

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 09 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

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

**ARREST WARRANT**

**2018A0710200400**

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

THE STATE 18S124618  
 against

**George Holmes**

Address:

Phone: SSN: [REDACTED]  
 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

**RETURN**

A copy of this arrest warrant was delivered to defendant on 12/28/2018 at 102 Ribaut Road, Rm. 208, Beaufort, SC 29901-1228

Signature of Constable/Law Enforcement Officer

**RETURN WARRANT TO:**

Beaufort County General Sessions  
 PO Box 1128  
 102 Ribaut Road, Rm. 208  
 Beaufort, SC 29901-1228

**ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL**

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

**AFFIDAVIT** ORIGINAL Form Approved by S.C. Attorney General April 21, 2003 SCGA 111

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 (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

**ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL**

3 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 Perrett

2018A0710200399

STATE OF SOUTH CAROLINA

County/  Municipality of

Beaufort

THE STATE  
against 18S324616

George Holmes

Charge:

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

Agency ORI #: SC0070000

Issuing Agency: Beaufort County Sheriff's Office  
Issuing Officer: Jonathan M Hewitt - S00393

Charge: 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  
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  
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

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 entry 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] (L.S.)  
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

DEFENDANT COPY 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

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

Code of Laws of South Carolina 1976 Annotated  
Title 16: Crimes and Offenses  
Chapter 21: Offenses Against Property  
Article 5: Burglary, Housebreaking, Robbery and the like

PLEASE SEE

Arrest Warrant: 2018A0710200400

Code 1976 § 16-11-390  
§ 16-11-390. Safecracking

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.  
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I Mr. George Holmes did not commit the offense of Safecracking  
Dismiss  
in general indictment: 2018A0710200400 16-11-0390

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.

"Safecracking" 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

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

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.

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

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.

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

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

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

In a prosecution for armed robbery and safecracking, the court improperly denied defendant's motion for directed verdict. WESTLAW © 2019 Thomson Reuters. No claim to original U.S. Government Works.

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# 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 Gibbs~~ - 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, 14<sup>th</sup> 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

Rule 38.

of Indictments: 2018A0710200400...

6-13-2022

<sup>-N-</sup>  
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

RECEIVED

JUN 16 2022

SC Court of Appeals

3-1-2023

Arthur Miller and John M. 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

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.

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

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

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MAR 09 2013  
SC Court of Appeals

South Carolina Court of Appeals  
Jenny Abbott Kitchings, Clerk  
Post office Box 11629  
Columbia South Carolina 29211

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