

The trial court properly admitted into evidence the loss prevention manual of a merchant sued for false imprisonment in the detention of a customer suspected of shoplifting, despite the fact that Section 16‑13‑140 rather than the manual governed the reasonableness of the merchant’s conduct, where the manual contained guidelines for employees in making shoplifting arrests and one of the material issues in dispute was the reasonableness of the merchant’s actions in investigating the suspected shoplifting. Caldwell v. K‑Mart Corp. (S.C.App. 1991) 306 S.C. 27, 410 S.E.2d 21, certiorari denied.

6. Instructions

Jury charge defining crime of shoplifting is required when charge on statutory merchant’s defense is warranted. Peters v. K‑Mart Corp. (S.C. 1996) 322 S.C. 404, 472 S.E.2d 248. False Imprisonment 40

7. Sufficiency of evidence

Sufficient evidence was presented by a merchant for a defense to a claim of false imprisonment by showing that it had probable cause to believe the plaintiff took its property, and that it acted reasonably in its efforts to investigate the matter, where (1) the plaintiff was carrying a large purse, went to several locations looking at small items, bent out of sight of the guard, and removed and replaced her glasses from her purse several times, and (2) after the plaintiff left the store the guard, who thought he saw her put something in her purse, stopped her, found no items in her purse, and then walked her around the store for 15 minutes while telling her that he saw her put something in her purse. Caldwell v. K‑Mart Corp. (S.C.App. 1991) 306 S.C. 27, 410 S.E.2d 21, certiorari denied.

**SECTION 16‑13‑150.** Purse snatching.

 It is unlawful for a person to snatch suddenly and carry away from another a purse or other thing of value with intent to deprive the owner or person lawfully in possession of the article in circumstances not constituting grand larceny or robbery.

 A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years.

HISTORY: 1962 Code Section 16‑359.5; 1965 (54) 266; 1993 Act No. 184, Section 175.

Library References

Robbery 1, 30.

Westlaw Topic No. 342.

C.J.S. Robbery Sections 1 to 3, 17 to 18, 101 to 107, 109, 125 to 127, 133, 140.

**SECTION 16‑13‑160.** Breaking into motor vehicles or tanks, pumps and other containers where fuel or lubricants are stored.

 (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.

 (B) 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.

HISTORY: 1962 Code Section 16‑360; 1952 Code Section 16‑360; 1942 Code Section 1154‑1; 1935 (39) 478; 1936 (39) 1342; 1993 Act No. 184, Section 30.

CROSS REFERENCES

Damaging or tampering with vehicle, see Section 16‑21‑90.

Library References

Burglary 4, 49.

Westlaw Topic No. 67.

C.J.S. Burglary Sections 1 to 4, 30 to 31, 33, 36 to 43, 175 to 179.

Attorney General’s Opinions

There must be sufficient evidence of a breaking or an attempted breaking into a vehicle or one of its compartments to support a violation under this statute. S.C. Op.Atty.Gen. (April 6, 2011) 2011 WL 1740739.

NOTES OF DECISIONS

Lesser included offenses 1

1. Lesser included offenses

Tampering with a motor vehicle is not a lesser included offense of breaking into a motor vehicle; the auto‑tampering offense but not the auto‑breaking offense require intentional damage to the vehicle or intentional removal of vehicle parts, and auto‑tampering statute listed four means of committing the offense that would not constitute auto‑breaking. State v. Arthur (S.C.App. 2004) 357 S.C. 566, 593 S.E.2d 522. Indictment And Information 191(.5)

**SECTION 16‑13‑165.** Unlawful actions involving counterfeit or nonfunctional airbags; penalties; definitions.

 (A) It is unlawful for a person to:

 (1) knowingly and intentionally import, manufacture, sell, offer for sale, install, or reinstall in a motor vehicle, a counterfeit airbag, a nonfunctional airbag, or an object that the person knows was not designed to comply with Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208), as amended, for the make, model, and year of the motor vehicle;

 (2) knowingly and intentionally sell, offer for sale, install, or reinstall in any motor vehicle a device that causes a motor vehicle’s diagnostic system to inaccurately indicate that the motor vehicle is equipped with a properly functioning airbag;

 (3) knowingly and intentionally sell, lease, trade, or transfer a motor vehicle if the person knows that a counterfeit airbag, a nonfunctional airbag, or an object that the person knows was not designed to comply with Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208), as amended, for the make, model, and year of the motor vehicle has been installed as part of the motor vehicle’s inflatable restraint system.

 (B)(1) A person who violates the provisions of this section by knowingly and intentionally installing or reinstalling an airbag that is counterfeit, nonfunctional, does not comply with the federal regulations described in subsection (A), or installs or reinstalls a device that causes a motor vehicle’s diagnostic system to inaccurately indicate that the motor vehicle is equipped with a properly functioning airbag is:

 (a) for a first offense, guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned for not more than one year, or both;

 (b) for a second or subsequent offense, guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.

 (2) A person who violates the provisions of this section by knowingly and intentionally importing, manufacturing, selling, or offering to sell, an airbag that is counterfeit, nonfunctional, does not comply with the federal regulations described in subsection (A), or a device that causes a motor vehicle’s diagnostic system to inaccurately indicate that the motor vehicle is equipped with a properly functioning airbag is:

 (a) for a first offense, guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both;

 (b) for a second or subsequent offense, guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than ten years, or both.

 (3) A person who violates the provisions of this section by knowingly and intentionally selling, leasing, trading, or transferring a motor vehicle when the person knows that the motor vehicle contains an airbag that is counterfeit, nonfunctional, or does not comply with the federal regulations described in subsection (A), is:

 (a) for a first offense, guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both;

 (b) for a second or subsequent offense, guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than ten years, or both.

 (4) A person whose violation of subsection (B)(2) or (B)(3) results in great bodily harm or death is:

 (a) for a first offense, guilty of a felony and, upon conviction, must be fined not more than twenty‑five thousand dollars or imprisoned for not more than ten years, or both;

 (b) for a second or subsequent offense, guilty of a felony and, upon conviction, must be fined not more than one hundred thousand dollars or imprisoned for not more than twenty years, or both.

 (5) Persons other than individuals who violate the provisions of subsection (A) are:

 (a) for a first offense, guilty of a felony and, upon conviction, must be fined not more than one million dollars or imprisoned subject to the discretion of the judge, or both;

 (b) for a second or subsequent offense, guilty of a felony and, upon conviction, must be fined not more than ten million dollars or imprisoned subject to the discretion of the judge, or both.

 (C) For purposes of this section:

 (1) “Airbag” means an inflatable restraint system, or portion of an inflatable restraint system including, but not limited to, the cushion material, cover, sensors, controllers, inflators, and wiring that (a) operates in the event of a crash, and (b) is designed in accordance with federal motor vehicle safety standards for the make, model, and year of the motor vehicle in which it is or will be installed.

 (2) “Counterfeit airbag” means an airbag that bears without authorization a mark identical or substantially similar to the genuine mark of the manufacturer of a motor vehicle or a supplier of parts to the manufacturer of a motor vehicle.

 (3) “Nonfunctional airbag” means a replacement airbag that has been previously deployed or damaged or that has an electrical fault that is detected by the vehicle diagnostic system after the installation procedure is completed. A nonfunctional airbag also includes any object, including a counterfeit or repaired airbag, airbag component, or other component intended to deceive a vehicle owner or operator into believing that it is a functional airbag.

 (4) “Person” or “persons” means an individual, a group of individuals, whether incorporated or not, a corporation, a company, an association, an organization, a partnership, or any other form of legal entity.

HISTORY: 2016 Act No. 271 (S.1015), Section 1, eff June 9, 2016.

**SECTION 16‑13‑170.** Entering house or vessel without breaking with intent to steal; attempt to enter.

 It is unlawful for a person to:

 (1) enter, without breaking, or attempt to enter a house or vessel, with intent to steal or commit any other crime; or

 (2) conceal himself in a house or vessel, with intent to commit a crime.

 A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both.

HISTORY: 1962 Code Section 16‑361; 1952 Code Section 16‑361; 1942 Code Section 1154; 1932 Code Section 1154; Cr. C. ‘22 Section 48; Cr. C. ‘12 Section 198; 1905 (24) 849; 1993 Act No. 184, Section 31.

Library References

Burglary 9(3), 11.

Westlaw Topic No. 67.

C.J.S. Burglary Sections 1 to 5, 11, 13, 17 to 18, 21 to 22.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 118, Entering Vessel With Criminal Intent.

NOTES OF DECISIONS

Indictment 2

Lesser included offenses 1

1. Lesser included offenses

Entering without breaking is not lesser included offense of first degree burglary; one can be convicted of first‑degree burglary if breaking occurs, whereas lesser offense requires a showing that entry was accomplished without a breaking. Hope v. State (S.C. 1997) 328 S.C. 78, 492 S.E.2d 76. Indictment And Information 191(2)

Although the facts did not support an indictment for housebreaking, defendant could have properly been indicated under Section 16‑13‑170 as a lesser included offense of housebreaking; however, double jeopardy precluded reindictment under this statute. State v. Dunbar (S.C. 1984) 282 S.C. 169, 318 S.E.2d 16.

2. Indictment

An indictment alleging entry with intent to steal is sufficient, although it does not allege it was without breaking. State v. Ross (S.C. 1909) 83 S.C. 434, 65 S.E. 443, rehearing denied 67 S.E. 477.

**SECTION 16‑13‑175.** Confiscation and forfeiture of motor vehicle used in larceny; hearing.

 (A) In addition to the penalties for larceny of property, the motor vehicle used in the commission of the larceny may be confiscated and forfeited to the jurisdiction where the larceny occurred if the offender is the registered owner of the motor vehicle and the offender used the motor vehicle during the commission of the offense.

 (B) A motor vehicle subject to confiscation and forfeiture under this section may be confiscated by any law enforcement officer upon a warrant issued by any court having jurisdiction or upon probable cause to believe that the motor vehicle was used pursuant to subsection (A). The confiscating officer shall deliver the motor vehicle immediately to the county or municipality where the larceny occurred. The county or municipality shall notify the registered owner of the motor vehicle by certified mail within seventy‑two hours of the confiscation. Upon notice, the registered owner has ten days to request a hearing before the presiding judge of the judicial circuit or his designated hearing officer. The confiscation hearing must be held within ten days from the date of receipt of the request. The motor vehicle must remain confiscated unless the registered owner can show by a preponderance of the evidence that the confiscation and forfeiture would cause an undue hardship on his family. The county or municipality in possession of the motor vehicle shall provide notice by certified mail of the confiscation to all lienholders of record within ten days of the confiscation.

 (C) Upon the conviction of the person owning and using the motor vehicle in the larceny of property, or upon his plea of guilty or nolo contendere to this offense, the county or municipality where the larceny occurred may initiate an action in the circuit court of the county in which the motor vehicle was seized to accomplish forfeiture by giving notice to registered owners of record, lienholders of record, and other persons claiming an interest in the motor vehicle subject to forfeiture and by giving these persons an opportunity to appear and show why the motor vehicle should not be forfeited and disposed of as provided for by this section. Failure of a person claiming an interest in the motor vehicle to appear at this proceeding after having been given notice constitutes a waiver of the claim. However, the failure to appear does not alter or affect the claim of a lienholder of record. The court, after hearing, may order that the motor vehicle be forfeited to the county or municipality and sold as provided in this section or returned to the registered owner. The court may order a motor vehicle returned to the registered owner if it is shown by a preponderance of the evidence that forfeiture of the motor vehicle would cause an undue hardship on the registered owner’s family. Forfeiture of a motor vehicle is subordinate in priority to all valid liens and encumbrances. Under this subsection, a person is entitled to a jury trial if requested.

 (D) If the person fails to file an appeal within ten days after the conviction, the forfeited motor vehicle is considered abandoned and must be disposed of as provided by Section 56‑5‑5640. However, if the fair market value of the motor vehicle is less than five hundred dollars, it must be sold as scrap to the highest bidder after first receiving at least two bids.

 (E) All costs relating to the confiscation and forfeiture of a motor vehicle under this section, including expenses for court costs and storage of the motor vehicle, must be paid from the proceeds of the sale of the motor vehicle.

HISTORY: 1995 Act No. 56, Section 1.

Library References

Forfeitures 56, 106.

Westlaw Topic No. 180.

C.J.S. Forfeitures Sections 1, 30 to 33, 44, 49 to 78.

C.J.S. RICO (Racketeer Influenced and Corrupt Organizations) Sections 48, 50.

**SECTION 16‑13‑177.** Timber theft; forfeiture of property.

 (A) In addition to the penalties provided by law, when an offense in violation of Section 16‑11‑580, 16‑13‑30, 16‑13‑230, or 16‑13‑240 involves timber theft valued in excess of five thousand dollars, all motor vehicles, conveyances, tractors, trailers, watercraft, vessels, tools, and equipment of any kind, used or positioned for use, in acquiring, cutting, harvesting, manufacturing, producing, processing, delivering, importing, or exporting timber or timber products that are known by the owner to be used in the commission of the offense may be confiscated and forfeited to the jurisdiction where the offense occurred if the offender is the owner or registered owner of the property and the offender or someone under his direction or control knowingly used the property during the commission of the offense.

 (B) Property subject to forfeiture under this section may be seized or confiscated by any law enforcement officer incident to a lawful arrest or a warrant issued for the purpose by a court of competent jurisdiction pursuant to subsection (A). The confiscating officer must deliver the property immediately to the county or municipality where the offense occurred. The county or municipality must notify the registered owner of the property by certified mail within seventy‑two hours of the confiscation. Upon notice, the registered owner has ten days to request a hearing before the presiding judge of the judicial circuit or his designated hearing officer. The forfeiture hearing must be held within ten days from the date of receipt of the request. The property confiscated must be returned to the registered owner unless the Forestry Commission, a county, or a municipality can show by a preponderance of the evidence that the property seized was knowingly used in the commission of the crime. In the event the commission, a county, or municipality is unable to make such a showing, all property seized under this section must be returned to the owner upon proof of ownership and the posting of a bond in a sufficient amount not to exceed ten thousand dollars. The county or municipality in possession of the property must provide notice by certified mail of the confiscation to all lienholders of record within ten days of the confiscation.

 (C) Upon conviction of a person owning and using the seized property or upon his plea of nolo contendre to an offense subjecting the property to forfeiture, the county or municipality where the offense occurred or the Forestry Commission may initiate an action in the circuit court of the county in which the property was seized to accomplish forfeiture by giving notice to registered owners of record, lienholders of record, and other persons claiming an interest in the property subject to forfeiture and by giving these persons notice and an opportunity to appear and show cause why the property should not be forfeited and disposed of as provided in this section. Failure of a person claiming an interest in the property to appear at this proceeding after having been given notice constitutes a waiver of the claim. However, the failure to appear does not affect the claim of a lienholder of record. The court, after hearing, may order the property forfeited to the county or municipality and sold as provided in this section or returned to the owner or registered owner. Forfeiture of property is subordinate in priority to all valid liens and encumbrances. A person whose property is subject to forfeiture under this section is entitled to a jury trial if requested.

 (D) When property is forfeited under this section, the judge must order the property sold at public auction by the seizing agency as provided by law. Notwithstanding any other provision of law, proceeds from the sale may be used by the agency for payment of all proper expenses of the proceeding for the forfeiture and sale of the property, including the expenses of the seizure, maintenance, and custody and other costs incurred by the implementation of this section. The net proceeds of any sale pursuant to this section shall be distributed to the victim of the offense in an amount to be determined by the presiding judge and any remaining proceeds shall be disbursed to the South Carolina Commission on Forestry to be used exclusively for timber theft enforcement, prevention, and awareness.

HISTORY: 2002 Act No. 288, Section 1, eff May 28, 2002.

CROSS REFERENCES

Payment to landowner for forest products purchased, penalties, see Section 48‑23‑265.

