CHAPTER 11

Offenses Against Property

ARTICLE 1

General Provisions

**SECTION 16‑11‑10.** “Dwelling house” defined in case of burglary, arson and other criminal offenses.

 With respect to the crimes of burglary and arson and to all criminal offenses which are constituted or aggravated by being committed in a dwelling house, any house, outhouse, apartment, building, erection, shed or box in which there sleeps a proprietor, tenant, watchman, clerk, laborer or person who lodges there with a view to the protection of property shall be deemed a dwelling house, and of such a dwelling house or of any other dwelling house all houses, outhouses, buildings, sheds and erections which are within two hundred yards of it and are appurtenant to it or to the same establishment of which it is an appurtenance shall be deemed parcels.

HISTORY: 1962 Code Section 16‑301; 1952 Code Section 16‑301; 1942 Code Section 1140; 1932 Code Section 1140; Cr. C. ‘22 Section 34; Cr. C. ‘12 Section 179; Cr. C. ‘02 Section 146; G. S. 2483; R. S. 143; 1866 (13) 405.

Library References

Arson 5.

Burglary 4.

Westlaw Topic Nos. 36, 67.

C.J.S. Arson Sections 1 to 4, 15 to 19, 21 to 23.

C.J.S. Burglary Sections 1 to 4, 30 to 31, 33, 36 to 43.

RESEARCH REFERENCES

ALR Library

68 ALR, Federal 2nd Series 55 , Comment Note: Construction and Application of “Crime of Violence” Provision of U.S.S.G. S2l1.2 Pertaining to Unlawfully Entering or Remaining in the United States After Commission of Felony...

Encyclopedias

S.C. Jur. Arson Section 25, Character of Property.

S.C. Jur. Burglary Section 6, Elements.

S.C. Jur. Burglary Section 8, Elements.

S.C. Jur. Burglary Section 16, Dwelling.

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1. In general

Test of whether a building is a “dwelling” for purposes of the burglary statutes turns on whether the occupant has left with the intention to return; an occupant’s temporary absence is irrelevant. State v. Evans (S.C.App. 2008) 376 S.C. 421, 656 S.E.2d 782. Burglary 4

A fully‑enclosed screened porch was a “dwelling,” within meaning of burglary statute; the porch was appurtenant to a home, and it was used by the homeowner for the protection of paint and wood stored there. State v. Stone (S.C. 2002) 350 S.C. 442, 567 S.E.2d 244, appeal after new sentencing hearing 376 S.C. 32, 655 S.E.2d 487, rehearing denied. Burglary 4

A mobile home was a “dwelling house” for purposes of second degree arson where the defendant, who was accused of setting fire to her mobile home, had $10,000 worth of personal possessions in the mobile home, had returned to the mobile home many times during the week before the fire to gather more possessions, and had stopped by the home once again on the day of the fire to retrieve her Bible, thus demonstrating that the defendant did not vacate her mobile home but left with the intention of returning. State v. Glenn (S.C. 1988) 297 S.C. 29, 374 S.E.2d 671. Arson 5

To qualify as dwelling house, apartment must have identifiable occupants sleeping or residing therein; occupants must leave with purpose of returning in order for breaking and entering during their absence to constitute burglary; thus, mere fact that building is suitable for use as dwelling is insufficient for purposes of burglary if occupant leaves it without intention to return; rationale for requiring that identifiable occupant reside and sleep within dwelling rests upon development of burglary as offense against habitation rather than against property; where former tenant had permanently abandoned premises without intention of returning and there was no evidence indicating that owner ever occupied or intended to occupy or dwell in apartment, conviction for burglary of premises must be reversed. State v. Ferebee (S.C. 1979) 273 S.C. 403, 257 S.E.2d 154.

It is not necessary that the entire building be devoted to dwelling purposes. State v. Steadman (S.C. 1972) 257 S.C. 528, 186 S.E.2d 712.

The dwelling area may be in a building, a portion of which is devoted to business purposes. State v. Steadman (S.C. 1972) 257 S.C. 528, 186 S.E.2d 712.

It is not required that the dwelling area entered be constantly inhabited every day or night of the year. State v. Steadman (S.C. 1972) 257 S.C. 528, 186 S.E.2d 712.

The area entered must be devoted to dwelling purposes. State v. Steadman (S.C. 1972) 257 S.C. 528, 186 S.E.2d 712.

2. Indictment

An indictment should allege that the house in which burglary was committed was within two hundreds yards of the dwelling house and appurtenant thereto. State v Evans (1882) 18 SC 137. State v Langford (1899) 55 SC 322, 33 SE 370.

Indictment for first‑degree burglary was sufficient to confer subject matter jurisdiction on the trial court, where it charged that defendant entered victim’s dwelling without consent, with the intent to commit a crime, and that the incident occurred in the nighttime. State v. Smalls (S.C.App. 1999) 336 S.C. 301, 519 S.E.2d 793. Burglary 20

3. Sufficiency of evidence

Evidence was sufficient to support conviction for second‑degree arson in connection with mobile home fire, despite defendant’s claim that he had he left the home without intending to return, and thus that it did not qualify as a “dwelling”; although defendant had packed his car with many of his belongings before he left mobile home, he left his lawnmower with a neighbor, and he left his golf clubs, yard tools, and his animals in the mobile home, thereby suggesting that he intended to return. State v. Phillips (S.C.App. 2011) 393 S.C. 407, 712 S.E.2d 457, rehearing denied, affirmed as modified 400 S.C. 460, 734 S.E.2d 650. Arson 37(1)

Evidence of occupants’ intent to return to building burglarized by defendant, characterized by occupants as secondary home, was sufficient to establish that building constituted “dwelling” for purposes of statute defining offense of first‑degree burglary; occupants, husband and wife, visited home about once every two weeks or month, utilities were all on in home, and home was ready to be lived in, occupants had previously lived in home “off and on,” and only reason they had not been staying overnight in home for last three years was because wife’s medical condition prevented them from doing so. State v. Evans (S.C.App. 2008) 376 S.C. 421, 656 S.E.2d 782. Burglary 4

**SECTION 16‑11‑20.** Making, mending or possessing tools or other implements capable of being used in crime.

 It is unlawful for a person to make or mend, cause to be made or mended, or have in his possession any engine, machine, tool, false key, picklock, bit, nippers, nitroglycerine, dynamite cap, coil or fuse, steel wedge, drill, tap‑pin, or other implement or thing adapted, designed, or commonly used for the commission of burglary, larceny, safecracking, or other crime, under circumstances evincing an intent to use, employ, or allow the same to be used or employed in the commission of a crime, or knowing that the same are intended to be so used.

 A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

HISTORY: 1962 Code Section 16‑302; 1952 Code Section 16‑302; 1942 Code Section 1165; 1932 Code Section 1165; Cr. C. ‘22 Section 58; Cr. C. ‘12 Section 195; 1907 (25) 580; 1993 Act No. 184, Section 26.

CROSS REFERENCES

Using tools, etc., about a safe with intent to commit larceny, see Section 16‑11‑390.

Library References

Burglary 12.

Disorderly Conduct 121.

Explosives 4.

Westlaw Topic Nos. 67, 129, 164.

C.J.S. Burglary Sections 49 to 54.

C.J.S. Disorderly Conduct Sections 1 to 4.

C.J.S. Explosives Sections 13, 20 to 22, 30, 33, 37, 41, 44, 49, 108 to 123.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Wheeler v State (1966) 247 SC 393, 147 SE2d 627. Miller v South Carolina (1970, DC SC) 309 F Supp 1287.

It is not necessary that articles in one’s possession for which prosecution lies under this section [Code 1962 Section 16‑302] be originally designed for a burglarious purpose. It is only necessary that they be suitable for breaking and entering. State v Pulley (1950) 216 SC 552, 59 SE2d 155. State v Nicholson (1952) 221 SC 472, 71 SE2d 306. State v Puckett (1960) 237 SC 369, 117 SE2d 369.

All of the items specifically enumerated in this section [Code 1962 Section 16‑302], together or separate, are obviously suitable for use where force is needed to break and enter burglariously. State v. Patterson (S.C. 1973) 261 S.C. 362, 200 S.E.2d 68.

Preprinted checks, I.D. cards and credit cards, all of which were alleged to be false, fictitious or the property of another and alleged to be implements and things adapted, designed and commonly used for the commission of forgery are not tools contemplated by the terms of this section [Code 1962 Section 16‑302]. State v. Patterson (S.C. 1973) 261 S.C. 362, 200 S.E.2d 68.

Cited in Crady v. State (S.C. 1966) 248 S.C. 522, 151 S.E.2d 670.

The fact that a particular tool may be, and frequently is, put to a lawful use, is not conclusive that it may not have been, in a given case, intended to be used in the commission of crime, such as burglary, larceny and safecraking. State v. Puckett (S.C. 1960) 237 S.C. 369, 117 S.E.2d 369.

**SECTION 16‑11‑30.** Possession of master keys and nonowner key sets.

 (A) As used in this section:

 (1) “Master key” means a key which unlocks more than one locking device.

 (2) “Nonowner key sets” means a set of keys designed to open locking devices in a group of products, machines, or vehicles of a particular manufacturer, which differ in configuration from the keys issued by the manufacturer at the time of sale for the locking devices.

 (B) A person who has in his possession, actual or constructive, while engaged in the commission of a crime against the person or property of another, a master key or nonowner key set as defined in subsection (A), or if a master key is used in the commission of any such offense against the laws of this State, he is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years.

HISTORY: 1962 Code Section 16‑303; 1968 (55) 2587; 1993 Act No. 184, Section 168.

Library References

Burglary 12.

Westlaw Topic No. 67.

C.J.S. Burglary Sections 49 to 54.

ARTICLE 3

Arson and Other Offenses Involving Fire

**SECTION 16‑11‑110.** Arson.

 (A) A person who wilfully and maliciously causes an explosion, sets fire to, burns, or causes to be burned or aids, counsels, or procures a burning that results in damage to a building, structure, or any property specified in subsections (B) and (C), whether the property of the person or another, which results, either directly or indirectly, in death or serious bodily injury to a person is guilty of the felony of arson in the first degree and, upon conviction, must be imprisoned not less than thirty years.

 (B) A person who wilfully and maliciously causes an explosion, sets fire to, burns, or causes to be burned or aids, counsels, or procures a burning that results in damage to a dwelling house, church or place of worship, public or private school facility, manufacturing plant or warehouse, building where business is conducted, institutional facility, or any structure designed for human occupancy including local and municipal buildings, whether the property of the person or another, is guilty of the felony of arson in the second degree and, upon conviction, must be imprisoned not less than three nor more than twenty‑five years.

 (C) A person commits a violation of the provisions of this subsection who wilfully and maliciously:

 (1) causes an explosion, sets fire to, burns, or causes a burning which results in damage to a building or structure other than those specified in subsections (A) and (B), a railway car, a ship, boat, or other watercraft, an aircraft, an automobile or other motor vehicle, or personal property; or

 (2) aids, counsels, or procures a burning that results in damage to a building or structure other than those specified in subsections (A) and (B), a railway car, a ship, boat, or other watercraft, an aircraft, an automobile or other motor vehicle, or personal property with intent to destroy or damage by explosion or fire, whether the property of the person or another.

 A person who violates the provisions of this subsection is guilty of the felony of arson in the third degree and, upon conviction, must be imprisoned not more than fifteen years.

 (D) For purposes of this section, “damage” means an application of fire or explosive that results in burning, charring, blistering, scorching, smoking, singeing, discoloring, or changing the fiber or composition of a building, structure, or any property specified in this section.

HISTORY: 1962 Code Section 16‑311; 1952 Code Section 16‑311; 1942 Code Section 1132; 1932 Code Section 1132; 1928 (35) 1226; 1982 Act No. 449, 1996 Act No. 356, Section 1; 1997 Act No. 113, Section 1; 2002 Act No. 224, Section 2, eff May 1, 2002; 2010 Act No. 273, Section 3, eff June 2, 2010; 2016 Act No. 154 (H.3545), Section 1, eff April 21, 2016.

Editor’s Note

2002 Act No. 224, Section 5, provides as follows:

“This act takes effect upon approval by the Governor and applies to offenses committed on or after the effective date.”

Effect of Amendment

2016 Act No. 154, Section 1, rewrote (A), (B), and (C).

CROSS REFERENCES

Accessories before the fact, generally, see Sections 16‑1‑40, 16‑1‑50.

Arson Reporting‑Immunity Act, see Section 23‑41‑10 et seq.

Burning of dwelling house or other buildings by tenant, see Section 16‑11‑570.

Definition of a dwelling house with respect to arson, see Section 16‑11‑10.

Post‑conviction DNA procedures, see Section 17‑28‑10 et seq.

Preservation of DNA evidence, see Section 17‑28‑310 et seq.

Provision that arson in the second degree constitutes a serious offense, see Section 17‑25‑45.

Sentencing, see Section 17‑25‑20 et seq.

Violent crimes defined, see Section 16‑1‑60.

Library References

Arson 1 to 13, 45.

Westlaw Topic No. 36.

C.J.S. Arson Sections 1 to 6, 9 to 29, 70.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arson Section 3, Overview.

S.C. Jur. Arson Section 4, First Degree Arson.

S.C. Jur. Arson Section 5, Second Degree Arson.

S.C. Jur. Arson Section 6, Third Degree Arson.

S.C. Jur. Arson Section 11, Attempts.

S.C. Jur. Arson Section 13, Definition and Elements.

S.C. Jur. Arson Section 14, Requisite Intent.

S.C. Jur. Arson Section 15, Character of Property.

S.C. Jur. Arson Section 16, Prohibited Acts.

S.C. Jur. Arson Section 17, Ownership and Possession of Property.

S.C. Jur. Arson Section 19, Resulting Injury.

S.C. Jur. Arson Section 20, Aiding and Abetting.

S.C. Jur. Arson Section 22, Sentence and Punishment.

S.C. Jur. Arson Section 23, Definition and Elements.

S.C. Jur. Arson Section 24, Requisite Intent.

S.C. Jur. Arson Section 25, Character of Property.

S.C. Jur. Arson Section 26, Prohibited Acts.

S.C. Jur. Arson Section 27, Ownership of Property.

S.C. Jur. Arson Section 29, Resulting Injury.

S.C. Jur. Arson Section 30, Aiding and Abetting.

S.C. Jur. Arson Section 32, Sentence and Punishment.

S.C. Jur. Arson Section 33, Definition and Elements.

S.C. Jur. Arson Section 34, Requisite Intent.

S.C. Jur. Arson Section 35, Character of Property.

S.C. Jur. Arson Section 36, Prohibited Acts.

S.C. Jur. Arson Section 37, Ownership of Property.

S.C. Jur. Arson Section 40, Aiding and Abetting.

S.C. Jur. Arson Section 42, Sentence and Punishment.

S.C. Jur. Arson Section 55, Elements.

S.C. Jur. Burglary Section 9, Punishment.

S.C. Jur. Shipping Law Section 114, Burning Ship, Boat or Watercraft.

Attorney General’s Opinions

The authority of Forestry Commission Officers to enforce this section. SC Op.Atty.Gen. (Oct. 1, 1996) 1996 WL 679427.

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1. In general

Applied in State v Browder (1937) 183 SC 447, 191 SE 302. State v Jones (1939) 192 SC 327, 6 SE2d 479.

Arson is an offense against the possession rather than the property. State v Copeland (1896) 46 SC 13, 23 SE 980. State v Perry (1906) 74 SC 551, 54 SE 764. State v Alford (1927) 142 SC 43, 140 SE 261.

Blistering and scorching of wall are not “burning” within meaning of arson statute that prohibits burning of building; blistering and scorching are more like singeing, smoking, or discoloring since underlying surface in building is not altered. In Interest of Christopher P. (S.C.App. 1997) 328 S.C. 545, 492 S.E.2d 820, rehearing denied, certiorari granted. Arson 11

A boat in which a person lodges is a “dwelling house” for purpose of the second degree arson statute, Section 16‑11‑110(B). State v. Myers (S.C. 1993) 313 S.C. 391, 438 S.E.2d 236. Arson 5

A mobile home was a “dwelling house” for purposes of second degree arson where the defendant, who was accused of setting fire to her mobile home, had $10,000 worth of personal possessions in the mobile home, had returned to the mobile home many times during the week before the fire to gather more possessions, and had stopped by the home once again on the day of the fire to retrieve her Bible, thus demonstrating that the defendant did not vacate her mobile home but left with the intention of returning. State v. Glenn (S.C. 1988) 297 S.C. 29, 374 S.E.2d 671. Arson 5

A mortgagee’s interest was sufficient to deem the mortgaged property “property of another” for the purposes of Section 16‑11‑110. State v. Leach (S.C. 1984) 282 S.C. 178, 318 S.E.2d 267. Arson 9

Stated in State v. Worthy (S.C. 1962) 239 S.C. 449, 123 S.E.2d 835.

Quoted in State v. Chisholm (S.C. 1938) 187 S.C. 275, 197 S.E. 308.

Setting fire to the dwelling house itself, as well as to the parcels thereof, is arson. State v. Carter (S.C. 1897) 49 S.C. 265, 27 S.E. 106.

The house may be alleged as the property of either the owner or the occupant. State v. Carter (S.C. 1897) 49 S.C. 265, 27 S.E. 106.

Soliciting another to commit arson, and bribing him and preparing him to do it, is an indictable offense. State v. Bowers (S.C. 1892) 35 S.C. 262, 14 S.E. 488.

