

309 F.Supp. 1287

United States District Court, D. South Carolina, Columbia Division.

Arthur Miller and John N. Johnson, Petitioners,

v.

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State of South Carolina et al. Respondents.

Civ. A. No. 70-2,

MAR 01 2023

Fed. 17, 1970

SC Court of Appeals

Attorneys and Law Firms

*1288 Daniel R. McLeod, Atty. Gen., Emmett H. Clair, Asst. Atty. Gen., Columbia, S.C.

OPINION and ORDER

⑤ Such reason apparently was never conveyed to appointed counsel, who would undoubtedly have been relieved to have been release from representation; nor did the petitioner explain how he expected to pay such counsel. There is perhaps an implication in the record that in not raising the plea that, since the petitioners had not actually succeeded in opening the safe involved in their prosecution, they could not be guilty of 'safecracking', only of, to use the words of one of the petitioners, 'safetampering'. However, it has been authoritatively held, in the construction of the South Carolina 'safecracking' statute, 'It is not essential to constitute a safe cracking/er that he shall be successful in his attempt to break open the safe.'

State v. O'Day (1906) 74 S.C. 448, 450, 54 S.E. 607, 608

See, also, Shelnut v. State (1965) 247 S.C. 41, 45, 145 S.E. 2d 420; cf.,

United States ex rel. Sadler v. Pennsylvania (D.C. Pa. 1969) 306 F.Supp. 102 106

With kindest regards I'm

Thanks

George Holmes

George Holmes

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MAR 01 2023

SC Court of Appeals

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

ARREST WARRANT

2018A0710200400

STATE OF SOUTH CAROLINA

County/ Municipality of

Beaufort

THE STATE 18S324618 against

George Holmes

Address:

Phone: SSN: Sex: M Race: B Date of Birth: 7 Weight: 240 DL State: 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 on 12/28/18

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

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: County Magistrate Municipal Circuit

ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL

of Statutes: Intent
0 Statutes: Plain language, Plain ordinary, Common, or literal meaning
1/2 Statutes: In general, factors considered

Certified - A True Copy

Jerri Ann Rosebeau - Clerk of Court Beaufort County, SC - Jennifer Pettif

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
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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 the offense of Safecracking
Notes Of Decisions (10)
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 larceny 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. 607.

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.
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
George Holmes

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. Cady 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

5

3-24-2019

APPEAL

RE: Motion to dismiss indictment: 2018A0710200400; because of Denial of Speedy trial; Lack of Prosecution; Failure to bring indictment in next term; Tape recording of February 1 2019 of my Preliminary hearing at Beaufort Magistrate.

APPEAL 6-13-2022 G.H.

Jeffery Stephens

~~George Holmes~~

TO: ~~Courtney Gibbes~~ - Public defender - Lauren Heath Carroway; Judges of General Sessions, Mullen, Buckner, Goldsmith, John & Cooper Clerk of Court & SC Commission of indigent defense... The SC Commission of Lawyers Conduct & Chief Justice Issac M. Stone III, Solicitor, 14th Judicial Circuit

Complaint. On February 1 2019, At my Preliminary hearing Beaufort Magistrate

The Presiding Judge was Mark Francis Fitzgibbons

on February 1 2019, Ofc Jonathan M Hewitt - B.C.S.O

Proof of witness alleged lies by stating that the safe was crack open, I'd like to introduced the tape into evidence of specific facts, Why Ofc Jonathan M Hewitt testimony is not sufficient or isn't trialable or appropriate to support any convictions of indictment: 2018A0710200400

The evidence of the tape recording of the witness statement I Demand for Speedy trial or dismissal of Indictments: 2018A0710200400...

6-13-2022

^{-N-} 2018A0710200399...

Thanks

With kind regards for your time I'm

~~George Holmes~~
George Holmes

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JUN 16 2022

S.C. SUPREME COURT

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JUN 16 2022

SC Court of Appeals

0-30 YEARS

STATE

GEORGE HOLMES

INDICTMENT/CASE#: 2019GSO700040

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BEAUFORT

STATE

INDICTMENT/CASE#: 2019GS0700040

VS.