**SECTION 16‑13‑180.** Receiving stolen goods, chattels, or other property; receiving or possessing property represented by law enforcement as stolen; penalties.

 (A) It is unlawful for a person to buy, receive, or possess stolen goods, chattels, or other property if the person knows or has reason to believe the goods, chattels, or property is stolen. A person is guilty of this offense whether or not anyone is convicted of the property theft.

 (B) It is unlawful for a person to knowingly receive or possess property from an agent of a law enforcement agency that was represented to the person by the same or other agent of the law enforcement agency as stolen. For purposes of this section, the person receiving or possessing the property need not know the person is receiving or has received the property from an agent of a law enforcement agency, and the property need not be actually stolen.

 (C) A person who violates this section is guilty of a:

 (1) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, if the value of the property is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than thirty days;

 (2) misdemeanor and, upon conviction, must be fined not less than one thousand dollars or imprisoned not more than three years, if the value of the property is more than two thousand dollars but less than ten thousand dollars; or

 (3) felony and, upon conviction, must be fined not less than two thousand dollars or imprisoned not more than ten years, if the value of the property is ten thousand dollars or more.

 (D) For purposes of this section, the receipt of multiple items in a single transaction or event constitutes a single offense.

 (E) For purposes of this section, multiple offenses occurring within a ninety‑day period may be aggregated into a single count with the aggregated value used to determine whether the violation is a misdemeanor or felony as provided in subsection (C).

HISTORY: 1962 Code Section 16‑362; 1952 Code Section 16‑362; 1942 Code Section 1161; 1932 Code Section 1161; Cr. C. ‘22 Section 54; Cr. C. ‘12 Section 204; Cr. C. ‘02 Section 165; G. S. 25, 26a; R. S. 161; 1712 (2) 543; 1760 (4) 309; 1887 (19) 814; 1964 (53) 1721; 1981 Act No. 76, Section 6; 1988 Act No. 640; 1993 Act No. 171, Section 9; 1993 Act No. 184, Section 112; 2010 Act No. 273, Section 16.L, eff June 2, 2010; 2013 Act No. 82, Section 7, eff June 13, 2013.

CROSS REFERENCES

Application of penalties provided in this section to purchase of unadvertised drifted lumber or timber, see Section 49‑1‑50.

Receiving goods and services obtained by fraudulent use of credit card, see Section 16‑14‑80.

Receiving stolen vehicle, see Section 16‑21‑80.

Library References

Receiving Stolen Goods 1 to 4, 10.

Westlaw Topic No. 324.

C.J.S. Receiving or Transferring Stolen Goods and Related Offenses Sections 1 to 16, 20 to 22.

RESEARCH REFERENCES

ALR Library

29 ALR 5th 59 , Participation in Larceny or Theft as Precluding Conviction for Receiving or Concealing the Stolen Property.

Encyclopedias

S.C. Jur. Receiving Stolen Properties Section 5, Early South Carolina Legislation.

S.C. Jur. Receiving Stolen Properties Section 8, Statute Before 1988.

S.C. Jur. Receiving Stolen Properties Section 9, Current Statute.

S.C. Jur. Receiving Stolen Properties Section 10, Comparison of the Two Statutes.

S.C. Jur. Receiving Stolen Properties Section 13, Character as Stolen Property.

S.C. Jur. Receiving Stolen Properties Section 20, Joinder of Charges.

S.C. Jur. Receiving Stolen Properties Section 23, Value of Goods.

S.C. Jur. Receiving Stolen Properties Section 30, Stolen Vehicles.

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1. In general

The accused may be convicted of criminally receiving stolen property, even though he was guilty participant in the stealing of it, where he took no part in the actual caption and asportation but participated only as accessory before or after the fact. State v Tindall (1948) 213 SC 484, 50 SE2d 188. State v Sweat (1952) 221 SC 270, 70 S2d 234. State v Rutledge (1957) 232 SC 223, 101 SE2d 289, 67 ALR2d 747.

The buying or receiving of stolen goods, knowing them to have been stolen, is a separate substantive offense irrespective of whether the principal felon be previously convicted or be amenable to justice. State v Tindall (1948) 213 SC 484, 50 SE2d 188. State v Sweat (1952) 221 SC 270, 70 SE2d 234.

One who commits larceny cannot be adjudged guilty of criminally receiving the property stolen. State v Tindall (1948) 213 SC 484, 50 SE2d 188. State v Sweat (1952) 221 SC 270, 70 SE2d 234.

Accused who took no part in actual caption and asportation of stolen property could be convicted both of conspiracy to commit larceny and of receiving stolen goods. State v. Rutledge (S.C. 1957) 232 S.C. 223, 101 S.E.2d 289, 67 A.L.R.2d 747. Conspiracy 37

Fact that theft of property occurred in another state does not preclude prosecution in this State, under this section [Code 1962 Section 16‑362], of one who receives such property with guilty knowledge in this State. State v. Rutledge (S.C. 1957) 232 S.C. 223, 101 S.E.2d 289, 67 A.L.R.2d 747.

Where defendant took property which he knew belonged to prosecuting witness and paid a third party who worked for the prosecuting witness an amount so disproportionate to the actual value as to justify the inference that it was merely paid by defendant for the third party’s acquiescent participation in the theft, and the defendant carried away the goods with no help from the third party, the defendant was not guilty of receiving stolen property by virtue of his committing larceny. State v. Tindall (S.C. 1948) 213 S.C. 484, 50 S.E.2d 188. Receiving Stolen Goods 6

For additional related case, see State v. Winter (S.C. 1909) 83 S.C. 153, 65 S.E. 209.

Conviction of one stealing property is not conclusive against another who received the property on his prosecution for receiving stolen property. State v. Daniels (S.C. 1908) 80 S.C. 368, 61 S.E. 1073. Receiving Stolen Goods 8(2)

It is not necessary that the whole of the property should have come into possession of the accused. It is enough if he “received” one of several articles. Neither is it required that he should have received all the property at the same time. State v. Crawford (S.C. 1893) 39 S.C. 343, 17 S.E. 799.

A wife receiving stolen goods, knowing them to be stolen, jointly with her husband and under his coercion, her greater activity in consummating the offense will not, as matter of law, make her guilty. State v. Houston (S.C. 1888) 29 S.C. 108, 6 S.E. 943.

Where party received goods from a servant and concealed them, under circumstances sufficient to indicate that servant had stolen them, he was held guilty of receiving stolen goods. State v. Teideman (S.C. 1850).

2. Constitutional issues

Plea attorney’s failure to consider whether defendant was properly charged with eighteen separate counts of receiving stolen property rendered defendant’s guilty plea to such charges involuntary on ground of ineffective assistance of counsel; plain meaning of receiving stolen property statute should have alerted counsel to possibility that number of indictments did not correspond to number of offenses, and reasonable probability existed that, had counsel informed defendant that he should not have been charged with the eighteen counts, defendant would not have pled guilty to each and every charge. Stevens v. State (S.C. 2005) 365 S.C. 309, 617 S.E.2d 366, rehearing denied. Criminal Law 273.1(3)

In a prosecution under this section [Code 1962 Section 16‑362], an exception that the statute violates the Fourteenth Amendment by depriving the accused of liberty without due process of law, and denying him the equal protection of the law because it declares that receiving stolen goods is a misdemeanor, and fixes the punishment, upon conviction, by imprisonment without the alternative of paying a fine, whereas all other misdemeanors in the State and under its laws are punished by fine or imprisonment with the alternative of paying a fine or being imprisoned, and because it fails to fix the alternative of paying a fine upon conviction of a misdemeanor, regardless of the value of the property received or stolen, is not well taken. State v. Johnson (S.C. 1919) 119 S.C. 55, 110 S.E. 460, error dismissed 42 S.Ct. 184, 257 U.S. 668, 66 L.Ed. 426. Receiving Stolen Goods 1

3. “Knowing” interpreted and applied

Facts sufficient to put a reasonably prudent man on inquiry are not sufficient. State v White (1947) 211 SC 276, 44 SE2d 741. State v Mills (1954) 225 SC 151, 81 SE2d 285.

The buying of goods and receiving them, knowing them to be stolen, completes the crime. State v Winter (1909) 83 SC 251, 65 SE 243. State v Scovel (1817) 8 SCL 274. State v Gibson (1909) 83 SC 34, 64 SE 607, reh dismd 83 SC 39, 64 SE 916.

The rule, in civil actions, that knowledge of such facts as are sufficient to put a reasonably prudent man on inquiry, is equivalent to notice, does not apply to a prosecution for receiving stolen goods, in which mere inadvertent failure to pursue in inquiry with reasonable diligence is not the equivalent of guilty knowledge and a fraudulent intent, which are essential elements of that crime. State v Rountree (1908) 80 Sc 387, 61 SE 1072. State v Daniels (1908) 80 SC 368, 61 SE 1073.

Guilty knowledge which is an essential element of the offense of receiving stolen goods is seldom susceptible of proof by direct evidence and may be proved by circumstances from which such knowledge may be inferred. State v. Atkins (S.C. 1964) 244 S.C. 213, 136 S.E.2d 298.

Where an assortment of stolen liquor was acquired, late at night, from a stranger with no apparent authority to possess or dispose of it, in violation of the liquor law, at a mere fraction of its selling price, at an unorthodox place, with no inquiry as to its source, these circumstances and the defendants’ conduct afterward, in not taking the liquor to their own homes, requied submission of the issue of guilty knowledge to the jury. State v. Atkins (S.C. 1964) 244 S.C. 213, 136 S.E.2d 298.

The real question to be answered is what effect did the surrounding circumstances have upon the mind of the person receiving the goods. State v. Mills (S.C. 1954) 225 S.C. 151, 81 S.E.2d 285.

Use of the word “believe” as synonymous with the word “knowing,” as used in this section [Code 1962 Section 16‑362], in the charge to the jury, was not misleading. State v. White (S.C. 1947) 211 S.C. 276, 44 S.E.2d 741.

Knowledge of the theft, on the part of the receiver, is an essential element of the offense of receiving stolen goods, which knowledge must exist at the moment the property is received. State v. Rountree (S.C. 1908) 80 S.C. 387, 61 S.E. 1072. Receiving Stolen Goods 3

Actual and positive knowledge that goods have been stolen is not required on the part of the receiver, in order to establish the offense of receiving stolen goods, a belief that the goods have been stolen being sufficient. State v. Rountree (S.C. 1908) 80 S.C. 387, 61 S.E. 1072. Receiving Stolen Goods 3

It is necessary that the guilty knowledge should be alleged, as well as the fraudulent intent. State v. Crawford (S.C. 1893) 39 S.C. 343, 17 S.E. 799.

4. Value of property received

A watch having been given to the prosecutor by his father and later been stolen, it naturally had sentimental value to him, but the true test was its commercial value. State v. Clamp (S.C. 1954) 225 S.C. 41, 80 S.E.2d 512.

When the jury came out and asked the trial judge as to the punishment which could be meted out for receiving stolen goods, and he read only that portion of this section [Code 1962 Section 16‑362] which related to property of the value of $20.00 [now $50.00] or over, which he had theretofore done in his general charge, if the defendant desired a fining by the jury as to the value of the watch, he should have, at least at that time, requested the trial judge to read the proviso in this section [Code 1962 Section 16‑362] to the jury. State v. Clamp (S.C. 1954) 225 S.C. 41, 80 S.E.2d 512.

At first view, it might seem that the proviso contains a qualification, but it has no requirement, as to the value of the property, necessary to be traced to the accused on trial; it may be to meet the possible case of confederates, each of whom may have received his share of the fruits of a common enterprise. But, on the contrary, it would seem that the only purpose of the proviso was to reduce the punishment as therein declared “when the chattel or other property stolen shall be of less value than twenty dollars,” showing clearly that conviction was contemplated even where the property stolen was of less value than twenty dollars [now fifty], the test as to the proper punishment being, not the value of the property found in possession of the defendant, but the value of the whole property stolen. State v. Crawford (S.C. 1893) 39 S.C. 343, 17 S.E. 799.

5. Indictment

Time or place of larceny or value of property received need not be stated. State v. Crawford (S.C. 1893) 39 S.C. 343, 17 S.E. 799.

It is not a misjoinder of parties to charge three defendants with burglary in one count of an indictment, and larceny in the second count, and to charge two of them with receiving stolen goods from the other in a third count. State v. Woodard (S.C. 1893) 38 S.C. 353, 17 S.E. 135. Indictment And Information 124(5)

Indictment for buying and receiving stolen goods is good. State v. Posey (S.C. 1854) 7 Rich. 484. Indictment And Information 128

6. Admissibility of evidence

Stolen goods, voluntarily returned by the defendant after the police requested that he do so, could be used in evidence in trial on charge of receiving stolen goods. State v. Broome (S.C. 1977) 268 S.C. 99, 232 S.E.2d 324.

In a prosecution for buying or receiving stolen goods, admitting evidence that the goods were received prior to other evidence tending to show the larceny, was not erroneous. State v. Johnson (S.C. 1919) 119 S.C. 55, 110 S.E. 460, error dismissed 42 S.Ct. 184, 257 U.S. 668, 66 L.Ed. 426. Criminal Law 680(1)

In a prosecution for receiving stolen goods, evidence as to previous purchases from one of the defendants by his codefendants is admissible. State v. Rountree (S.C. 1908) 80 S.C. 387, 61 S.E. 1072. Criminal Law 368.31

Evidence that other stolen goods were found in defendant’s possession is admissible to show guilty knowledge. State v. Crawford (S.C. 1893) 39 S.C. 343, 17 S.E. 799.

7. Questions for jury

In a prosecution for receiving stolen goods, for being an accessory after the fact of grand larceny, and for other offenses, the trial judge effectually ended the count of accessory after the fact when he directed a verdict on the count for receiving stolen goods, since the defendant would be compelled to know the goods were stolen if he had knowledge that the principal committed the felony. State v. Legette (S.C. 1985) 285 S.C. 465, 330 S.E.2d 293.

8. Instructions

In a prosecution for grand larceny, the defendant was not entitled to jury instructions explaining the crimes of accessory after the fact and receiving stolen goods, even though no one had actually seen him steal the goods, where there was no evidence of another individual’s involvement in the crime, and the only explanation as to how the defendant came into possession of the stolen goods was as the principle in the larceny. State v. Pace (S.C.App. 1992) 310 S.C. 95, 425 S.E.2d 73, rehearing denied, certiorari granted, reversed 316 S.C. 71, 447 S.E.2d 186.

Receiving stolen goods does not involve asportation, but only receiving. Therefore, it was error to instruct the jury that a person accused of receiving stolen goods can be prosecuted in any county in which he is found to be in possession of those goods. Under Article I, Section 11 of the South Carolina Constitution, a defendant has the right to be tried in the county where the crime was committed and this right is jurisdictional. State v. Henderson (S.C.App. 1985) 285 S.C. 320, 329 S.E.2d 448.

9. Sentence and punishment

There is no statute which prescribes a specific punishment for the crime of receiving stolen goods, and the sentencing for such offense is determined under the provisions of Code 1962 Section 17‑553, which must be construed in connection with Code 1962 Section 17‑552. State v. Fogle (S.C. 1971) 256 S.C. 149, 181 S.E.2d 483.

The procedure in South Carolina for sentencing defendants convicted of the crime of receiving stolen goods is not in violation of the Eighth Amendment and Fourteenth Amendment of the Constitution of the United States or SC Const, Art I, Sections 3 and 15. State v. Fogle (S.C. 1971) 256 S.C. 149, 181 S.E.2d 483. Constitutional Law 4713; Sentencing And Punishment 206

Length of prison sentence rests in the sound discretion of the court, and the appellate court is not warranted in disturbing that discretion simply upon a challenge of it by the accused. State v. Johnson (S.C. 1919) 119 S.C. 55, 110 S.E. 460, error dismissed 42 S.Ct. 184, 257 U.S. 668, 66 L.Ed. 426.

