

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.

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

RECEIVED  
AUG 17 2023  
SC Court of Appeals

WESTLAW © 2018 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 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. 2287. 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. 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. 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.

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

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.

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

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUES ON APPEAL .....1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS .....3

ARGUMENT

1.

~~The trial judge erred~~ by denying Appellant’s motion for a directed verdict for the offense of second degree burglary where Appellant allegedly entered a standalone structure housing an automated teller machine (ATM), which is not a “building” as intended by the legislature for purposes of S.C. Code Ann. § 16-11-312(B)(3).....5

2.

~~The trial judge erred~~ by denying Appellant’s motion for a directed verdict for the offense of safecracking where the state alleged Appellant attempted to pry open an automated teller machine (ATM) since an ATM does not constitute “a safe used for keeping money or other valuables” as intended by the legislature for purposes of S.C. Code Ann. § 16-11-390. ....9

3.

~~The trial judge erred~~ by denying Appellant’s motion to relieve counsel and proceed *pro se* without conducting the proper inquiry pursuant to ~~Foretta v. California, 242 U.S. 806 (1975)~~ in violation of Appellant’s federal and state constitutional rights..... 12

CONCLUSION.....17

25. However, Appellant was "not satisfied." He asserted, "It's not looking right at all." Tr. 126, ll. 5-7.

The judge then inquired whether Appellant was under the influence of any drugs or alcohol. Appellant responded, "No, ma'am" and again stated that he was "~~not satisfied with his [counsel's] service.~~" The following colloquy then took place:

THE COURT: Sir, if you want him to be relieved, I can entertain that. But we're still going forward with the trial and you would have to represent yourself.

~~MR. HOLMES: I'll represent myself. Mental health and all - let's represent myself. And let the Lord Jesus, I'll represent myself. I don't want his service. I'll represent myself.~~

MR. HAMILTON [Defense Counsel]: It would be against the advice of -

THE COURT: Counsel, obviously. Mr. Holmes, we need to go forward. We're in the middle of your trial, sir. You have not been to law school. You don't know the rules of evidence and you will do better having the assistance of counsel.

~~MR. HOLMES: God is all - I don't want his service.~~ This is not going right.

MR. HAMILTON: I'd like to reserve the right that Mr. Holmes can re-raise this motion at a time in the future if he so chooses.

THE COURT: That's fine. That's fine. Okay. Let's bring the jury in.

Tr. 126, l. 12 - 127, l. 8 (emphasis added).

The judge then entered the courtroom and testimony resumed. Tr. 127, ll. 9-12. ~~The judge never entertained Appellant's motion to relieve counsel and represent himself nor did she conduct a Faretta colloquy.~~

### Standard of Review

"Whether a defendant has knowingly, intelligently, and voluntarily waived his right to counsel is a mixed question of law and fact which appellate courts review de novo." State v. Samuel, 422 S.C. 596, 602, 813 S.E.2d 487, 490 (2018) (citing United States v. Lopez-Osuna,

CONCLUSION

Based on the foregoing argument, this Court should direct a verdict of acquittal for the offenses of second degree burglary and safecracking. In the alternative, Appellant respectfully requests this Court reverse his convictions and remand for a new trial.

Respectfully submitted,

~~/s/ Brian M. Caudy~~  
\_\_\_\_\_  
~~Brian M. Caudy~~  
~~Appellate Defender~~

ATTORNEY FOR APPELLANT

~~This 19th day of April 2020,~~

3)

# APPEAL

5-21-2019

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.

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, 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 of Indictment: 2018A0710200400...

**RECEIVED**

SEP 14 2022

SC Court of Appeals

6-13-2022

2018A0710200399...

Thanks

With kind regards for your time I'm

George Holmes  
George Holmes

**RECEIVED**

SEP 14 2022

S.C. SUPREME COURT

**RECEIVED**

JUN 16 2022

S.C. SUPREME COURT

**RECEIVED**

JUN 16 2022

SC Court of Appeals

12-5-22

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

ORDER MOTION  
TO BE RELEASED

Warrant No. (s) 2018AD710200399, 2018AD710200400  
Indictment No. (s) 2019GS0700039, 2019GS0700040

ORDER

The Circuit Court applied the wrong Standard of review, and under the Correct Standard of review. Please See:

