

RECEIVED

AUG 25 2022

SC Court of Appeals

8-18-2022

RE: State v. George, Appellate Case No. 2022-0007
Holmes

RECEIVED

ORDER

OCT 03 2022

SC Court of Appeals

On 2-1-2019, At my Preliminary hearing at Beaufort Magistrate Court
The Presiding Judge was Mark Francis Fitzgibbons, Jeffrey Stephens, was
My Public Defender, 14th Judicial Circuit B.C.S.O. Jonathan M Hewitt
When the incident occur these are the witness

I Mr. George Holmes, I'd^{like} to introduced the tape recording of my
Preliminary hearing B.C.S.O. Jonathan M Hewitt, has committed
PerJury? Subornation of PerJury (§16-9-10) Anderson SC, Request to.
By giving false misleading incomplete testimony Under Oath in
the Courts of record, Judicial, administrative -N- regulatory
Proceeding in this state Affiant false statement as basis for finding
insufficient Probable Cause. STATED, Yes I George Holmes, did
crack the safe open. I'd like you to look into ARREST WARRANT#:
2018A0710200400, Safecracking §16-11-390, SC ST Ingeneral:
Miller v. State of SC / D.C.S.C. 1970 / 309 F. Supp. 1287

§21. Nature of Preliminary hearing, 22 C.J.S. Criminal Procedure
Rights of In writing requesting Copies of Transcripts of Trial -N- Prelim hearing
Thanks

With kindest Regards I'm George Holmes
George Holmes
George Holmes

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 22 DAY OF August
2022
Dorothy Seagerson
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES 10-1-25

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OCT 03 2022

S.C. SUPREME COURT

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,

States Non violent

v.

*I did not
Commit the*

Respondent.

offense of Safe Cracking

Appellant.

GEORGE HOLMES,

*George Holmes
George Holmes*

Indictment # 2019GS070039, states/
Burglary 2nd non-violent

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.

*How can the trial give me
a greater offense of
Burglary 2nd violent??*

*George Holmes
George Holmes*

RECEIVED

AUG 11 2022

S.C. SUPREME COURT

[SIGNATURE PAGE TO FOLLOW]

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

ARREST WARRANT

2018A0710200400

STATE OF SOUTH CAROLINA

County/ Municipality of

Beaufort

THE STATE 183324618
against

George Holmes

Address:

Phone: SSN:
 Sex: M Race: B Height: 5 7 Weight: 240
 DL State: SC DL #:
 DOB: Agency ORI #: SC0070000
 Prosecuting Agency: Beaufort County Sheriff's Office
 Prosecuting Officer: Jonathan M Hewitt - S00393
 Offense: Burglary / Safecracking

Offense Code: 0141
 Code/Ordinance Sec: 16-11-0390

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of
 The accused
 is to be arrested and brought before me to be
 dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
 defendant George Holmes
 on 12/28/18
 Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Beaufort County General Sessions
 PO Box 1128
 102 Ribaut Road, Rm. 208
 Beaufort, SC 29901-1128

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Beaufort

Personally appeared before me the affiant Jonathan M Hewitt who
 being duly sworn deposes and says that defendant George Holmes
 did within this county and state on or about 12/28/2018 violate the criminal laws of the
 State of South Carolina (or ordinance of County/ Municipality of Beaufort)
 in the following particulars:

DESCRIPTION OF OFFENSE: Burglary / Safecracking

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

That on December 28th, 2018, at approximately 0128 hours, the defendant, one George Holmes did knowingly, willingly and
 unlawfully violate the laws of the State of South Carolina in that he did commit the offense of Safecracking. The defendant
 unlawfully broke into the Navy Federal Credit Union ATM. Upon gaining entry attempted to force entry into the ATM box to steal
 the currency located within. The incident was captured on surveillance footage, Holmes was positively identified and a BCSO
 Tracking Team was recalled and tracked to the location he was found. This incident did occur at 102 Sea Island Parkway, Beaufort,
 Beaufort County, South Carolina and within the jurisdiction of the Beaufort County Sheriff's Office. The Affiant and others are
 witness to the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Beaufort

Affiant's Address 2001 Duke St
 Beaufort, SC 29902-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/28/2018 defendant George Holmes
 did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of Beaufort) as set forth below.

DESCRIPTION OF OFFENSE: Burglary / Safecracking

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
 her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
 soon thereafter as is practicable
 Sworn to and subscribed before me

on 12/28/2018

Signature of Issuing Judge

Mark Francis Fitzgibbons

Judge Code: 7060

Judge's Address 104 Ribaut Rd
 Beaufort, SC 29901-2207

Judge's Telephone (843)255-5700

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

9 Statutes: Intent
 10 Statutes: Plain language; Plain ordinary
 Common, or literal meaning
 11 Statutes: In general; factors considered

Certified - A True Copy

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

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

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

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

WESTLAW © 2019 Thomson Reuters. No claim to original U.S. Government Works.

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

Notes Of Decisions (10) 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
George Holmes

GH Defendant's possession, following recovery 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
George Holmes

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. 107.