2. Constitutional issues

Defendant who pled guilty to second‑degree attempted arson failed to establish that he was prejudiced by his plea counsel’s failure to advise him of lesser‑included offense of attempt to burn, and thus such failure did not amount to ineffective assistance; counsel testified that defendant requested plea negotiations in order to avoid facing trial on original first‑degree burglary charge, judge thoroughly discussed with defendant his decision to plead guilty and terms of negotiated plea, defendant never testified that he would not have pled guilty except for his plea counsel’s error, and defendant testified that he did not wish to set aside his plea to second‑degree burglary. Pelzer v. State (S.C.App. 2009) 381 S.C. 217, 672 S.E.2d 790, certiorari denied. Criminal Law 1920

Plea counsel’s failure to advise defendant of the lesser‑included offense of attempt to burn, prior to defendant’s guilty plea to second‑degree attempted arson, constituted deficient performance, as element of ineffective assistance of counsel claim. Pelzer v. State (S.C.App. 2009) 381 S.C. 217, 672 S.E.2d 790, certiorari denied. Criminal Law 1920

3. Lesser included offenses

Attempt to burn is a lesser‑included offense of attempted second‑degree arson. Pelzer v. State (S.C.App. 2009) 381 S.C. 217, 672 S.E.2d 790, certiorari denied. Indictment And Information 191(.5)

4. Justiciability

Defendant, who was convicted of burning club house which he managed but did not own, lacks standing to challenge constitutionality of arson statute on grounds that it deprived him of his rights as property owner. State v. Hogg (S.C. 1981) 276 S.C. 226, 277 S.E.2d 592.

5. Indictment

An indictment is not fatally defective because it omits to state the courthouse or other place where crime was committed, when it names the county. State v Moore (1886) 24 SC 150. State v Colclough (1889) 31 SC 156, 9 SE 811.

The indictment need not allege location of stable or gin house burned, nor charge that it was within the curtilage. State v Gwinn (1886) 24 SC 146. State v Moore (1886) 24 SC 150.

An indictment, at common law, for attempting to burn a storehouse within the curtilage, is a bar to a subsequent indictment under the statute for burning the same storehouse. State v. Switzer (S.C. 1903) 65 S.C. 187, 43 S.E. 513.

Acquittal under charge of arson is not a good plea to indictment for statutory offense of burning an untenanted house. State v. Jenkins (S.C. 1884) 20 S.C. 351.

6. Questions for jury

Circumstantial evidence presented by the state was insufficient to submit second degree arson case to the jury, in regard to fire at defendant’s mobile home, though before the fire defendant moved valuables to outside storage and he possessed a key to that storage room; defendant’s wife admitted to starting the fire without defendant’s assistance, and state presented no evidence that defendant was in financial difficulty. State v. Lollis (S.C. 2001) 343 S.C. 580, 541 S.E.2d 254. Arson 40

7. Sufficiency of evidence

Evidence was sufficient to support conviction for second‑degree arson in connection with mobile home fire, despite defendant’s claim that he had he left the home without intending to return, and thus that it did not qualify as a “dwelling”; although defendant had packed his car with many of his belongings before he left mobile home, he left his lawnmower with a neighbor, and he left his golf clubs, yard tools, and his animals in the mobile home, thereby suggesting that he intended to return. State v. Phillips (S.C.App. 2011) 393 S.C. 407, 712 S.E.2d 457, rehearing denied, affirmed as modified 400 S.C. 460, 734 S.E.2d 650. Arson 37(1)

8. Sentence and punishment

For purposes of determining whether defendant’s prior conviction of burning constituted serious offense within scope of life without parole (LWOP) sentencing statute following his conviction of second‑degree arson, offense of second‑degree arson was not limited to burning of structures designed for human occupancy. State v. Phillips (S.C. 2012) 400 S.C. 460, 734 S.E.2d 650. Sentencing and Punishment 1260

Defendant’s 1979 conviction for burning was not shown to be a “serious offense,” and thus could not be used to enhance his current sentence for second‑degree arson to life imprisonment without the possibility of parole (LWOP); there was no evidence that defendant’s 1979 conviction involved the burning of a school facility. State v. Phillips (S.C.App. 2011) 393 S.C. 407, 712 S.E.2d 457, rehearing denied, affirmed as modified 400 S.C. 460, 734 S.E.2d 650. Sentencing and Punishment 1251

Death penalty was not disproportionate for defendant’s murder of his two‑year‑old child by arson; although defendant did not have a substantial history of violent criminal conduct and he suffered slight mental or emotional disturbance at the time of the murder, defendant knowingly and intentionally started fire, jumped from the van, and failed to inform rescuers that his child was still strapped to a safety seat in the vehicle, and victim was alive during the fire, succumbing to death only after intense heat caused her severe pain and suffering. State v. Passaro (S.C. 2002) 350 S.C. 499, 567 S.E.2d 862. Sentencing And Punishment 1684; Sentencing And Punishment 1708; Sentencing And Punishment 1710

9. Collateral considerations

Alien’s conviction for arson under New York law qualified as an aggravated felony under the Immigration and Nationality Act (INA), rendering alien ineligible for cancellation of removal. Torres v. Lynch, 2016, 136 S.Ct. 1619, 194 L.Ed.2d 737. Aliens, Immigration, and Citizenship 321

**SECTION 16‑11‑125.** Making false claim or statement in support of claim to obtain insurance benefits for fire or explosion loss.

 Any person who wilfully and knowingly presents or causes to be presented a false or fraudulent claim, or any proof in support of such claim, for the payment of a fire loss or loss caused by an explosion, upon any contract of insurance or certificate of insurance which includes benefits for such a loss, or prepares, makes, or subscribes to a false or fraudulent account, certificate, affidavit, or proof of loss, or other documents or writing, with intent that such documents may be presented or used in support of such claim, is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than five years or both in the discretion of the court.

 The provisions of this section are supplemental to and not in lieu of existing law relating to falsification of documents and penalties therefor.

HISTORY: 1982 Act No. 401; 1989 Act No. 148, Section 24.

CROSS REFERENCES

Presenting false claim for payment on insurance as a felony, see Section 38‑55‑170.

Library References

Insurance 3649.

Westlaw Topic No. 217.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arson Section 8, Type of Property Involved.

S.C. Jur. Arson Section 43, Elements.

S.C. Jur. Arson Section 44, Requisite Intent.

S.C. Jur. Arson Section 45, Type of Insurance Benefit.

S.C. Jur. Arson Section 46, Ownership of Property.

S.C. Jur. Arson Section 47, Sentence and Punishment.

S.C. Jur. Arson Section 48, Supplemental Provision.

**SECTION 16‑11‑130.** Burning personal property to defraud insurer.

 Any person who (a) wilfully and with intent to injure or defraud an insurer sets fire to or burns or causes to be burned or (b) aids, counsels, or procures the burning of any goods, wares, merchandise, or other chattels or personal property of any kind, whether the property of himself or of another, which is at the time insured by any person against loss or damage by fire is guilty of a felony and, upon conviction, must be imprisoned for not less than one nor more than five years.

HISTORY: 1962 Code Section 16‑313; 1952 Code 16‑313; 1942 Code Section 1135; 1932 Code Section 1135; 1928 (35) 1226; 1989 Act No. 148, Section 25.

Library References

Insurance 3649.

Westlaw Topic No. 217.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arson Section 49, Elements.

S.C. Jur. Arson Section 50, Requisite Intent.

S.C. Jur. Arson Section 51, Ownership of Property.

S.C. Jur. Arson Section 52, Character of Property.

S.C. Jur. Arson Section 53, Aiding and Abetting.

S.C. Jur. Arson Section 54, Sentence and Punishment.

**SECTION 16‑11‑140.** Burning of crops, fuel or lumber.

 It is unlawful for a person to (a) wilfully and maliciously set fire to or burn or cause to be burned, or (b) aid, counsel, or procure the burning of any:

 (1) barracks, cock, crib, rick or stack of hay, corn, wheat, oats, barley, or other grain or vegetable product of any kind;

 (2) field of standing hay or grain of any kind;

 (3) pile of coal, wood, or other fuel;

 (4) pile of planks, boards, posts, rails, or other lumber.

 A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years.

HISTORY: 1962 Code Section 16‑314; 1952 Code Section 16‑314; 1942 Code Section 1134; 1932 Code Section 1134; 1928 (35) 11993 Act No. 184, Section 91; 1997 Act No. 113, Section 2.

CROSS REFERENCES

Burning of crops by tenant, see Section 16‑11‑570.

Firing turpentine farms, see Section 46‑1‑50.

Library References

Fires 3.

Westlaw Topic No. 175.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arson Section 11, Attempts.

S.C. Jur. Arson Section 55, Elements.

S.C. Jur. Arson Section 56, Requisite Intent.

S.C. Jur. Arson Section 57, Character of Property.

S.C. Jur. Arson Section 58, Prohibited Acts.

S.C. Jur. Arson Section 59, Ownership of Property.

S.C. Jur. Arson Section 60, Aiding and Abetting.

S.C. Jur. Arson Section 61, Sentence and Punishment.

S.C. Jur. Logs and Timber Section 48, Willful Burning of Lumber Under S. C. Code Ann.Ss 16‑11‑140(4), 16‑11‑150, and 16‑11‑170.

S.C. Jur. Shipping Law Section 114, Burning Ship, Boat or Watercraft.

**SECTION 16‑11‑150.** Burning lands of another without consent.

 It shall be unlawful for any person without prior written consent of the landowner or his agent to intentionally set fire to lands of another, or to intentionally cause or allow fire to spread to lands of another, whereby any woods, fields, fences or marshes of any other person are burned. Any person violating the provisions of this section shall, upon conviction, be punished as follows: (a) For the first offense, by a fine of not more than one thousand dollars, or imprisonment for not more than one year, or both, (b) for a second or subsequent offense, by a fine of not more than five thousand dollars or imprisonment for not more than five years.

HISTORY: 1962 Code Section 16‑315; 1967 (55) 265.

Library References

Fires 3.

Westlaw Topic No. 175.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arson Section 62, Elements.

S.C. Jur. Arson Section 63, Requisite Intent.

S.C. Jur. Arson Section 64, Ownership of Property.

S.C. Jur. Arson Section 65, Prohibited Acts.

S.C. Jur. Arson Section 66, Character of Property.

S.C. Jur. Arson Section 67, Aiding and Abetting.

S.C. Jur. Arson Section 68, Sentence and Punishment.

S.C. Jur. Logs and Timber Section 48, Willful Burning of Lumber Under S. C. Code Ann.Ss 16‑11‑140(4), 16‑11‑150, and 16‑11‑170.

**SECTION 16‑11‑160.** Carrying fire on lands of another without permit.

 It shall be unlawful for any person to carry a lighted torch, chunk or coals of fire in or under any mill or wooden building or over and across any of the enclosed or unenclosed lands of another person at any time without the special permit of the owner of such lands, mill or wooden building, whether any damage result therefrom or not. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for a term not to exceed thirty days or to a fine not to exceed one hundred dollars.

HISTORY: 1962 Code Section 16‑316; 1952 Code Section 16‑316; 1942 Code Section 1181; 1932 Code Section 1181; Cr. C. ‘22 Section 71; Cr. C. ‘12 Section 216; Cr. C. ‘02 Section 161; R. S. 158; 1891 (20) 1045.

Library References

Fires 1.

Westlaw Topic No. 175.

C.J.S. Fires Sections 1 to 4.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arson Section 69, Elements.

S.C. Jur. Arson Section 70, Requisite Intent.

S.C. Jur. Arson Section 71, Character of Property.

S.C. Jur. Arson Section 72, Prohibited Acts.

S.C. Jur. Arson Section 73, Ownership of Property.

S.C. Jur. Arson Section 74, Sentence and Punishment.

**SECTION 16‑11‑170.** Wilfully burning lands of another.

 It is unlawful for a person to wilfully and maliciously set fire to or burn any grass, brush, or other combustible matter, causing any woods, fields, fences, or marshes of another person to be set on fire or cause the burning or fire to spread to or to be transmitted to the lands of another, or to aid or assist in such conduct.

 A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years. A person convicted under this section is liable to any person who may have sustained damage.

HISTORY: 1962 Code Section 16‑317; 1952 Code Section 16‑317; 1942 Code Section 1208; 1932 Code Section 1208; Cr. C. ‘22 Section 96; Cr. C. ‘12 Section 215; Cr. C. ‘02 Section 160; G. S. 2497; R. S. 157; 1787 (5) 125; 1857 (12) 617; 1891 (20) 1195; 1919 (31) 59; 1940 (41) 1820; 1956 (49) 1609; 1960 (51) 1602; 1993 Act No. 184, Section 27.

CROSS REFERENCES

Firing turpentine farms, see Section 46‑1‑50.

Library References

Fires 3.

Westlaw Topic No. 175.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arson Section 75, Elements.

S.C. Jur. Arson Section 76, Requisite Intent.

S.C. Jur. Arson Section 77, Character of Property.

S.C. Jur. Arson Section 78, Prohibited Acts.

S.C. Jur. Arson Section 79, Ownership of Property.

S.C. Jur. Arson Section 80, Sentence and Punishment.

S.C. Jur. Logs and Timber Section 48, Willful Burning of Lumber Under S. C. Code Ann.Ss 16‑11‑140(4), 16‑11‑150, and 16‑11‑170.

Attorney General’s Opinions

The offense of burning the lands of another is a crime of moral turpitude. 1992 Op.Atty.Gen. No 92‑37 (1992 WL 575643).

**SECTION 16‑11‑180.** Negligently allowing fire to spread to lands or property of another.

 Any person who carelessly or negligently sets fire to or burns any grass, brush, leaves, or other combustible matter on any lands so as to cause or allow fire to spread or to be transmitted to the lands or property of another, or to burn or injure the lands or property of another, or who causes the burning to be done or who aids or assists in the burning, is guilty of a misdemeanor and, upon conviction, must be imprisoned for not less than five days nor more than thirty days or be fined not less than twenty‑five dollars nor more than two hundred dollars. For a second or subsequent offense the sentence must be imprisonment for not less than thirty days nor more than one year, or a fine of not less than one hundred dollars nor more than five hundred dollars, or both, in the discretion of the court.

HISTORY: 1962 Code Section 16‑318; 1952 Code Section 16‑318; 1942 Code Section 1208‑1; 1940 (41) 1820; 1958 (50) 1596; 1987 Act No. 113 Section 1.

Library References

Fires 1, 3.

Westlaw Topic No. 175.

C.J.S. Fires Sections 1 to 4.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arson Section 81, Elements.

S.C. Jur. Arson Section 82, Requisite Intent.

S.C. Jur. Arson Section 83, Character of Property.

S.C. Jur. Arson Section 84, Prohibited Acts.

S.C. Jur. Arson Section 85, Ownership of Property.

S.C. Jur. Arson Section 86, Sentence and Punishment.

**SECTION 16‑11‑190.** Attempts to burn.

 It is unlawful for a person to wilfully and maliciously attempt to set fire to, burn, or aid, counsel, or procure the burning of any of the buildings or property mentioned in Sections 16‑11‑110 to 16‑11‑140 or commit an act in furtherance of burning these buildings.

 A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than ten thousand dollars.

HISTORY: 1962 Code Sections 16‑319; 1952 Code Section 16‑319; 1942 Code Section 1136; 1932 Code Section 1136; 1928 (35) 1226; 1982 Act No. 449, Section 2; 1993 Act No. 184, Section 169.

Library References

Arson 13, 45.

Fires 3.

Westlaw Topic Nos. 36, 175.

C.J.S. Arson Sections 6, 70.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arson Section 11, Attempts.

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lesser included offenses 1

1. lesser included offenses

Attempt to burn is a lesser‑included offense of attempted second‑degree arson. Pelzer v. State (S.C.App. 2009) 381 S.C. 217, 672 S.E.2d 790, certiorari denied. Indictment And Information 191(.5)

2. Constitutional issues

Defendant who pled guilty to second‑degree attempted arson failed to establish that he was prejudiced by his plea counsel’s failure to advise him of lesser‑included offense of attempt to burn, and thus such failure did not amount to ineffective assistance; counsel testified that defendant requested plea negotiations in order to avoid facing trial on original first‑degree burglary charge, judge thoroughly discussed with defendant his decision to plead guilty and terms of negotiated plea, defendant never testified that he would not have pled guilty except for his plea counsel’s error, and defendant testified that he did not wish to set aside his plea to second‑degree burglary. Pelzer v. State (S.C.App. 2009) 381 S.C. 217, 672 S.E.2d 790, certiorari denied. Criminal Law 1920

Plea counsel’s failure to advise defendant of the lesser‑included offense of attempt to burn, prior to defendant’s guilty plea to second‑degree attempted arson, constituted deficient performance, as element of ineffective assistance of counsel claim. Pelzer v. State (S.C.App. 2009) 381 S.C. 217, 672 S.E.2d 790, certiorari denied. Criminal Law 1920

**SECTION 16‑11‑200.** Placing or distributing combustible materials and the like in buildings and property as constituting attempt.

 The placing or distributing of any inflammable, explosive or combustible materials or substance or any device in any building or property mentioned in Sections 16‑11‑110 to 16‑11‑140 in an arrangement or preparation with intent eventually wilfully and maliciously to set fire to or burn the same or to procure the setting fire to or burning of the same shall for the purposes of Section 16‑11‑190 constitute an attempt to burn such building or property.

