

6-26-2022

The Carolina Court of Appeals  
The Supreme Court of South Carolina  
Clerk of Court of Beaufort South Carolina

Mr. Colin J Hamilton, Esquire  
Bar No. 104439, 14 Circuit  
Assistant Public Defender  
Post office Box 525  
1905 Duke Street, Room 210  
Beaufort, SC 29901

ORDER MOTION  
OF TERMINATION **RECEIVED**

JUN 29 2022

SC Court of Appeals

The State v. George Holmes, Appellate  
Appellate Case No. 2022-000728

Dear SCACR,

Big Complaint: Ineffective Assistant of Council - Creditability of  
Mr. Colin J Hamilton, Esq., Bar No. 104439, Assistant Public Defender 14<sup>th</sup> Circuit...  
As representing me, of my trial re Statute: SafeCracking 16-11-390, in general  
Miller v. State of SC, D.C.S.C. 1970, 309 F. Supp. 1287...  
Perjury and Subornation, when B.C.D.O., Affiant: Jonathan M Hewitt,  
At my Preliminary hearing On 2-1-2019, he committed Perjury 16-9-10,  
B.C.S.O. Jonathan M Hewitt, committed Perjury and Subornation,  
under Oath, 11.6 Oath: false statement, testimony, 12-24-70, Affidavit,  
Perjury generally 3:49, Nature of Preliminary hearing 21. On 2-1-2019,  
Creditability of Jonathan M Hewitt, at my trial On May 18, 2022, ...  
My Arrest Warrant #2018A0110200399, States, (non violent) Burglary 2<sup>nd</sup>  
degree, But the Jury trial convicted me, burglary 2<sup>nd</sup> degree (Violent)  
How?? Mr. Colin J Hamilton, Is Ineffective Assistant of Council, Also  
Motion by Charles W. Patrick, III, appointed Counsel, held on  
March 25, 2020, Order for my bond, stated I, George Holmes,  
shall be release on my own recognizance and Motion order  
for Competency to stand trial Evaluation Pursuant to  
STATE V. BLAIR

with kindest regards I'm ~~George~~ Holmes  
George Holmes  
Thanks

## 22 C.J.S. Criminal Procedure and Rights of Accused § 21

Corpus Juris Secundum March 2019 Update

### Criminal Procedure and Rights of the Accused

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; Kristina E. Mtrsic Biro, J.D., of the staff of the National Legal Research Group, Inc.; Elizabeth M. Boscak, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Paul M. Colloff, J.D.; Cecily Fehr, J.D.; John Glenn, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Luanne E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Glenda K. Harstad, J.D.; Janice Holben, J.D.; Alan J. Jacobs, J.D.; John Knappfien, J.D.; Julianna Frisch Kittelson, J.D.; Jack K. Levin, J.D.; William Lindsley, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Jeffrey J. Shampo, J.D.; and Eric C. Surette, J.D.

### Part One. Complaint, Jurisdiction, Venue, and Arrest; Investigation

#### I. Preliminary Matters: Complaint, Affidavit, Warrant, Hearing, and Commitment

#### D. Preliminary Hearing or Examination

##### 1. In General

### \* § 21. Nature of preliminary hearing

#### Topic Summary References Correlation Table

##### West's Key Number Digest

- West's Key Number Digest, Criminal Law § 21(4), 222.1

\* A preliminary hearing is not a trial, rather, it is a hearing to determine whether or not an accused probably committed a crime, and thus should be held over for trial or set free, as the facts warrant.

A "preliminary examination" is a public hearing conducted before a magistrate at which the prosecution and the defendant may present evidence.<sup>1</sup> Unlike a trial, a preliminary hearing is not a trial of the guilt or innocence of the accused,<sup>2</sup> rather, it is a hearing to determine whether an accused probably committed a crime.<sup>3</sup> The determination thereof is not a final judgment.<sup>4</sup>

Subject to the rights secured to a person accused of a crime by the provisions of the constitution, the legislature may in general provide for preliminary hearings or investigations,<sup>5</sup> but the rules that govern criminal pleading and the scope and import of trial issues and the relevancy of evidence are not applicable thereto.<sup>6</sup>

#### Purposes.

In general, a preliminary hearing serves a limited purpose: to determine if there is probable cause to believe that the defendant committed the crime charged,<sup>7</sup> so as to warrant further proceedings,<sup>8</sup> or to hold the accused for prosecution if warranted.<sup>9</sup>

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## § 21. Nature of preliminary hearing, 22 C.J.S. Criminal Procedure and Rights of...