Arrest Warrant No. 2018AD710200399, States "Non-violent" burglary 2nd degree, Conflict ORDER: on February 26, 2020. Stated Defendant, George Holmes, is charged with Burglary (non-violent) 2nd degree, "Non-violent" offense. Motion by Charles W. Patrick, III, On March 25, 2020, Order Granting Defendant Motion for Bond is hereby ordered as follows: George Holmes, shall be released on his own recognizance; shall be on house arrest; order for Competency to stand trial Evaluation Pursuant to STATE v. BLAIR. States "George Holmes, charged with one (1) Count of Burglary 2nd degree (non violent) Please See: Summons No. 607774 Defendant's COPY incident Report #188324616. May 18, 2022. The Trial Convicted of Burglary 2nd degree (violent) Sentence Sheet and Notice of Appeal Shows (violent).

The Circuit Court applied the wrong Standard of review and under the Correct Standard of review.

CREDIBILITY: OF B.C.S.O. Jonathan M Hewitt, 2-1-2019.

ACQUITTAL: That the evidence is insufficient to support a Conviction.

with kindest Regards I'm <sup>Thanks,</sup> ~~George~~ Holmes

3-1-2023

Arthur Miller and John N. Johnson, Petitioners,

State of South Carolina et al. Respondents.

RECEIVED  
USDC CLERK, COLUMBIA, SC  
2023 APR 12 PM 12:14

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

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*

**NOTICE OF APPEAL**  
*Indictment # 2019GS0700039, states  
Burglary 2<sup>nd</sup> non-violent*

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 2<sup>nd</sup> violent??*

*George Holmes  
George Holmes*

The Carolina Court of Appeals  
The Supreme Court of South Carolina  
Clerk of Court of Beaufort South Carolina

Mr. Colin J Hamilton, Esquire  
Bar No. 104439, 14 Circuit  
Assistant Public Defender  
Post office Box 525  
1905 Duke Street, Room 210  
Beaufort, SC 29901

ORDER MOTION  
OF TERMINATION **RECEIVED**

JUN 29 2022

SC Court of Appeals

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

Dear SCACR,

Big Complaint: Ineffective Assistant of Council - Creditability of  
Mr. Colin J Hamilton, Esq., Bar No. 104439, Assistant Public Defender 14<sup>th</sup> Circuit...  
As representing me, of my trial - Statute: Safe Cracking 16-11-390, in general  
Miller v. State of SC, D.C.S.C. 1970, 309 F. Supp. 1287...  
Perjury and Subornation, When B.C.D.O., Affiant: Jonathan M Hewitt,  
At my Preliminary hearing On 2-1-2019, he committed Perjury 16-9-10,  
B.C.S.O. Jonathan M Hewitt, Committed Perjury and Subornation,  
Under Oath, Oath, false statement, testimony, Affidavit,  
Perjury generally, Nature of Preliminary hearing 21. On 2-1-2019,  
Creditability of Jonathan M Hewitt, at my trial On May 18, 2022, ...  
My Arrest Warrant #2018A0110200399, States, (non violent) Burglary 2<sup>nd</sup>  
degree, But the Jury trial Convicted me, burglary 2<sup>nd</sup> degree (Violent)  
How?? Mr. Colin J Hamilton, Is Ineffective Assistant of Council, Also  
Motion by Charles W. Patrick, III, appointed Counsel, held on  
March 25, 2020, order for my bond, Stated I, George Holmes,  
shall be release on my own recognizance and Motion order  
for Competency to Stand trial Evaluation Pursuant to  
STATE V. BLAIR

with kindest regards I'm <sup>Thanks</sup> 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

189324618

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 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 Judge's Address 104 Ribaut Rd  
 \_\_\_\_\_ (L.S.) \_\_\_\_\_ Beaufort, SC 29901-2207

Signature of Issuing Judge Mark Francis Fitzgibbons Judge's Telephone (843)255-3700

Judge Code: 7060 Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL 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 Rosejeau - Clerk of Court  
 Beaufort County, SC - Jennifer Peroff

George Holmes #289114  
Lee CI/F-7-85  
990 Wisacky Highway  
Bishopville, SC 29010

IMS

RECEIVED

AUG 17 2023

SC Court of Appeals

~~George Holmes #289114~~  
~~Lee CI/F-7-85~~  
~~990 Wisacky Highway~~  
~~Bishopville, SC 29010~~

Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

LEGAL MAIL ONLY