HISTORY: 1962 Code Section 16‑320; 1952 Code Section 16‑320; 1942 Code Section 1137; 1932 Code Section 1137; 1928 (35) 1226.

Library References

Arson 13, 45.

Fires 3.

Westlaw Topic Nos. 36, 175.

C.J.S. Arson Sections 6, 70.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arson Section 12, Explosive Materials.

ARTICLE 5

Burglary, Housebreaking, Robbery and the Like

**SECTION 16‑11‑310.** Definitions.

 For purposes of Sections 16‑11‑311 through 16‑11‑313:

 (1) “Building” means any structure, vehicle, watercraft, or aircraft:

 (a) Where any person lodges or lives; or

 (b) Where people assemble for purposes of business, government, education, religion, entertainment, public transportation, or public use or where goods are stored. Where a building consists of two or more units separately occupied or secured, each unit is deemed both a separate building in itself and a part of the main building.

 (2) “Dwelling” means its definition found in Section 16‑11‑10 and also means the living quarters of a building which is used or normally used for sleeping, living, or lodging by a person.

 (3) “Enters a building without consent” means:

 (a) To enter a building without the consent of the person in lawful possession; or

 (b) To enter a building by using deception, artifice, trick, or misrepresentation to gain consent to enter from the person in lawful possession.

HISTORY: 1962 Code Section 16‑331; 1952 Code Section 16‑331; 1942 Code Section 1138; 1932 Code Section 1138; Cr. C. ‘22 Section 32; Cr. C. ‘12 Section 177; Cr. C. ‘02 Section 144; G. S. 2481; R. S. 141; 1883 (18) 290; 1985 Act No. 159, Section 1.

RESEARCH REFERENCES

ALR Library

119 ALR, Federal 319 , What Constitutes “Violent Felony” for Purpose of Sentence Enhancement Under Armed Career Criminal Act (18 U.S.C.A. Section 924(E)(1)).

Encyclopedias

S.C. Jur. Burglary Section 2, Background.

S.C. Jur. Burglary Section 4, Housebreaking Repealed.

S.C. Jur. Burglary Section 5, Definitions Applicable to Burglary Statutes.

S.C. Jur. Burglary Section 8, Elements.

S.C. Jur. Burglary Section 15, Entering.

S.C. Jur. Burglary Section 17, of Another.

S.C. Jur. Post‑Conviction Relief Section 8, Failure to Raise Objections.

Attorney General’s Opinions

Youthful offender cannot be sentenced for burglary under Youthful Offenders Act since burglary carries punishment provided by law of life imprisonment. 1984 Op.Atty.Gen., No 84‑75, p 190 (1984 WL 159882).

NOTES OF DECISIONS

In general 1

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Lesser included offenses 2

1. In general

Evidence that stabbing victim’s name was only one signed on lease, victim had only key to mobile home, and burglary defendant’s identification was affixed to lease pursuant to clause requiring that visitors be approved supported inference that defendant was guest in victim’s home and she was entitled to terminate defendant’s lawful possession by evicting him as she did before stabbing occurred, even though defendant had paid rent several times. State v. Coffin (S.C. 1998) 331 S.C. 129, 502 S.E.2d 98, rehearing denied. Burglary 41(8)

In a prosecution for burglary and armed robbery, defendant’s statement to the victim that his car had broken down and that he needed to call a wrecker constituted a constructive breaking since an entry effected by trickery or deception satisfies the breaking element in the definition of burglary under Section 16‑11‑310. State v. Fuller (S.C. 1982) 278 S.C. 393, 296 S.E.2d 871. Burglary 9(1)

2. Lesser included offenses

Grand larceny is not a lesser‑included offense of robbery or armed robbery; overruling State v. Lawson, 279 S.C. 266, 305 S.E.2d 249, Young v. State, 259 S.C. 383, 192 S.E.2d 212, and State v. Ziegler, 274 S.C. 6, 260 S.E.2d 182. State v. Parker (S.C. 2002) 351 S.C. 567, 571 S.E.2d 288. Indictment And Information 191(9)

Grand larceny is not a lesser‑included offense of robbery or armed robbery; overruling State v. Lawson, 279 S.C. 266, 305 S.E.2d 249, Young v. State, 259 S.C. 383, 192 S.E.2d 212 (1972), and State v. Ziegler, 274 S.C. 6, 260 S.E.2d 182. Joseph v. State (S.C. 2002) 351 S.C. 551, 571 S.E.2d 280. Indictment And Information 191(9)

3. Collateral consequences

Defendant’s prior conviction under California’s burglary statute, which defined burglary more broadly than the generic offense of burglary in that it did not require an unlawful entry as an element or alternative element of the crime, was not a “violent felony” within the meaning of the Armed Career Criminal Act (ACCA). Descamps v. U.S., 2013, 133 S.Ct. 2276, 186 L.Ed.2d 438, rehearing denied 134 S.Ct. 41, 186 L.Ed.2d 955, on remand 730 F.3d 968. Sentencing and Punishment 1285

South Carolina conviction for burglary in the third degree constituted a “violent offense,” for purposes of armed career criminal statute, where plain language of indictment clearly set forth that defendant burglarized a physical structure with a defined street address. U.S. v. Rivers (C.A.4 (S.C.) 2009) 310 Fed.Appx. 618, 2009 WL 301847, Unreported. Sentencing And Punishment 1285

**SECTION 16‑11‑311.** Burglary; first degree.

 (A) A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either:

 (1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:

 (a) is armed with a deadly weapon or explosive; or

 (b) causes physical injury to a person who is not a participant in the crime; or

 (c) uses or threatens the use of a dangerous instrument; or

 (d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or

 (2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or

 (3) the entering or remaining occurs in the nighttime.

 (B) Burglary in the first degree is a felony punishable by life imprisonment. For purposes of this section, “life” means until death. The court, in its discretion, may sentence the defendant to a term of not less than fifteen years.

HISTORY: 1985 Act No. 159, Section 2; 1995 Act No. 83, Section 17.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Definitions relevant to the crime of burglary, see Section 16‑11‑310.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Offenses specified in subsection (B) of this section as exempt from classification of felonies and misdemeanors, see Section 16‑1‑10.

Person charged with noncapital offense may be released on his own recognizance, conditions of release, bond hearing for burglary charges, see Section 17‑15‑10.

Post‑conviction DNA procedures, see Section 17‑28‑10 et seq.

Preservation of DNA evidence, see Section 17‑28‑310 et seq.

Sentencing, see Section 17‑25‑20 et seq.

Violent crimes defined, see Section 16‑1‑60.

Library References

Burglary 10, 49.

Westlaw Topic No. 67.

C.J.S. Burglary Sections 7 to 10, 175 to 179.

RESEARCH REFERENCES

ALR Library

119 ALR, Federal 319 , What Constitutes “Violent Felony” for Purpose of Sentence Enhancement Under Armed Career Criminal Act (18 U.S.C.A. Section 924(E)(1)).

Encyclopedias

S.C. Jur. Burglary Section 4, Housebreaking Repealed.

S.C. Jur. Burglary Section 6, Elements.

S.C. Jur. Burglary Section 7, Punishment.

S.C. Jur. Burglary Section 9, Punishment.

S.C. Jur. Constitutional Law Section 80, Criminal Proceedings.

S.C. Jur. Post‑Conviction Relief Section 9, Failure Invalidating Guilty Plea.

S.C. Jur. Probation, Parole, and Pardon Section 14, Summary of Parole Eligibility Calculations.

LAW REVIEW AND JOURNAL COMMENTARIES

1981 Survey: Criminal law; modifying the common law definition of burglary. 34 S.C. L. Rev. 97, August 1982.

“Burglar of Interest”: An analysis of South Carolina burglary law after State v. Singley. Stephen D. Sutherland, 64 S.C. L. Rev. 849 (Summer 2013).

Attorney General’s Opinions

A magistrates may not set bond on an individual who is charged with a violation of this section. SC Op.Atty.Gen. (July 11, 1997) 1997 WL 568844.

Under the 1986 Omnibus Criminal Justice Improvements Act, individuals convicted of murder are not entitled to reductions in time prior to parole eligibility through the use of earned work credits. Prisoners convicted of any violent crimes, as defined in Section 16‑1‑60, for a criminal event that occurred after June 3, 1986, and who have a prior conviction at any time before or after June 3, 1986, for one of the specified crimes, would not be eligible for parole consideration on the recent conviction and must complete service of their entire sentences. Under the provisions of Sections 24‑21‑645 and 24‑21‑650, the review in two years upon rejection, of prisoners in confinement for a violent crime, is applicable to the entire violent offender population. Under the provisions of Section 24‑21‑610, all burglary in the second degree convictions would not be eligible for parole until they have served at least one‑third of their sentence. Any and all offenses of burglary in the first degree and burglary in the second degree under Section 16‑11‑312(B) carry all consequences of a “violent crime” regardless of the statutory aggravating circumstances shown. 1986 Op.Atty.Gen., No 86‑102, p 309 (1986 WL 192060).

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1. In general

Violation of a domestic violence protection order is a crime sufficient to support a conviction of first‑degree burglary. State v. Gilliland (S.C.App. 2012) 402 S.C. 389, 741 S.E.2d 521, rehearing denied. Burglary 3

To ensure that the defendant is not convicted on an improper basis while allowing the State to prove the elements of first degree burglary, the trial court should limit the evidence to the prior burglary and/or housebreaking convictions required for establishing such offense; however, detailed, particular information about the prior burglaries and/or housebreaking convictions should not be admitted. State v. Simmons (S.C.App. 2002) 352 S.C. 342, 573 S.E.2d 856. Criminal Law 368.19; Criminal Law 673(5)

Because two prior burglary and/or housebreaking convictions are an element of first degree burglary, a defendant charged with first degree burglary cannot require the State to stipulate to the prior convictions in lieu of informing the jury about the prior convictions. State v. Simmons (S.C.App. 2002) 352 S.C. 342, 573 S.E.2d 856. Criminal Law 661

Trial court properly denied counsel’s motion to be relieved, which counsel submitted after suspecting his client was about to present perjured testimony, as any new attorney would have been confronted with the same dilemma, and the motion came nearly half way through a very serious trial on first degree burglary, grand larceny, and weapons charges. Lucas v. State (S.C. 2002) 352 S.C. 1, 572 S.E.2d 274, rehearing denied. Criminal Law 1832

2. Constitutional issues

Burglary defendant was not prejudiced by counsel’s failure to impeach an identification witness with her prior conviction for giving false information to police; many witnesses identified defendant, for he was well known to them, defense counsel used witness’s drug conviction for impeachment purposes, and officer testified that victims immediately identified defendant as the burglar. Teamer v. State (S.C. 2016) 416 S.C. 171, 786 S.E.2d 109, rehearing denied. Criminal Law 1935

Trial counsel’s act of advising defendant that a jury could infer the intent to commit burglary from defendant’s act of trespassing did not constitute deficient performance, and therefore was not ineffective assistance of counsel; the jury was free to disbelieve defendant’s version of events and find that he intended to commit a crime based on his actions in forcibly breaking and entering a residence at night. McMillian v. State (S.C. 2009) 383 S.C. 480, 680 S.E.2d 905. Criminal Law 1890

Defendant was not deprived of a fair trial on burglary and other charges because trial court denied counsel’s motion to be relieved on ground that he suspected defendant was about to present perjured testimony and counsel revealed the suspected perjury to the court; defendant’s request to be appointed co‑counsel was granted at outset of trial, he decided to cross‑examine his witnesses, and counsel filed all appropriate motions and presented a closing argument to the jury. Lucas v. State (S.C. 2002) 352 S.C. 1, 572 S.E.2d 274, rehearing denied. Criminal Law 1166.10(1)

Defendant’s sentence of life imprisonment without the possibility of parole under “Two‑Strikes” law did not violate the separation of powers doctrine on basis that law deprives the judiciary of “all judicial discretion” in the exercise of its sentencing function; judicial discretion in sentencing was subject to statutory restriction without any violation of the separation of powers doctrine. State v. Johnson (S.C.App. 2002) 350 S.C. 543, 567 S.E.2d 486, rehearing denied, certiorari denied. Constitutional Law 2371; Sentencing And Punishment 1210

Application to defendant of “Two‑Strikes” law, resulting in sentence of life imprisonment without possibility of parole for his convictions for first‑degree burglary, armed robbery, and kidnapping, did not amount to cruel and unusual punishment; burglary, armed robbery, and kidnapping were grave offenses of the most serious nature, and when considered along with defendant’s prior offenses, two of which were for attempted armed robbery and one of which was for assault and battery with intent to kill, penalty of life without parole for each of offenses for which defendant was convicted was not extreme. State v. Johnson (S.C.App. 2002) 350 S.C. 543, 567 S.E.2d 486, rehearing denied, certiorari denied. Sentencing And Punishment 1513

Defendants’ right of confrontation was violated by trial judge’s limiting cross‑examination on co‑conspirator witness’s potential sentence if convicted of same crimes as defendants, who were charged with first degree burglary, grand larceny, and possession of a firearm during the commission of a violent crime; while witness had neither agreed to a plea bargain nor pled guilty, the lack of a negotiated plea created a situation where witness was more likely to engage in biased testimony to obtain recommendation for leniency. State v. Mizzell (S.C. 2002) 349 S.C. 326, 563 S.E.2d 315. Criminal Law 662.7

Due process did not require state to accept defendant’s offer in first‑degree burglary prosecution to stipulate that he had two prior burglary convictions in lieu of state introducing evidence of convictions before jury; proof that defendant had two prior burglary convictions was element of first‑degree burglary, and refusing to require state to stipulate to prior convictions did not dilute state’s burden of proof in violation of due process, as state was still required to prove all elements of first‑degree burglary beyond reasonable doubt. State v. Benton (S.C. 2000) 338 S.C. 151, 526 S.E.2d 228, certiorari denied 120 S.Ct. 2209, 530 U.S. 1209, 147 L.Ed.2d 242, habeas corpus dismissed 2002 WL 32333153, appeal dismissed 56 Fed.Appx. 200, 2003 WL 599286. Constitutional Law 4671; Criminal Law 661

Defense counsel’s failure to challenge first‑degree burglary indictment for burglary of victim’s barn in which no one lived was not reasonable trial strategy, as would preclude finding of ineffective assistance of counsel, where counsel did not articulate any strategy for not challenging indictment and did not know break‑in occurred at barn or recognize distinction between barn and dwelling for first‑degree burglary purposes. Padgett v. State (S.C. 1997) 324 S.C. 22, 484 S.E.2d 101, denial of habeas corpus vacated in part 175 F.3d 1015, appeal from denial of habeas corpus 230 F.3d 1353. Criminal Law 1895

3. Elements

In prosecution of first degree burglary, defendant’s willingness to stipulate to one of two alternative elements of crime, namely, element requiring that alleged entry occurred at nighttime, did not preclude State from offering evidence of alternate element of crime, namely, that defendant had a record of two or more convictions of burglary or housebreaking. State v. Simmons (S.C.App. 2002) 352 S.C. 342, 573 S.E.2d 856. Criminal Law 661

Temporary absence from a dwelling is irrelevant to the charge of first‑degree burglary. State v. White (S.C. 2002) 349 S.C. 33, 562 S.E.2d 305, habeas corpus dismissed 2007 WL 709001, appeal dismissed 250 Fed.Appx. 568, 2007 WL 2963701, certiorari denied 128 S.Ct. 1454, 552 U.S. 1235, 170 L.Ed.2d 283. Burglary 6

In prosecution of first degree burglary, defendant’s willingness to stipulate to one of two alternative elements of crime, namely, element requiring that alleged entry occurred at nighttime, did not preclude State from offering evidence of alternate element of crime, namely, that defendant had a record of two or more convictions of burglary or housebreaking. State v. Cheatham (S.C.App. 2002) 349 S.C. 101, 561 S.E.2d 618, rehearing denied, certiorari denied. Criminal Law 661

The general rule is that one is “armed” for purposes of first‑degree burglary if a firearm is easily accessible and readily available for use by that individual for offensive or defensive purposes; this is true even in the absence of evidence that the defendant intended to use the weapon in furtherance of the crime. State v. McCaskill (S.C.App. 1996) 321 S.C. 283, 468 S.E.2d 81. Burglary 10

To be “armed” with a deadly weapon within the meaning of Section 16‑11‑311(A)(1)(a), a person, or “another participant in the crime” need only have physical control over a deadly weapon “in effecting entry or while in the dwelling or in the immediate flight therefrom” such that the weapon is readily available for the person to use; it matters not how the person acquired the deadly weapon or for what purpose the person took possession of the deadly weapon. State v. McCaskill (S.C.App. 1996) 321 S.C. 283, 468 S.E.2d 81. Burglary 10

For purposes of the first‑degree burglary statue, a person can become armed with a deadly weapon even if the weapon is one taken during the course of the burglary. State v. McCaskill (S.C.App. 1996) 321 S.C. 283, 468 S.E.2d 81.

First degree burglary requires the entry of a dwelling without consent with the intent to commit a crime therein, as well as the existence of an aggravating circumstance. State v. Cross (S.C.App. 1994) 323 S.C. 41, 448 S.E.2d 569, amended on denial of rehearing, rehearing denied. Burglary 10

The crime of burglary no longer requires proof of a break in. State v. Kornahrens (S.C. 1986) 290 S.C. 281, 350 S.E.2d 180, certiorari denied 107 S.Ct. 1592, 480 U.S. 940, 94 L.Ed.2d 781, denial of habeas corpus affirmed 66 F.3d 1350, certiorari denied 116 S.Ct. 1575, 517 U.S. 1171, 134 L.Ed.2d 673, rehearing denied 116 S.Ct. 2541, 518 U.S. 1013, 135 L.Ed.2d 1063.