Moreover, the preliminary hearing or examination is used to protect the accused who is unjustly or improperly charged being compelled to stand trial,<sup>10</sup> to ferret out groundless and improvident prosecutions,<sup>11</sup> to prevent the accused's release without probable cause,<sup>12</sup> to preserve the evidence and keep the witnesses within the control of the state, and to deter amount of bail<sup>13</sup> if the offense is bailable.<sup>14</sup>

On the other hand, it is not the purpose of a preliminary hearing to establish guilt or innocence,<sup>15</sup> since it is not a mini-trial and as such the defendant cannot assert a mistake of law defense to overcome the charged offense at a preliminary hearing. A preliminary examination is not available to the accused for the purpose of ascertaining in advance the evidence relied upon by the prosecution,<sup>16</sup> nor is a preliminary hearing the proper forum to choose between conflicting facts or inferences, or to test the state's evidence against evidence favorable to the defendant.<sup>17</sup> Although some discovery results as a by-product of a preliminary hearing,<sup>18</sup> discovery is not the purpose of the hearing.<sup>19</sup>

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#### Footnotes

1. Cal.—People v. Martinez, 22 Cal. 4th 750, 94 Cal. Rptr. 2d 381, 996 P.2d 32 (2000).
2. N.D.—State v. Foley, 2000 ND 91, 610 N.W.2d 49 (N.D. 2000).  
Pa.—Com. v. Sanchez, 623 Pa. 253, 82 A.3d 943 (2013).  
As to determination as to guilt or innocence of accused on preliminary examination, see § 32.  
Summary proceeding only  
A preliminary hearing as to probable cause is not a preliminary trial or a full evidentiary trial on the issue beyond a reasonable doubt; rather, it is intended to be a summary proceeding to determine essential or basic facts probably.  
Wis.—State v. Anderson, 2005 WI 54, 280 Wis. 2d 104, 695 N.W.2d 731 (2005).
3. N.D.—State v. Foley, 2000 ND 91, 610 N.W.2d 49 (N.D. 2000).  
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La.—State v. Naas, 409 So. 2d 535 (La. 1981).  
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Primary purpose of preliminary examination is to protect accused from hasty, improvident, or malicious prosecution and to discover whether there is substantial basis for bringing prosecution and further denying accused his right to liberty; upon determination that bind over is warranted on at least one count, that purpose has been served.  
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8. U.S.—Barber v. Page, 390 U.S. 719, 88 S. Ct. 1318, 20 L. Ed. 2d 255 (1968); Jaban v. U.S., 381 U.S. 214, 85 S.Ct. 1365, 14 L. Ed. 2d 345 (1965).
9. Wyo.—Messer v. State, 2004 WY 98, 96 P.3d 12 (Wyo. 2004).  
As to discharge of accused, generally, see § 39.

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Code of Laws of South Carolina 1976 Annotated  
Title 16. Crimes and Offenses  
Chapter 11. Offenses Against Property  
Article 5. Burglary, Housebreaking, Robbery and the like

Code 1976 § 16-11-390  
§ 16-11-390. Safecracking

PLEASE SEE  
Arrest Warrant: 2018A0710200400 16-11-0390

It is unlawful for a person to use explosives, tools, or any other implement in or about a safe used for keeping money or other valuables with intent to commit larceny or any other crime.

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

Credits

HISTORY: 1962 Code § 16-337; 1952 Code § 16-337; 1942 Code § 1150; 1932 Code § 1150; Cr. C. '22 § 44; Cr. C. '12 § 191; 1904 (14) 396; 1907 (25) 380; 1955 (49) 65; 1993 Act No. 184, § 172.

Notes of Decisions (10)

COPYRIGHT (C) 2019 BY THE STATE OF SOUTH CAROLINA  
Code 1976 § 16-11-390, SC ST § 16-11-390  
Current through 2019 Act No. 90, subject to technical revisions by the Code Commissioner as authorized by law before official publication.

Entitled Document 17 2019 Thomson Reuters. No claim to original U.S. Government Works.