10. Harmless error

Instruction “that if defendant received less than $20 worth of stolen goods, he is not guilty,” if erroneous, is harmless. State v. Crawford (S.C. 1893) 39 S.C. 343, 17 S.E. 799. Receiving Stolen Goods 9(4)

The admission of evidence of finding in the possession of another goods similar to those found in defendant’s possession is harmless. State v. Crawford (S.C. 1893) 39 S.C. 343, 17 S.E. 799. Receiving Stolen Goods 9(4)

**SECTION 16‑13‑181.** Action for damages resulting from violation of Section 16‑13‑180.

 Any person who has been injured or suffered damages because of a violation of Section 16‑13‑180 may bring an action in the circuit court against the person convicted of the violation for three times the amount of damages suffered, if any, plus costs of the action and reasonable attorney fees.

HISTORY: 1980 Act No. 489.

Library References

Conversion and Civil Theft 116.

Westlaw Topic No. 97C.

C.J.S. Trover and Conversion Sections 30 to 31.

**SECTION 16‑13‑185.** Failure to pay for gasoline; penalties.

 (A) No person shall drive a motor vehicle so as to cause it to leave the premises of an establishment at which gasoline offered for retail sale was dispensed into the fuel tank of the motor vehicle unless due payment or authorized charge for the gasoline so dispensed has been made.

 (B) A person who intentionally violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both, and, at the discretion of the sentencing judge, the person’s driver’s license may be suspended for a period not to exceed thirty days for a first offense and for a period not to exceed ninety days for a second or subsequent offense.

HISTORY: 2000 Act No. 223, Section 1.

CROSS REFERENCES

Suspension of driver’s license, see Section 56‑1‑292.

Library References

Larceny 18.

Westlaw Topic No. 234.

C.J.S. Larceny Section 32.

**SECTION 16‑13‑210.** Embezzlement of public funds.

 (A) It is unlawful for an officer or other person charged with the safekeeping, transfer, and disbursement of public funds to embezzle these funds.

 (B) A person who violates the provisions of this section is guilty of a:

 (1) felony and, upon conviction, must be fined in the discretion of the court to be proportioned to the amount of the embezzlement and imprisoned not more than ten years if the amount of the embezzled funds is ten thousand dollars or more;

 (2) felony and, upon conviction, must be fined in the discretion of the court to be proportioned to the amount of embezzlement and imprisoned not more than five years if the amount of the embezzled funds is less than ten thousand dollars.

 (C) The person convicted of a felony is disqualified from holding any office of honor or emolument in this State; but the General Assembly, by a two‑thirds vote, may remove this disability upon payment in full of the principal and interest of the sum embezzled.

HISTORY: 1962 Code Section 16‑363; 1952 Code Section 16‑363; 1942 Code Section 1510; 1932 Code Section 1510; Cr. C. ‘22 Section 459; Cr. C. ‘12 Section 534; Cr. C. ‘02 Section 378; 1898 (22) 810; 1934 (38) 1197; 1993 Act No. 184, Section 113; 1995 Act No. 7, Part I Section 6; 2010 Act No. 273, Section 16.M, eff June 2, 2010.

CROSS REFERENCES

Provisions of this section as taking precedence over provisions governing right to hold public office, under statute generally restoring civil rights upon grant of a pardon, see Section 24‑21‑990.

Sentencing, see Section 17‑25‑20 et seq.

Library References

Embezzlement 21, 52.

Westlaw Topic No. 146.

C.J.S. Embezzlement Sections 30, 32 to 35, 67.

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NOTES OF DECISIONS

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1. In general

The State has the right in an action for embezzlement to prove the offense, generally alleged, at any time prior to the finding of the indictment by the grand jury; and the very fact that this section compels the jury to find the amount embezzled is indicative that it was the intention of the legislature that separate acts of embezzlement on different occasions could and would be united in one indictment. State v. Gregory (S.C. 1939) 191 S.C. 212, 4 S.E.2d 1. Indictment And Information 87(1); Indictment And Information 130

It should be construed broadly, to protect the taxpayers of the State, and the counties thereof, who have intrusted their moneys with men presumed to be honest. A narrow construction would tend to defeat the very purpose for which the act was placed among our laws. State v. Bikle (S.C. 1936) 180 S.C. 400, 185 S.E. 753.

2. Constitutional issues

Trial court did not erroneously consider defendant’s exercise of right to jury trial in sentencing her more severely than codefendants who pled guilty in connection with scandal involving defrauding school district through diversion of funds, where defendant and codefendants were not all employees of school district, were not all charged with identical crimes, and faced different sentences, defendant’s sentence was well within sentencing range for her convictions for aiding and abetting embezzlement, conspiracy, and obtaining goods and services by false pretenses, and although court commented on a codefendant’s guilty plea and consideration given to him for pleading guilty, court repeatedly noted that court was not considering defendant’s exercise of her right to a jury trial in rendering her sentence. State v. Follin (S.C.App. 2002) 352 S.C. 235, 573 S.E.2d 812, rehearing denied, certiorari denied. Sentencing And Punishment 115(3)

This section [Code 1962 Section 16‑363] is constitutional. State v. Brown (S.C. 1935) 178 S.C. 294, 182 S.E. 838, appeal dismissed 56 S.Ct. 750, 298 U.S. 639, 80 L.Ed. 1372.

3. Elements of crime

This section [Code 1962 Section 16‑363] makes it a felony for one charged with the safekeeping and disbursement of public funds to fraudulently appropriate to his own use or benefit any of the funds entrusted to him. State v Alexander (1927) 140 SC 325, 138 SE 835 (1927). State v Brown (1935) 178 SC 294, 182 SE 838, app dismd 298 US 639, 80 L Ed 1372, 56 S Ct 750. State v Bikle (1936) 180 SC 400, 185 SE 753.

Where it was contended that the State was required to prove manual receipt by the person charged under this section [Code 1962 Section 16‑363], it was held that this construction was too narrow. State v. Gregory (S.C. 1941) 198 S.C. 98, 16 S.E.2d 532.

Embezzlement is purely a statutory offense, and was unknown to the common law. State v. Gregory (S.C. 1939) 191 S.C. 212, 4 S.E.2d 1. Embezzlement 1

While no single definition of embezzlement is broad enough to cover the offense, yet, generally speaking, embezzlement may be defined as the fraudulent appropriation or conversion by an agent, an employee, a corporate officer, or other person acting in a fiduciary capacity or character, of money or property, the possession of which has been entrusted to him by another. State v. Gregory (S.C. 1939) 191 S.C. 212, 4 S.E.2d 1. Embezzlement 4

Time is not an element of the offenses of embezzlement. Hence, State may prove offense alleged, generally, at any time prior to finding of indictment. State v Alexander (1927) 140 SC 325, 138 SE 835. State v. Gregory (S.C. 1939) 191 S.C. 212, 4 S.E.2d 1. Criminal Law 147

The defendant was held guilty of embezzlement under this section [Code 1962 Section 16‑363], notwithstanding he formed the intention of misappropriating the funds before the money he converted came into his possession, in State v. Bikle (S.C. 1936) 180 S.C. 400, 185 S.E. 753.

In prosecution under this section [Code 1962 Section 16‑363] for embezzlement, State is required to establish conversion on part of defendant, though it may be either actual or constructive. State v. Alexander (S.C. 1927) 140 S.C. 325, 138 S.E. 835.

Fraudulent conversion essential to offense of embezzlement, under this section [Code 1962 Section 16‑363], may be effected by any exercise of the right of ownership inconsistent with the owner’s rights and with the nature and purpose of a trust. State v. Alexander (S.C. 1927) 140 S.C. 325, 138 S.E. 835. Embezzlement 11(1)

4. Sufficiency of evidence

Evidence was sufficient to support a finding that defendant, who was a travel agent, had the intent to defraud school district through a fake travel scheme, and thus, evidence was sufficient to support defendant’s conviction for aiding and abetting embezzlement; assistant superintendent, who was apparently the mastermind behind scheme, testified that defendant implicitly agreed to assist him in scheme by submitting false invoices and then crediting amounts paid on invoices to his personal travel, and defendant created false invoices at assistant superintendent’s request. State v. Follin (S.C.App. 2002) 352 S.C. 235, 573 S.E.2d 812, rehearing denied, certiorari denied. Embezzlement 44(2)

5. Sentence and punishment

In determining punishment the amount of the embezzlement charged in the indictment is immaterial. State v. Heath (S.C. 1958) 232 S.C. 384, 102 S.E.2d 268.

In conviction for embezzling $30,153.71 a fine of $10,000 and imprisonment for nine years and ten months was not excessive. State v. Heath (S.C. 1958) 232 S.C. 384, 102 S.E.2d 268.

Where an officer was convicted under this section [Code 1962 Section 16‑363] and sentenced for seven years with an $800.00 fine, the amount embezzled being $733.53, it was held that the lower court erred in the exercise of its discretion was to sentence and fine and the case was remanded for the sole purpose of resentencing to a lesser punishment. State v. Gregory (S.C. 1941) 198 S.C. 98, 16 S.E.2d 532.

In a prosecution for embezzlement of public funds, the jury should be explicitly instructed, in the event of conviction, to state in their verdict the amount embezzled, for, without such finding, the court is not possessed of information essential for determining the measure of punishment. State v. Johnson (S.C. 1938) 186 S.C. 202, 195 S.E. 329. Embezzlement 48(4)

As to the imprisonment for embezzlement, the Constitution and this statute clearly meant to require no mathematical relation between the amount embezzled and the time imposed, but merely meant that a substantial sentence for a substantial embezzlement should be imposed, to the end that “the safekeeping, transfer and disbursement” of public funds provided by taxation should be well protected from the dishonesty of those handling such funds. State v. Bikle (S.C. 1936) 180 S.C. 400, 185 S.E. 753.

**SECTION 16‑13‑220.** Embezzlement of public funds; presumption on proof of failure to account for receipts.

 In trials under Section 16‑13‑210, upon production of evidence tending to prove that any such officer or other person has received public funds and failed to account for the funds as required by law, it is permissible to infer that the funds received and unaccounted for have been fraudulently appropriated by the officer or person.

HISTORY: 1962 Code Section 16‑364; 1952 Code Section 16‑364; 1942 Code Section 1510; 1932 Code Section 1510; Cr. C. ‘22 Section 459; Cr. C. ‘12 Section 534; Cr. C. ‘02 Section 378; 1898 (22) 810; 1934 (38) 1197; 1987 Act No. 95 Section 5.

Library References

Embezzlement 21, 36.

Westlaw Topic No. 146.

C.J.S. Embezzlement Sections 30, 32 to 35, 54 to 56.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

It creates a rule of evidence dependent upon receipt and failure to account. State v. Gregory (S.C. 1941) 198 S.C. 98, 16 S.E.2d 532.

It does not preclude the accused from proving his innocence of the charge under any circumstances which would relieve him from criminal responsibility. State v. Brown (S.C. 1935) 178 S.C. 294, 182 S.E. 838, appeal dismissed 56 S.Ct. 750, 298 U.S. 639, 80 L.Ed. 1372.

This statute does not presume to supply the proof of the fraudulent intent, but is only designed and intended to lend a presumption of fraud upon the proof of the prerequisite facts named in the statute, which presumption logically follows upon proof of such facts. State v. Brown (S.C. 1935) 178 S.C. 294, 182 S.E. 838, appeal dismissed 56 S.Ct. 750, 298 U.S. 639, 80 L.Ed. 1372.

The presumption of fraudulent appropriation created upon the proof of certain facts merely offsets the presumption of innocence as to this particular essential element of the crime of embezzlement, and it remains for a jury to say, under all of the facts and circumstances of the case, if the officer or other person receiving public funds, and failing to account for them as required by law, has fraudulently appropriated such public funds to his or their own use. State v. Brown (S.C. 1935) 178 S.C. 294, 182 S.E. 838, appeal dismissed 56 S.Ct. 750, 298 U.S. 639, 80 L.Ed. 1372.

2. Constitutional issues

This section [Code 1962 Section 16‑364] is constitutional. State v. Brown (S.C. 1935) 178 S.C. 294, 182 S.E. 838, appeal dismissed 56 S.Ct. 750, 298 U.S. 639, 80 L.Ed. 1372.

**SECTION 16‑13‑230.** Breach of trust with fraudulent intent.

 (A) A person committing a breach of trust with a fraudulent intention or a person who hires or counsels another person to commit a breach of trust with a fraudulent intention is guilty of larceny.

 (B) A person who violates the provisions of this section is guilty of a:

 (1) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, if the amount is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days;

 (2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years if the amount is more than two thousand dollars but less than ten thousand dollars;

 (3) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years if the amount is ten thousand dollars or more.

HISTORY: 1962 Code Section 16‑365; 1952 Code Section 16‑365; 1942 Code Section 1149; 1932 Code Section 1149; Cr. C. ‘22 Section 43; Cr. C. ‘12 Section 188; Cr. C. ‘02 Section 154; G. S. 2493; R. S. 150; 1866 (13) 406; 1993 Act No. 171, Section 10; 1993 Act No. 184, Section 114; 2010 Act No. 273, Section 16.N, eff June 2, 2010.

CROSS REFERENCES

Accessories before the fact, generally, see Sections 16‑1‑40, 16‑1‑50.

Sentencing, see Section 17‑25‑20 et seq.

Library References

Embezzlement 4, 52.

Westlaw Topic No. 146.

C.J.S. Embezzlement Sections 8, 67.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. False Pretenses Section 1, Scope Note.

S.C. Jur. Magistrates and Municipal Judges Section 11, Suspension, Removal, and Judicial Misconduct.

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 17, Contract and Trust.

Attorney General’s Opinions

Felonies that fall within the category of dishonesty or breach of trust, in the context of 18 U.S.C.A. Section 1033. SC Op.Atty.Gen. (June 9, 2008) 2008 WL 2614984.

Inasmuch as a court’s jurisdiction of cases involving the offense of breach of trust with fraudulent intent is governed by statutory provisions applicable to the offense of larceny, such cases are triable in a magistrate’s court where the value of the property taken is less than two hundred dollars. 1987 Op.Atty.Gen., No 87‑31, p 91 (1987 WL 245440).

NOTES OF DECISIONS

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1. In general

If one is intrusted with property in one county, and there forms the intention of fraudulently appropriating it to his own use, and, pursuant to such intention, goes with it to another county, where he accomplishes his object by pawning it, his crime may be deemed committed in the place where he received the property and formed the criminal intent. State v McCann (1932) 167 SC 393, 166 SE 411. State v Jordan (1970) 255 SC 866, 177 SE2d 464.

Person who commits breach of trust with fraudulent intention in South Carolina is guilty of larceny. Ballard v. Walker, 1991, 772 F.Supp. 1335.

A “trust,” for purposes of offense of breach of trust with fraudulent intent, is an arrangement whereby property is transferred with intention that it be administered by trustee for another’s benefit. State v. Parris (S.C. 2005) 363 S.C. 477, 611 S.E.2d 501. Embezzlement 4

State failed to establish trust relationship between defendant and car dealership, as required to convict for breach of trust with fraudulent intent, where car dealership mistakenly sent check for payoff of traded vehicle to defendant rather than lienholder. State v. Jackson (S.C.App. 2000) 338 S.C. 565, 527 S.E.2d 367. Embezzlement 4

Dates of late and missing deposits made on behalf of convenience store that defendant managed amounted to strong substantial circumstantial evidence of defendant’s fraudulent intent as element of breach of trust with fraudulent intent; evidence showed that defendant made deposits one day after his actions were being investigated. State v. Scott (S.C.App. 1998) 330 S.C. 125, 497 S.E.2d 735. Embezzlement 44(2)

Evidence of defendant’s failure to return to his employer’s store after regional supervisor had visited store for routine auditing check was, in essence, evidence of flight, which could be considered evidence of guilty knowledge and intent in prosecution for breach of trust with fraudulent intent. State v. Scott (S.C.App. 1998) 330 S.C. 125, 497 S.E.2d 735. Criminal Law 351(3)

Fraudulent intent is a condition of the mind beyond the reach of the senses, usually kept secret, and can only be proved by unguarded expressions, conduct and circumstances generally. State v. Jordan (S.C. 1970) 255 S.C. 86, 177 S.E.2d 464.