4. Intent

Neither statute defining offense of first‑degree burglary nor statute governing domestic violence protection orders contains limitation or exception for unlawful entries or violations committed with benevolent intent; neither statute purports to exclude a misdemeanor violation of a protective order from supporting a conviction of first‑degree burglary, neither statute requires a particular mental state for the violation of a protective order to become a criminal act, and neither statute establishes any exceptions or identifies violations that are not of a criminal nature. State v. Gilliland (S.C.App. 2012) 402 S.C. 389, 741 S.E.2d 521, rehearing denied. Burglary 14; Protection of Endangered Persons 93; Protection of Endangered Persons 101

First‑degree burglary requires that, at the time the offender entered the dwelling, he intended to commit a crime once inside. State v. Gilliland (S.C.App. 2012) 402 S.C. 389, 741 S.E.2d 521, rehearing denied. Burglary 3

Although the intent to commit a crime required for a conviction of first‑degree burglary must exist at the time the accused enters the dwelling, the jury may base its determination of that intent upon evidence of the accused’s actions once inside the dwelling. State v. Gilliland (S.C.App. 2012) 402 S.C. 389, 741 S.E.2d 521, rehearing denied. Burglary 3; Burglary 41(3)

5. Dwelling

The inquiry into whether a defendant has a sufficient possessory interest in a dwelling so as to preclude a burglary conviction for entry into that dwelling is highly factual. State v. Singley (S.C. 2011) 392 S.C. 270, 709 S.E.2d 603. Burglary 7

The proper test for determining whether a defendant’s ownership interest in a dwelling precludes a burglary conviction is whether, under the totality of the circumstances, a burglary defendant had custody and control of, and the right and expectation to be safe and secure in, the dwelling burglarized; if so, he is a person in lawful possession and cannot be convicted of burglary, but if not, the jury must then determine whether the alleged victim had this interest and whether the defendant invaded it. State v. Singley (S.C. 2011) 392 S.C. 270, 709 S.E.2d 603. Burglary 7

One cannot commit the offense of burglary by breaking into his own home, although the person must be in lawful possession of the home. State v. Singley (S.C. 2011) 392 S.C. 270, 709 S.E.2d 603. Burglary 7

Defendant’s ownership interest in home did not preclude, as a matter of law, conviction for burglary stemming from incident involving home; burglary was a crime against possession and habitation, not a crime against ownership, although defendant had an undivided right to possess the home equal to that of his mother by virtue of his ownership interest, the mere holding of title to property was not dispositive of whether defendant could be convicted of burglarizing the home as the core of a dwelling constituting one’s home for burglary purposes was the expectation of peace and security therein, and defendant had left the home without protest at the request of his mother and taken up residence elsewhere, only to return six months later and enter the home through a window. State v. Singley (S.C. 2011) 392 S.C. 270, 709 S.E.2d 603. Burglary 7

The law of burglary is primarily designed to secure the sanctity of one’s home, especially at nighttime when peace, solitude, and safety are most desired and expected, and thus, at the heart of burglary law is protection of the individual and family from unlawful intrusion while home at night. State v. Singley (S.C.App. 2009) 383 S.C. 441, 679 S.E.2d 538, rehearing denied, certiorari granted, affirmed 392 S.C. 270, 709 S.E.2d 603. Burglary 4; Burglary 8

While defendant lawfully owned 12.5% of the dwelling, his ownership of title did not give him a possessory interest recognized under the burglary statute; defendant’s father had passed away, and as a result, his father’s ownership interest in defendant’s childhood home passed intestate to defendant, his mother, and his brother, and under the burglary statute, it was clear that defendant’s mother, not defendant, was the person in lawful possession, as defendant’s mother owned 75% of the dwelling, and defendant’s mode of entrance through a window implied his entry was without consent. State v. Singley (S.C.App. 2009) 383 S.C. 441, 679 S.E.2d 538, rehearing denied, certiorari granted, affirmed 392 S.C. 270, 709 S.E.2d 603. Burglary 7

A fully‑enclosed screened porch was a “dwelling,” within meaning of burglary statute; the porch was appurtenant to a home, and it was used by the homeowner for the protection of paint and wood stored there. State v. Stone (S.C. 2002) 350 S.C. 442, 567 S.E.2d 244, appeal after new sentencing hearing 376 S.C. 32, 655 S.E.2d 487, rehearing denied. Burglary 4

Motel room remained a “dwelling,” within the meaning of the burglary statutes, even if its occupants were not present at the time defendant entered room, where one occupant and children of occupant’s boyfriend had been in and out of room all that day. State v. White (S.C. 2002) 349 S.C. 33, 562 S.E.2d 305, habeas corpus dismissed 2007 WL 709001, appeal dismissed 250 Fed.Appx. 568, 2007 WL 2963701, certiorari denied 128 S.Ct. 1454, 552 U.S. 1235, 170 L.Ed.2d 283. Burglary 6

Motel room was being used as a “dwelling” as a matter of law, and thus, defendant was not entitled to instruction on lesser‑included offenses of second‑degree and third‑degree burglary of a building, in prosecution for first‑degree burglary, even if room was temporarily unoccupied at time defendant entered room, where occupants were staying in motel while work was being done on their home and intended to return to room after swimming in motel pool. State v. White (S.C. 2002) 349 S.C. 33, 562 S.E.2d 305, habeas corpus dismissed 2007 WL 709001, appeal dismissed 250 Fed.Appx. 568, 2007 WL 2963701, certiorari denied 128 S.Ct. 1454, 552 U.S. 1235, 170 L.Ed.2d 283. Criminal Law 795(2.35)

6. Lesser included offenses

Statutory trespass is not a lesser included offense of first degree burglary: statutory trespass requires a prior warning against entry or a request to leave while burglary does not require these elements. State v. Cross (S.C.App. 1994) 323 S.C. 41, 448 S.E.2d 569, amended on denial of rehearing, rehearing denied. Indictment And Information 191(.5)

7. Under former Section 16‑11‑310

Precise day or year need not be alleged, provided the day named is anterior to the bill. State v Branham (1880) 13 SC 389. State v Dawkins (1890) 32 SC 17, 10 SE 772. State v Howard (1890) 32 SC 91, 10 SE 831.

Intent to commit felony is no longer an ingredient of burglary, and indictment which charges one with breaking and entering dwelling of another in nighttime within intent to commit any crime, felony or misdemeanor, is sufficient. State v. Brooks (S.C. 1981) 277 S.C. 111, 283 S.E.2d 830. Burglary 19

Voluntary intoxication is not a defense to a crime of specific intent such as burglary. State v. Vaughn (S.C. 1977) 268 S.C. 119, 232 S.E.2d 328.

Voluntary intoxication is not an excuse for a crime of specific intent such as housebreaking. State v. Vaughn (S.C. 1977) 268 S.C. 119, 232 S.E.2d 328.

Unbridled discretion of jury in imposing life sentence upon defendant convicted of burglary does not constitute cruel and unusual punishment. State v. Smith (S.C. 1976) 267 S.C. 527, 229 S.E.2d 851.

Burglary is a crime against possession and not against property. State v. Clamp (S.C. 1954) 225 S.C. 89, 80 S.E.2d 918. Burglary 2

A sentence of thirty years on special verdict of guilty with recommendation of mercy was set aside as too severe and within the protection of SC Const, Art 1, Section 19. State v. Kimbrough (S.C. 1948) 212 S.C. 348, 46 S.E.2d 273.

Where a servant, having a right to sleep in his master’s dwelling, goes in, not with intent to lodge, but with intent to steal, by opening the door or raising the sash, and actually steals and carries away his master’s goods, he commits a burglary. State v. Howard (S.C. 1902) 64 S.C. 344, 42 S.E. 173, 92 Am.St.Rep. 804. Burglary 3

It is not necessary to specify the particular chattels defendant intended to steal. State v. Langford (S.C. 1899) 55 S.C. 322, 33 S.E. 370, 74 Am.St.Rep. 746. Burglary 23

There being one count for burglary and another for larceny, upon conviction of burglary, error in charge as to larceny was immaterial, and no ground for new trial. State v. Dawkins (S.C. 1890) 32 S.C. 17, 10 S.E. 772.

It was no error to decline to give legal definition of burglary when correct principles of law applicable had already been stated. State v. Dawkins (S.C. 1890) 32 S.C. 17, 10 S.E. 772.

Where a party breaks out of a dwelling house at night, having committed a felony, no matter how he entered, it is burglary. State v. Bee (S.C. 1888) 29 S.C. 81, 6 S.E. 911.

General verdict on indictment with three counts, one for burglary, one for another burglary, and the third for petit larceny, is good. State v. Nelson (S.C. 1867) 14 Rich. 169, 94 Am.Dec. 130.

Neither the act of 1886, enlarging the limits within which burglary may be committed, nor the act of 1878, increasing its punishment, repealed the common‑law offense of burglary. State v. Branham (S.C. 1880) 13 S.C. 389. Burglary 2

Misnomer is not fatal unless it is objected to. State v. Branham (S.C. 1880) 13 S.C. 389.

At common law, the offense of burglary consisted in breaking and entering the dwelling house of another with intent to commit a felony therein; and the term “dwelling house” was held to include all outhouses contiguous to the dwelling and parcel thereof, if within the curtilage. State v. Sampson (S.C. 1880) 12 S.C. 567, 32 Am.Rep. 513.

Indictment may join a count for burglary with a count for receiving stolen goods. State v. Strickland (S.C. 1878) 10 S.C. 191. Indictment And Information 131

8. Under former Section 16‑11‑320

Housebreaking, denounced by this section [Code 1962 Section 16‑332], is a crime against possession, and not against property. State v Alford (1927) 142 SC 43, 140 SE 261. State v Miller (1954) 225 SC 21, 80 SE2d 354. Copeland v Manning (1959) 234 SC 510, 109 SE2d 361.

The court, in construing this section [Code 1962 Section 16‑332], said: “Under this statute the mere breaking into a house is not a crime, nor is the mere breaking into and entering a house, or mere breaking with intent to enter a house any crime. It is only where there is a breaking and entering, or a breaking with intent to enter, ‘with intent to commit a felony, or other crime of a lesser grade,’ that the crime denounced by the statute is complete.” in the case of State v Clark (1910) 85 SC 273, 67 SE 300. State v Green (1921) 118 SC 279, 110 SE 145, 19 ALR 1431. State v Christensen (1940) 194 SC 131, 9 SE2d 555.

A conviction for conspiracy to housebreak was supported by the evidence where the defendant was found near the scene of an attempted housebreaking at 3:00 a.m., was apprehended as he drove his truck away with the headlights off, originally denied knowing the co‑defendant (who was his cousin), and later admitted that the co‑defendant told him of larceny plans although the defendant denied any participation in them. Under such circumstances, the judgment of conviction would be affirmed despite the trial court’s error in admitting the confession of the co‑defendant without sufficiently redacting references to the defendant. State v. Clark (S.C. 1985) 286 S.C. 432, 334 S.E.2d 121, certiorari denied 106 S.Ct. 416, 474 U.S. 998, 88 L.Ed.2d 366. Conspiracy 47(11)

Evidence was insufficient for conviction for housebreaking and larceny where residence was broken into and property removed between 10:15 a.m. and 12:20 p.m., and during same time period, defendants parked car along nearby road, climbed fence, and entered woods in direction of residence, defendants walked along street in front of residence, thereafter, they returned to their parked car, through woods they had originally entered and drove away from area, and around 6:00 p.m. that evening, majority of stolen property was located in clump of undergrowth near route used by defendants when returning to their parked car. State v. Woods (S.C. 1979) 273 S.C. 266, 255 S.E.2d 680. Burglary 41(1); Larceny 55

Co‑defendant’s guilty plea was relevant to issue of defendant’s knowledge of co‑defendant’s intentions, where defendant testified co‑defendant had said nothing to him about committing crime before entering school building, and that he had no reason to think he intended to do so. State v. Murphy (S.C. 1978) 270 S.C. 642, 244 S.E.2d 36.

The fundamental theory, in the absence of evidence of other intent or explanation for breaking and entering, is that the usual object or purpose of burglarizing a dwelling house at night is theft. State v. Haney (S.C. 1971) 257 S.C. 89, 184 S.E.2d 344.

The breaking and entry condemned by this section [Code 1962 Section 16‑332] must be carried out with intent to commit a felony or other crime of a lesser grade. State v. Haney (S.C. 1971) 257 S.C. 89, 184 S.E.2d 344.

Absent an admission by the defendant, proof of intent necessarily rests on inference from conduct. State v. Haney (S.C. 1971) 257 S.C. 89, 184 S.E.2d 344.

It is not necessary for the indictment to specify the particular goods and chattels the defendant intended to steal. State v. Haney (S.C. 1971) 257 S.C. 89, 184 S.E.2d 344.

It is not essential to the commission of the crime of housebreaking that one commit grand larceny. It is sufficient that the one breaking and entering did so with the intent to commit any crime. State v. Amerson (S.C. 1964) 244 S.C. 374, 137 S.E.2d 284.

A verdict of not guilty to a charge of grand larceny is not inconsistent with a verdict of guilty to a crime charged under this section [Code 1962 Section 16‑332]. State v. Amerson (S.C. 1964) 244 S.C. 374, 137 S.E.2d 284.

If a defendant breaks and enters into the dwelling house of a tenant for the purpose of securing possession of property under a distress warrant, which is required to be taken in a peaceable manner, he is guilty of a trespass and an invasion of the rights of the tenant unwarranted in law. It was for the jury to say whether such breaking and entry under the circumstances constitutes a crime under the provisions of this section [Code 1962 Section 16‑332]. State v. Christensen (S.C. 1940) 194 S.C. 131, 9 S.E.2d 555. Burglary 9(.5)

The mere breaking and entering a house is not a crime under this section [Code 1962 Section 16‑332] of the Code. State v. Melton (S.C. 1936) 181 S.C. 482, 188 S.E. 133. Burglary 3

Indictment for housebreaking may properly allege the house broken into to be the property of the person who occupies it. State v. Alford (S.C. 1927) 142 S.C. 43, 140 S.E. 261. Burglary 22

This section [Code 1962 Section 16‑332] does not justify the setting of a spring gun to prevent breaking or entry. State v. Green (S.C. 1921) 118 S.C. 279, 110 S.E. 145, 19 A.L.R. 1431.

9. Guilty pleas

The guilty plea of a defendant charged with attempted burglary and burglary in the first degree was not knowing and voluntary where, at the plea hearing, the trial judge twice stated that the defendant would have to serve at least 1⁄3 of his sentence before becoming eligible for parole, the defendant did not discover until after incarceration that because he had a previous violent crime conviction he would not be eligible for parole, and the trial judge was aware of the defendant’s prior conviction when he made the statements at the hearing. Brown v. State (S.C. 1991) 306 S.C. 381, 412 S.E.2d 399.