I Mr. George Holmes did not commit the offense of Safecracking  
Dismiss  
In general indictment: 2018A0710200400 16-11-0390

GH It is not essential to constitute a safecracker that he shall be successful in his attempt to break open the safe. Miller State of S. C. (D.C.S.C. 1970) 309 F.Supp. 1287. George Holmes

GH "Safetampering" falls within the crime defined as "safecracking" in this section [ Code 1962 § 16-337 ]. Miller v. State of S. C. (D.C.S.C. 1970) 309 F.Supp. 1287. Burglary 2 George Holmes

GH Defendant's possession, following larceny of safe, of property of the nature stolen, with his admission to others that he obtained them from the safe in subject, were sufficient to sustain his conviction of the offense of safecracking. State of S. C. (S.C. 1975) 264 S.C. 468, 215 S.E.2d 905. Burglary 45

GH Use of a hammer to remove a safe in one county, although it was not opened until carried into a second county, constitutes a violation of this section [ Code 1962 § 16-337 ], such as to give a court of the first county jurisdiction over the case. Shelnut v. State (S.C. 1965) 247 S.C. 41, 145 S.E.2d 420.

GH The subject of the act from which this section [ Code 1962 § 16-337 ] is taken was expressed in the title thereof. State of S. C. (S.C. 1905) 74 S.C. 448, 54 S.E. 607.

Constitutional Issues

GH Ten year minimum sentence for safecracking with tools does not constitute cruel and unusual punishment. Stockton v. Leeke (S.C. 1977) 269 S.C. 459, 237 S.E.2d 896.

GH This section [ Code 1962 § 16-337 ] is not unconstitutional by reason of the fact that life imprisonment is directed upon conviction if the jury does not recommend mercy, and not less than ten years' imprisonment is directed when the jury recommends mercy. State v. Haulcomb (S.C. 1973) 260 S.C. 260, 195 S.E.2d 601, appeal dismissed 94 S.Ct. 229, 414 U.S. 886, 38 L.Ed.2d 134. George Holmes George Holm

GH The contention that this section [ Code 1962 § 16-337 ] is not sufficiently definite to place a person of common intellect on notice as to what is prohibited is clearly without merit. The offense is designated in bold-faced letters - "SAFECRACKING." State v. Haulcomb (S.C. 1973) 260 S.C. 260, 195 S.E.2d 601, appeal dismissed 94 S.Ct. 229, 414 U.S. 886, 38 L.Ed.2d 134. Larceny 2

GH Indictment 2018A0710200400 I'm Not guilty GH

GH Where an indictment on its face specifically sets forth the charge of safecracking as the fourth count, its plain language is not to be ignored merely because on the outside of the indictment the several counts are tabulated in a different order. Crady v. State (S.C. 1966) 248 S.C. 522, 151 S.E.2d 670.

Questions for Jury

GH In a prosecution for armed robbery and safecracking, the court improperly denied defendant's motion for directed verdict. George Holmes

STATE OF SOUTH CAROLINA )

COUNTY OF BEAUFORT )

INDICTMENT

2019GS0700040

At a Court of General Sessions, convened on April 18, 2019, the Grand Jurors of Beaufort County present upon their oath:

**Safecracking**

That in Beaufort County, South Carolina, on or about December 28, 2018, the Defendant, GEORGE HOLMES, did use explosives, tools, or other implement in or about a safe used for keeping money or other valuables with intent to commit larceny or another crime, all in violation of Section 16-11-390, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

FILED  
APR 18 2019

**WITNESSES**

Hewitt - BCSO

DOCKET NO. 2019GS0700040

The State of South Carolina  
County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

April Term 2019

I  
hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2018A0710200400

THE STATE

vs.

GEORGE HOLMES

ACTION OF GRAND JURY

Indictment For

Safecracking

SC Code: 16-11-390

CDR Code: 0141

**True Bill**

*Michael L.*

Foreperson of Grand Jury

Date: APR 18 2019

Defendant

VERDICT

Witness:

Foreperson of Petit Jury

Date:

INDICT

C.C.C. PLS. and G.S.

Certified - A True Copy

*Jerri Ann Rose*  
Jerri Ann Rose - Clerk of Court  
Beaufort County, SC - Jennifer Peacock

George Holmes #289114 C-2-A/21  
Kirkland R-N-E Center  
1344 Broad River Road  
Columbia, SC 29210



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JUN 29 2022

**SC Court of Appeals**

South Carolina Court of Appeals  
V. CLAIRE ALLEN Chief Clerk  
Post office Box 11629  
Columbia, South Carolina 29211

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JUL 28 2022

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