

6-22-2022

The Supreme Court of South Carolina
The South Carolina Court of Appeals
George Holmes, Petitioner, Appellate Case No. 2022-000728

v.
State of South Carolina, Respondent

RE: ORDER MOTION
TO BE RELEASED

Mr. Colin J Hamilton, Esquire
Bar No. 104439
Assistant Public Defender
Post Office Box 525
1905 Duke St, room 210
Beaufort SC 29901
14th Judicial Circuit

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JUN 24 2022

SC Court of Appeals

ORDER

Pursuant of Rule 267, SCACR, 2016a) of the SC Appellate Court Rules
RE: Creditability, Affidavit: Shall be Released... Witness, Statutes: Creditability,
SAFE Cracking 16-11-390, Notes of decisions (10) in general.
Jonathan M Hewitt, Commits, 2-50 Perjury and Subornation (16-9-10)
On 2-1-2019, At my Preliminary hearing, introduced the tape recording into
evidence, the Presiding Judge was Mark Francis Fitzgibbons, 3. Jeffrey Stephens,
was my Public Defender at Prelim hearing, State vs. Dunbar, 12-24-70,
Affidavit 3-49... 11-6 Oath, false statement, testimony, witnesses.
Transcript of Preliminary hearing § 21. Nature of Preliminary hearing at
Beaufort Magistrate, B.C.D.C. - Jonathan M Hewitt, 1621 Perjury generally,
Arrest Warrant: OF Burglary 2nd degree (non-violent) and See
order for Competency to Stand trial Evaluation Pursuant
to State vs. Blair as a (non-violent) burglary 2nd degree...
How is that nice... But the Jury trial convicts me of
burglary 2nd degree (violent) How???

Motion by Charles W Patrick, III, appointed Counsel March 25, 2020
Granting my Bond for released on my own recognizance as a
(non-violent) offense of burglary 2nd degree and Safe Cracking...

Thanks

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

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

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JUN 24 2022

SC Court of Appeals

The Honorable Carmen T. Mullen, Circuit Court Judge

Warrant No (s): 2018A0710200399, 2018A0710200400
Indictment No (s): 2019GS0700039, 2019GS0700040

STATE OF SOUTH CAROLINA,

Respondent.

v.

GEORGE HOLMES,

Appellant.

NOTICE OF APPEAL

George Holmes appeals his trial, conviction and sentence on the charges of Burglary - Second Degree (Violent), and Safecracking before the Honorable Carmen T. Mullen, Presiding Judge, Fourteenth Judicial Circuit. George Holmes also appeals the Denial of his Motion for Direct Verdict on May 18, 2022 before the Honorable Carmen T. Mullen, Presiding Judge, Fourteenth Judicial Circuit.

[SIGNATURE PAGE TO FOLLOW]

SC-JICRIM 2-50, Anderson, S.C. Requests to Charge - Criminal, § 2-50

Anderson's South Carolina Requests to Charge - Criminal, 2nd Ed.

Part II. Offenses

Ralph King Anderson, Jr.

2nd Edition, 2012

§ 2-50 Perjury and Subornation of Perjury (§ 16-9-10)

Section 16-9-10(A) of the South Carolina Code of Laws provides:

(1) It is unlawful for a person to willfully give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.

(2) It is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

Subsection (C) provides:

A person may be convicted under this section if he induces, procures, or persuades another person to commit perjury or if he commits perjury by his own act, consent, or agreement.

* The crime of subornation of perjury consists of two essential elements:

(1) procuring or inducing one to commit perjury; and

(2) commission of perjury.

However, one may be convicted of an attempt to commit this, even if the witness allegedly suborned did not actually swear falsely.

• S.C. Code Ann. § 16-9-10(A) (2003); *see also* S.C. Code Ann. § 16-9-10(B) (2003) ("(1) A person who violates the provisions of subsection (A)(1) is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both. (2) A person who violates the provisions of subsection (A)(2) is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not less than one hundred dollars, or both.")

• S.C. Code Ann. § 16-9-10(C) (2003).

* • *Collins v. Doe*, 343 S.C. 119, 539 S.E.2d 62 (Ct. App. 2000), *rev'd on other grounds*, 352 S.C. 462, 574 S.E.2d 739 (2002) ("... Giving false testimony at trial constitutes the felony of perjury and subjects the perjurer to a fine and/or up to five years imprisonment.") (*citing* S.C. Code Ann. § 16-9-10 (Supp. 1999)).