10. Competency to stand trial

Evidence supported finding that defendant was competent to stand trial for rape and burglary, even though defendant suffered brain damage and short term memory deficits; forensic psychologists testified that defendant understood the charges against him and the nature of the proceedings, and that defendant was able to consult with his attorneys. State v. Proctor (S.C.App. 2001) 348 S.C. 322, 559 S.E.2d 318, rehearing denied, reversed 358 S.C. 424, 595 S.E.2d 480. Criminal Law 625.15

11. Indictment

Failure to state circumstances of aggravation in indictment for first‑degree burglary deprived circuit court of subject matter jurisdiction to convict defendant of first degree burglary, where indictment did not indicate that defendant had a weapon, harmed anyone, or threatened to use force, nor did it indicate that defendant had prior burglary convictions or that the burglary occurred at night. Mathis v. State (S.C. 2003) 355 S.C. 87, 584 S.E.2d 366. Criminal Law 99

The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. Mathis v. State (S.C. 2003) 355 S.C. 87, 584 S.E.2d 366. Indictment And Information 60; Indictment And Information 71.2(2)

Indictment for attempted first‑degree burglary was sufficient to confer subject matter jurisdiction on the circuit court, where indictment alleged that defendant attempted to enter the dwelling of another, without consent, and with the intent to commit a crime, and that defendant had two or more prior convictions for burglary and/or housebreaking, or a combination of the two. State v. Wright (S.C.App. 2003) 354 S.C. 48, 579 S.E.2d 538. Burglary 18

Trial court erred in allowing the state to amend defendant’s burglary indictment at trial by adding the additional aggravating factor of two or more prior burglary convictions; amendment was a material change in the nature of the offense charged because the proof required for amended indictment was different from proof required for original indictment. State v. Guthrie (S.C.App. 2002) 352 S.C. 103, 572 S.E.2d 309. Indictment And Information 159(2)

Trial court lost subject matter jurisdiction over first degree burglary charge when it permitted state, at outset of trial, to amend indictment to replace words “in the hours during darkness” with “caused physical injury”; aggravating circumstance was required element of first degree burglary, aggravating circumstance upon which conviction was based was never presented to grand jury, and proof required for each aggravating circumstance was materially different from one another. State v. Lynch (S.C. 2001) 344 S.C. 635, 545 S.E.2d 511, habeas corpus denied 2007 WL 134130. Indictment And Information 159(1)

First‑degree burglary indictment sufficiently alleged that entering occurred “in the nighttime,” even though it did not use those words; indictment alleged very hour and minute burglary occurred, i.e., “2316 hours,” or in other words, 11:16 o’clock p.m., which could only have occurred in “nighttime.” State v. Staggers (S.C.App. 1999) 338 S.C. 53, 525 S.E.2d 260, rehearing denied, certiorari denied. Burglary 24

Indictment for first‑degree burglary was sufficient to confer subject matter jurisdiction on the trial court, where it charged that defendant entered victim’s dwelling without consent, with the intent to commit a crime, and that the incident occurred in the nighttime. State v. Smalls (S.C.App. 1999) 336 S.C. 301, 519 S.E.2d 793. Burglary 20

Prosecutor’s amendment of indictment charging defendant with second degree burglary to state that burglary occurred at nighttime changed the classification of the offense from nonviolent to violent, and thus trial court lacked subject matter jurisdiction to convict and sentence defendant under amended indictment that had not been presented to grand jury. Weinhauer v. State (S.C. 1999) 334 S.C. 327, 513 S.E.2d 840, rehearing denied. Criminal Law 93; Indictment And Information 159(3)

12. Severance

Trial court did not abuse its discretion in refusing to sever defendant’s two burglary charges for trial; break‑in at first victim’s residence was very close in time and proximity to the attempted break‑in of second victim, victims of both burglaries similarly described the suspect, defendant was found after second burglary victim chased him and directed police to defendant’s location, and both indictments for burglary offenses arose out of a single chain of events, were of the same nature, and were proved by the same evidence and witnesses. State v. Simmons (S.C.App. 2002) 352 S.C. 342, 573 S.E.2d 856. Criminal Law 620(6)

13. Presumptions and burden of proof

State is required to prove all the elements of first degree burglary beyond a reasonable doubt. State v. Simmons (S.C.App. 2002) 352 S.C. 342, 573 S.E.2d 856. Criminal Law 561(2)

The State is not required to accept a defendant’s stipulation of proof as to element of crime because the State still bears the burden of proving every element of a crime beyond a reasonable doubt. State v. Cheatham (S.C.App. 2002) 349 S.C. 101, 561 S.E.2d 618, rehearing denied, certiorari denied. Criminal Law 327; Criminal Law 661

14. Admissibility of evidence

Pursuant to statute providing that person is guilty of burglary in the first degree if person enters dwelling without consent and with intent to commit crime in the dwelling and burglary is committed by person with prior record of two or more convictions for burglary, probative value of all seven of defendant’s prior burglary convictions was outweighed by the very great potential for prejudice to defendant, regardless of trial court’s limiting instructions, and thus, trial court erred in admitting evidence of all seven of defendant’s prior burglary convictions; if State had submitted evidence of only two of defendant’s seven prior convictions, jury would have had sufficient evidence to convict defendant of first‑degree burglary without prejudice. State v. James (S.C. 2003) 355 S.C. 25, 583 S.E.2d 745. Criminal Law 368.19

Evidence of second burglary committed on second victim by defendant was admissible in burglary prosecution under res gestae theory, where defendant’s act of burglarizing first victim’s home was inextricably intertwined with defendant’s attempt to evade second victim and defendant’s subsequent capture by police. State v. Simmons (S.C.App. 2002) 352 S.C. 342, 573 S.E.2d 856. Criminal Law 368.76

Defendant was not prejudiced by the presentation of evidence regarding burglary of second victim in burglary prosecution to entitle defendant to a mistrial, even though trial court granted defendant’s motion for a directed verdict on burglary of second victim; evidence presented regarding burglary of second victim was relevant to defendant’s capture and would have been admissible at trial regardless of whether defendant faced charges for the burglary of second victim. State v. Simmons (S.C.App. 2002) 352 S.C. 342, 573 S.E.2d 856. Criminal Law 867.12(7)

Defendant’s prior housebreaking convictions were admissible in first degree burglary prosecution, even though convictions were more than ten years old, where such convictions were an element of first degree burglary, jury was not informed of specific details of convictions, and jury was instructed that they should consider the convictions only as proof of an element of first degree burglary and not consider the convictions as proof that defendant was guilty of the current offense. State v. Simmons (S.C.App. 2002) 352 S.C. 342, 573 S.E.2d 856. Criminal Law 368.19; Criminal Law 373.21; Criminal Law 673(5)

Victim’s in court identification testimony was admissible, even though victim chose not to make selection from the one photographic lineup she was shown, where she described the scene as well‑lit, victim testified that she had heightened degree of attention during incident, which she described in great detail, and victim was with perpetrator for some fifteen minutes. State v. McCord (S.C.App. 2002) 349 S.C. 477, 562 S.E.2d 689. Criminal Law 339.9(3)

Evidence of defendant’s prior burglary and housebreaking convictions admitted to show an element of first degree burglary was not unduly prejudicial; trial court specifically instructed the jury not to consider defendant’s prior convictions as evidence of defendant’s guilt of crime charged and to limit their consideration of the prior convictions to whether an element of first degree burglary was proven. State v. Cheatham (S.C.App. 2002) 349 S.C. 101, 561 S.E.2d 618, rehearing denied, certiorari denied. Criminal Law 373.12; Criminal Law 673(5)

The admission of prior burglary or housebreaking convictions for limited consideration as an element of first degree burglary does not constitute undue prejudice. State v. Cheatham (S.C.App. 2002) 349 S.C. 101, 561 S.E.2d 618, rehearing denied, certiorari denied. Criminal Law 373.12

Under the totality of the circumstances, a substantial likelihood of irreparable misidentification existed such that eyewitness’s show up identifications about one to one and one half hours after robbery were unreliable as a matter of law; eyewitness saw the two defendants for only a very brief period of time and at some distance, eyewitness’s attention was likely not as acute as it might have been had she been the victim, the degree of accuracy of eyewitness’s descriptions were at best tenuous, and eyewitness failed to recognize one defendant until the show‑up. State v. Moore (S.C. 2000) 343 S.C. 282, 540 S.E.2d 445. Criminal Law 339.8(6)

Error in admission of eyewitness identification testimony without prior determination as to reliability of identification required reversal, in burglary prosecution, as, without such testimony, state’s case against defendant was tenuous; defendant presented alibi witnesses, and, although prosecution presented testimony by police officer that police dog taken to woods behind victim’s apartment later reacted to co‑defendant, as well as testimony by inmate that he heard defendant and co‑defendant confess, testimony pertaining to police dog did not place co‑defendant inside apartment, and inmate’s testimony was contradicted by two other inmates who were present. State v. Moore (S.C.App. 1999) 334 S.C. 411, 513 S.E.2d 626, rehearing denied, certiorari granted, affirmed in part, reversed in part 343 S.C. 282, 540 S.E.2d 445. Criminal Law 1169.1(5)

Defendant’s two prior burglary convictions were element of charged first‑degree burglary offense, so that trial court could admit evidence of those convictions, where it gave limiting instruction on several occasions; state was required to prove specific nature of prior convictions and could not be forced to accept defendant’s offered stipulation. State v. Hamilton (S.C.App. 1997) 327 S.C. 440, 486 S.E.2d 512, rehearing denied, certiorari denied, certiorari denied 119 S.Ct. 239, 525 U.S. 904, 142 L.Ed.2d 196. Criminal Law 368.19

Evidence of the defendant’s prior attacks on 3 elderly women was properly admitted to show intent for purposes of the first degree burglary charge in a murder prosecution involving the beating death of an elderly woman, even though the 3 prior attacks involved sexual assaults, where each attack was accompanied by terrific physical violence far beyond that needed to accomplish the assault itself, and theft was not the overwhelming motivation; moreover, the probative value of the evidence outweighed its prejudicial effect since the issue of intent was a contested one. State v. Simmons (S.C. 1993) 310 S.C. 439, 427 S.E.2d 175, rehearing denied, certiorari granted 114 S.Ct. 57, 510 U.S. 811, 126 L.Ed.2d 27, reversed 114 S.Ct. 2187, 512 U.S. 154, 129 L.Ed.2d 133.

15. Questions for jury

Whether defendant entered victim’s apartment without her consent and with intent to commit crime presented questions for jury, on charge for first‑degree burglary. State v. Thompson (S.C.App. 2017) 420 S.C. 386, 803 S.E.2d 44. Burglary 45

Circumstantial evidence that defendant’s fingerprint was found on stolen vehicle, which was located two miles from victim’s home within 30 minutes of crime, that defendant denied he had contact with victim’s vehicle, knew victim, or knew where he lived, that one assailant had exited vehicle and assaulted victim before leaving scene, that defendant and alleged accomplice were in same vocational rehabilitation program, and that DNA evidence on duct tape removed from victim’s head was matched to alleged accomplice, was sufficient to raise question for jury as to defendant’s guilt in prosecution for first‑degree burglary, armed robbery, kidnapping, and other crimes. State v. Pearson (S.C. 2016) 415 S.C. 463, 783 S.E.2d 802. Burglary 45; Criminal Law 741(2); Robbery 26

Issue as to whether defendant entered the apartment without permission, during the nighttime, with a gun, and intended to commit the crime of armed robbery was for jury in prosecution of defendant for burglary in the first degree. State v. Thompson (S.C.App. 2007) 374 S.C. 257, 647 S.E.2d 702, appeal from dismissal of hapeas corpus dismissed 462 Fed.Appx. 284, 2012 WL 313686. Burglary 45

Defendant was entitled to directed verdict on first‑degree burglary charge; fact that defendant’s fingerprint was on a screen that was propped up against the house did not prove entry, where defendant was in and around the victim’s house at least three times prior to the burglary. State v. Mitchell (S.C. 2000) 341 S.C. 406, 535 S.E.2d 126. Burglary 45

Burglary defendant’s actions after he entered the house were some evidence of his intent to commit a crime therein, and thus, trial judge did not err in refusing to direct a verdict as it was for the jury to decide if defendant had entered the house with the intent to commit a crime inside. State v. Pinckney (S.C. 2000) 339 S.C. 346, 529 S.E.2d 526. Burglary 45

16. Instructions

The trial court did not impermissibly enlarge the indictment when it charged the jury with attempted burglary, as a lesser included offense of burglary; defendant was apprised of the fact that the State was trying to prove first degree burglary by showing he entered the victim’s home, and thus defendant was on notice of the charge and its lesser included offense. State v. Green (S.C.App. 2014) 406 S.C. 589, 753 S.E.2d 259. Criminal Law 795(2.85); Indictment and Information 159(2)

Jury charge on offense of first degree burglary adequately instructed jury that state must prove that intent to commit crime existed at time of entry into dwelling. Pinckney v. State (S.C. 2006) 368 S.C. 502, 629 S.E.2d 367. Burglary 3

To ensure that the defendant is not convicted on an improper basis while allowing the State to prove the elements of first degree burglary, the trial court should, on request, instruct the jury that the information about the prior burglaries and/or housebreaking convictions should only be considered for the limited purpose of proving one of the elements of first degree burglary. State v. Simmons (S.C.App. 2002) 352 S.C. 342, 573 S.E.2d 856. Criminal Law 673(5)

Motel room was being used as a “dwelling” as a matter of law, and thus, defendant was not entitled to instruction on lesser‑included offenses of second‑degree and third‑degree burglary of a building, in prosecution for first‑degree burglary, even if room was temporarily unoccupied at time defendant entered room, where occupants were staying in motel while work was being done on their home and intended to return to room after swimming in motel pool. State v. White (S.C. 2002) 349 S.C. 33, 562 S.E.2d 305, habeas corpus dismissed 2007 WL 709001, appeal dismissed 250 Fed.Appx. 568, 2007 WL 2963701, certiorari denied 128 S.Ct. 1454, 552 U.S. 1235, 170 L.Ed.2d 283. Criminal Law 795(2.35)

In a first‑degree burglary prosecution, the trial court should, on request, instruct the jury on the limited purpose for which it can consider evidence that the defendant has two prior burglary and/or housebreaking convictions. State v. Benton (S.C. 2000) 338 S.C. 151, 526 S.E.2d 228, certiorari denied 120 S.Ct. 2209, 530 U.S. 1209, 147 L.Ed.2d 242, habeas corpus dismissed 2002 WL 32333153, appeal dismissed 56 Fed.Appx. 200, 2003 WL 599286. Criminal Law 673(5)

First‑degree burglary defendant could not claim on appeal that trial erred by failing to give jury instruction on circumstantial evidence; while defendant claimed on appeal that palm print in victim’s apartment was circumstantial evidence of perpetrator’s identity, defendant conceded at trial that palm print was direct evidence. State v. Benton (S.C. 2000) 338 S.C. 151, 526 S.E.2d 228, certiorari denied 120 S.Ct. 2209, 530 U.S. 1209, 147 L.Ed.2d 242, habeas corpus dismissed 2002 WL 32333153, appeal dismissed 56 Fed.Appx. 200, 2003 WL 599286. Criminal Law 1137(3)

A defendant was not entitled to have the jury instructed on the elements of all three degrees of burglary, although he asserted that one who commits burglary in the first degree also commits burglary in the second and third degrees because the term “dwelling” is encompassed within the term “building,” where no evidence existed to create a factual dispute as to what type of structure was entered and the victim’s apartment was unquestionably a “dwelling” within the meaning of the first degree burglary statute. State v. Goldenbaum (S.C. 1988) 294 S.C. 455, 365 S.E.2d 731.

17. Sufficiency of evidence

Testimony by defendant’s girlfriend that she had never given him permission to “break‑in” to apartment whenever he desired, together with evidence that she had obtained a restraining order against him at the time of the break‑in, was sufficient to show that defendant’s attempted entry into apartment was not consensual, as required to support conviction for attempted first degree burglary. State v. Pipkin (S.C.App. 2004) 359 S.C. 322, 597 S.E.2d 831, rehearing denied, certiorari denied, habeas corpus dismissed 2010 WL 1727869. Burglary 41(4)

Evidence was sufficient to show that defendant was person who committed burglary; victim’s neighbor observed red vehicle with gray primer paint on front fender and paper license plate parked in victim’s driveway and saw person walking back and forth from vehicle to victim’s front door, victim found piece of paper near driveway with unique username and password printed on it, police determined that paper was issued to defendant by unemployment office, investigator went to interview defendant and observed vehicle that matched description of vehicle observed by neighbor at defendant’s girlfriend’s home, defendant had asked girlfriend’s mother to lie for him, and defendant was initially evasive in interview but ultimately acknowledged that he had driven vehicle to victim’s home on day of burglary. State v. Lane (S.C. 2014) 410 S.C. 505, 765 S.E.2d 557. Burglary 41(6)

Evidence supported finding that attempted first degree burglary was a lesser included charge of first degree burglary; attempted first degree burglary was a lesser included offense of first degree burglary, without the completed act of entering the premises. State v. Green (S.C.App. 2014) 406 S.C. 589, 753 S.E.2d 259. Indictment and Information 191(2)

State failed to present substantial circumstantial evidence to reasonably prove defendant was person who committed burglary for which he was charged, but rather evidence presented by state raised only mere suspicion that defendant committed burglary; state presented testimony that burgundy or red car with paper tag was parked in victim’s driveway on day of theft, that defendant at times drove car that matched description of car parked in driveway, that defendant was driving car with matching description on day of theft, that folded piece of paper belonging to defendant was found in driveway that was not originally found by police, and that defendant did not want to talk to police the day after theft. State v. Lane (S.C.App. 2013) 406 S.C. 118, 749 S.E.2d 165, rehearing denied, certiorari granted, reversed 410 S.C. 505, 765 S.E.2d 557. Burglary 41(6)

Evidence that defendant entered victim’s home against her wishes at some point before midnight and remained there for nearly three nighttime hours was sufficient to establish that defendant entered victim’s dwelling without her consent and remained there during the nighttime, as required to support conviction of first‑degree burglary. State v. Gilliland (S.C.App. 2012) 402 S.C. 389, 741 S.E.2d 521, rehearing denied. Burglary 41(4); Burglary 41(5)

Direct and circumstantial evidence of defendant’s intent to commit a crime once inside victim’s residence, independent of defendant’s violation of domestic violence protection order by breaking into victim’s home, was sufficient to support conviction of first‑degree burglary; defendant admitted that went to victim’s home with intent of talking to victim, he knew protective order barred any communication or attempt to communicate with victim in any way, and he entered victim’s home and talked to her for hours. State v. Gilliland (S.C.App. 2012) 402 S.C. 389, 741 S.E.2d 521, rehearing denied. Burglary 41(3)

Evidence supported finding that defendant intended to commit a crime when he entered victim’s home, and therefore was sufficient to support first‑degree burglary conviction; defendant entered victim’s home at night without permission, and when victim woke up, defendant briefly brought up an outstanding debt and then sexually assaulted victim. State v. Meggett (S.C.App. 2012) 398 S.C. 516, 728 S.E.2d 492. Burglary 41(3)

Circumstantial evidence presented did not tend to prove defendant’s guilt with regards to burglary and several related offenses, and therefore evidence was insufficient to support convictions for first‑degree burglary, grand larceny, criminal conspiracy, and malicious injury to an electric utility system; only evidence presented by State was that defendant was with the burglars in stolen good less than 90 minutes after burglary, that defendant fled from law enforcement, and that defendant asked an uninvolved person to lie for him. State v. Odems (S.C. 2011) 395 S.C. 582, 720 S.E.2d 48, rehearing denied. Burglary 41(1); Conspiracy 47(11); Electricity 21; Larceny 65