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.
George Holmes George Holmes

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

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AUG 08 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF GENERAL SESSIONS

Indictment No.(s): 2019GS0700039-40,
2019GS0700547

A/Warrant No.(s): 2018A0710200399-400,
2019A0710400105

The State of South Carolina,

Plaintiff,

v.

ORDER FOR COMPETENCY TO STAND
TRIAL EVALUATION PURSUANT TO

STATE V. BLAIR

EVALUATION BY
(Select Only One)

Department of Mental Health (Mental
Illness)

OR

Department of Disabilities and Special
Needs (Intellectual Disability or Related Disability)

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

GEORGE HOLMES,
Defendant.

How can the trial
charge me a Greater
offense of Burglary 2nd
Violent??????

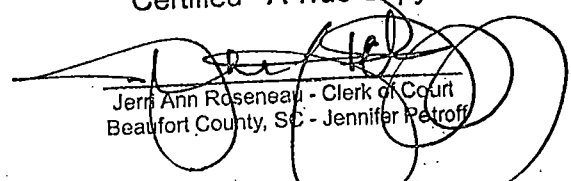
This matter is before me for an order requiring defendant, George Holmes, charged with one (1) count of Burglary, 2nd Degree (Non-Violent), one (1) count of Safecracking, and one (1) count of Indecent Exposure, to submit to an evaluation for competency to stand trial pursuant to State v. Blair, 275 S.C. 529; 273 S.E.2d 536 (1981) and S.C. Code Ann. § 44-23-410 (1976).

BASIS FOR ORDER. I have considered the showing made in support of the motion requesting this evaluation and have reason to believe defendant may lack the competency to understand the criminal proceedings or to assist with the defense as a result of a lack of mental competence.

This order is issued for the following reasons: Due to Defendant's extensive mental health history and as a result there is the concern that client appears to not be able to understand or assist attorney in his own defense.

THEREFORE, IT IS ORDERED: Defendant shall be examined and observed at an appropriate facility by two examiners of the Department of Mental Health if suspected of having a mental illness or by two examiners designated by the Department of Disabilities and Special Needs if suspected of having an intellectual disability or a related disability, to render an opinion whether defendant is competent to stand trial.

Certified - A True Copy


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

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**

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:

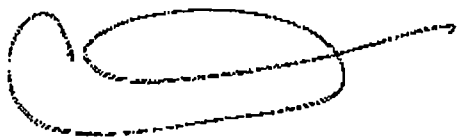
George Holmes
39 Samuel Lane
St. Helena Island, SC 29920

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.

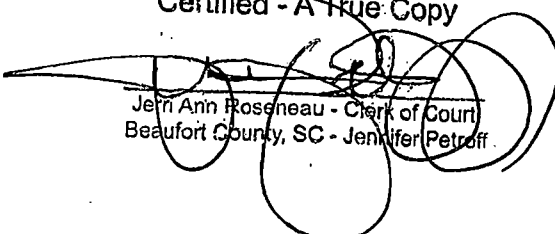
AND IT IS SO ORDERED.

March 26, 2020



Judge Carmen T. Mullen

Certified - A True Copy



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

MAR 25 PM 2:19
JENN ANN ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
STATE OF SOUTH CAROLINA)
)
vs.)
)
GEORGE HOLMES,)
Defendant)

IN THE COURT OF GENERAL SESSIONS
Indictment No(s): 2019GS070039-40
Warrant No(s): 2018A0710200399-40

101831

CONFLICT ORDER

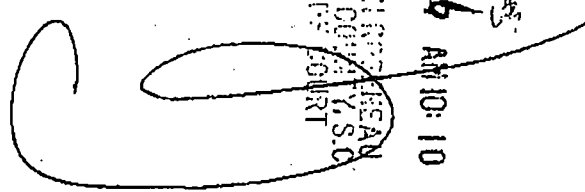
GH George Holmes 6-13-2022

The 14th Circuit Public Defender's Office has been appointed to represent the Defendant in the above-captioned matters. *Please dismiss it's No way*

The Defendant is charged with Burglary (non-violent) 2nd Degree and Safecracking. The Defendant filed a Motion to Relieve Counsel on February 11, 2020. This hearing was heard on February 26, 2020. *wow*

IT IS THEREFORE ORDERED that the 14th Circuit Public Defender's Office is relieved of the Representation of the Defendant, and Contract Attorney, Charles Patrick, is appointed to represent the Defendant.

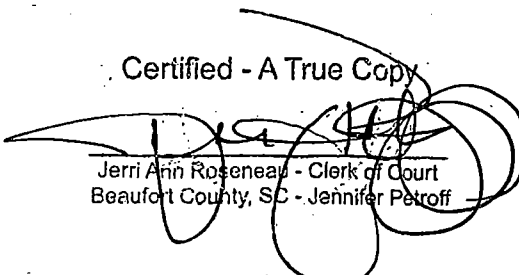
IT IS SO ORDERED,


The Honorable Carmen T. Mullen
Presiding Judge
Fourteenth Judicial Circuit

Beaufort, South Carolina

February 26, 2020

Certified - A True Copy


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

2018A0710200399

STATE OF SOUTH CAROLINA

County/ Municipality of

Beaufort

THE STATE

against

18S324616

George Holmes

Address:

Sex: M Race: B Height: 5 7 Weight: 240
State: SC DL #:

Agency ORI #: SC0070000
Securing Agency: Beaufort County Sheriff's Office
Securing Officer: Jonathan M Hewitt - S00393
Offense: Burglary / Burglary (Non-Violent) - Second degree

Offense Code: 0080
Fel/Ordinance Sec: 16-11-0312

Warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of

The accused to be arrested and brought before me to be
t with according to the law.