There was evidence of fraudulent intent when the accused departed from his duty to use the money he had received in payment for stock and diverted it to other purposes. State v. Jordan (S.C. 1970) 255 S.C. 86, 177 S.E.2d 464.

In view of this section [Code 1962 Section 16‑365], the conduct of bailee, hiring automobile, in driving car out of State and failing to return it, held to constitute theft within meaning of policy insuring automobile against theft, robbery, or pilferage. Simpson v. Palmetto Fire Ins. Co. (S.C. 1928) 145 S.C. 405, 143 S.E. 184. Insurance 2706(1)

It merely extends the crime of larceny at common law. State v. Butler (S.C. 1884) 21 S.C. 353.

This section [Code 1962 Section 16‑365] applies not only to cases which the common law did not reach, but also to cases where a fraudulent appropriation did constitute larceny at common law. State v. Shirer (S.C. 1884) 20 S.C. 392. Embezzlement 13

2. Elements of crime

Time is not an element in the crime of breach of trust with fraudulent intention, and it is not necessary to prove either the precise time or the precise amount laid in the indictment. State v Wells (1931) 162 SC 509, 161 SE 177, citing State v Dewees (1907) 76 SC 72, 56 SE 674.

To constitute this offense as to property, there must be an appropriation thereof, accompanied with a fraudulent purpose to destroy the right of the true owner. State v Butler (1884) 21 SC 353. Bell v Clinton Oil Mill (1924) 129 SC 242, 124 SE 7.

A breach of trust is where personal property of appreciable value and of which larceny may be committed is put into the possession of another; and when it is so put into his possession it becomes a trust, and while it so remains, if he conceives the purpose to convert that property to his own use, and does it with intention to deprive the owner of the use of that property, then that is a breach of trust with fraudulent intent. State v Shirer (1884) 20 SC 392. Bell v Clinton Oil Mill (1924) 129 SC 242, 124 SE 7.

Crimes of larceny and breach of trust are not mutually exclusive, but rather merge into one crime, and timing of fraudulent intent is irrelevant. McPhatter v. Leeke (D.C.S.C. 1978) 442 F.Supp. 1252.

Although lending of car to defendant created no fiduciary obligation, his possession of car nonetheless created trust. McPhatter v. Leeke (D.C.S.C. 1978) 442 F.Supp. 1252.

Section 16‑13‑230 merely expanded definition of common‑law larceny by eliminating element of trespassory taking or unlawful possession, it did not create new element of unlawful possession which state was required to establish. McPhatter v. Leeke (D.C.S.C. 1978) 442 F.Supp. 1252.

To establish existence of a trust relationship, for purposes of offense of breach of trust with fraudulent intent, the transferor of the property must intend that the trustee will act for the transferor’s benefit instead of on his own behalf. State v. Parris (S.C. 2005) 363 S.C. 477, 611 S.E.2d 501. Embezzlement 4

State must prove the existence of a trust relationship to sustain a charge of breach of trust with fraudulent intent; failure to prove the existence of a trust relationship will result in a directed verdict of acquittal for the defendant. State v. Parris (S.C. 2005) 363 S.C. 477, 611 S.E.2d 501. Embezzlement 4

Primary difference between larceny and breach of trust with fraudulent intent is that in common‑law larceny, possession of property stolen is obtained unlawfully, while in breach of trust, possession is obtained lawfully. State v. Scott (S.C.App. 1998) 330 S.C. 125, 497 S.E.2d 735. Embezzlement 9

In order to prove breach of trust with fraudulent intent, State was required to prove that defendant appropriated his employer’s bank deposits and that appropriation was accompanied by fraudulent intent to destroy right of true owner. State v. Scott (S.C.App. 1998) 330 S.C. 125, 497 S.E.2d 735. Embezzlement 5; Embezzlement 11(1)

The crime of breach of trust with fraudulent intention does not depend alone upon the act of conversion. State v. Jordan (S.C. 1970) 255 S.C. 86, 177 S.E.2d 464.

Whether the accused, at the time he received the money in Fairfield County, formed the intention and purpose of fraudulently appropriating it to his own use, was a question of fact for jury determination. State v. Jordan (S.C. 1970) 255 S.C. 86, 177 S.E.2d 464.

Breach of trust is larceny after trust, which includes all of the elements of larceny or in common parlance, stealing, except the unlawful taking in the beginning. State v. Owings (S.C. 1944) 205 S.C. 314, 31 S.E.2d 906. Embezzlement 4

If possession of the property is obtained through artifice, trick, or other fraud, then such possession is not lawfully obtained, and the crime is larceny at common law rather than that of breach of trust as contemplated by this section [Code 1962 Section 16‑365]. State v. McCann (S.C. 1932) 167 S.C. 393, 166 S.E. 411.

This section [Code 1962 Section 16‑365] makes the offense larceny in general terms, and when placed under the general head of larceny, it partakes of all the incidents thereto, and is governed by the law applicable to larceny as one of the classes of crime whether statutory or common law. State v. McCann (S.C. 1932) 167 S.C. 393, 166 S.E. 411.

3. Attorney discipline

Attorney’s conduct in failing to safeguard client funds, failing to remit funds owed to third parties, criminal conviction for breach of trust with fraudulent intent, incurring of debt in name of attorney’s wife without her knowledge and consent, and failing to respond to inquiries by Office of Disciplinary Counsel (ODC) in violation of rules of professional conduct warranted disbarment; attorney admitted misconduct, misconduct resulted in significant harm to clients, and attorney admitted that he stole client funds simply to support a more lavish lifestyle. In re Taylor (S.C. 2012) 396 S.C. 627, 723 S.E.2d 366. Attorney and Client 59.14(1); Attorney and Client 59.14(2); Attorney and Client 59.14(4)

Municipal judge’s commission of the criminal offense of breach of trust by converting law firm funds to her own use in her previous employment as a lawyer warranted public reprimand, where judge resigned prior to disciplinary proceeding and no longer held judicial office. In re Koulpasis (S.C. 2008) 376 S.C. 496, 657 S.E.2d 759. Judges 11(4)

4. Indictment

In prosecutions under this section [Code 1962 Section 16‑365] the State must prove the exact trust which has been breached. State v Cody (1936) 180 SC 417, 186 SE 165. State v White (1964) 244 SC 349, 137 SE2d 97.

In a prosecution alleging that the defendant committed a breach of trust with fraudulent intent while serving as corporate president and trustee of the charitable foundation that created the corporation, the court did not err in allowing the indictments to be amended under Section 17‑19‑20 since the nature of the crime charged (larceny) was not changed by the substitution of the corporation for the foundation as the victim, neither the defendant nor the codefendant was surprised by the amendments and they did not request a continuance based on the amendments, and counsel for one defendant admitted having actual notice of the change. State v. Johnson (S.C.App. 1994) 314 S.C. 161, 442 S.E.2d 191, rehearing denied, certiorari denied.

An indictment will lie in the state where defendant refused to account, and also in the state in which he received the money, if there was evidence of an intent to defraud at the time the money was received, or at any time while defendant remained in that state. State v. Jordan (S.C. 1970) 255 S.C. 86, 177 S.E.2d 464.

Testimony tended to establish that the trust which the defendant breached and violated, if any, was the obligation to remit a part of the proceeds of the sale of equipment. The indictment, on the other hand, alleged the trust which he breached was the obligation to hold the equipment and that instead of doing so, he fraudulently appropriated the equipment to his own use. It was held that these were two separate and distinct offenses, that they were not the same in law or fact, and involved different acts of wrongdoing, and that the circuit judge should have directed a verdict of acquittal. State v. White (S.C. 1964) 244 S.C. 349, 137 S.E.2d 97.

An indictment in a case of breach of trust with fraudulent intention is sufficient if the offense be so described that the defendant may know how to answer it, the court what judgment to pronounce, and a conviction or acquittal on it may be pleaded in bar of another indictment for the same offense. State v. Wells (S.C. 1931) 162 S.C. 509, 161 S.E. 177. Indictment And Information 71.4(1)

Where an agent receives and wrongfully retains money which he knows belongs to his principal, with intent to defraud his principal, he is guilty. State v. Ezzard (S.C. 1894) 40 S.C. 312, 18 S.E. 1025.

The court held that the defendant, who was prosecuted under the provisions of this section [Code 1962 Section 16‑365], was entitled to a directed verdict where the indictment charged breach of trust with fraudulent intention relating to the unlawful conversion of mill stock and the evidence submitted was proof of a breach of trust with a fraudulent intention relating to the subsequent conversion of money, the proceeds derived from the sale of stock, in State v. Cody (S.C. 1936) 180 S.C. 417, 186 S.E. 165.

Where the proof shows the trust to consist in that which is different from that alleged in the indictment, it is fatal. State v. Green (S.C. 1874) 5 S.C. 65.

5. Presumptions and burden of proof

Proof beyond a reasonable doubt of a fraudulent intention is necessary before the crime of breach of trust is complete. State v McCann (1932) 167 SC 393, 166 SE 411. State v Jordan (1970) 255 SC 86, 177 SE2d 464.

6. Questions for jury

In a larceny prosecution under Section 16‑13‑230, a jury question existed as to whether the defendant committed a breach of trust with fraudulent intent while serving as corporate president and trustee of the charitable trust that created the corporation, where the evidence showed that he wrote a check for $234,000 and gave it to the codefendant to purchase a residence. State v. Johnson (S.C.App. 1994) 314 S.C. 161, 442 S.E.2d 191, rehearing denied, certiorari denied. Larceny 68(1)

Evidence of the use of the funds of the prosecuting witness by the accused for purposes other than to purchase stock was sufficient to create a jury question on the issue of fraudulent intent. State v. Jordan (S.C. 1970) 255 S.C. 86, 177 S.E.2d 464. Embezzlement 47

Evidence showing that the accused used some $200.00 of the money he received on the check for the payment of his own grocery bill was sufficient to take the case to jury on the question of his fraudulent intention. State v. McCann (S.C. 1932) 167 S.C. 393, 166 S.E. 411.

7. Sufficiency of evidence

Evidence was sufficient to support finding of trust relationship between defendant, a mobile home vendor, and mobile home buyer, thus supporting conviction for breach of trust with fraudulent intent when defendant appropriated buyer’s payment for his own use; employee of defendant’s company testified that in the normal course of business, buyer checks would be deposited and payments would be made against liens, vice‑president of lender bank testified that buyer endorsed checks and handed them to defendant, buyer testified that he expected his bank to get clear title after he gave checks to defendant. State v. Parris (S.C. 2005) 363 S.C. 477, 611 S.E.2d 501. Embezzlement 44(1)

Evidence was sufficient to show that defendant personally had control over each night deposit that should have been made on his employer’s behalf and, thus, was sufficient to prove breach of trust with fraudulent intent. State v. Scott (S.C.App. 1998) 330 S.C. 125, 497 S.E.2d 735. Embezzlement 44(5)

8. Sentence and punishment

Defendant convicted of breach of trust with fraudulent intent was not entitled to be sentenced under amended version of sentencing statute with effective date after her conviction but before her sentencing, where applicable statute unambiguously provided that amendments thereto did not apply to actions pending at time of amendment. State v. Dawson (S.C. 2013) 402 S.C. 160, 740 S.E.2d 501. Sentencing and Punishment 17(3)

**SECTION 16‑13‑240.** Obtaining signature or property by false pretenses.

 A person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty of a:

 (1) felony and, upon conviction, must be fined not more than five hundred dollars and imprisoned not more than ten years if the value of the property is ten thousand dollars or more;

 (2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years if the value of the property is more than two thousand dollars but less than ten thousand dollars;

 (3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, if the value of the property is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days.

HISTORY: 1962 Code Section 16‑366; 1952 Code Section 16‑366; 1942 Code Section 1171; 1932 Code Section 1171; Cr. C. ‘22 Section 64; Cr. C. ‘12 Section 220; Cr. C. ‘02 Section 168; G. S. 2499; R. S. 162; 1876 (26) 39; 1893 (21) 507; 1894 (21) 824; 1960 (51) 1598; 1981 Act No. 76, Section 7; 1993 Act No. 171, Section 11; 1993 Act No. 184, Section 115; 2010 Act No. 273, Section 16.O, eff June 2, 2010.

CROSS REFERENCES

Credit card fraud, see Section 16‑14‑60.

Defrauding hospitals, see Section 44‑7‑30.

Jurisdiction of magistrates, see Section 22‑3‑590.

Sentencing, see Section 17‑25‑20 et seq.

South Carolina Farm Aid Fund, see Section 46‑1‑160.

Library References

False Pretenses 11, 13, 54.

Westlaw Topic No. 170.

C.J.S. False Pretenses Sections 19, 30 to 32, 93.

RESEARCH REFERENCES

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S.C. Jur. Advertising Section 6, False Pretenses.

S.C. Jur. False Pretenses Section 1, Scope Note.

S.C. Jur. False Pretenses Section 2, Text.

S.C. Jur. False Pretenses Section 4, Lesser Included Offense.

S.C. Jur. False Pretenses Section 6, Property of Another.

S.C. Jur. False Pretenses Section 7, False Pretense or Representation of a Present or Past Fact.

S.C. Jur. False Pretenses Section 9, Intent to Cheat and Defraud.

NOTES OF DECISIONS

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1. In general

State was not required to prove that title to truck had passed to defendant in order to convict defendant for obtaining property under false pretenses; focus of statute criminalizing the obtaining of property under false pretenses is on the method of misappropriation and the property involved, not the form that possession ultimately takes. State v. Dickinson (S.C.App. 2000) 339 S.C. 194, 528 S.E.2d 675, rehearing denied, certiorari denied. False Pretenses 12

A postdated check is a promise to pay at a future time, and a promise to do something in the future cannot constitute the basis of a prosecution for obtaining goods under false pretenses pursuant to Section 16‑13‑240. State v. McCutcheon (S.C.App. 1985) 284 S.C. 524, 327 S.E.2d 372. False Pretenses 7(5)

Nor is a mere opinion a false pretense, but any statement of a present or past fact is, if false. State v. Stone (S.C. 1913) 95 S.C. 390, 79 S.E. 108.

It is perfectly manifest from the express terms of the statute that an intent to cheat and defraud is an essential element of the statutory crime, and it is elementary that every essential element of the crime must be alleged and proven. State v. Hicks (S.C. 1907) 77 S.C. 289, 57 S.E. 842.

On an indictment for obtaining money from a county by false pretenses by presenting a claim already paid, it is immaterial whether the county supervisor and the treasurer knew of, and participated in, the fraud or not. State v. Talley (S.C. 1907) 77 S.C. 99, 57 S.E. 618, 122 Am.St.Rep. 559.