Evidence of occupants’ intent to return to building burglarized by defendant, characterized by occupants as secondary home, was sufficient to establish that building constituted “dwelling” for purposes of statute defining offense of first‑degree burglary; occupants, husband and wife, visited home about once every two weeks or month, utilities were all on in home, and home was ready to be lived in, occupants had previously lived in home “off and on,” and only reason they had not been staying overnight in home for last three years was because wife’s medical condition prevented them from doing so. State v. Evans (S.C.App. 2008) 376 S.C. 421, 656 S.E.2d 782. Burglary 4

Evidence was sufficient to show that defendant and the individual previously convicted were one and the same, and thus, State satisfied its burden of proof that defendant had been convicted of the prior offenses that triggered the “Two‑Strikes” law; State proffered certified copies of court records showing that defendant had previously pled guilty to two counts of attempted armed robbery and one count of assault and battery with intent to kill, and defendant offered no evidence to suggest that he was not that individual. State v. Johnson (S.C.App. 2002) 350 S.C. 543, 567 S.E.2d 486, rehearing denied, certiorari denied. Sentencing And Punishment 1381(6)

Finding that defendant intended to commit a crime when he broke and entered victim’s home, as required for burglary conviction, was supported by evidence that, after entering victim’s home without her consent, defendant, who was wearing gloves, grabbed victim and covered her mouth, threw her on the bed, choked her, began “humping” her and suggested she cooperate, told her to be quiet so that her child would not wake up, and released victim and ran away when her child woke up and began crying; fact that jury failed to convict defendant of sexual assault did not affect validity of burglary conviction. State v. Peterson (S.C.App. 1999) 336 S.C. 6, 518 S.E.2d 277, habeas corpus dismissed 2008 WL 2557450, appeal dismissed 312 Fed.Appx. 522, 2009 WL 453200. Burglary 41(3)

Circumstantial evidence in burglary prosecution was insufficient to support finding that defendant unlawfully entered victim’s residence; only evidence linking defendant to alleged burglary was single thumbprint found on outside of window screen under broken window, state offered no evidence as to age of thumbprint, there was no evidence as to how screen was removed, i.e., from inside or out, or when it was last seen protecting newly‑painted window, and screen was found directly beneath window, located on side of victim’s house and easily accessible. State v. Mitchell (S.C.App. 1998) 332 S.C. 619, 506 S.E.2d 523, rehearing denied, certiorari granted, affirmed 341 S.C. 406, 535 S.E.2d 126. Burglary 41(6)

The evidence was insufficient, in a juvenile delinquency proceeding, to prove the juvenile’s guilt of first‑degree burglary and grand larceny where the sole evidence supporting the adjudication of guilt was the identification testimony of the victim who saw, with only the light of a flashlight, 2 black youths with short hair, red t‑shirts, and dark pants flee his property, and where 500 red t‑shirts had recently been distributed to area youths. In Interest of Jamal Rashee A (S.C.App. 1992) 308 S.C. 392, 418 S.E.2d 326, rehearing denied.

Evidence was sufficient to identify defendant as perpetrator of first degree burglary and first degree criminal sexual conduct, where evidence showed that defendant’s wallet was found at scene, victim said her assailant looked similar to person pictured on defendant’s driver’s license, and defendant’s appearance was consistent with description given by victim, including scratch on back of neck. State v. Martinez (S.C. 1987) 294 S.C. 72, 362 S.E.2d 641, post‑conviction relief granted 304 S.C. 39, 403 S.E.2d 113. Burglary 41(6); Sex Offenses 261

18. Sentence and punishment

Unambiguous oral sentencing pronouncement took precedence over ambiguous written sentences in prosecution for burglary in the first degree, where oral sentence was subject to only one interpretation, as it was clear that defendant pled guilty to two counts of burglary in the first degree, and he was sentenced in consonance with his negotiated plea agreement, defendant acknowledged on seven occasions that he was pleading guilty to two counts of burglary in the first degree and twice acknowledged that he was being sentenced pursuant to a negotiated agreement, and written sentences were ambiguous and subject to multiple interpretations, as it was not clear from written sentences whether defendant pleaded guilty to burglary in the first or second degree. Bordeaux v. State (S.C. 2014) 410 S.C. 495, 765 S.E.2d 143. Sentencing and Punishment 1139

The trial court lacked the authority to suspend the sentence for first degree burglary; statute gave the trial judge the discretion to suspend a criminal sentence in favor of probation unless the seriousness of the crime warranted a penalty of death or life imprisonment, and the punishment for first degree burglary ranged between 15 years to life imprisonment. State v. Jacobs (S.C. 2011) 393 S.C. 584, 713 S.E.2d 621. Sentencing and Punishment 1804; Sentencing and Punishment 1837

Defense counsel’s advice to defendant charged with first degree burglary to plead guilty was not deficient performance, and, thus, was not ineffective assistance; counsel advised defendant to plead guilty based, at least in part, on likelihood of what counsel believed the sentence would be, i.e., life imprisonment, which was not an inappropriate concern for counsel to have communicated to defendant, and counsel’s advice to defendant that he would get a life sentence if convicted was not incorrect, because life was the maximum sentence for first degree burglary. Bennett v. State (S.C. 2006) 371 S.C. 198, 638 S.E.2d 673. Criminal Law 1920

Defendant’s mandatory life sentence without parole for first‑degree burglary under so‑called “two‑strikes law” did not amount to cruel and unusual punishment, considering that a life sentence was possible even for first offense of first‑degree burglary, which was a most serious offense, defendant had two prior convictions for most serious offense of armed robbery. State v. White (S.C. 2002) 349 S.C. 33, 562 S.E.2d 305, habeas corpus dismissed 2007 WL 709001, appeal dismissed 250 Fed.Appx. 568, 2007 WL 2963701, certiorari denied 128 S.Ct. 1454, 552 U.S. 1235, 170 L.Ed.2d 283. Sentencing And Punishment 1513

“Prior record of two or more convictions,” as used in statute permitting first‑degree burglary conviction if person satisfied other elements of burglary and had two or more prior convictions for burglary or housebreaking, permitted use of prior out‑of‑state convictions as predicate offenses; statute did not limit prior record of convictions for burglary or housebreaking to only those that occurred within South Carolina, and to give it such reading would be result that legislature clearly did not intend. State v. Zulfer (S.C.App. 2001) 345 S.C. 258, 547 S.E.2d 885, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 353 S.C. 537, 579 S.E.2d 317. Sentencing And Punishment 1270

Under repeat offender statute, state could use defendant’s prior burglary and housebreaking convictions to enhance his sentence for current conviction for burglary, first degree, without offending double jeopardy; defendant’s current sentence did not punish him second time for his previous transgression, but rather, it punished him to greater extent for current offense due to his repetitive illegal actions. State v. Washington (S.C. 2000) 338 S.C. 392, 526 S.E.2d 709. Double Jeopardy 30

Defendant’s prior state court burglary conviction qualified as predicate violent felony conviction for purposes of armed career criminal sentencing following his plea of guilty to possession of a firearm by a convicted felon, where defendant acknowledged at sentencing, through counsel, that his prior conviction involved burglary of a building, specifically of a restaurant. U.S. v. Keys (C.A.4 (S.C.) 2006) 208 Fed.Appx. 203, 2006 WL 3498047, Unreported, appeal from dismissal of post‑conviction relief dismissed 585 Fed.Appx. 41, 2014 WL 5358204. Sentencing And Punishment 1285

19. Verdict

Verdicts convicting defendant of first‑degree burglary and acquitting him of petit larceny were not necessarily inconsistent; defendant was identified from photographs on camera in victim’s home, victim testified that he did not recognize person in photographs and had not given permission for that person to be in his home, there was testimony that defendant held bag and flashlight in one of the photographs, and such photograph was admitted into evidence, permitting jury to infer that defendant intended to commit a crime while in victim’s home, and due to multitude of scenarios, was unable or decided not to carry out intended crime. State v. Mitchell (S.C.App. 2012) 399 S.C. 410, 731 S.E.2d 889, rehearing denied, certiorari denied. Criminal Law 878(4)

20. Harmless error

Any error in trial court’s admission of extraneous offense evidence of defendant’s five prior burglary convictions and one prior housebreaking conviction, the probative value of which was outweighed by danger of unfair prejudice in light of fact that offense with which defendant was charged, first‑degree burglary, required but two or more prior convictions, was harmless, given other overwhelming evidence of defendant’s guilt. State v. Keenon (S.C. 2003) 356 S.C. 457, 590 S.E.2d 34. Criminal Law 1169.11

21. Reversible error

Reversible error occurred when defendants’ right of confrontation was violated by trial judge’s limiting cross‑examination on co‑conspirator witness’s potential sentence if convicted of same crimes as defendants, who were charged with first degree burglary, grand larceny, and possession of a firearm during the commission of a violent crime, as witness was the only link placing defendants at the scene of the crime. State v. Mizzell (S.C. 2002) 349 S.C. 326, 563 S.E.2d 315. Criminal Law 1170.5(1)

22. Collateral considerations

Iowa’s burglary statute, which encompassed entry into any building, structure, or land, water, or air vehicle, set out alternative means of fulfilling its locational element, which were broader than the locational element of generic burglary, i.e., entry into a building or other structure, and thus, defendant’s prior Iowa convictions for burglary did not qualify as predicate violent felony offenses for 15‑year mandatory minimum sentence under Armed Career Criminal Act (ACCA). Mathis v. U.S., 2016, 136 S.Ct. 2243, 195 L.Ed.2d 604, on remand 832 F.3d 876. Sentencing and Punishment 1285

**SECTION 16‑11‑312.** Burglary; second degree.

 (A) A person is guilty of burglary in the second degree if the person enters a dwelling without consent and with intent to commit a crime therein.

 (B) A person is guilty of burglary in the second degree if the person enters a building without consent and with intent to commit a crime therein, and either:

 (1) When, in effecting entry or while in the building or in immediate flight therefrom, he or another participant in the crime:

 (a) Is armed with a deadly weapon or explosive; or

 (b) Causes physical injury to any person who is not a participant in the crime; or

 (c) Uses or threatens the use of a dangerous instrument; or

 (d) Displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or

 (2) The burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or

 (3) The entering or remaining occurs in the nighttime.

 (C)(1) Burglary in the second degree pursuant to subsection (A) is a felony punishable by imprisonment for not more than ten years.

 (2) Burglary in the second degree pursuant to subsection (B) is a felony punishable by imprisonment for not more than fifteen years, provided, that no person convicted of burglary in the second degree pursuant to subsection (B) shall be eligible for parole except upon service of not less than one‑third of the term of the sentence.

HISTORY: 1985 Act No. 159, Section 2; 2010 Act No. 273, Section 11, eff June 2, 2010.

CROSS REFERENCES

Additional punishment for possession of firearm or knife during commission of, or attempt to commit, violent crime, see Section 16‑23‑490.

Correction and treatment of youthful offenders, definitions, see Section 24‑19‑10.

Custody of convicted persons, designation of place of confinement, participation in work release and training program, see Section 24‑3‑20.

Definitions relevant to the crime of burglary, see Section 16‑11‑310.

Eligibility for work release, see Section 24‑13‑125.

Prohibition against release of offender into community in which he committed violent crime, see Section 24‑13‑650.

Sentencing, see Section 17‑25‑20 et seq.

Submission of samples for DNA database, see Section 23‑3‑620.

Violent crimes defined, see Section 16‑1‑60.

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119 ALR, Federal 319 , What Constitutes “Violent Felony” for Purpose of Sentence Enhancement Under Armed Career Criminal Act (18 U.S.C.A. Section 924(E)(1)).

77 ALR 1211 , Right of Court to Hear Evidence for Purpose of Determining Sentence to be Imposed.

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6 Am. Jur. Trials 605, Making and Preserving the Record‑Objections.

S.C. Jur. Burglary Section 9, Punishment.

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S.C. Jur. Probation, Parole, and Pardon Section 14, Summary of Parole Eligibility Calculations.

LAW REVIEW AND JOURNAL COMMENTARIES

1981 Survey: Criminal law; modifying the common law definition of burglary. 34 S.C. L. Rev. 97, August 1982.

Attorney General’s Opinions

Under the 1986 Omnibus Criminal Justice Improvements Act, individuals convicted of murder are not entitled to reductions in time prior to parole eligibility through the use of earned work credits. Prisoners convicted of any violent crimes, as defined in Section 16‑1‑60, for a criminal event that occurred after June 3, 1986, and who have a prior conviction at any time before or after June 3, 1986, for one of the specified crimes, would not be eligible for parole consideration on the recent conviction and must complete service of their entire sentences. Under the provisions of Sections 24‑21‑645 and 24‑21‑650, the review in two years upon rejection, of prisoners in confinement for a violent crime, is applicable to the entire violent offender population. Under the provisions of Section 24‑21‑610, all burglary in the second degree convictions would not be eligible for parole until they have served at least one‑third of their sentence. Any and all offenses of burglary in the first degree and burglary in the second degree under Section 16‑11‑312(B) carry all consequences of a “violent crime” regardless of the statutory aggravating circumstances shown. 1986 Op.Atty.Gen., No 86‑102, p 309 (1986 WL 192060).

NOTES OF DECISIONS

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1. Constitutional issues

Defense counsel’s failure to argue, at sentencing for being a felon in possession of a firearm, that defendant’s South Carolina third degree burglary convictions and his South Carolina conviction for assault on a correctional officer were not predicate offenses under the Armed Career Criminal Act (ACCA) was objectively unreasonable under prevailing professional standards, as required to support claim of ineffective assistance of counsel, given existing case law establishing that similar crimes in other states were not predicate offenses under ACCA. U.S. v. Jones, 2015, 114 F.Supp.3d 310. Criminal Law 1957

Counsel rendered ineffective assistance by failing to request clarification of whether jury verdict meant defendant was guilty of third degree burglary rather than second degree burglary; trial court did not explicitly instruct the jury to specify the degree of the offense, and the jury was not instructed that a general verdict had the effect of finding defendant guilty of the highest offense charged in the indictment. Wertz v. State (S.C. 2002) 349 S.C. 291, 562 S.E.2d 654. Criminal Law 1951

On claim that counsel was ineffective on ground that he failed to request clarification of jury verdict finding defendant guilty of second degree burglary, fact that defendant was acquitted of possession of a firearm during the commission of a violent crime did not show that jury intended to convict him of third degree burglary because “armed with deadly weapon” aggravator was absent, as Alexander abolished the rule prohibiting inconsistent verdicts. Wertz v. State (S.C. 2002) 349 S.C. 291, 562 S.E.2d 654. Criminal Law 878(3)

2. Elements

Crawl space was an integral part of office building and, thus, constituted part of a “building” for purposes of second‑degree burglary, where crawl space was underneath office building and enclosed but for an opening concealed with a metal cover. State v. Middleton (S.C.App. 2006) 367 S.C. 527, 626 S.E.2d 74. Burglary 4

The phrase “separately occupied or secured,” as used in statutory definition of “building” for purposes of burglary, requires some objective manifestation that the unit is secure. State v. Hill (S.C. 2004) 361 S.C. 297, 604 S.E.2d 696, rehearing denied, certiorari denied, certiorari denied 125 S.Ct. 1977, 544 U.S. 1020, 161 L.Ed.2d 860. Burglary 4

Department of Social Services’ office area that defendant entered from lobby before shooting three people was not “separately occupied or secured” from public area, and thus, was not deemed separate “building,” for purposes of burglary; door into office area was not locked or even closed on day of shootings, and there was no sign posted telling clients not to enter. State v. Hill (S.C. 2004) 361 S.C. 297, 604 S.E.2d 696, rehearing denied, certiorari denied, certiorari denied 125 S.Ct. 1977, 544 U.S. 1020, 161 L.Ed.2d 860. Burglary 4

The fact a handgun is stolen during a burglary makes the perpetrator “armed with a deadly weapon” within meaning of second degree burglary statute. Wertz v. State (S.C. 2002) 349 S.C. 291, 562 S.E.2d 654. Burglary 10

The crime of burglary no longer requires proof of a break in. State v. Kornahrens (S.C. 1986) 290 S.C. 281, 350 S.E.2d 180, certiorari denied 107 S.Ct. 1592, 480 U.S. 940, 94 L.Ed.2d 781, denial of habeas corpus affirmed 66 F.3d 1350, certiorari denied 116 S.Ct. 1575, 517 U.S. 1171, 134 L.Ed.2d 673, rehearing denied 116 S.Ct. 2541, 518 U.S. 1013, 135 L.Ed.2d 1063.

3. Dwelling

Motel room remained a “dwelling,” within the meaning of the burglary statutes, even if its occupants were not present at the time defendant entered room, where one occupant and children of occupant’s boyfriend had been in and out of room all that day. State v. White (S.C. 2002) 349 S.C. 33, 562 S.E.2d 305, habeas corpus dismissed 2007 WL 709001, appeal dismissed 250 Fed.Appx. 568, 2007 WL 2963701, certiorari denied 128 S.Ct. 1454, 552 U.S. 1235, 170 L.Ed.2d 283. Burglary 6

Motel room was being used as a “dwelling” as a matter of law, and thus, defendant was not entitled to instruction on lesser‑included offenses of second‑degree and third‑degree burglary of a building, in prosecution for first‑degree burglary, even if room was temporarily unoccupied at time defendant entered room, where occupants were staying in motel while work was being done on their home and intended to return to room after swimming in motel pool. State v. White (S.C. 2002) 349 S.C. 33, 562 S.E.2d 305, habeas corpus dismissed 2007 WL 709001, appeal dismissed 250 Fed.Appx. 568, 2007 WL 2963701, certiorari denied 128 S.Ct. 1454, 552 U.S. 1235, 170 L.Ed.2d 283. Criminal Law 795(2.35)

4. Under former Section 16‑11‑310 [Burglary]

Precise day or year need not be alleged, provided the day named is anterior to the bill. State v Branham (1880) 13 SC 389. State v Dawkins (1890) 32 SC 17, 10 SE 772. State v Howard (1890) 32 SC 91, 10 SE 831.

