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June 28, 2022

RECEIVED

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

JUL 25 2022

George Holmes  
Inmate ID No.: 289114  
Kirkland Correctional Center  
4344 Broad River Road  
Columbia, SC 29210

SC Court of Appeals

Rule 2 Preliminary Hearing

Rule 2

Dear Mr. Holmes,

I am writing to you in response to your letter dated June 1, 2022. Regarding your request for your sentencing sheets, I have attached a copy to this letter. In regard to your request for the transcripts of from your trial, the Office of Appellate Defense has ordered those in preparation and review for your appeal from trial. Your attorneys with SC Appellate Defense should be able to provide you a copy of the trial transcript.

As it pertains to your request for the preliminary hearing recording, we looked into that before and during your trial. The Beaufort Magistrate Court does not maintain recordings from hearings that took place that long ago. I was not assigned to your case at that time.

Please see: Under Oath, False Statement 321. Nature of Preliminary hearing.  
Ineffective Assistant of Council 32 C.S.S. Criminal Procedure 3 Rights Accused

George Holmes

Respectfully,

George Holmes

Rule 2 Preliminary Hearing

Colin J. Hamilton, Esq.

If Beaufort Magistrate Court does not maintain recording from Preliminary hearing On 2-1-2019, when the incident occurred. It's Tampering with Evidence-F

Wow...

DNA

Thanks

With kindest Regards I'm George Holmes  
George Holmes

Rule 2

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 Bro. J.D.; of the staff of the National Legal Research Group, Inc.; Elizabeth M. Borek, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Paul M. Celisoff, J.D.; Cecily Fabe, 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. Harstad, J.D.; James Holton, J.D.; Alan J. Jacobs, J.D.; John Kimpfen, J.D.; Julianna Prisch Kittelson, J.D.; Jack K. Levin, J.D.; William Lindsay, J.D.; Anne L. Malley, J.D.; J.L.M., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Jeffrey J. Shamps, 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

George Holmes  
George Holmes  
Preliminary Hearings  
Who? ( )

Rule 2

§ 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

~~§ 207(4), 222.1~~

advised

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, or 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 detention without probable cause, to preserve the evidence and keep the witnesses within the control of the state, and to determine the 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 by 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.

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.

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.—Blavins 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).

~~Recording the Proceeding. The preliminary hearing must be recorded by a court reporter or by a suitable recording device. A recording of the proceeding may be made available to any party upon request. A copy of the recording and transcript may be provided to any party upon request and upon any payments required by applicable Judicial Conference regulations.~~



~~George Holmes~~

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

Rule 2  
Preliminary Hearing

§ 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.

George Holmes  
George Holmes

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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~~George Holmes~~

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Rule 2  
Preliminary hearing

George Holmes George Holmes

George Holmes #289114  
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Ridgeland, SC 29936

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JUL 25 2022

**SC Court of Appeals**

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