

309 F.Supp. 1287

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

Arthur Miller and John N. Johnson, Petitioners,

v.  
State of South Carolina et al. Respondents.

Civ. A. No. 70-2,

Fed. 17, 1970

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APR 13 2023

S.C. SUPREME COURT

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 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 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

With kindest regards I'm

Thanks  
~~George Holmes~~  
George Holmes

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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 189324618

against

**George Holmes**

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_

Sex: **M** Race: **B** Height: **5 7** Weight: **240**

DL State: \_\_\_\_\_ # \_\_\_\_\_

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: \_\_\_\_\_

STATE OF SOUTH CAROLINA )

County/  Municipality of \_\_\_\_\_ )

**Beaufort** )

**AFFIDAVIT** **ORIGINAL**

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** )

(L.S.) )

Signature of Issuing Judge \_\_\_\_\_ )

**Mark Francis Fitzgibbons** )

Judge's Address **104 Ribaut Rd**

**Beaufort, SC 29901-2207**

Judge's Telephone **(843)255-5700**

Issuing Court:  Magistrate  Municipal  Circuit

Judge Code: **7060**

**ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL**

9 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 Peroff

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 GH

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)

COPYRIGHT (C) 2019 BY THE STATE OF SOUTH CAROLINA  
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 the offense of Safecracking  
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. 407.

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. Haucomb (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. Haucomb (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. Brady 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

0-30 YEARS

STATE GEORGE HOLMES INDICTMENT/CASE#: 2019GSO700040

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )  
 )  
STATE )  
 )  
VS. )  
 )  
GEORGE HOLMES )  
AKA: )  
Race: Black Sex: Male Age: 34 )  
DOB: ) SS#: [REDACTED] )  
Address: )  
 )  
City, State, Zip: )  
DL#\* ) SID# )

IN THE COURT OF GENERAL SESSIONS  
INDICTMENT/CASE#: 2019GSO700040  
AW#: 2018A0710200400  
Date of Offense: 12/28/2018  
S.C. Code §: 16-11-390  
CDR Code #: 0141

SENTENCE SHEET

\*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 1<sup>st</sup> or CSC w/minor 3<sup>rd</sup>)

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.

*[Signature]*  
Jerrin Roseneau - Clerk of Court  
Beaufort County, SC - Jennifer Petroff

George Holmes #289114  
Lee CI/F-2-2121  
990 Wisacky Hwy  
Bishopville, SC 29010

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SC Court of Appeals

The Supreme Court of South Carolina  
Patricia A. Howard, CLERK OF COURT  
Post office Box 11330  
Columbia, South Carolina 29211

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