Intent to commit felony is no longer an ingredient of burglary, and indictment which charges one with breaking and entering dwelling of another in nighttime within intent to commit any crime, felony or misdemeanor, is sufficient. State v. Brooks (S.C. 1981) 277 S.C. 111, 283 S.E.2d 830. Burglary 19

Voluntary intoxication is not a defense to a crime of specific intent such as burglary. State v. Vaughn (S.C. 1977) 268 S.C. 119, 232 S.E.2d 328.

Voluntary intoxication is not an excuse for a crime of specific intent such as housebreaking. State v. Vaughn (S.C. 1977) 268 S.C. 119, 232 S.E.2d 328.

Burglary is a crime against possession and not against property. State v. Clamp (S.C. 1954) 225 S.C. 89, 80 S.E.2d 918. Burglary 2

Where a servant, having a right to sleep in his master’s dwelling, goes in, not with intent to lodge, but with intent to steal, by opening the door or raising the sash, and actually steals and carries away his master’s goods, he commits a burglary. State v. Howard (S.C. 1902) 64 S.C. 344, 42 S.E. 173, 92 Am.St.Rep. 804. Burglary 3

It is not necessary to specify the particular chattels defendant intended to steal. State v. Langford (S.C. 1899) 55 S.C. 322, 33 S.E. 370, 74 Am.St.Rep. 746. Burglary 23

There being one count for burglary and another for larceny, upon conviction of burglary, error in charge as to larceny was immaterial, and no ground for new trial. State v. Dawkins (S.C. 1890) 32 S.C. 17, 10 S.E. 772.

It was no error to decline to give legal definition of burglary when correct principles of law applicable had already been stated. State v. Dawkins (S.C. 1890) 32 S.C. 17, 10 S.E. 772.

Where a party breaks out of a dwelling house at night, having committed a felony, no matter how he entered, it is burglary. State v. Bee (S.C. 1888) 29 S.C. 81, 6 S.E. 911.

General verdict on indictment with three counts, one for burglary, one for another burglary, and the third for petit larceny, is good. State v. Nelson (S.C. 1867) 14 Rich. 169, 94 Am.Dec. 130.

Neither the act of 1886, enlarging the limits within which burglary may be committed, nor the act of 1878, increasing its punishment, repealed the common‑law offense of burglary. State v. Branham (S.C. 1880) 13 S.C. 389. Burglary 2

Misnomer is not fatal unless it is objected to. State v. Branham (S.C. 1880) 13 S.C. 389.

At common law, the offense of burglary consisted in breaking and entering the dwelling house of another with intent to commit a felony therein; and the term “dwelling house” was held to include all outhouses contiguous to the dwelling and parcel thereof, if within the curtilage. State v. Sampson (S.C. 1880) 12 S.C. 567, 32 Am.Rep. 513.

Indictment may join a count for burglary with a count for receiving stolen goods. State v. Strickland (S.C. 1878) 10 S.C. 191. Indictment And Information 131

5. Under former Section 16‑11‑320 [Housebreaking which is not burglary]

Housebreaking, denounced by this section [Code 1962 Section 16‑332], is a crime against possession, and not against property. State v Alford (1927) 142 SC 43, 140 SE 261. State v Miller (1954) 225 SC 21, 80 SE2d 354. Copeland v Manning (1959) 234 SC 510, 109 SE2d 361.

The court, in construing this section [Code 1962 Section 16‑332], said: “Under this statute the mere breaking into a house is not a crime, nor is the mere breaking into and entering a house, or mere breaking with intent to enter a house any crime. It is only where there is a breaking and entering, or a breaking with intent to enter, ‘with intent to commit a felony, or other crime of a lesser grade,’ that the crime denounced by the statute is complete.” in the case of State v Clark (1910) 85 SC 273, 67 SE 300. State v Green (1921) 118 SC 279, 110 SE 145, 19 ALR 1431. State v Christensen (1940) 194 SC 131, 9 SE2d 555.

A conviction for conspiracy to housebreak was supported by the evidence where the defendant was found near the scene of an attempted housebreaking at 3:00 a.m., was apprehended as he drove his truck away with the headlights off, originally denied knowing the co‑defendant (who was his cousin), and later admitted that the co‑defendant told him of larceny plans although the defendant denied any participation in them. Under such circumstances, the judgment of conviction would be affirmed despite the trial court’s error in admitting the confession of the co‑defendant without sufficiently redacting references to the defendant. State v. Clark (S.C. 1985) 286 S.C. 432, 334 S.E.2d 121, certiorari denied 106 S.Ct. 416, 474 U.S. 998, 88 L.Ed.2d 366. Conspiracy 47(11)

Evidence was insufficient for conviction for housebreaking and larceny where residence was broken into and property removed between 10:15 a.m. and 12:20 p.m., and during same time period, defendants parked car along nearby road, climbed fence, and entered woods in direction of residence, defendants walked along street in front of residence, thereafter, they returned to their parked car, through woods they had originally entered and drove away from area, and around 6:00 p.m. that evening, majority of stolen property was located in clump of undergrowth near route used by defendants when returning to their parked car. State v. Woods (S.C. 1979) 273 S.C. 266, 255 S.E.2d 680. Burglary 41(1); Larceny 55

Co‑defendant’s guilty plea was relevant to issue of defendant’s knowledge of co‑defendant’s intentions, where defendant testified co‑defendant had said nothing to him about committing crime before entering school building, and that he had no reason to think he intended to do so. State v. Murphy (S.C. 1978) 270 S.C. 642, 244 S.E.2d 36.

Sentence to a term of 5 years was within statutory limits and there was no abuse of discretion where trial judge made inquiry as to degree of participation of appellant and concluded that he was the “prime movement” in the crime of which he was convicted. State v. Dozier (S.C. 1974) 263 S.C. 267, 210 S.E.2d 225.

The fundamental theory, in the absence of evidence of other intent or explanation for breaking and entering, is that the usual object or purpose of burglarizing a dwelling house at night is theft. State v. Haney (S.C. 1971) 257 S.C. 89, 184 S.E.2d 344.

The breaking and entry condemned by this section [Code 1962 Section 16‑332] must be carried out with intent to commit a felony or other crime of a lesser grade. State v. Haney (S.C. 1971) 257 S.C. 89, 184 S.E.2d 344.

Absent an admission by the defendant, proof of intent necessarily rests on inference from conduct. State v. Haney (S.C. 1971) 257 S.C. 89, 184 S.E.2d 344.

It is not necessary for the indictment to specify the particular goods and chattels the defendant intended to steal. State v. Haney (S.C. 1971) 257 S.C. 89, 184 S.E.2d 344.

It is not essential to the commission of the crime of housebreaking that one commit grand larceny. It is sufficient that the one breaking and entering did so with the intent to commit any crime. State v. Amerson (S.C. 1964) 244 S.C. 374, 137 S.E.2d 284.

A verdict of not guilty to a charge of grand larceny is not inconsistent with a verdict of guilty to a crime charged under this section [Code 1962 Section 16‑332]. State v. Amerson (S.C. 1964) 244 S.C. 374, 137 S.E.2d 284.

A sentence of six years for the crimes of housebreaking and grand larceny is well within the statutory limits and the discretion of the trial judge, and where it was not the result of partiality, prejudice, oppression or corrupt motive, the Supreme Court is powerless to interfere. State v. Alexander (S.C. 1956) 230 S.C. 195, 95 S.E.2d 160.

If a defendant breaks and enters into the dwelling house of a tenant for the purpose of securing possession of property under a distress warrant, which is required to be taken in a peaceable manner, he is guilty of a trespass and an invasion of the rights of the tenant unwarranted in law. It was for the jury to say whether such breaking and entry under the circumstances constitutes a crime under the provisions of this section [Code 1962 Section 16‑332]. State v. Christensen (S.C. 1940) 194 S.C. 131, 9 S.E.2d 555. Burglary 9(.5)

The mere breaking and entering a house is not a crime under this section [Code 1962 Section 16‑332] of the Code. State v. Melton (S.C. 1936) 181 S.C. 482, 188 S.E. 133. Burglary 3

Indictment for housebreaking may properly allege the house broken into to be the property of the person who occupies it. State v. Alford (S.C. 1927) 142 S.C. 43, 140 S.E. 261. Burglary 22

This section [Code 1962 Section 16‑332] does not justify the setting of a spring gun to prevent breaking or entry. State v. Green (S.C. 1921) 118 S.C. 279, 110 S.E. 145, 19 A.L.R. 1431.

6. Indictment

Prosecutor’s amendment of indictment charging defendant with second degree burglary to state that burglary occurred at nighttime changed the classification of the offense from nonviolent to violent, and thus trial court lacked subject matter jurisdiction to convict and sentence defendant under amended indictment that had not been presented to grand jury. Weinhauer v. State (S.C. 1999) 334 S.C. 327, 513 S.E.2d 840, rehearing denied. Criminal Law 93; Indictment And Information 159(3)

7. Plea agreements

Assistant solicitor’s classification of defendant’s second‑degree burglary offenses as violent constituted breach of oral plea agreement in prior burglary case that was handled by another assistant solicitor in the same judicial circuit, under which the assistant solicitor had stated the sentence in defendant’s second burglary case would be nonviolent; both solicitors were bound to fulfill the plea agreements made by the other. Sprouse v. State (S.C. 2003) 355 S.C. 335, 585 S.E.2d 278. Criminal Law 273.1(2)

8. Admissibility of evidence

Under the totality of the circumstances, a substantial likelihood of irreparable misidentification existed such that eyewitness’s show up identifications about one to one and one half hours after robbery were unreliable as a matter of law; eyewitness saw the two defendants for only a very brief period of time and at some distance, eyewitness’s attention was likely not as acute as it might have been had she been the victim, the degree of accuracy of eyewitness’s descriptions were at best tenuous, and eyewitness failed to recognize one defendant until the show‑up. State v. Moore (S.C. 2000) 343 S.C. 282, 540 S.E.2d 445. Criminal Law 339.8(6)

Error in admission of eyewitness identification testimony without prior determination as to reliability of identification required reversal, in burglary prosecution, as, without such testimony, state’s case against defendant was tenuous; defendant presented alibi witnesses, and, although prosecution presented testimony by police officer that police dog taken to woods behind victim’s apartment later reacted to co‑defendant, as well as testimony by inmate that he heard defendant and co‑defendant confess, testimony pertaining to police dog did not place co‑defendant inside apartment, and inmate’s testimony was contradicted by two other inmates who were present. State v. Moore (S.C.App. 1999) 334 S.C. 411, 513 S.E.2d 626, rehearing denied, certiorari granted, affirmed in part, reversed in part 343 S.C. 282, 540 S.E.2d 445. Criminal Law 1169.1(5)

8.5. Questions for jury

Circumstantial evidence introduced by State in burglary trial raised fact issue for jury as to defendant’s guilt; forensic evidence placed defendant within community center and, more specifically, at the two places where the crimes had occurred, his fingerprint was found on a manipulated television set in community room where a window had been broken, his blood was recovered just beneath spot a stolen television had been mounted, and testimony suggested that defendant would have no reason to be in the community room because he was not involved in any of the groups that met there. State v. Bennett (S.C. 2016) 415 S.C. 232, 781 S.E.2d 352. Burglary 45

9. Instructions

Motel room was being used as a “dwelling” as a matter of law, and thus, defendant was not entitled to instruction on lesser‑included offenses of second‑degree and third‑degree burglary of a building, in prosecution for first‑degree burglary, even if room was temporarily unoccupied at time defendant entered room, where occupants were staying in motel while work was being done on their home and intended to return to room after swimming in motel pool. State v. White (S.C. 2002) 349 S.C. 33, 562 S.E.2d 305, habeas corpus dismissed 2007 WL 709001, appeal dismissed 250 Fed.Appx. 568, 2007 WL 2963701, certiorari denied 128 S.Ct. 1454, 552 U.S. 1235, 170 L.Ed.2d 283. Criminal Law 795(2.35)

A defendant was not entitled to have the jury instructed on the elements of all three degrees of burglary, although he asserted that one who commits burglary in the first degree also commits burglary in the second and third degrees because the term “dwelling” is encompassed within the term “building,” where no evidence existed to create a factual dispute as to what type of structure was entered and the victim’s apartment was unquestionably a “dwelling” within the meaning of the first degree burglary statute. State v. Goldenbaum (S.C. 1988) 294 S.C. 455, 365 S.E.2d 731.

10. Sufficiency of evidence

State did not present substantial circumstantial evidence to reasonably prove defendant’s guilt, but at most, the evidence presented merely raised a suspicion that defendant committed the crimes, and thus, evidence was not sufficient to support defendant’s convictions for burglary in the second degree, petty larceny, and malicious injury to real property; defendant was a frequent visitor to community center prior to the crime, spending much of his time in the computer room, and thus, it would not be unexpected to find defendant’s DNA in the computer room and his fingerprint in the community room, and though the exact locations of the DNA and fingerprint evidence raised a suspicion of defendant’s guilt, the evidence did not rise above suspicion. State v. Bennett (S.C.App. 2014) 408 S.C. 302, 758 S.E.2d 743, certiorari granted, reversed 415 S.C. 232, 781 S.E.2d 352. Burglary 41(6); Criminal Law 566

11. Sentence and punishment

Defendant’s prior South Carolina juvenile adjudications for burglary and theft of firearms, involved the use or carrying of firearms, as required to count the adjudications as predicate violent felonies for purpose of imposing sentencing enhancement against defendant, convicted of felony possession, under Armed Career Criminal Act (ACCA); at the moment defendant stole the firearms from the homes, they became available for offensive or defensive use as if the burglar had himself brought the weapon to the burglary for the purpose of committing the crime. U.S. v. Wright (C.A.4 (S.C.) 2010) 594 F.3d 259, certiorari denied 131 S.Ct. 507, 562 U.S. 1006, 178 L.Ed.2d 376. Sentencing And Punishment 1292

State could introduce two of defendant’s prior burglary convictions as an element of charged second‑degree burglary, though defendant was willing to stipulate, in the alternative, that charge offense occurred at nighttime. State v. Fripp (S.C.App. 2012) 396 S.C. 434, 721 S.E.2d 465. Criminal Law 661

A defendant convicted of second‑degree burglary will be entitled to parole after serving 1⁄4 of his sentence since (1) second degree burglary is not listed as a violent offense under Section 16‑1‑60 and thus is a non‑violent offense under Section 16‑1‑70; and (2) Section 21‑21‑610, which sets parole eligibility at 1⁄4 for non‑violent crimes, was enacted after Section 16‑11‑312, which defines second degree burglary and provides for parole eligibility after 1⁄3 of the sentence is served. Hair v. State (S.C. 1991) 305 S.C. 77, 406 S.E.2d 332.

The imposition of $1,500 restitution as a condition of probation on a count of second degree burglary would be reversed where the trial judge stated that he was ordering the defendant to pay the restitution “just for antagonizing the man” whose place of business had been broken into a number of times, and the only evidence regarding the amount of loss was a statement by the solicitor that the defendant had stolen stereo equipment, office supplies and some other small items worth over $200; the judge’s reasons for ordering restitution were improper and the solicitor’s statement was insufficient to support the amount of restitution ordered. State v. Fussell (S.C. 1989) 299 S.C. 162, 383 S.E.2d 1.

Defendant’s prior convictions under South Carolina law for strong arm robbery, assault and battery of a high and aggravated nature, and burglary in the second degree were for violent felonies, thereby warranting finding that defendant was an armed career criminal upon his federal conviction for being a felon in possession of a firearm. U.S. v. Jones (C.A.4 (S.C.) 2009) 312 Fed.Appx. 559, 2009 WL 434869, Unreported, certiorari denied 129 S.Ct. 2846, 557 U.S. 927, 174 L.Ed.2d 566, post‑conviction relief denied 2010 WL 9921504, affirmed 419 Fed.Appx. 365, 2011 WL 1042256, certiorari denied 132 S.Ct. 380, 565 U.S. 933, 181 L.Ed.2d 239, dismissal of habeas corpus affirmed 598 Fed.Appx. 678, 2015 WL 364794, certiorari denied 136 S.Ct. 796, 193 L.Ed.2d 766. Sentencing And Punishment 1285

Defendant’s prior state court burglary conviction qualified as predicate violent felony conviction for purposes of armed career criminal sentencing following his plea of guilty to possession of a firearm by a convicted felon, where defendant acknowledged at sentencing, through counsel, that his prior conviction involved burglary of a building, specifically of a restaurant. U.S. v. Keys (C.A.4 (S.C.) 2006) 208 Fed.Appx. 203, 2006 WL 3498047, Unreported, appeal from dismissal of post‑conviction relief dismissed 585 Fed.Appx. 41, 2014 WL 5358204. Sentencing And Punishment 1285

12. Remand

Solicitor’s per se prejudicial breach of prior plea agreement with defendant, by classifying defendant’s second‑degree burglary offenses as violent, warranted remand for specific performance of the plea agreement, rather than remand to allow defendant to withdraw his guilty plea and start over; requiring specific performance was the most efficient option because it eliminated need for new trial or new plea hearings, and it also granted the parties nothing more and nothing less than the benefit for which they had bargained. Sprouse v. State (S.C. 2003) 355 S.C. 335, 585 S.E.2d 278. Criminal Law 273.1(2); Criminal Law 1181.5(3.1)

13. Collateral considerations

Prior South Carolina convictions of nonviolent second‑degree burglary could not serve as predicate violent felony offenses that would warrant enhanced sentencing under Armed Career Criminal Act (ACCA) for defendant who pleaded guilty to possession of a firearm by a convicted felon; government presented no document to show that prior crimes of conviction were generic burglaries, and statute forming basis of prior convictions prohibited breaking and entering into vehicles, boats, or planes, and not just buildings. U.S. v. McLeod (C.A.4 (S.C.) 2015) 808 F.3d 972. Sentencing and Punishment 1273

**SECTION 16‑11‑313.** Burglary; third degree.

 (A) A person is guilty of burglary in the third degree if the person enters a building without consent and with intent to commit a crime therein.