False pretense is such a fraudulent representation of an existing or past fact, by one who knows it not to be true, as is adapted to induce the person to whom it is made to part with something of value. A mere promise to do something in the future is not such a pretense. State v. Haines (S.C. 1885) 23 S.C. 170. False Imprisonment 7(5)

2. Constitutional issues

Trial court did not erroneously consider defendant’s exercise of right to jury trial in sentencing her more severely than codefendants who pled guilty in connection with scandal involving defrauding school district through diversion of funds, where defendant and codefendants were not all employees of school district, were not all charged with identical crimes, and faced different sentences, defendant’s sentence was well within sentencing range for her convictions for aiding and abetting embezzlement, conspiracy, and obtaining goods and services by false pretenses, and although court commented on a codefendant’s guilty plea and consideration given to him for pleading guilty, court repeatedly noted that court was not considering defendant’s exercise of her right to a jury trial in rendering her sentence. State v. Follin (S.C.App. 2002) 352 S.C. 235, 573 S.E.2d 812, rehearing denied, certiorari denied. Sentencing And Punishment 115(3)

3. Indictment

The indictment was held to sufficiently indicate the person to whom the representation was made, to show in what particular such representations were false and to charge the crime with sufficient particularity to put defendant on notice, in State v. Gellis (S.C. 1930) 158 S.C. 471, 155 S.E. 849. False Pretenses 28

An indictment, under this section [Code 1962 Section 16‑366], charging that accused falsely pretended that a certain horse was sound in every respect, which pretense he knew to be false, whereby he obtained another horse, the property of such witness, with intent to cheat and defraud him, stated facts constituting a crime, the representation that the horse was sound in every respect being the statement of a material fact and not an opinion. State v. Stone (S.C. 1913) 95 S.C. 390, 79 S.E. 108.

An indictment, charging obtaining money by false pretenses, is not sustained by proof of obtaining the satisfaction of a debt by false representation of the value of the property given in satisfaction. State v. Daniel (S.C. 1909) 83 S.C. 309, 65 S.E. 236. False Pretenses 38

4. Questions for jury

Whether defendant obtained property under false pretenses presented question for jury, in light of uncontroverted evidence that defendant wrote a check that he knew could not be honored in order to obtain a new truck, that defendant gave dealer an address at which he never resided, that defendant allowed dealer to copy his driver’s license, which contained a non‑existent address, and that defendant left with new truck after providing false information and worthless check. State v. Dickinson (S.C.App. 2000) 339 S.C. 194, 528 S.E.2d 675, rehearing denied, certiorari denied. False Pretenses 51

On trial for obtaining property under false pretenses, where the false pretenses are shown, the question of intent is a question of fact to be submitted to the jury, and it is error for the court to draw the inference of a fraudulent intent. State v. Hicks (S.C. 1907) 77 S.C. 289, 57 S.E. 842. False Pretenses 51

5. Sufficiency of evidence

Evidence was sufficient to support a finding that defendant, who was a travel agent, had the intent to defraud school district through a fake travel scheme, and thus, evidence was sufficient to support defendant’s conviction for aiding and abetting embezzlement; assistant superintendent, who was apparently the mastermind behind scheme, testified that defendant implicitly agreed to assist him in scheme by submitting false invoices and then crediting amounts paid on invoices to his personal travel, and defendant created false invoices at assistant superintendent’s request. State v. Follin (S.C.App. 2002) 352 S.C. 235, 573 S.E.2d 812, rehearing denied, certiorari denied. Embezzlement 44(2)

**SECTION 16‑13‑250.** Effect when obtaining signature or property by false pretenses amounts to larceny.

 If upon the trial of any person indicted for a misdemeanor under the provisions of Section 16‑13‑240 it shall be proved that he obtained the property in such a manner as to amount in law to larceny he shall not, by reason thereof, be entitled to be acquitted of such misdemeanor. No person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts.

HISTORY: 1962 Code Section 16‑367; 1952 Code Section 16‑367; 1942 Code Section 1171; 1932 Code Section 1171; Cr. C. ‘22 Section 64; Cr. C. ‘12 Section 220; Cr. C. ‘02 Section 168; G. S. 2499; R. S. 162; 1876 (26) 39; 1893 (21) 507; 1894 (21) 824.

Library References

Criminal Law 29(10).

Double Jeopardy 143.

Westlaw Topic Nos. 110, 135H.

C.J.S. Criminal Law Sections 21, 323, 327.

C.J.S. Larceny Sections 71 to 72.

**SECTION 16‑13‑260.** Obtaining property under false tokens or letters.

 A person who falsely and deceitfully obtains or gets into his hands or possession any money, goods, chattels, jewels, or other things of another person by color and means of any false token or counterfeit letter made in another person’s name is guilty of a:

 (1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the value of the property is ten thousand dollars or more;

 (2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the value of the property is more than two thousand dollars but less than ten thousand dollars;

 (3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, if the value of the property is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both.

HISTORY: 1962 Code Section 16‑368; 1952 Code Section 16‑368; 1942 Code Section 1170; 1932 Code Section 1170; Cr. C. ‘22 Section 63; Cr. C. ‘12 Section 219; Cr. C. ‘02 Section 167; 1712 (2) 476; 1894 (21) 824; 1964 (53) 1723; 1993 Act No. 171, Section 12; 1993 Act No. 184, Section 116; 2010 Act No. 273, Section 16.P, eff June 2, 2010.

Library References

False Pretenses 6, 54.

Westlaw Topic No. 170.

C.J.S. False Pretenses Sections 18 to 19, 40 to 45, 93.

**SECTION 16‑13‑290.** Securing property by fraudulent impersonation of officer.

 It is unlawful for a person, with intent to defraud either the State, a county, or municipal government or any person, to act as an officer and demand, obtain, or receive from a person or an officer of the State, county, or municipal government any money, paper, document, or other valuable things. A person who violates the provisions of this section is guilty of a:

 (1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the property or thing obtained has a value of more than four hundred dollars.

 (2) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days if the property or thing obtained has a value of four hundred dollars or less.

HISTORY: 1962 Code Section 16‑369; 1952 Code Section 16‑369; 1942 Code Section 1173; 1932 Code Section 1173; Cr. C. ‘22 Section 66; 1920 (31) 753; 1993 Act No. 184, Section 32; 2010 Act No. 273, Section 16.Q, eff June 2, 2010.

Library References

False Pretenses 19, 54.

Westlaw Topic No. 170.

C.J.S. False Pretenses Sections 37, 93.

NOTES OF DECISIONS

In general 1

1. In general

A constable collecting excessive taxes, part of which he appropriated to himself, was not guilty of impersonating an officer in violation of this section [Code 1962 Section 16‑369]. He was an officer, and the fact that he was not legally authorized to make the collection, although apparently armed with authority, does not constitute the offense. State v. Robertson (S.C. 1925) 133 S.C. 126, 130 S.E. 212.

**SECTION 16‑13‑300.** Fraudulent removal or secreting of personal property attached or levied on.

 Whoever, with intent to defraud, removes or secretes personal property which has been attached or levied on by the sheriff or any other officer authorized by law to make such attachment or levy shall be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment in the county jail for a period not less than sixty days nor more than one year or by fine of not less than one hundred dollars nor more than two hundred dollars.

HISTORY: 1962 Code Section 16‑370; 1952 Code Section 16‑370; 1942 Code Section 1279; 1932 Code Section 1279; Cr. C. ‘22 Section 174; Cr. C. ‘12 Section 452; Cr. C. ‘02 Section 339; G. S. 2516; R. S. 278; 1873 (15) 448; 1879 (17) 2.

Library References

Larceny 18, 88.

Westlaw Topic No. 234.

C.J.S. Larceny Section 32.

**SECTION 16‑13‑310.** Taking official records without authority.

 Any person who shall take any record from the office of the clerk of the court, judge of probate or master in equity without the consent of the officer having control of such record shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of fifty dollars for the first offense and for the second and any subsequent offense by a fine of one hundred dollars.

HISTORY: 1962 Code Section 16‑371; 1952 Code Section 16‑371; 1942 Code Section 1526; 1932 Code Section 1526; Cr. C. ‘22 Section 473; Cr. C. ‘12 Section 547; Cr. C. ‘02 Section 390; G. S. 2557; R. S. 307; 1882 (17) 871; 1885 (19) 415.

Library References

Records 21.

Westlaw Topic No. 326.

C.J.S. Records Sections 69 to 73.

NOTES OF DECISIONS

In general 1

1. In general

Court has no power to order records removed outside of the State. Ex parte Lockhart (S.C. 1897) 50 S.C. 156, 27 S.E. 620.

**SECTION 16‑13‑320.** Swindling.

 Whoever shall (a) inveigle or entice by any arts or devices any person to play at cards, dice or any other game or bear a share or part in the stakes, wagers or adventures or bet on the sides or hands of such as do or shall play as aforesaid, (b) sell, barter or expose to sale any kind of property which has been before sold, bartered or exchanged by the person so selling, bartering or exchanging or by anyone for the benefit or advantage of the person so selling, bartering or exchanging in any house or other place within this State or be a party thereto or (c) overreach, cheat or defraud by any other cunning, swindling arts and devices, so that the ignorant and unwary, who are deluded thereby, lose their money or other property, shall, on conviction thereof in any court of competent jurisdiction, be guilty of a misdemeanor and shall be fined at the discretion of the court and, besides, shall refund to the party aggrieved double the sum he was so defrauded of.

 And if the same be not immediately paid, with costs, every such person shall be committed to the common jail or house of correction, if there be any, of the county in which such person shall be convicted, there to continue for any time not exceeding six months, unless such fine, with costs, be sooner paid and discharged.

HISTORY: 1962 Code Section 16‑566; 1952 Code Section 16‑566; 1942 Code Section 1746; 1932 Code Section 1746; Cr. C. ‘22 Section 728; Cr. C. ‘12 Section 713; Cr. C. ‘02 Section 515; G. S. 2508; R. S. 400; 1791 (5) 177.

Library References

False Pretenses 16, 54.

Fines 1.5.

Westlaw Topic Nos. 170, 174.

C.J.S. False Pretenses Sections 27 to 28, 35 to 36, 40 to 45, 93.

C.J.S. Fines Sections 1 to 2, 8, 10 to 12.

NOTES OF DECISIONS

In general 1

1. In general

Using paper as bank bill. State v Grooms (1849) 36 SCL 158. See also State v Wilson (1818) 9 SCL 135.

Where all the parties to a contract for the sale of land were residents of another state, and the contract was signed and all the payments, except one, were made in the same state, the single payment does not give this State jurisdiction of the prosecution of the accused for swindling. State v. King (S.C. 1947) 211 S.C. 1, 43 S.E.2d 596.

In a prosecution for swindling in a contract of sale of land located in this State, when all the parties were resident and the contract was consummated in another state, the act of viewing the land cannot be an overt act such as to give jurisdiction. State v. King (S.C. 1947) 211 S.C. 1, 43 S.E.2d 596.

Nor is selling a promissory note, knowing it to have been paid, but representing that it was still unpaid. Middleton ads. State (S.C. 1838).

Selling a blind horse as a sound horse is not indictable under this section [Code 1962 Section 16‑566]. State v. Delyon (S.C. 1794). False Pretenses 9

Obtaining property from ignorant person under threat of prosecution. State v. Vaughan (S.C. 1792).

**SECTION 16‑13‑330.** Stealing or damaging works of literature or objects of art.

 Any person who shall steal or unlawfully take or wilfully or maliciously write upon, cut, tear, deface, disfigure, soil, obliterate, break or destroy, or who shall sell or buy or receive, knowing it to have been stolen, any book, pamphlet, document, newspaper, periodical, map, chart, picture, portrait, engraving, statue, coin, medal, equipment, specimen, recording, film or other work of literature or object of art belonging to or in the care of a library, gallery, museum, collection, exhibition or belonging to or in the care of any department or office of the State or local government, or belonging to or in the care of a library, gallery, museum, collection or exhibition which belongs to any incorporated college or university or which belongs to any institution devoted to educational, scientific, literary, artistic, historical or charitable purposes shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred dollars or imprisonment for not more than thirty days.

HISTORY: 1962 Code Section 16‑372; 1958 (50) 1929.

Library References

Larceny 5, 88.

Malicious Mischief 1, 12.

Westlaw Topic Nos. 234, 248.

C.J.S. Larceny Sections 18 to 31.

C.J.S. Malicious or Criminal Mischief or Damage to Property Sections 1 to 2, 4 to 10, 17.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Colleges and Universities Section 22, Discipline Matters.

**SECTION 16‑13‑331.** Unauthorized removal or concealment of library property prohibited; penalty.

 Whoever, without authority, with the intention of depriving the library or archive of the ownership of such property, wilfully conceals a book or other library or archive property, while still on the premises of such library or archive, or wilfully or without authority removes any book or other property from any library or archive or collection shall be deemed guilty of a misdemeanor under the jurisdiction of the magistrates or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, and, upon conviction, shall be punished in accordance with the following: by a fine of not more than six hundred dollars or imprisonment for not more than six months; provided, however, that if the value of the library or archive property is less than one hundred dollars, the punishment shall be a fine of not more than two hundred dollars or imprisonment for not more than thirty days. Proof of the wilful concealment of any book or other library or archive property while still on the premises of such library or archive shall be prima facie evidence of intent to commit larceny thereof.

HISTORY: 1980 Act No. 334; 2010 Act No. 273, Section 16.R, eff June 2, 2010.

CROSS REFERENCES

Libraries and archives, generally, see Section 60‑1‑10 et seq.

Library References

Larceny 18, 88.

Westlaw Topic No. 234.

C.J.S. Larceny Section 32.

**SECTION 16‑13‑332.** Library personnel exempt from liability for arrest of persons suspected of concealment or removal of library property.

 A library or agent or employee of the library causing the arrest of any person pursuant to the provisions of Section 16‑13‑331 shall not be held civilly liable for unlawful detention, slander, malicious prosecution, false imprisonment, false arrest, or assault and battery of the person so arrested, unless excessive or unreasonable force is used; whether such arrest takes place on the premises by such agent or employee; provided that, in causing the arrest of such person, the library or agent or employee of the library had at the time of such arrest probable cause to believe that the person committed willful concealment of books or other library property.

HISTORY: 1980 Act No. 334.

CROSS REFERENCES

Libraries and archives, generally, see Section 60‑1‑10 et seq.

Library References

False Imprisonment 15.

Westlaw Topic No. 168.

C.J.S. False Imprisonment Sections 23 to 24, 28, 30, 33 to 34, 36, 42 to 45.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. False Imprisonment Section 11, Immunity.

S.C. Jur. Libel and Slander Section 59, Aid of Law Enforcement.

**SECTION 16‑13‑340.** Failure to return books, newspapers, magazines and the like borrowed from library and other institutions.

 Whoever borrows from any county library or municipal, school, college or other institutional library or gallery, museum, collection or exhibition any book, newspaper, magazine, manuscript, pamphlet, publication, recording, film or other article belonging to or in the care of such library, gallery, museum, collection or exhibition under any agreement to return it and thereafter fails to return such book, newspaper, magazine, manuscript, pamphlet, publication, recording, film or other article shall be given written notice, mailed to his last known address or delivered in person, to return such book, newspaper, magazine, manuscript, pamphlet, publication, recording, film or other article within fifteen days, and in the event that such person shall thereafter wilfully and knowingly fail to return such borrowed article within fifteen days, such person shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred dollars or imprisonment for not more than thirty days, provided the notice required by this section shall bear upon its face a copy of this section.

HISTORY: 1962 Code Section 16‑373; 1958 (50) 1929.

Library References

Bailment 16.

Larceny 18, 88.

Westlaw Topic Nos. 50, 234.

C.J.S. Bailments Sections 41 to 43, 102, 110, 117.

C.J.S. Larceny Section 32.

**SECTION 16‑13‑350.** Posting copies of Sections 16‑13‑330 to 16‑13‑370.

 Every county library or municipal, school, college or other institutional library or gallery, museum, collection or exhibition or any such institution belonging to any incorporated college or library or belonging to any incorporated institution devoted to educational, scientific, literary, artistic, historical or charitable purposes whose books, newspapers, magazines, manuscripts, pamphlets, publications, recordings, films or other articles are covered by or protected by Sections 16‑13‑330 and 16‑13‑340, shall post and display in at least two public places within such institution or library a copy of Sections 16‑13‑330 to 16‑13‑370 so that they may be read by anyone going into, visiting or belonging to such institution and borrowing books or other documents from such institution.