GEORGE HOLMES

A/W#: 2018A0710200400

AKA:

Date of Offense: 12/28/2018

Race: Black Sex: Male Age: 34

S.C. Code §: 16-11-390

DOB: SS#: [REDACTED]

CDR Code #: 0141

Address:

City, State, Zip:

SENTENCE SHEET

DL#* SID#

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Safecracking I did Not Crack No Safe open George Holmes

In violation of § 16-11-390 of the S.C. Code of Laws, bearing CDR Code # 0141

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Correction County Detention Center,

for a determinate term of 20 days/months/years/Time Served Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of 15 days/months/years/Time Served and or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with **probation** for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc.

505 days/months

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

SCCA/217 (07/2021)

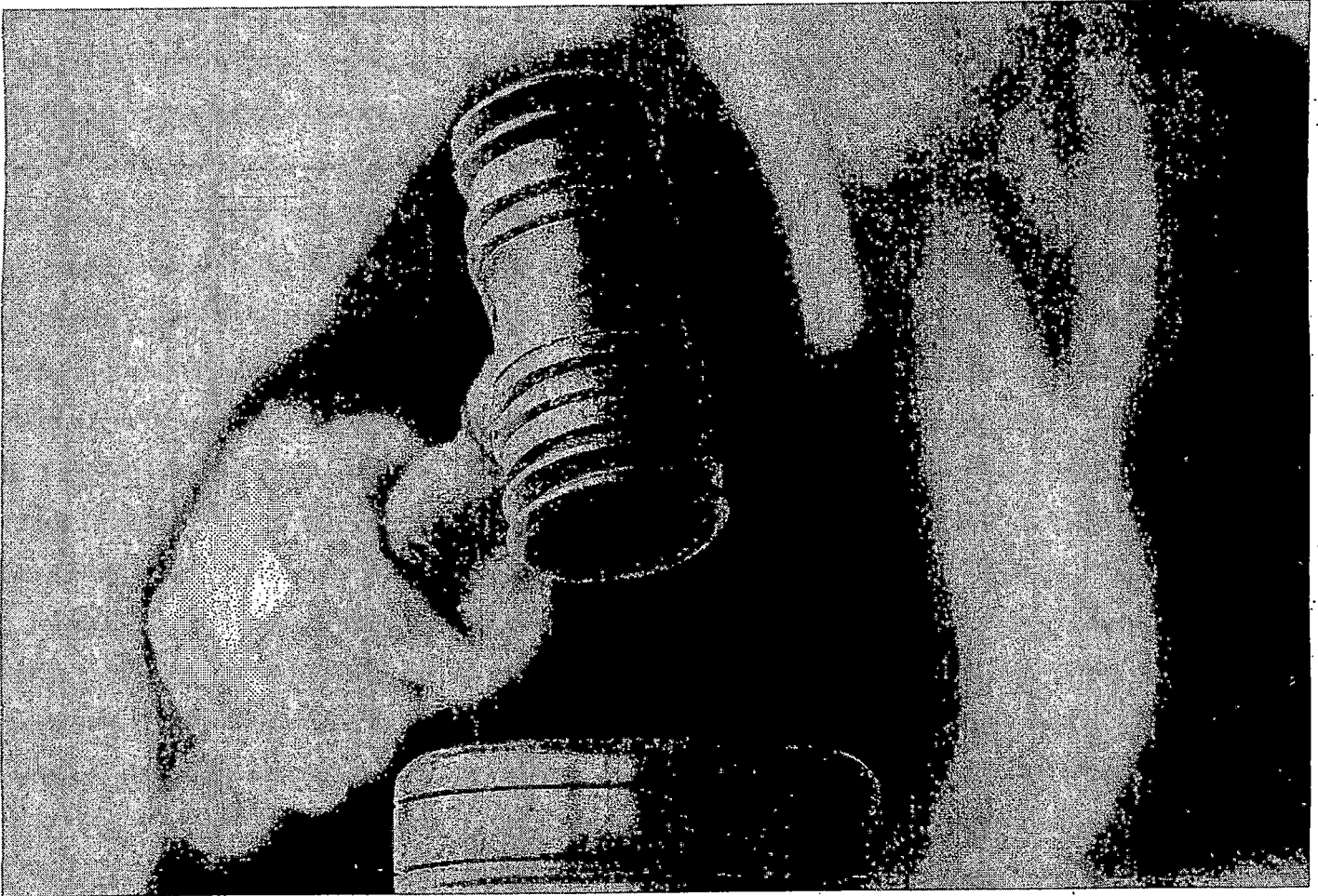
Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Jennifer Petroff

https://www.postandcourier.com/news/new-ethics-rule-requires-prosecutors-to-turn-over-evidence-in-wrongful-convictions/article_6c475e8c-0023-11ec-b011-c7ea65359e06.html