(L.S.)

Signature of Judge

RETURN

Copy of this arrest warrant was delivered to
defendant George Holmes

12/28/18
[Signature]
Signature of Constable/Law Enforcement Officer

JRN WARRANT TO:
Beaufort County General Sessions
PO Box 1128
102 Ribaut Road, Rm. 208
Beaufort, SC 299011128

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA

County/ Municipality of

Beaufort

AFFIDAVIT

DEFENDANT COPY

Fern Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant Jonathan M Hewitt
being duly sworn deposes and says that defendant George Holmes
did within this county and state on or about 12/28/2018
State of South Carolina (or ordinance of County/ Municipality of Beaufort)
in the following particulars: violate the criminal laws of the

DESCRIPTION OF OFFENSE: Burglary / Burglary (Non-Violent) - Second degree

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That on December 28th, 2018, at approximately 0128 hours, the defendant, one George Holmes did knowingly, willingly and
unlawfully violate the laws of the State of South Carolina in that he did commit the offense of Burglary in the 2nd Degree. The
defendant unlawfully forced into the Navy Federal Credit Union ATM. He did so by using a crow bar to break through the outside
door. Upon gaining entry attempted to force entry into the ATM box in an attempt to steal the currency located within. The incident
was captured on surveillance footage, Holmes was positively identified and a BCSO Tracking Team was recalled and tracked to the
location he was found. This incident did occur at 102 Sea Island Parkway, Beaufort, Beaufort County, South Carolina and within the
jurisdiction of the Beaufort County Sheriff's Office. The Affiant and others are witness to the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Beaufort

Affiant's Address 2001 Duke St

Beaufort, SC 29902-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/28/2018 defendant George Holmes
did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of Beaufort) as set forth below:

DESCRIPTION OF OFFENSE: Burglary / Burglary (Non-Violent) - Second degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 12/28/2018

[Signature]
Signature of Issuing Judge
Mark Francis Fitzgibbons
Judge Code: 7060

(L.S.)

Judge's Address 104 Ribaut Rd

Beaufort, SC 29901-2207

Judge's Telephone (843)255-5700

Issuing Court: Magistrate Municipal Circuit

Office of the Public Defender
Fourteenth Judicial Circuit
Stephanie Smart-Gittings, Circuit Defender



BEAUFORT COUNTY
 Human Services Building
 1905 Duke Street, Room 210
 Post Office Box 525
 Beaufort, SC 29902
 (843) 255-5805 (Phone)
 (843) 255-9494 (Fax)

ALLENDALE, HAMPTON & JASPER COUNTIES
 1 Courthouse Square
 80 Elm Street, Room 133
 Post Office Box 506
 Hampton, SC 29924
 (803) 914-2240 (Phone)

COLLETON COUNTY
 319 N. Lucas Street
 Walterboro, SC 29488
 (843) 549-1633 (Phone)
 (843) 549-9543 (Fax)

June 28, 2022

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

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

Rule 2 Preliminary Hearing

Dear Mr. Holmes,

Rule 2 Preliminary Hearing

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.

my Preliminary hearing

Must be recording Facts UGH

George Holmes Not True

Not True

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 Ineffective Assistant of Council

§ 21. Nature of Preliminary hearing, 22 C.S.S. Criminal Procedure? Rights Accused

George Holmes

Respectfully,

George Holmes

Rule 2 Preliminary Hearing

Colin J. Hamilton, Esq.

Rule 2

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

Wow...

DNA

Thanks

With kindest Regards I'm *George Holmes*
 George Holmes

Rule 2 Preliminary Hearing

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. Ammendola, J.D.; Joseph Bassano, J.D.; Krishna E. Anuse Bano, J.D., of the staff of the National Legal Research Group, Inc.; Elizabeth M. Bosck, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Paul M. Collaff, 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.; Lonne E. Griffith, Jr., J.D.; Heanor L. Grosman, J.D., of the staff of the National Legal Research Group, Inc.; Glenda K. Harnad, J.D.; Janice Holben, J.D.; Alan J. Jacobs, J.D.; John Kimpfen, J.D.; Julianna Frisch Kittelson, J.D.; Jack K. Levin, J.D.; William Lindsay, J.D.; Anne E. Melley, J.D.; L.L.M., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Jeffrey J. Shampe, 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

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

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. Rule 2 Preliminary Hearing

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

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.—Cont. v. Sanel, 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.

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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)

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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.

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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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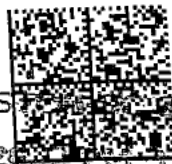
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