HISTORY: 1962 Code Section 16‑374; 1958 (50) 1929.

**SECTION 16‑13‑360.** Disposition of fines collected under Sections 16‑13‑330 and 16‑13‑340.

 Any and all fines collected pursuant to the terms of Sections 16‑13‑330 and 16‑13‑340 shall be paid into the fund of the county library or municipal, school, college or other institutional library or gallery, museum, collection or exhibition injured by the act of the person so fined.

HISTORY: 1962 Code Section 16‑375; 1958 (50) 1929.

Library References

Fines 20.

Westlaw Topic No. 174.

C.J.S. Fines Section 6.

**SECTION 16‑13‑370.** Cumulative effect of Sections 16‑13‑330 to 16‑13‑360.

 The provisions of Sections 16‑13‑330 to 16‑13‑360 are not intended as a substitute for or a replacement of any penalties now provided by law, but shall be considered accumulative and in addition thereto.

HISTORY: 1962 Code Section 16‑376; 1958 (50) 1929.

**SECTION 16‑13‑380.** Theft of electric current.

 Any person who (a) has no contract, agreement, license, or permission with or from any person authorized to manufacture, sell, or use electricity for the purpose of light, heat, or power or with or from any authorized agent of the person for the use of electrical current belonging to or produced or furnished by the person and (b) wilfully withdraws or causes to be withdrawn in any manner and appropriate for his own use or for the use of any other person the current from the wires of the person authorized to manufacture, sell, or use electricity is guilty of a misdemeanor and, upon conviction for a first offense, must be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding thirty days. For a second or subsequent offense, the person is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than three years, or both. Any person who shall aid, abet, or assist the person in the withdrawing and appropriating of the current from the wires to or for the use of the other person or to or for the use of any other person is guilty of a misdemeanor and, upon conviction, must be punished in like manner.

HISTORY: 1962 Code Section 24‑451; 1952 Code Section 24‑451; 1942 Code Section 1155; 1932 Code Section 1155; Cr. C. ‘22 Section 49; Cr. C. ‘12 Section 199; 1904 (24) 409; 1929 (36) 50; 1996 Act No. 369, Section 1.

Library References

Electricity 21.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 136 to 137.

**SECTION 16‑13‑385.** Altering, tampering with or bypassing electric, gas or water meters; penalties.

 (A) It is unlawful for an unauthorized person to alter, tamper with, or bypass a meter which has been installed for the purpose of measuring the use of electricity, gas, or water.

 A meter found in a condition which would cause electricity, gas, or water to be diverted from the recording apparatus of the meter or to cause the meter to inaccurately measure the use of electricity, gas, or water or the attachment to a meter or distribution wire of any device, mechanism, or wire which would permit the use of unmetered electricity, gas, or water or would cause a meter to inaccurately measure the use is prima facie evidence that the person in whose name the meter was installed or the person for whose benefit electricity, gas, or water was diverted caused the electricity, gas, or water to be diverted from going through the meter or the meter to inaccurately measure the use of the electricity, gas, or water.

 (B) A person who violates the provisions of this section for a:

 (1) first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days;

 (2) second offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than three years, or both; and

 (3) third or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than fifteen thousand dollars or imprisoned not more than five years, or both.

 (C) A person who violates the provisions of this section for profit or income on behalf of a person in whose name the meter was installed or a person for whose benefit electricity, gas, or water was diverted for a:

 (1) first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year, or both;

 (2) second offense, is guilty of misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than three years or both; and

 (3) third or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.

 (D) A person who violates the provisions of this section and the violation results in property damage in excess of five thousand dollars or results in the risk of great bodily injury or death from fire, explosion, or electrocution for a:

 (1) first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year, or both;

 (2) second offense, is guilty of misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than three years or both; and

 (3) third or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.

 (E) A person who violates the provisions of this section and the violation results in:

 (1) great bodily injury to another person is guilty of a felony and, upon conviction, must be fined not more than fifteen thousand dollars or imprisoned not more than fifteen years, or both. For purposes of this item, “great bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ; and

 (2) the death of another person is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

 (F) This section does not apply to licensed and certified contractors while performing usual and ordinary service in accordance with recognized standards.

 (G) A person who violates the provisions of this section for the purpose of growing or manufacturing controlled substances listed, or to be listed, in the schedules in Sections 44‑53‑190, 44‑53‑210, 44‑53‑230, 44‑53‑250, and 44‑53‑270 is guilty of a felony and, upon conviction, must be fined not more than fifteen thousand dollars or imprisoned for not more than ten years, or both.

HISTORY: 1962 Code 16‑400; 1976 Act No. 650; 1993 Act No. 184, Section 176; 1995 Act No. 7, Part I Section 7; 2013 Act No. 23, Section 1, eff May 3, 2013.

Library References

Electricity 21.

Gas 23.

Water Law 2272.

Westlaw Topic Nos. 145, 190, 405.

C.J.S. Electricity Sections 136 to 137.

C.J.S. Gas Section 4.

Attorney General’s Opinions

The theft of water from a municipality could be considered larceny under the common law. SC Op.Atty.Gen. (March 30, 2005) 2005 WL 774151.

**SECTION 16‑13‑390.** Cheating producers of electricity.

 Any person who (a) has a contract, agreement, license or permission, oral or written, with or from any person authorized to manufacture, sell or use electricity for the purpose of light, heat or power or with or from any authorized agent of such person for the use of the electrical current belonging to or produced or furnished by any such person, for certain specified purposes and (b) shall wilfully and intentionally withdraw or cause to be withdrawn, in any manner, and appropriate to his own use or to the use of any other person electrical current for purposes other than those specified shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished as provided in Section 16‑13‑380. And any such person to whom such electrical current is furnished from or by means of a meter who shall wilfully and with intention to cheat and defraud any person, alter or interfere with such meter or by any contrivance whatsoever withdraw or take off electrical current in any manner except through such meter shall be guilty of a misdemeanor and be punished as provided in Section 16‑13‑380.

HISTORY: 1962 Code Section 24‑452; 1952 Code Section 24‑452; 1942 Code Section 1158; 1932 Code Section 1158; Cr. C. ‘22 Section 52; Cr. C. ‘12 Section 202; 1904 (24) 410.

Library References

Electricity 21.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 136 to 137.

**SECTION 16‑13‑400.** Avoiding or attempting to avoid payment of telecommunications services.

 Any person who knowingly avoids or attempts to avoid, or causes another to avoid, the lawful charges or payments, in whole or in part, for any telecommunications service or for the transmission of a message, signal, or other telecommunication over telephone or telegraph facilities:

 (1) By charging such service to an existing telephone number or credit card number without the authority of the subscriber thereto or the lawful holder thereof;

 (2) By charging such service to a nonexistent telephone number or credit card number, or to a number associated with telephone service which is suspended or terminated, or to a revoked or canceled credit card number;

 (3) By use of a code, prearranged scheme, or other similar stratagem or device whereby such person, in effect, sends or receives information;

 (4) By rearranging, tampering with, or making connection with any facilities or equipment of a telephone company, whether physically, inductively, acoustically, or otherwise; or

 (5) By the use of any other fraudulent means, method, trick or device; is guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than one thousand dollars or imprisoned not more than one year, or both.

HISTORY: 1962 Code Section 16‑565.1; 1961 (52) 569; 1965 (54) 680.

Library References

Telecommunications 1067, 1167, 1254.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 171, 250.

NOTES OF DECISIONS

In general 1

1. In general

A defendant’s conduct in denying that he had made toll calls to telephone numbers which provided recorded information including sexually explicit monologue from his father’s telephone did not support a conviction for knowingly avoiding, attempting to avoid, or causing another to avoid lawful charges for telephone service, where the defendant was authorized to use his father’s telephone for long distance calls and the telephone company had recourse to enforce payment on a legally chargeable account by discontinuing service and taking measures to collect its bill. State v. Lee (S.C. 1988) 294 S.C. 461, 365 S.E.2d 734. Telecommunications 1013

**SECTION 16‑13‑410.** Making or possessing device, plans or instructions which can be used to violate Section 16‑13‑400.

 (1) Any person who knowingly makes or possesses any device or any plans or instructions for making the same which can be used to violate the provisions of Section 16‑13‑400 or to conceal from any supplier of telecommunication service the existence, origin or destination of any telecommunication shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than one thousand dollars or imprisoned not more than one year, or both.

 (2) Any magistrate may issue a warrant to search for and seize any such device upon application supported by oath of the complainant which shall set forth the facts upon which the application is based, specifically designating the place and the object of the search or seizure. Any such device seized under warrant or as an incident to a lawful arrest shall after conviction of the owner or possessor thereof be destroyed by the sheriff of the county in which such person was convicted.

HISTORY: 1962 Code Section 16‑565.2; 1965 (54) 682.

Library References

Disorderly Conduct 121.

Westlaw Topic No. 129.

C.J.S. Disorderly Conduct Sections 1 to 4.

NOTES OF DECISIONS

Malicious prosecution 1

1. Malicious prosecution

In an action for malicious prosecution arising out of the arrest and prosecution of the plaintiff by a utility for tampering with the utility’s electric meter, there was probable cause for the arrest and prosecution of the plaintiff where the utility knew when the arrest warrant was procured that meter tampering was a crime, the plaintiff’s meter had been found with the seal broken and in a condition which prevented operation of the recording apparatus, it was highly unlikely that the condition had occurred without human intervention, the plaintiff was the beneficiary of the meter’s not recording electricity used, and two meters belonging to the plaintiff’s brother, who resided next door next door to the plaintiff, had been found in the same condition; thus, the trial court erred in failing to enter judgment in favor of the utility where the plaintiff had not established the essential element of lack of probable cause. Eaves v. Broad River Elec. Co‑op., Inc. (S.C. 1982) 277 S.C. 475, 289 S.E.2d 414.

**SECTION 16‑13‑420.** Failure to return leased or rented property; fraudulent appropriation of leased or rented property.

 (A) A person having any property in his possession or under his control by virtue of a lease or rental agreement is guilty of larceny if he:

 (1) wilfully and fraudulently fails to return the property within seventy‑two hours after the lease or rental agreement has expired;

 (2) fraudulently secretes or appropriates the property to any use or purpose not within the due and lawful execution of the lease or rental agreement.

 The provisions of this section do not apply to lease‑purchase agreements or conditional sales type contracts.

 (B) A person who violates the provisions of this section is guilty of a:

 (1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the value of the rented or leased item is ten thousand dollars or more;

 (2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the value of the rented or leased item is more than two thousand dollars but less than ten thousand dollars;

 (3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, if the value of the rented or leased item is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than thirty days, or both.

HISTORY: 1962 Code Section 46‑150.87:1; 1964 (53) 1880; 1970 (56) 2498; 1993 Act No. 171, Section 13; 1993 Act No. 184, Section 117; 2000 Act No. 409, Section 1; 2010 Act No. 273, Section 16.S, eff June 2, 2010.

CROSS REFERENCES

Confiscation of motor vehicles used in stealing livestock, see Section 16‑13‑50.

Library References

Larceny 18, 88.

Westlaw Topic No. 234.

C.J.S. Larceny Section 32.

Attorney General’s Opinions

A magistrate would have jurisdiction over a charge pursuant to Section 16‑13‑420 of the Code if the value of the property leased or rented is less than two hundred ($200.00) dollars. 1987 Op.Atty.Gen., No 87‑89, p 239 (1987 WL 245497).

A court would probably conclude that television and furniture are included in the list of rented objects covered by Section 16‑13‑420 depending on surrounding circumstances. 1983 Op.Atty.Gen., No 83‑88, p 145 (1983 WL 142757).

**SECTION 16‑13‑430.** Fraudulent acquisition or use of food stamps.

 (A) It is unlawful for a person to:

 (1) obtain, attempt to obtain, aid, abet, or assist any person to obtain, by means of a false statement or representation, false impersonation, fictitious transfer, conveyance, or other fraudulent device, food stamps or coupons to which an applicant is not entitled or a greater amount of food stamps or coupons than that which an applicant is justly entitled; or

 (2) to acquire, possess, use, or transfer food stamps or coupons except as authorized by law and the rules and regulations of the United States Department of Agriculture relating to these matters.

 (B) It is unlawful for a person to acquire or transfer food stamps or coupons except in exchange for food or food products for human consumption, which do not include alcoholic beverages, tobacco, beer, or wine.

 (C) A person who violates the provisions of this section is guilty of a:

 (1) felony if the amount of food stamps fraudulently acquired or used is of a value of ten thousand dollars or more. Upon conviction, the person must be fined not more than five thousand dollars or imprisoned not more than ten years, or both;

 (2) felony if the amount of food stamps fraudulently acquired or used is of a value of more than two thousand dollars but less than ten thousand dollars. Upon conviction, the person must be fined not more than five hundred dollars or imprisoned not more than five years, or both;

 (3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, if the amount of food stamps fraudulently acquired or used is of a value of two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both.

 (D) A mercantile establishment which allows purchases of prohibited items in exchange for food stamps or coupons or currency of the United States must be disqualified from participation in the food stamp program for a period not to exceed two years and fined not more than five thousand dollars, or both.

HISTORY: 1976 Act No. 548; 1993 Act No. 184, Section 119; 2010 Act No. 273, Section 16.T, eff June 2, 2010.

Library References

Public Assistance 152.

Westlaw Topic No. 316E.

C.J.S. Agriculture Sections 37 to 43.

**SECTION 16‑13‑437.** False statement or representation as to income to public housing agency to obtain or retain public housing or with respect to determining rent; misdemeanor; penalties; restitution.

 It is unlawful for a person knowingly to make a false statement or representation with respect to the person’s individual or family income to a public housing agency in obtaining or retaining public housing or with respect to the determination of rent due from the person for public housing. For purposes of this section public housing includes private housing provided through a housing program managed by a public housing agency. For purposes of this section, public housing agency means an agency of state, regional, county, or municipal government, including housing authorities, which administer state or federal housing programs. A person violating this provision is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than two years or fined not more than one thousand dollars and the person convicted must be ordered to pay restitution to the public housing agency.

HISTORY: 1994 Act No. 458, Section 1.

Library References

Fraud 68.10, 69(1).

Westlaw Topic No. 184.

C.J.S. Fraud Sections 125 to 133, 135.

Attorney General’s Opinions

Discussion of whether a housing authority is precluded from seeking a warrant under this section because a tenant had previously signed an agreement for restitution, based upon violation of this section in qualifying for housing. SC Op.Atty.Gen. (May 15, 1996) 1996 WL 452779.

**SECTION 16‑13‑440.** Fraudulent refunds from businesses; use of false or fictitious driver’s licenses or identification cards; penalties.

 (A) It is unlawful for a person to give a false or fictitious name or address, or to give the name or address of another person without that person’s approval, for the purpose of obtaining or attempting to obtain a refund from a business establishment for merchandise.

 A person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for not more than thirty days.

 (B) It is unlawful for a person to obtain or attempt to obtain a refund in the form of cash, check, credit on a credit card, merchant gift card, or credit in any other form from a merchant using a motor vehicle driver’s license not issued to the person, a motor vehicle driver’s license containing false information, an altered motor vehicle driver’s license, an identification card containing false information, an altered identification card, or an identification card not issued to the person. A person who violates the provisions of this subsection:

 (1) when the value is less than two thousand dollars, is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand five hundred dollars or imprisoned for not more than six months, or both;

 (2) when the value is two thousand dollars or more, is guilty of a felony and, upon conviction, must be fined not more than five thousand five hundred dollars or imprisoned for not more than five years, or both; or

 (3) regardless of the value involved, if the person has two or more prior convictions for a violation of this subsection, is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years.

HISTORY: 1982 Act No. 375, Sections 1, 2; 2013 Act No. 82, Section 3, eff June 13, 2013.

Library References

False Pretenses 11, 54.

