

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

Arthur Miller and John N. Johnson, Petitioners,

RECEIVED

v.
State of South Carolina et al. Respondents.

MAR 06 2023

Civ. A. No. 70-2,

Fed. 17, 1970

SC Court of Appeals

Attorneys and Law firms

*1238 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 released 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 crackinger 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

3-1-2023

Arthur Miller and John N. Johnson, Petitioners,
State of South Carolina et al. Respondents.

United States District Court, D. South Carolina,
Columbia Division, Fed 17, 1970. 309 F. Supp. 1287
(Approx. 8 pages) Civ. A. No. 70-2

5) Such reason apparently was never conveyed to appointed counsel, who would undoubtedly have been relieved to have been released from representation; nor did the petitioner explain how he expected to pay such counsel. There is perhaps an implication in the record that the appointed counsel failed adequately to protect the petitioners right 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 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. It is thus clear that 'safetampering' in Section 16-337 of the South Carolina Code.

George Holmes

George Holmes

3

APPEAL

3-24-2019

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
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 Isaac 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 Indictment: 2018A0710200400...
Rule 38.

6-13-2022

2018^{-N-}A0710200399...

Thanks

With kind regards for your time I'm

George Holmes
George Holmes

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JUN 16 2022

S.C. SUPREME COURT

RECEIVED

JUN 16 2022

SC Court of Appeals

The State v. George Holmes, Appellate Case No. 2018-000728

Code of Laws of South Carolina 1976 Annotated

Title 16: Crimes and Offenses

Chapter 33: 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

16-11-8390

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

Notes Of Decisions (10)

In general indictment: 2018A0710200400 16-11-8390

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 "Safecracking" falls within the crime defined as "burglary" 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 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

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. Shelmut 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

GH Indictment 2018A0710200400 I'm Not guilty GH

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.

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

ARREST WARRANT

2018A0710200400

STATE OF SOUTH CAROLINA
 County/ Municipality of
Beaufort

THE STATE 18S324616
 against
George Holmes

Address: _____
 Phone: _____ SSN: _____
 Sex: **M** Race: **B** Height: **5 7** Weight: **240**
 DL State: **SC** DL #: _____
 DOB: _____ Agency Unit #: **SC0070000**
 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: _____

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
Beaufort)

AFFIDAVIT ORIGINAL Form Approved by S.C. Attorney General April 21, 2003 SCCA111

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 _____

RETURN

A copy of this arrest warrant was delivered to defendant **George Holmes** on **12/28/18**

Signature of Constable/Law Enforcement Officer _____

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 (L.S.) _____
Mark Francis Fitzgibbons
 Judge Code: **7060**

Judge's Address **104 Ribaut Rd**
Beaufort, SC 29901-2207
 Judge's Telephone **(843)255-3700**

Issuing Court: Magistrate Municipal Circuit

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

ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL

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

Certified - A True Copy
 Jarri Ann Rosebeau - Clerk of Court
 Beaufort County, SC - Jennifer Patten

2018A0710200399

STATE OF SOUTH CAROLINA

County/ Municipality of

Beaufort

THE STATE
against 18S334616

George Holmes

Sex: M Race: B Height: 5 SSN: 7 Weight: 240
Date of Birth: SC DL #: 0080

Agency ORI #: SC0070000

Issuing Agency: Beaufort County Sheriffs Office
Issuing Officer: Jonathan M Hewitt - S00393

Offense: Burglary / Burglary (Non-Violent) - Second degree

Case Code: 0080
Ordinance Sec: 16-11-0312

Warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of

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

(L.S.)
Signature of Judge

RETURN
Copy of this arrest warrant was delivered to defendant George Holmes on 12/28/18
[Signature]
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

DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA
 County/ Municipality of

Beaufort
Personally appeared before me the affiant
being duly sworn deposes and says that defendant
did within this county and state on or about
State of South Carolina (or ordinance of
in the following particulars:

Jonathan M Hewitt
George Holmes who

12/28/2018
County/ Municipality of Beaufort

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, he 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.

STATE OF SOUTH CAROLINA
 County/ Municipality of
Beaufort

Signature of Affiant
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 of Issuing Judge (L.S.)
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

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

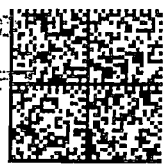
AFFIDAVIT

DEFENDANT COPY

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

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Lee CI-F-2-2121
990 Wisack Hwy
Bishopville SC 29010

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