• *In re Diggs*, 344 S.C. 397, 403, 544 S.E.2d 628, 632 (2001) ("... [A]ny attorney who provides false information on a notarized CLE [Continuing Legal Education] compliance report commits a false swearing to a tribunal, which constitutes perjury."); *State v. Stanley*, 365 S.C. 24, 35, 615 S.E.2d 455, 460 (Ct. App. 2005) ("Giving false information in a document or report required by the laws of this State is perjury." (*citing* S.C. Code Ann. § 16-9-10(A)(2) (2003)); *see also* *State v. Davis*, 354 S.C. 348, 580 S.E.2d 778 (Ct. App. 2003) (discussing whether allegedly exculpatory information was intentionally or recklessly withheld from the magistrate, rendering a search warrant defective); *State v. Jones*, 331 S.C. 228, 500 S.E.2d 499 (Ct. App. 1998) (discussing affiant's false statement as basis for finding

insufficient probable cause).

• *Burns v. Clayton*, 237 S.C. 316, 117 S.E.2d 300, 308-09 (1960) ("... Although the crime of subornation of perjury was not consummated, the attempt to commit it was in itself a crime, being an act done with the intention of preventing the due course of justice.")

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

STATE OF SOUTH CAROLINA

-vs-

GEORGE HOLMES

Defendant.

IN THE COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT

WARRANT #s:

2018A0710200399 and 2018A0710200400

ORDER GRANTING DEFENDANT'S
MOTION FOR BOND

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SC Court of Appeals

This matter is before me pursuant to a motion by Charles W. Patrick, III, appointed counsel for the Defendant, George Holmes, for an own recognizance bond on the above referenced cases. Following a phone conference hearing held on March 25, 2020, I ordered that, should Mr. Holmes provide a stable living address, he would be allowed release on his own recognizance pending trial in the above reference matter. Mr. Holmes's permanent address is:

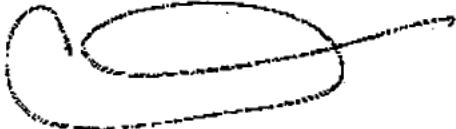
George Holmes
39 Samuel Lane
St. Helena Island, SC 29920

Bond is hereby ordered as follows:

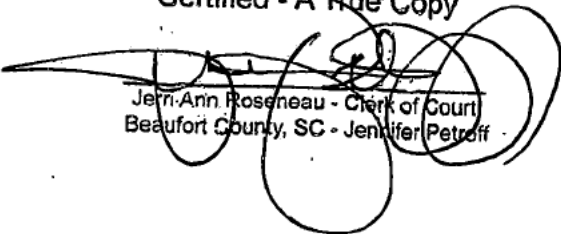
1. Mr. Holmes shall be released on his own recognizance.
2. Mr. Holmes shall reside at 39 Samuel Lane, St. Helena Island, SC 29920 until the resolution of his case and shall be on house arrest.
3. Mr. Holmes may only leave this residence for court appearances, meetings with his attorney, and for his employment.

AND IT IS SO ORDERED.

March 26, 2020


Judge Carmen T. Mullen

Certified - A True Copy


Jerri-Ann Roseneau - Clerk of Court
Beaufort County, SC - Jennifer Petroff

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

Currentness

PLEASE SEE

Arrest Warrant: 2018A0710200400

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) 580; 1955 (49) 65; 1993 Act No. 184, § 172.

Notes of Decisions (10)

Code 1976 § 16-11-390, SC ST § 16-11-390

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I Mr. George Holmes did not commit the offense of Safecracking

Notes Of Decisions (10)

Dismiss indictment: 2018A0710200400 16-11-6390

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

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

GH

Defendant's possession, following is any of safe, of property of the nature stolen, with his admission to others that he had obtained them from the safe in subject, were sufficient to sustain his conviction of the offense of safecracking. State v. Blue (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, constituted 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 v. O'Day (S.C. 1906) 74 S.C. 448, 54 S.E. 607.

GH

Constitutional Issues

GH

Ten year minimum sentence for safecracking with tools does not constitute cruel and unusual punishment. Stockton v. Leake (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 does recommend 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.

GH

The contention that this section [Code 1962 § 16-337] is not sufficiently definite to place a person of common intelligence 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

Indictment

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

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. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Elizabeth M. Boser, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Paul M. Colloff, J.D.; Cecily Falar, J.D.; John Glenn, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Glenda K. Harad, J.D.; Janice Holben, J.D.; Alan J. Jacobs, J.D.; John Kimpfle, 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 Onkes, 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 § 207(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.¹ Unlike a trial, a preliminary hearing is not a trial of the guilt or innocence of the accused,² rather, it is a hearing to determine whether an accused probably committed a crime.³ The determination thereof is not a final judgment.⁴

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,⁵ but the rules that govern criminal pleading and the scope and import of trial issues and the relevancy of evidence are not applicable thereto.⁶

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,⁷ so as to warrant further proceedings,⁸ or to hold the accused for prosecution if warranted.⁹

Moreover, the preliminary hearing or examination is used to protect the accused who is unjustly or improperly charged from being compelled to stand trial,¹⁰ to ferret out groundless and improvident prosecutions,¹¹ to prevent the accused's detention without probable cause,¹² to preserve the evidence and keep the witnesses within the control of the state, and to determine the amount of bail¹³ if the offense is bailable.¹⁴

