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April 25, 1986

#50

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OPINION NO. 86-285

Honorable Doug Wood
State Representative
201 West Broadway
North Little Rock, Arkansas 72119

Dear Representative Wood:

This letter is in response to your request for an opinion on the following questions:

1. If there is no offense of shoplifting as defined by the Arkansas Criminal Code, can we create a presumption which gives rise to an offense of shoplifting?
2. Do the provisions of Ark. Stat. Ann. § 41-2251(c) and the presumption created by § 41-2202(2) apply to the larcenous acts of an employee?
3. If the Arkansas Criminal Code does not contain an offense of "shoplifting", per se, can Ark. Stat. Ann. § 41-2251(c) be used to establish probable cause for "shoplifting" when the statute applies to theft of property?
4. Can a defendant be lawfully arrested under a charge of theft of property using this presumption statute?

Although shoplifting is no longer a separate offense, it is still a manner or form of theft. In other words, the defendant may be convicted of theft if it is shown that he knowingly appropriated the property of another person with the purpose of depriving the owner thereof, through the act of shoplifting. The presumption in § 41-2202(2) gives rise to the offense of theft through the form of shoplifting.

Because the legislature entitled this statute the "shoplifting presumption" it is clear that it intended the presumption to apply only to customers who shoplift, and not to employees who commit larceny. Larceny by employees is still a separate manner of committing theft.

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Section 2251(c) does not establish probable cause for shoplifting. It merely provides that a person may be arrested for theft without a warrant upon probable cause to believe that the person has shoplifted. The use of the phrase "offense of shoplifting" is unfortunate, but it does not negate the power of the peace officer to make a warrantless arrest based on probable cause to believe that a theft by means of shoplifting has been committed.

Because of the specific reference to shoplifting, it is clear that section 2251(c) does not apply to employees who commit larceny.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Sandra Johnson-Buchanan.

Sincerely,

STEVE CLARK
Attorney General

SC:SJB:lvil the Arkansas Criminal Code does not contain an offense of "shoplifting", per se, see Ark. Stat. Ann. § 5-1-101. It is used to establish probable cause for "shoplifting" when the statute applies to theft of property

of theft of property using this resolution on discovery

A person who steals a person's property is guilty of theft. The Arkansas Criminal Code does not contain an offense of "shoplifting", per se, see Ark. Stat. Ann. § 5-1-101. It is used to establish probable cause for "shoplifting" when the statute applies to theft of property of the owner of the property. The Arkansas Criminal Code does not contain an offense of "shoplifting", per se, see Ark. Stat. Ann. § 5-1-101. It is used to establish probable cause for "shoplifting" when the statute applies to theft of property of the owner of the property.

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