Westlaw Topic No. 170.

C.J.S. False Pretenses Sections 19, 30 to 31, 93.

**SECTION 16‑13‑450.** Unlawful issuance, sale, or offer to sell identification card or document purporting to contain age or date of birth.

 (1) It is unlawful for any person to sell or issue, or to offer to sell or issue, in this State any identification card or document purporting to contain the age or date of birth of the person in whose name it was issued unless:

 (a) Prior to selling or issuing an identification card or document, the person has first obtained from the applicant and retains for a period of three years from the date of sale:

 1. an authenticated or certified copy of proof of age as provided in subsection (2) of this section;

 2. a notarized affidavit from the applicant attesting to the applicant’s age and that the evidence of age required by subitem 1 of item (a) of this subsection is for the applicant.

 (b) Prior to offering to sell identification cards in this State, the person has included in any offer for sale of identification cards or documents that the cards or documents may not be sold without the applicant first submitting the documents required by item (a) of this section.

 (c) The identification card or document contains the business name and street address of the person selling or issuing the identification card or document.

 (2) For purposes of this section acceptable evidence of age is:

 1. a duly attested copy of the person’s birth certificate;

 2. a duly attested transcript of a certificate of baptism showing the date of birth and place of baptism, accompanied by an affidavit sworn to by the parent;

 3. an insurance policy on the person’s life which has been in force for at least two years;

 4. a passport or certificate of arrival in the United States showing the person’s age;

 5. a transcript of record of age shown in the person’s school record at least four years prior to application, stating date of birth; or

 6. if none of the evidences in subitems 1 through 5 may be produced, an affidavit of age sworn to by the parent, accompanied by a certificate of age signed by a public health officer or licensed practicing physician, which certificate shall state that the health officer or physician has examined the person and believes that the age as stated in the affidavit is substantially correct.

 (3) For purposes of this section, the term “offer to sell” includes every inducement, solicitation, attempt, printed or media advertisement to encourage a person to purchase an identification card.

 (4) Any person violating the provisions of this section is guilty of a misdemeanor and upon conviction must be fined not less than five hundred dollars nor more than two thousand five hundred dollars or imprisoned for not more than six months, or both.

HISTORY: 1986 Act No. 526, Section 1.

Library References

Forgery 9, 51.

Westlaw Topic No. 181.

C.J.S. Forgery Sections 3, 10, 14, 74.

**SECTION 16‑13‑451.** Unlawful submission of documentation required under Section 16‑13‑450.

 It is unlawful for any person to submit documentation as required by subitem 1 of item (a) of subsection (1) of Section 16‑13‑450, which contains false information. Any person violating the provisions of this section is guilty of a misdemeanor and upon conviction must be fined not more than one hundred dollars or imprisoned for not more than thirty days.

HISTORY: 1986 Act No. 526, Section 1.

Library References

Forgery 16, 51.

Westlaw Topic No. 181.

C.J.S. Forgery Sections 30 to 34, 74.

**SECTION 16‑13‑452.** Law enforcement or intelligence activities not subject to Sections 16‑13‑450 and 16‑13‑451.

 Sections 16‑13‑450 and 16‑13‑451 do not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement or intelligence agency of the United States, a state, or a political subdivision of a state.

HISTORY: 1986 Act No. 526, Section 1.

Library References

Forgery 20.

Westlaw Topic No. 181.

C.J.S. Forgery Section 38.

**SECTION 16‑13‑460.** Church to separate and use money only for cemetery maintenance when so designated; penalties.

 Any church which receives money specifically designated for the maintenance of a cemetery on its property shall account for the money separately, and it may be used only for the maintenance of the cemetery. Any person or member of the church governing board who knowingly approves or permits the use of the fund for any other purpose is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for not more than thirty days.

HISTORY: 1987 Act No. 115 Section 1.

Library References

Cemeteries 22.

Westlaw Topic No. 71.

C.J.S. Cemeteries Sections 33 to 34.

**SECTION 16‑13‑470.** Defrauding drug and alcohol screening tests; penalty.

 (A) It is unlawful for a person to:

 (1) sell, give away, distribute, or market urine in this State or transport urine into this State with the intent of using the urine to defraud a drug or alcohol screening test;

 (2) attempt to foil or defeat a drug or alcohol screening test by the substitution or spiking of a sample or the advertisement of a sample substitution or other spiking device or measure;

 (3) adulterate a urine or other bodily fluid sample with the intent to defraud a drug or alcohol screening test;

 (4) possess adulterants which are intended to be used to adulterate a urine or other bodily fluid sample for the purpose of defrauding a drug or alcohol screening test; or

 (5) sell adulterants which are intended to be used to adulterate a urine or other bodily fluid sample for the purpose of defrauding a drug or alcohol screening test.

 Intent is presumed if a heating element or any other device used to thwart a drug‑screening test accompanies the sale, giving, distribution, or marketing of urine or if instructions which provide a method for thwarting a drug‑screening test accompany the sale, giving, distribution, or marketing of urine.

 (B) A person who violates a provision of subsection (A):

 (1) for a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than three years, or both; and

 (2) for a second or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than five years, or both.

HISTORY: 1999 Act No. 65, Section 1.

Library References

Disorderly Conduct 140, 151.

Westlaw Topic No. 129.

C.J.S. Disorderly Conduct Sections 1 to 4, 12 to 13.

RESEARCH REFERENCES

Encyclopedias

28 Am. Jur. Proof of Facts 3d 185, Proof of Violation of Privacy Rights in Employment Drug Testing.

S.C. Jur. Appeal and Error Section 19, Moot Decisions.

S.C. Jur. Constitutional Law Section 32, Legislative‑ Judicial Conflicts.

S.C. Jur. Constitutional Law Section 38, General Tests‑ Criminal Laws of General Applicability.

NOTES OF DECISIONS

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Validity 1

1. Validity

The term “drug test,” in statute criminalizing the sale of urine with the intent to defraud a drug or alcohol test, had a sufficiently common meaning to put defendant on notice of the conduct proscribed, as was required to survive a challenge alleging statute was unconstitutionally vague in failing to specify that it was only the sale of urine with the intent to defraud testing for illegal drug usage which was prohibited; Legislature’s failure to specify that only the sale with the intent to defraud tests for illegal drugs was prohibited indicated its intent that the intent to defraud any drug test was illegal. State v. Curtis (S.C. 2004) 356 S.C. 622, 591 S.E.2d 600, rehearing denied. Constitutional Law 4509(8); Disorderly Conduct 101; Disorderly Conduct 140

Statute prohibiting the possession of adulterants intended to defraud a urine drug screening test was not impermissibly vague, in violation of due process, for allegedly failing to contain a mens rea element; the statute could be construed as requiring that the person possessing the product intended it be used as an adulterant. State v. Rothschild (S.C. 2002) 351 S.C. 238, 569 S.E.2d 346. Constitutional Law 4509(8); Disorderly Conduct 101; Disorderly Conduct 140

Statute criminalizing the sale of urine with the intent to defraud a drug screening test unconstitutionally shifted the burden of proof on the issue of criminal intent to the defendant by presuming intent if a heating element or any other device used to thwart a drug‑screening test accompanied the sale. Curtis v. State (S.C. 2001) 345 S.C. 557, 549 S.E.2d 591, rehearing denied, certiorari denied, certiorari denied 122 S.Ct. 1295, 535 U.S. 926, 152 L.Ed.2d 208, rehearing denied 122 S.Ct. 1954, 535 U.S. 1074, 152 L.Ed.2d 856. Disorderly Conduct 101; Disorderly Conduct 146

Statute criminalizing the sale of urine with the intent to defraud a drug screening test was not unconstitutionally vague or overbroad; a person of ordinary intelligence seeking to obey the law would know, and was sufficiently warned of, the conduct the statute made criminal, and undefined terms such as “foil,” “spike,” “defraud,” “bodily fluids,” and “adulterate” all had common, ordinary meanings sufficient to proscribe conduct, without needing to be specifically defined. Curtis v. State (S.C. 2001) 345 S.C. 557, 549 S.E.2d 591, rehearing denied, certiorari denied, certiorari denied 122 S.Ct. 1295, 535 U.S. 926, 152 L.Ed.2d 208, rehearing denied 122 S.Ct. 1954, 535 U.S. 1074, 152 L.Ed.2d 856. Constitutional Law 4509(8); Disorderly Conduct 101; Disorderly Conduct 140

2. In general

The statute prohibiting the possession of adulterants intended to defraud a urine drug screening test can be construed as requiring that the person possessing the product intended it be used as an adulterant. State v. Rothschild (S.C. 2002) 351 S.C. 238, 569 S.E.2d 346. Disorderly Conduct 140

Evidence of defendant’s advertisement of adulterants intended to defraud a urine drug screening test, and evidence of adulterants seized from store other than the one sold to undercover officer, was relevant to proving mental culpability, in prosecution for possession of adulterants intended to defraud a urine drug screening test. State v. Rothschild (S.C. 2002) 351 S.C. 238, 569 S.E.2d 346. Disorderly Conduct 147

Statute criminalizing the sale of urine with the intent to defraud a drug screening test furthered the public purpose of ensuring a drug‑free workplace and was a legitimate exercise of the State’s police powers in regulating public safety and welfare, which outweighed any legitimate interest, if any, in doing business of seller of urine test substitution kits. Curtis v. State (S.C. 2001) 345 S.C. 557, 549 S.E.2d 591, rehearing denied, certiorari denied, certiorari denied 122 S.Ct. 1295, 535 U.S. 926, 152 L.Ed.2d 208, rehearing denied 122 S.Ct. 1954, 535 U.S. 1074, 152 L.Ed.2d 856. Disorderly Conduct 101; Disorderly Conduct 140

Statute criminalizing the sale of urine with the intent to defraud a drug screening test did not violate privacy rights of seller of urine test substitution kits; statute did not involve an act of surveillance by the State and did not prohibit seller from doing what he wants with his urine, as long as he did not intend to defraud a drug or alcohol screening test. Curtis v. State (S.C. 2001) 345 S.C. 557, 549 S.E.2d 591, rehearing denied, certiorari denied, certiorari denied 122 S.Ct. 1295, 535 U.S. 926, 152 L.Ed.2d 208, rehearing denied 122 S.Ct. 1954, 535 U.S. 1074, 152 L.Ed.2d 856. Constitutional Law 1225; Disorderly Conduct 101; Disorderly Conduct 140

3. Construction and application

Statute prohibiting the sale of urine with the intent to defraud a drug test does not give businesses unfettered discretion to test. State v. Curtis (S.C. 2004) 356 S.C. 622, 591 S.E.2d 600, rehearing denied. Disorderly Conduct 140; Searches And Seizures 78

Unconstitutional provision of statute criminalizing the sale of urine with the intent to defraud a drug screening test that created a presumption of intent was severable from remainder of statute, which outlined different unlawful ways a person could attempt to defraud a drug and alcohol screening test, using general language to describe intent; remainder of statute was complete without intent presumption language and presumably would have passed regardless of whether presumption language was included. Curtis v. State (S.C. 2001) 345 S.C. 557, 549 S.E.2d 591, rehearing denied, certiorari denied, certiorari denied 122 S.Ct. 1295, 535 U.S. 926, 152 L.Ed.2d 208, rehearing denied 122 S.Ct. 1954, 535 U.S. 1074, 152 L.Ed.2d 856. Statutes 1535(6)

4. Constitutional issues

Using evidence of commercial speech to prove that the adulterant was intended to defeat a drug test, as element of possession of adulterants intended to defraud a urine drug screening test, did not violate the First Amendment; adulterating a urine sample to defeat a drug test was an illegal activity in itself, so that such commercial speech concerned an unlawful activity and the commercial speech therefore was not protected by the First Amendment. State v. Rothschild (S.C. 2002) 351 S.C. 238, 569 S.E.2d 346. Constitutional Law 1540; Disorderly Conduct 140

Statute criminalizing the sale of urine with the intent to defraud a drug screening test did not violate equal protection rights of seller of urine test substitution kits; classification of an individual who sold urine or an adulterant to defeat a drug test was rationally related to the legitimate state purpose of promoting a safe work environment, and all individuals who engaged in conduct prohibited by statute were treated alike, regardless of whether they adulterated urine samples with herbal supplements or chemicals. Curtis v. State (S.C. 2001) 345 S.C. 557, 549 S.E.2d 591, rehearing denied, certiorari denied, certiorari denied 122 S.Ct. 1295, 535 U.S. 926, 152 L.Ed.2d 208, rehearing denied 122 S.Ct. 1954, 535 U.S. 1074, 152 L.Ed.2d 856. Constitutional Law 3781; Disorderly Conduct 101; Disorderly Conduct 140

Statute criminalizing the sale of urine with the intent to defraud a drug screening test did not prohibit seller of urine test substitution kits from dispensing literature regarding his political beliefs on urine testing or otherwise violate his First Amendment free speech rights. Curtis v. State (S.C. 2001) 345 S.C. 557, 549 S.E.2d 591, rehearing denied, certiorari denied, certiorari denied 122 S.Ct. 1295, 535 U.S. 926, 152 L.Ed.2d 208, rehearing denied 122 S.Ct. 1954, 535 U.S. 1074, 152 L.Ed.2d 856. Constitutional Law 1807; Disorderly Conduct 101; Disorderly Conduct 113

Penalties for violating statute criminalizing the sale of urine with the intent to defraud a drug screening test were not inhumane or disproportionate to the severity of the crime, so as to violate the Eighth Amendment; a trial court had discretion as to the amount of the fine or length of imprisonment, and statute did not preclude the sentencing authority from considering mitigating and aggravating circumstances in fashioning an appropriate sentence. Curtis v. State (S.C. 2001) 345 S.C. 557, 549 S.E.2d 591, rehearing denied, certiorari denied, certiorari denied 122 S.Ct. 1295, 535 U.S. 926, 152 L.Ed.2d 208, rehearing denied 122 S.Ct. 1954, 535 U.S. 1074, 152 L.Ed.2d 856. Sentencing And Punishment 1507

Statute prohibiting the sale of urine with the intent to defraud a drug screening test did not unduly burden interstate commerce; statute did not ban the sale of urine and other bodily fluids, but simply made it unlawful for someone to sell, give away, distribute, or market urine with the intent to use the urine to defraud a drug or alcohol screening test. Curtis v. State (S.C. 2001) 345 S.C. 557, 549 S.E.2d 591, rehearing denied, certiorari denied, certiorari denied 122 S.Ct. 1295, 535 U.S. 926, 152 L.Ed.2d 208, rehearing denied 122 S.Ct. 1954, 535 U.S. 1074, 152 L.Ed.2d 856. Commerce 82; Disorderly Conduct 101; Disorderly Conduct 140

5. Injunctions

Ruling on merits of constitutional challenges asserted by seller of urine substitution kits who sought temporary injunction against enforcement of statute criminalizing the sale of urine with the intent to defraud a drug screening test was proper and necessary to determine the likelihood of success on the merits, as seller’s prima facie case depended on an allegation that statute was unconstitutional. Curtis v. State (S.C. 2001) 345 S.C. 557, 549 S.E.2d 591, rehearing denied, certiorari denied, certiorari denied 122 S.Ct. 1295, 535 U.S. 926, 152 L.Ed.2d 208, rehearing denied 122 S.Ct. 1954, 535 U.S. 1074, 152 L.Ed.2d 856. Civil Rights 1457(7); Civil Rights 1762

6. Justiciability

Defendant had no standing to assert that prohibiting the sale of urine with the intent to defraud any drug test was an unwarranted intrusion upon privacy of those tested, as defendant was not a person who was tested. State v. Curtis (S.C. 2004) 356 S.C. 622, 591 S.E.2d 600, rehearing denied. Constitutional Law 727