On the other hand, it is not the purpose of a preliminary hearing to establish guilt or innocence,¹⁵ since it is not a mini-trial,¹⁶ and as such the defendant cannot assert a mistake of law defense to overcome the charged offense at a preliminary hearing.¹⁷ A preliminary examination is not available to the accused for the purpose of ascertaining in advance the evidence relied on by the prosecution,¹⁸ nor is a preliminary hearing the proper forum to choose between conflicting facts or inferences, or to weigh the state's evidence against evidence favorable to the defendant.¹⁹ Although some discovery results as a by-product of the preliminary hearing,²⁰ discovery is not the purpose of the hearing.²¹

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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 of guilt beyond a reasonable doubt; rather, it is intended to be a summary proceeding to determine essential or basic facts as to probability.
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).
Idaho—State v. Schall, 157 Idaho 488, 337 P.3d 647 (2014).
W. Va.—State v. Davis, 232 W. Va. 398, 752 S.E.2d 429 (2013).

⁴ Ariz.—State ex rel. Mahoney v. Stevens, 79 Ariz. 298, 288 P.2d 1077 (1955).
Wyo.—State v. Spears, 76 Wyo. 82, 300 P.2d 551 (1956).

⁵ Or.—State v. Pirkey, 203 Or. 697, 281 P.2d 698 (1955).
Statute valid
La.—State v. Naas, 409 So. 2d 535 (La. 1981).
Tex.—Pierce v. State, 636 S.W.2d 734 (Tex. App. Corpus Christi 1982).

⁶ § 32.

⁷ Idaho—State v. Schall, 157 Idaho 488, 337 P.3d 647 (2014).
Mich.—People v. Perkins, 468 Mich. 448, 662 N.W.2d 727 (2003).
W. Va.—State v. Davis, 232 W. Va. 398, 752 S.E.2d 429 (2013).
Felony
Wis.—State v. Anderson, 2005 WI 54, 280 Wis. 2d 104, 695 N.W.2d 731 (2005).

Protection of accused
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.
Wis.—State v. Williams, 198 Wis. 2d 516, 544 N.W.2d 406 (1996).

⁸ U.S.—Barber v. Page, 390 U.S. 719, 88 S. Ct. 1318, 20 L. Ed. 2d 255 (1968); Jaben 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.

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

As to holding accused, generally, see § 40.

Minn.—State v. Koenig, 666 N.W.2d 366 (Minn. 2003).

N.D.—State v. Foley, 2000 ND 91, 610 N.W.2d 49 (N.D. 2000).

N.D.—State v. Foley, 2000 ND 91, 610 N.W.2d 49 (N.D. 2000).
Kan.—State v. Jones, 290 Kan. 373, 228 P.3d 394 (2010).

N.J.—State v. Spindel, 24 N.J. 395, 132 A.2d 291 (1957).
Wyo.—State v. Spears, 76 Wyo. 82, 300 P.2d 551 (1956).

N.J.—State v. Spindel, 24 N.J. 395, 132 A.2d 291 (1957).

N.D.—State v. Buchholz, 2005 ND 30, 692 N.W.2d 105 (N.D. 2005).
Pa.—Com. v. Sanchez, 623 Pa. 253, 82 A.3d 943 (2013).

Wyo.—Messer v. State, 2004 WY 98, 96 P.3d 12 (Wyo. 2004).

As to examining magistrate as not acting in the capacity of a court in determining the guilt or innocence of accused, see § 32.

Colo.—People v. Fry, 92 P.3d 970 (Colo. 2004).

N.D.—State v. Buchholz, 2005 ND 30, 692 N.W.2d 105 (N.D. 2005).

Colo.—Blevins v. Tihonovich, 728 P.2d 732 (Colo. 1986).

Pa.—Com. v. Sanchez, 623 Pa. 253, 82 A.3d 943 (2013).

As to information as to charge, generally, see § 32.

Motion to suppress

Preliminary hearing is inappropriate forum for deciding important issues involved in motion to suppress.

Wyo.—State v. Carter, 714 P.2d 1217 (Wyo. 1986).

Wis.—State v. Anderson, 2005 WI 54, 280 Wis. 2d 104, 695 N.W.2d 731 (2005).

W. Va.—State v. Davis, 232 W. Va. 398, 752 S.E.2d 429 (2013).

Wyo.—Messer v. State, 2004 WY 98, 96 P.3d 12 (Wyo. 2004).

Colo.—People v. Fry, 92 P.3d 970 (Colo. 2004).

W. Va.—State v. Davis, 232 W. Va. 398, 752 S.E.2d 429 (2013).

Wyo.—Messer v. State, 2004 WY 98, 96 P.3d 12 (Wyo. 2004).

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