

6-20-2022

State of South Carolina
County of Beaufort

The State of South Carolina

vs.

George Holmes
Defendant

IN The Court of General Sessions
Fourteenth Judicial Circuit

INDICTMENT NO's: 2019-GS-07-00039

Appeal Court 2019-GS-07-00040

The Supreme Court of S.C.

ORDER MOTION Shall
BE RELEASED

ORDER

This matter is before me/the Honorable Judge of the Court of General Session of the 14th Judicial Circuit, Appeal from Beaufort County, Pursuant to this Motion by Defendant, George Holmes, ORDER Motion Shall be Released... Following the grounds and Statutes of, Creditability, Kania vs. Atlas Wire? Cable Co, 214. S.C. 232. Code, 1942 § 529, 551, Affidavit, Jonathan M Hewitt, Affidavit: 162/, PerJury generally, 11.6. Oath, false, statements, Affidavit's: § 12-24-70, Affidavit: 3, 49 - UCC lien Satisfaction, 36-9-111 § 2-50, PerJury and Subornation of PerJury (16-9-10) Safe Cracking § 16-11-390, in general...

Motion Order by Charles W. Patrick, III, appointed counsel, RE: Release on my own recognizance, being that the Charge of Burglary Second Degree, was non-violent, Now that I'm conviction at trial with a Burglary^{2nd} degree (Violent) How???

AND IT IS SO ORDERED.

6-20-2022

with the kindest regards I'm

Thanks,
George Holmes
George Holmes

RECEIVED

JUN 24 2022
SC Court of Appeals

RECEIVED

JUN 24 2022
S.C. SUPREME COURT

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. Musc Birt, J.D.; of the staff of the National Legal Research Group, Inc.; Elizabeth M. Bosek, J.D.; M. Elaine Buccieri, J.D.; James Budwalter, J.D.; Paul M. Coltoff, J.D.; Cecily Fuhr, 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. Harinal, J.D.; Janice Holben, J.D.; Alan J. Jacobs, J.D.; John Kimpfler, J.D.; Julinna Frisch Kittelson, J.D.; Jack K. Levin, J.D.; William Lindsay, 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. Swette, 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. Unlike a trial, a preliminary hearing is not a trial of the guilt or innocence of the accused; rather, it is a hearing to determine whether an accused probably committed a crime. The determination thereof is not a final judgment.

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

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

Moreover, the preliminary hearing or examination is used to protect the accused who is unjustly or improperly charged from being compelled to stand trial, to ferret out groundless and improvident prosecutions, to prevent the accused's detentive amount of bail if the offense is bailable.

On the other hand, it is not the purpose of a preliminary hearing to establish guilt or innocence, 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 on in the prosecution, 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. Although some discovery results as a by-product of the preliminary hearing, discovery is not the purpose of the hearing.

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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).
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- 5 Or.—State v. Pirkey, 203 Or. 697, 281 P.2d 698 (1955). Statute valid Ia.—State v. Nans, 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.

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 (Cl. 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 (Cl. 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 (Cl. 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 (Cl. 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)

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
Bill

WITNESSES

Héwitt - 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

THE STATE

vs.

GEORGE HOLMES

ARREST WARRANT NUMBER

2018A0710200400

Indictment For

Safecracking

SC Code: 16-11-390

CDR Code: 0141

ACTION OF GRAND JURY

True Bill

Defendant

Foreperson of Grand Jury

Date: APR 18 2019

Witness:

VERDICT

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

Foreperson of Petit Jury

Date:
INDICT

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

16-11-0390

I'm Not guilty

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
Current through 2019 Act No. 90, subject to technical revisions by the Code Commissioner as authorized by law before official publication.

End of Document

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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 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 a robbery of a 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. Sheinut 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.

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 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

GH Indictment 2018A0710200400 I'm Not guilty 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

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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 detentive amount of bail¹² if the offense is bailable.¹³

On the other hand, it is not the purpose of a preliminary hearing to establish guilt or innocence,¹⁴ 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 on by the prosecution,¹⁵ 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.¹⁶ Although some discovery results as a by-product of the preliminary hearing,¹⁷ discovery is not the purpose of the hearing.¹⁸

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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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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

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]

George Holmes #289114
Kirkland R-ME Center
4344 Broad River Rd
Columbia, SC 29210



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