Seller of urine substitution kits did not have standing to assert the Fourth Amendment rights of his customers in challenging statute criminalizing the sale of urine with the intent to defraud a drug screening test. Curtis v. State (S.C. 2001) 345 S.C. 557, 549 S.E.2d 591, rehearing denied, certiorari denied, certiorari denied 122 S.Ct. 1295, 535 U.S. 926, 152 L.Ed.2d 208, rehearing denied 122 S.Ct. 1954, 535 U.S. 1074, 152 L.Ed.2d 856. Searches And Seizures 164

7. Indictment

Indictment alleging that defendant knowingly and intentionally operated a business which sold urine with the intent to defraud a drug test was sufficient to charge defendant with violating the statute criminalizing the sale of urine with the intent to defraud a drug or alcohol test; fact that indictment did not allege that defendant personally sold urine with the intent to defraud was not fatal. State v. Curtis (S.C. 2004) 356 S.C. 622, 591 S.E.2d 600, rehearing denied. Disorderly Conduct 143

8. Questions for jury

Whether defendant who sold urine kits, which contained warming devices, temperature indicator devices, and instructions, with photos, as to how to affix kit to the body for “maximum concealment” and proper temperature transfer and maintenance, was selling such kits with the intent to defraud drug tests was question for jury in prosecution under statute criminalizing the sale of urine with the intent to defraud a drug or alcohol test. State v. Curtis (S.C. 2004) 356 S.C. 622, 591 S.E.2d 600, rehearing denied. Disorderly Conduct 149

Evidence that defendant owned the store where adulterants were for sale, invoices indicating that defendant had paid for them, and defendant’s advertisement, from which it could be inferred that defendant possessed the adulterants with the intent they would be used to defeat drug or alcohol tests, created issue for jury as to defendant’s guilt, in prosecution for possession of adulterants intended to defraud a urine drug screening test. State v. Rothschild (S.C. 2002) 351 S.C. 238, 569 S.E.2d 346. Disorderly Conduct 149

9. Review

Defendant, who argued at trial only that he was entitled to a directed verdict on the basis that he was not directly involved in the sale of urine kits and that there was no evidence the individual who purchased his urine kits had any intent to defraud a drug test, failed to preserve for appellate review claim that he was entitled to a directed verdict on the ground that there was no evidence the kits were sold with the intent to defraud. State v. Curtis (S.C. 2004) 356 S.C. 622, 591 S.E.2d 600, rehearing denied. Criminal Law 1043(3)

Defense counsel’s objection to inquiry concerning pornographic links on defendant’s website was insufficient to preserve challenge for appellate review, in prosecution for selling urine with the intent to defraud a drug or alcohol test, where counsel raised no objection to the inquiry until several pages of testimony concerning pornographic links had been taken. State v. Curtis (S.C. 2004) 356 S.C. 622, 591 S.E.2d 600, rehearing denied. Criminal Law 1037.1(4)

Defendant, having opened the door to line of inquiry concerning pornographic links on his website could not complain on appeal of an error related to such inquiry in prosecution for selling urine with the intent to defraud a drug or alcohol test; both defendant and webmaster for defendant’s business maintained that business did not allow pornographic materials or links on website. State v. Curtis (S.C. 2004) 356 S.C. 622, 591 S.E.2d 600, rehearing denied. Criminal Law 1137(8)

Order determining that statute criminalizing the sale of urine with the intent to defraud a drug screening test was constitutional and a legitimate exercise of the State’s police powers rendered moot appeal of seller of urine test substitution kits challenging denial of his motion for a temporary injunction against enforcement of statute; any decision by appellate court would not have had a practical legal effect on the temporary injunction. Curtis v. State (S.C. 2001) 345 S.C. 557, 549 S.E.2d 591, rehearing denied, certiorari denied, certiorari denied 122 S.Ct. 1295, 535 U.S. 926, 152 L.Ed.2d 208, rehearing denied 122 S.Ct. 1954, 535 U.S. 1074, 152 L.Ed.2d 856. Appeal And Error 781(1)

**SECTION 16‑13‑480.** Providing false identifications for use by unlawful aliens; penalty.

 Unless otherwise provided by law, it is unlawful for a person to make, issue, or sell, or offer to make, issue, or sell, a false, fictitious, fraudulent, or counterfeit picture identification that is for use by an alien who is unlawfully present in the United States. A person who violates this section is guilty of a felony, and, upon conviction, must be fined twenty‑five thousand dollars or imprisoned for not more than five years, or both.

HISTORY: 2011 Act No. 69, Section 15, eff January 1, 2012.

Library References

Aliens, Immigration, and Citizenship 774.

Westlaw Topic No. 24.

C.J.S. Aliens Sections 1563 to 1568, 1601 to 1604.

RESEARCH REFERENCES

ALR Library

75 ALR 6th 541 , Preemption of State Statute, Law, Ordinance, or Policy With Respect to Law Enforcement or Criminal Prosecution as to Aliens.

Encyclopedias

S.C. Jur. Aliens and Foreign Representatives Section 88, Civil Penalties for Document Fraud.

United States Supreme Court Annotations

Deportation or removal, federal law preempts most of Arizona immigration law, see Arizona v. U.S., 2012, 132 S.Ct. 2492, 567 U.S. 387, 183 L.Ed.2d 351, on remand 689 F.3d 1132. Aliens, Immigration, and Citizenship 103; States 18.43

NOTES OF DECISIONS

Injunctions 2

Validity 1

1. Validity

Immigration and Nationality Act (INA) provisions and federal regulations preempted provisions of newly‑adopted South Carolina immigration law related to alien registration documents and making, selling, and possession of counterfeit identification materials by persons unlawfully present in United States, where federal regulation of immigration was pervasive and comprehensive, alien registration and counterfeit identification materials were not areas traditionally regulated by states, South Carolina’s registration provision subjected persons lawfully present in United States to potential arrest, prosecution, and incarceration, and such arrests and prosecutions had potential to generate tensions with foreign nations. U.S. v. South Carolina, 2011, 840 F.Supp.2d 898, modified in part 906 F.Supp.2d 463, affirmed 720 F.3d 518. Aliens, Immigration, And Citizenship 103; States 18.43

2. Injunctions

United States was not likely to suffer irreparable harm if South Carolina was allowed to enforce its newly‑adopted immigration law provision, prohibiting making or selling of counterfeit identification documents for use by persons unlawfully present in United States, thus precluding preliminary injunction to enjoin state law’s enforcement, even though court found that federal regulations preempted state law, where state law did not necessarily involve arrest and prosecution of unlawfully present persons, and thus did not raise same foreign policy sensitivities raised by other sections of state law. U.S. v. South Carolina, 2011, 840 F.Supp.2d 898, modified in part 906 F.Supp.2d 463, affirmed 720 F.3d 518. Injunction 1496

ARTICLE 2

Personal Financial Security Act

**SECTION 16‑13‑500.** Citation of article.

 This article may be cited as the “Personal Financial Security Act”.

HISTORY: 2000 Act No. 305, Section 1.

Library References

False Pretenses 7(1).

Westlaw Topic No. 170.

C.J.S. False Pretenses Sections 9, 12, 15 to 16, 19, 39.

**SECTION 16‑13‑510.** Financial identity fraud or identity fraud; penalty.

 (A) It is unlawful for a person to commit the offense of financial identity fraud or identity fraud.

 (B) A person is guilty of financial identity fraud when the person, without the authorization or permission of another individual, and with the intent of unlawfully:

 (1) appropriating the financial resources of the other individual to the person’s own use or the use of a third party;

 (2) devising a scheme or artifice to defraud; or

 (3) obtaining money, property, or services by means of false or fraudulent pretenses, representations, or promises obtains or records identifying information which would assist in accessing the financial records of the other individual or accesses or attempts to access the financial resources of the other individual through the use of identifying information as defined in subsection (D).

 (C) A person is guilty of identity fraud when the person uses identifying information, as defined in subsection (D), of another individual for the purpose of obtaining employment or avoiding identification by a law enforcement officer, criminal justice agency, or another governmental agency, including, but not limited to, law enforcement, detention, and correctional agencies or facilities.

 (D) “Personal identifying information” includes, but is not limited to:

 (1) social security numbers;

 (2) driver’s license numbers or state identification card numbers issued instead of a driver’s license;

 (3) checking account numbers;

 (4) savings account numbers;

 (5) credit card numbers;

 (6) debit card numbers;

 (7) personal identification (PIN) numbers;

 (8) electronic identification numbers;

 (9) digital signatures;

 (10) dates of birth;

 (11) current or former names, including first and last names, middle and last names, or first, middle, and last names, but only when the names are used in combination with, and linked to, other identifying information provided in this section;

 (12) current or former addresses, but only when the addresses are used in combination with, and linked to, other identifying information provided in this section; or

 (13) other numbers, passwords, or information which may be used to access a person’s financial resources, numbers, or information issued by a governmental or regulatory entity that uniquely will identify an individual or an individual’s financial resources.

 (E) “Financial resources” includes:

 (1) existing money and financial wealth contained in a checking account, savings account, line of credit, or otherwise;

 (2) a pension plan, retirement fund, annuity, or other fund which makes payments monthly or periodically to the recipient; and

 (3) the establishment of a line of credit or an amount of debt whether by loan, credit card, or otherwise for the purpose of obtaining goods, services, or money.

 (F) A person who violates this section is guilty of a felony, and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both. The court may order restitution to the victim pursuant to the provisions of Section 17‑25‑322.

 (G) Venue for the prosecution of offenses pursuant to this section is in the county in which:

 (1) the victim resided at the time the information was obtained or used; or

 (2) the information is obtained or used.

 (H) In a prosecution for a violation of this section, the State is not required to establish and it is not a defense that some of the acts constituting the crime did not occur in this State or within one city, county, or local jurisdiction.

HISTORY: 2000 Act No. 305, Section 1; 2006 Act No. 350, Section 2, eff June 12, 2006; 2008 Act No. 190, Section 8, eff December 31, 2008; 2013 Act No. 15, Section 1, eff April 23, 2013.

Library References

False Pretenses 7(1), 54.

Westlaw Topic No. 170.

C.J.S. False Pretenses Sections 9, 12, 15 to 16, 19, 39, 93.

RESEARCH REFERENCES

Encyclopedias

74 Am. Jur. Proof of Facts 3d 63, Scams and Cons.

81 Am. Jur. Proof of Facts 3d 113, Identity Theft and Other Misuses of Credit and Debit Cards.

Treatises and Practice Aids

31 Causes of Action 2d 1, Cause of Action for Identity Theft.

United States Supreme Court Annotations

Identity theft, knowledge that identification belonged to another person, counterfeit identifications, see Flores‑Figueroa v. U.S., 2009, 129 S.Ct. 1886, 556 U.S. 646, 173 L.Ed.2d 853.

NOTES OF DECISIONS

Torts 1

1. Torts

South Carolina does not recognize the tort of negligent enablement of imposter fraud. Huggins v. Citibank, N.A. (S.C. 2003) 355 S.C. 329, 585 S.E.2d 275. Fraud 30

**SECTION 16‑13‑512.** Printing credit and debit card numbers on sales receipts; exceptions; penalties.

 (A) Except as provided in this section, a person, firm, partnership, association, corporation, limited liability company, or any other entity which accepts credit cards or debit cards for the transaction of business must not print on a receipt provided to the cardholder at the point of sale:

 (1) more than five digits of the credit card or debit card account number; and

 (2) the expiration date of the credit card or debit card.

 (B) This section does not apply to transactions in which the sole means of recording the cardholder’s credit card or debit card account number is by handwriting or by an imprint or copy of the credit card or debit card.

 (C)(1) A person that violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred fifty dollars for the first violation and one thousand dollars for each subsequent violation.

 (2) A person that knowingly and wilfully violates the provisions of this section is guilty of a Class F felony and, upon conviction, must be imprisoned not more than five years and fined not more than one thousand dollars, or both.

 (D) This section, in compliance with Public Law 108‑159, Section 113 of Title 1, is effective:

 (1) three years after its enactment as to a cash register or other machine or device that electronically prints receipts for credit card or debit card transactions and that is in use before January 1, 2005; or

 (2) one year after its enactment for those machines and devices first put into use on or after January 1, 2005.

HISTORY: 2008 Act No. 190, Section 6, eff December 31, 2008.

**SECTION 16‑13‑520.** Venue.

 In a criminal proceeding brought pursuant to this article, the crime is considered to have been committed in a county in which a part of the financial identity fraud took place, regardless of whether the defendant was ever actually in that county.

HISTORY: 2000 Act No. 305, Section 1.

Library References

Criminal Law 112(5).

Westlaw Topic No. 110.

**SECTION 16‑13‑525.** Financial identity fraud enabling unlawfully present alien to live or work in United States; penalties.

 (A) In addition to the penalties provided for in this chapter, a person who is convicted of, pleads guilty to, or enters into a plea of nolo contendere to financial identity fraud or identity fraud involving the false, fictitious, or fraudulent creation or use of documents that enable an alien who is unlawfully present in the United States to live or work in the United States, or to receive benefits administered by an agency or political subdivision of this State, must disgorge any benefit received or make restitution to the agency or political subdivision that administered the benefit or entitlement program, or both. A criminal charge pursuant to this chapter shall not preempt or preclude additional appropriate civil or criminal charges or penalties.

 (B) A person who suffers an ascertainable loss of money or property, real or personal, as a result of a conviction or plea to a violation of financial identity fraud or identity fraud involving a matter described in subsection (A), may bring an action individually, or in a representative capacity, to recover actual damages against any person convicted of the violation. If a court finds that a violation has been established, the court shall award three times the actual damages sustained and may provide such other relief as it considers necessary or proper. Upon the finding by the court of a violation, the court shall award to the person bringing this action pursuant to this section reasonable attorney’s fees and costs.

 (C) A person convicted of a violation of this subsection is jointly and severally liable for a loss suffered by a person or an agency or political subdivision of the State.

 (D)(1) It is unlawful for a person to display, cause or permit to be displayed, or have in his possession a false, fictitious, fraudulent, or counterfeit identity document including, but not limited to, a driver’s license or social security card for the purpose of offering proof of United States citizenship or classification by the United States as an alien lawfully admitted for temporary or permanent residence under federal immigration law.

 (2) A person who violates the provisions of this section:

 (a) for a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days; and

 (b) for a second offense or subsequent offenses, is guilty of a felony and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than five years.

 (E) A violation of the provisions of this section is considered a separate criminal offense and does not preclude prosecution for perjury pursuant to Section 16‑9‑10 in addition to prosecution pursuant to the provisions of this section.

 (F) In enforcing the terms of this section, no state officer shall attempt to make an independent judgment of an alien’s immigration status. State officials must verify any alien’s status with the federal government in accordance with 8 USC Section 1373(c).

HISTORY: 2008 Act No. 280, Section 10, eff June 4, 2008.

LAW REVIEW AND JOURNAL COMMENTARIES

Preemption and United States v. South Carolina: Undermining our nation’s border and the Constitution’s border between State and Federal sovereignty. Honorable George E. “Chip” Campsen, III, 65 S.C. L. Rev. 901 (Summer 2014).

**SECTION 16‑13‑530.** Exceptions from application of article.

 Nothing in this article may be construed to apply to:

 (1) the lawful acquisition and use of credit or other information in the course of a bona fide consumer or commercial transaction or in connection with an account by any financial institution or entity defined in or required to comply with the Federal Fair Credit Reporting Act, 15 U.S.C.A. Section 1681, or the Federal Gramm‑Leach‑Bliley Financial Modernization Act, 113 Stat. 1338;

 (2) the lawful, good faith exercise of a security interest or a right to offset exercised by a creditor, agency, or financial institution; or

 (3) the lawful, good faith compliance by a party when required by a warrant, levy, attachment, court order, or other judicial or administrative order, decree, or directive.

HISTORY: 2000 Act No. 305, Section 1.

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C.J.S. False Pretenses Sections 48 to 50.