New ethics rule requires prosecutors to turn over evidence in wrongful convictions

BY STEVE GARRISON SGARRISON@POSTANDCOURIER.COM

AUG 18, 2021



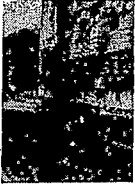
ISTOCK

Defendants wrongfully convicted of a crime in South Carolina have an unexpected new ally: prosecutors.

Under changes made last week to the S.C. Rules of Professional Conduct, prosecutors are required to disclose evidence of innocence discovered after a defendant is convicted of a crime.

South Carolina joins about two dozen other states in adopting such ethics rules for prosecutors, which were first developed by the American Bar Association in 2008.

Some states, including North Carolina and Arizona, have gone further, requiring all attorneys to disclose credible and material evidence of a wrongful conviction to the defendant or his or her attorney.



NEWS

SC Batman faces dark nights in prison as caped crusader fights drug charge

BY GLENN SMITH GSMITH@POSTANDCOURIER.COM

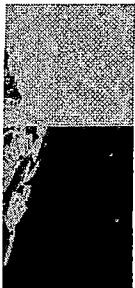
John Freeman, professor emeritus for the University of South Carolina School of Law, said the new rules emphasize the special role prosecutors play in pursuing justice.

“The prosecutor’s job is to see that the right thing is done,” Freeman said. “And to protect the public by seeing that justice is as fair as it possibly can be. Not to put people in jail.”

Freeman said the rules eliminate ambiguity regarding a prosecutor’s responsibilities when new evidence is unearthed that casts significant doubt on a prior conviction.

Ninth Circuit Solicitor Scarlett Wilson said she supported the rule change.

“I think the rule is good and basically ‘codifies’ what good prosecutors do already,” she said.



UNCOVERED

South Carolina politicians blow off their ethics fines with few consequencesBY AVERY G. WILKS AND JOSEPH CRANNEY AWILKS@POSTANDCOURIER.COM
JCRANNEY@POSTANDCOURIER.COM 13 MIN TO READ

Under the new rules, when a prosecutor becomes aware of “credible, material” evidence that indicates a defendant was wrongfully convicted, the prosecutor is required to disclose that evidence to the defendant, or the defendant’s attorney, as well as the chief prosecutor in the jurisdiction where the conviction was obtained.

A prosecutor who knows of “clear and convincing” evidence of a wrongful conviction in his or her jurisdiction has an ethical obligation to remedy the conviction, the rules state.

Prosecutors will need to determine on a case-by-case basis whether newly discovered evidence requires disclosure, Freeman said, but the rule requires they give serious thought to new evidence.

The new rule also provides hope for wrongfully convicted defendants who have otherwise exhausted their right to appeal, Freeman said.



NEWS

Law enforcement missteps in Paul Murdaugh boat crash case captured in new recordings

BY THAD MOORE AND STEPHEN HOBBS TMOORE@POSTANDCOURIER.COM
SHOBBS@POSTANDCOURIER.COM

“What this says, basically, is that so long as there is a possibility of proof surfacing that shows that the guy is innocent, it ain’t over,” Freeman said. “And, frankly, isn’t that the way it should be?”

More than 2,800 defendants have been exonerated of crimes they did not commit since 1989 in the United States, including nine defendants in South Carolina, according to the National Registry of Exonerations.

Reach Steve Garrison 843-607-1052. Follow him on Twitter @SteveGarrisonDT.

STEVE GARRISON

Steve Garrison covers breaking news and public safety. He’s a native of Chicago who previously covered courts and crime in Wisconsin, New Mexico and Indiana. He studied journalism at the University of Wisconsin-Milwaukee and the University of Missouri.

George Holmes #289114
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Bishopville SC 29010

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MAR 01 2023

SC Court of Appeals

South Carolina Court of Appeals
Jenny Abbott Kitching, CLERK
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