 (B) Burglary in the third degree is a felony punishable by imprisonment for not more than five years for conviction on a first offense and for not more than ten years for conviction of a second offense according to the discretion of the Court.

HISTORY: 1985 Act No. 159, Section 2.

CROSS REFERENCES

Definitions relevant to the crime of burglary, see Section 16‑11‑310.

Library References

Burglary 10, 49.

Westlaw Topic No. 67.

C.J.S. Burglary Sections 7 to 10, 175 to 179.

RESEARCH REFERENCES

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119 ALR, Federal 319 , What Constitutes “Violent Felony” for Purpose of Sentence Enhancement Under Armed Career Criminal Act (18 U.S.C.A. Section 924(E)(1)).

Encyclopedias

S.C. Jur. Burglary Section 10, Elements.

S.C. Jur. Burglary Section 11, Punishment.

LAW REVIEW AND JOURNAL COMMENTARIES

1981 Survey: Criminal law; modifying the common law definition of burglary. 34 S.C. L. Rev. 97, August 1982.

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Under former Section 16‑11‑310 3

Under former Section 16‑11‑320 4

1. In general

The crime of burglary no longer requires proof of a break in. State v. Kornahrens (S.C. 1986) 290 S.C. 281, 350 S.E.2d 180, certiorari denied 107 S.Ct. 1592, 480 U.S. 940, 94 L.Ed.2d 781, denial of habeas corpus affirmed 66 F.3d 1350, certiorari denied 116 S.Ct. 1575, 517 U.S. 1171, 134 L.Ed.2d 673, rehearing denied 116 S.Ct. 2541, 518 U.S. 1013, 135 L.Ed.2d 1063.

2. Constitutional issues

On claim that counsel was ineffective on ground that he failed to request clarification of jury verdict finding defendant guilty of second degree burglary, fact that defendant was acquitted of possession of a firearm during the commission of a violent crime did not show that jury intended to convict him of third degree burglary because “armed with deadly weapon” aggravator was absent, as Alexander abolished the rule prohibiting inconsistent verdicts. Wertz v. State (S.C. 2002) 349 S.C. 291, 562 S.E.2d 654. Criminal Law 878(3)

Counsel rendered ineffective assistance by failing to request clarification of whether jury verdict meant defendant was guilty of third degree burglary rather than second degree burglary; trial court did not explicitly instruct the jury to specify the degree of the offense, and the jury was not instructed that a general verdict had the effect of finding defendant guilty of the highest offense charged in the indictment. Wertz v. State (S.C. 2002) 349 S.C. 291, 562 S.E.2d 654. Criminal Law 1951

3. Under former Section 16‑11‑310

Precise day or year need not be alleged, provided the day named is anterior to the bill. State v Branham (1880) 13 SC 389. State v Dawkins (1890) 32 SC 17, 10 SE 772. State v Howard (1890) 32 SC 91, 10 SE 831.

Intent to commit felony is no longer an ingredient of burglary, and indictment which charges one with breaking and entering dwelling of another in nighttime within intent to commit any crime, felony or misdemeanor, is sufficient. State v. Brooks (S.C. 1981) 277 S.C. 111, 283 S.E.2d 830. Burglary 19

Voluntary intoxication is not a defense to a crime of specific intent such as burglary. State v. Vaughn (S.C. 1977) 268 S.C. 119, 232 S.E.2d 328.

Voluntary intoxication is not an excuse for a crime of specific intent such as housebreaking. State v. Vaughn (S.C. 1977) 268 S.C. 119, 232 S.E.2d 328.

Burglary is a crime against possession and not against property. State v. Clamp (S.C. 1954) 225 S.C. 89, 80 S.E.2d 918. Burglary 2

Where a servant, having a right to sleep in his master’s dwelling, goes in, not with intent to lodge, but with intent to steal, by opening the door or raising the sash, and actually steals and carries away his master’s goods, he commits a burglary. State v. Howard (S.C. 1902) 64 S.C. 344, 42 S.E. 173, 92 Am.St.Rep. 804. Burglary 3

It is not necessary to specify the particular chattels defendant intended to steal. State v. Langford (S.C. 1899) 55 S.C. 322, 33 S.E. 370, 74 Am.St.Rep. 746. Burglary 23

There being one count for burglary and another for larceny, upon conviction of burglary, error in charge as to larceny was immaterial, and no ground for new trial. State v. Dawkins (S.C. 1890) 32 S.C. 17, 10 S.E. 772.

It was no error to decline to give legal definition of burglary when correct principles of law applicable had already been stated. State v. Dawkins (S.C. 1890) 32 S.C. 17, 10 S.E. 772.

Where a party breaks out of a dwelling house at night, having committed a felony, no matter how he entered, it is burglary. State v. Bee (S.C. 1888) 29 S.C. 81, 6 S.E. 911.

General verdict on indictment with three counts, one for burglary, one for another burglary, and the third for petit larceny, is good. State v. Nelson (S.C. 1867) 14 Rich. 169, 94 Am.Dec. 130.

Neither the act of 1886, enlarging the limits within which burglary may be committed, nor the act of 1878, increasing its punishment, repealed the common‑law offense of burglary. State v. Branham (S.C. 1880) 13 S.C. 389. Burglary 2

Misnomer is not fatal unless it is objected to. State v. Branham (S.C. 1880) 13 S.C. 389.

At common law, the offense of burglary consisted in breaking and entering the dwelling house of another with intent to commit a felony therein; and the term “dwelling house” was held to include all outhouses contiguous to the dwelling and parcel thereof, if within the curtilage. State v. Sampson (S.C. 1880) 12 S.C. 567, 32 Am.Rep. 513.

Indictment may join a count for burglary with a count for receiving stolen goods. State v. Strickland (S.C. 1878) 10 S.C. 191. Indictment And Information 131

4. Under former Section 16‑11‑320

Housebreaking, denounced by this section [Code 1962 Section 16‑332], is a crime against possession, and not against property. State v Alford (1927) 142 SC 43, 140 SE 261. State v Miller (1954) 225 SC 21, 80 SE2d 354. Copeland v Manning (1959) 234 SC 510, 109 SE2d 361.

The court, in construing this section [Code 1962 Section 16‑332], said: “Under this statute the mere breaking into a house is not a crime, nor is the mere breaking into and entering a house, or mere breaking with intent to enter a house any crime. It is only where there is a breaking and entering, or a breaking with intent to enter, ‘with intent to commit a felony, or other crime of a lesser grade,’ that the crime denounced by the statute is complete.” in the case of State v Clark (1910) 85 SC 273, 67 SE 300. State v Green (1921) 118 SC 279, 110 SE 145, 19 ALR 1431. State v Christensen (1940) 194 SC 131, 9 SE2d 555.

A conviction for conspiracy to housebreak was supported by the evidence where the defendant was found near the scene of an attempted housebreaking at 3:00 a.m., was apprehended as he drove his truck away with the headlights off, originally denied knowing the co‑defendant (who was his cousin), and later admitted that the co‑defendant told him of larceny plans although the defendant denied any participation in them. Under such circumstances, the judgment of conviction would be affirmed despite the trial court’s error in admitting the confession of the co‑defendant without sufficiently redacting references to the defendant. State v. Clark (S.C. 1985) 286 S.C. 432, 334 S.E.2d 121, certiorari denied 106 S.Ct. 416, 474 U.S. 998, 88 L.Ed.2d 366. Conspiracy 47(11)

Evidence was insufficient for conviction for housebreaking and larceny where residence was broken into and property removed between 10:15 a.m. and 12:20 p.m., and during same time period, defendants parked car along nearby road, climbed fence, and entered woods in direction of residence, defendants walked along street in front of residence, thereafter, they returned to their parked car, through woods they had originally entered and drove away from area, and around 6:00 p.m. that evening, majority of stolen property was located in clump of undergrowth near route used by defendants when returning to their parked car. State v. Woods (S.C. 1979) 273 S.C. 266, 255 S.E.2d 680. Burglary 41(1); Larceny 55

Co‑defendant’s guilty plea was relevant to issue of defendant’s knowledge of co‑defendant’s intentions, where defendant testified co‑defendant had said nothing to him about committing crime before entering school building, and that he had no reason to think he intended to do so. State v. Murphy (S.C. 1978) 270 S.C. 642, 244 S.E.2d 36.

Sentence to a term of 5 years was within statutory limits and there was no abuse of discretion where trial judge made inquiry as to degree of participation of appellant and concluded that he was the “prime movement” in the crime of which he was convicted. State v. Dozier (S.C. 1974) 263 S.C. 267, 210 S.E.2d 225.

When the building entered is a dwelling house, the weight of authority holds that the unexplained breaking and entry in the night is itself evidence of intent to commit larceny rather than some other crime; and there is no ground for concluding differently when a schoolhouse instead of a dwelling is the object of the entry. State v. Haney (S.C. 1971) 257 S.C. 89, 184 S.E.2d 344.

The breaking and entry condemned by this section [Code 1962 Section 16‑332] must be carried out with intent to commit a felony or other crime of a lesser grade. State v. Haney (S.C. 1971) 257 S.C. 89, 184 S.E.2d 344.

Absent an admission by the defendant, proof of intent necessarily rests on inference from conduct. State v. Haney (S.C. 1971) 257 S.C. 89, 184 S.E.2d 344.

An indictment which alleged that the defendant intended to steal “the goods and chattels” inside a schoolhouse was not fatally uncertain in failing to specify what particular items he contemplated stealing. State v. Haney (S.C. 1971) 257 S.C. 89, 184 S.E.2d 344. Burglary 19

It is not essential to the commission of the crime of housebreaking that one commit grand larceny. It is sufficient that the one breaking and entering did so with the intent to commit any crime. State v. Amerson (S.C. 1964) 244 S.C. 374, 137 S.E.2d 284.

A verdict of not guilty to a charge of grand larceny is not inconsistent with a verdict of guilty to a crime charged under this section [Code 1962 Section 16‑332]. State v. Amerson (S.C. 1964) 244 S.C. 374, 137 S.E.2d 284.

Where defendant was indicted in separate counts for (1) breaking and entering a store with intent to commit larceny, and (2) grand larceny, the first count charged a statutory offense under this section [Code 1962 Section 16‑332] and the second a common‑law offense. The two are distinct offenses for which separate sentences may be imposed. Copeland v. Manning (S.C. 1959) 234 S.C. 510, 109 S.E.2d 361.

A sentence of six years for the crimes of housebreaking and grand larceny is well within the statutory limits and the discretion of the trial judge, and where it was not the result of partiality, prejudice, oppression or corrupt motive, the Supreme Court is powerless to interfere. State v. Alexander (S.C. 1956) 230 S.C. 195, 95 S.E.2d 160.

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The mere breaking and entering a house is not a crime under this section [Code 1962 Section 16‑332] of the Code. State v. Melton (S.C. 1936) 181 S.C. 482, 188 S.E. 133. Burglary 3

Indictment for housebreaking may properly allege the house broken into to be the property of the person who occupies it. State v. Alford (S.C. 1927) 142 S.C. 43, 140 S.E. 261. Burglary 22

This section [Code 1962 Section 16‑332] does not justify the setting of a spring gun to prevent breaking or entry. State v. Green (S.C. 1921) 118 S.C. 279, 110 S.E. 145, 19 A.L.R. 1431.

5. Collateral considerations

Defendant’s South Carolina third degree burglary convictions did not qualify as “generic burglaries” under the modified categorical approach for determining whether such convictions were predicate offenses under the Armed Career Criminal Act (ACCA), where indictments contained no identifying information, such as a street address, that would necessarily narrow the offenses to which defendant pleaded guilty to burglary of a “structure” versus burglary of a “vehicle, watercraft, or aircraft.” U.S. v. Jones, 2015, 114 F.Supp.3d 310. Sentencing and Punishment 1273

South Carolina conviction for burglary in the third degree constituted a “violent offense,” for purposes of armed career criminal statute, where plain language of indictment clearly set forth that defendant burglarized a physical structure with a defined street address. U.S. v. Rivers (C.A.4 (S.C.) 2009) 310 Fed.Appx. 618, 2009 WL 301847, Unreported. Sentencing And Punishment 1285

6. Indictment

Prosecutor’s amendment of indictment charging defendant with second degree burglary to state that burglary occurred at nighttime changed the classification of the offense from nonviolent to violent, and thus trial court lacked subject matter jurisdiction to convict and sentence defendant under amended indictment that had not been presented to grand jury. Weinhauer v. State (S.C. 1999) 334 S.C. 327, 513 S.E.2d 840, rehearing denied. Criminal Law 93; Indictment And Information 159(3)

7. Admissibility of evidence

Under the totality of the circumstances, a substantial likelihood of irreparable misidentification existed such that eyewitness’s show up identifications about one to one and one half hours after robbery were unreliable as a matter of law; eyewitness saw the two defendants for only a very brief period of time and at some distance, eyewitness’s attention was likely not as acute as it might have been had she been the victim, the degree of accuracy of eyewitness’s descriptions were at best tenuous, and eyewitness failed to recognize one defendant until the show‑up. State v. Moore (S.C. 2000) 343 S.C. 282, 540 S.E.2d 445. Criminal Law 339.8(6)

Error in admission of eyewitness identification testimony without prior determination as to reliability of identification required reversal, in burglary prosecution, as, without such testimony, state’s case against defendant was tenuous; defendant presented alibi witnesses, and, although prosecution presented testimony by police officer that police dog taken to woods behind victim’s apartment later reacted to co‑defendant, as well as testimony by inmate that he heard defendant and co‑defendant confess, testimony pertaining to police dog did not place co‑defendant inside apartment, and inmate’s testimony was contradicted by two other inmates who were present. State v. Moore (S.C.App. 1999) 334 S.C. 411, 513 S.E.2d 626, rehearing denied, certiorari granted, affirmed in part, reversed in part 343 S.C. 282, 540 S.E.2d 445. Criminal Law 1169.1(5)

8. Instructions

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A defendant was not entitled to have the jury instructed on the elements of all three degrees of burglary, although he asserted that one who commits burglary in the first degree also commits burglary in the second and third degrees because the term “dwelling” is encompassed within the term “building,” where no evidence existed to create a factual dispute as to what type of structure was entered and the victim’s apartment was unquestionably a “dwelling” within the meaning of the first degree burglary statute. State v. Goldenbaum (S.C. 1988) 294 S.C. 455, 365 S.E.2d 731.

9. Sentence and punishment

Prior out‑of‑state burglary conviction is “offense,” which must be considered in determining sentencing range for third‑degree burglary, second offense. State v. Donahue (S.C.App. 2012) 400 S.C. 604, 735 S.E.2d 547. Sentencing and Punishment 1273

Defendant’s prior state court burglary conviction qualified as predicate violent felony conviction for purposes of armed career criminal sentencing following his plea of guilty to possession of a firearm by a convicted felon, where defendant acknowledged at sentencing, through counsel, that his prior conviction involved burglary of a building, specifically of a restaurant. U.S. v. Keys (C.A.4 (S.C.) 2006) 208 Fed.Appx. 203, 2006 WL 3498047, Unreported, appeal from dismissal of post‑conviction relief dismissed 585 Fed.Appx. 41, 2014 WL 5358204. Sentencing And Punishment 1285

10. Review

By pleading guilty to “burglary in the third degree second offense” and telling court that he understood he faced up to ten years in prison, defendant did not waive his right to challenge court’s interpretation of sentencing statute to impose ten‑year sentence; defense counsel made it clear, and court acknowledged it understood, that defendant challenged court’s interpretation of statute and intended to appeal the ruling. State v. Donahue (S.C.App. 2012) 400 S.C. 604, 735 S.E.2d 547. Criminal Law 1026.10(4)

**SECTION 16‑11‑325.** Common law robbery classified as felony; penalty.

 The common law offense of robbery is a felony. Upon conviction, a person must be imprisoned not more than fifteen years.

HISTORY: 1993 Act No. 184, Section 9, eff January 1, 1994.

Library References

Robbery 1, 30.

Westlaw Topic No. 342.

C.J.S. Robbery Sections 1 to 3, 17 to 18, 101 to 107, 109, 125 to 127, 133, 140.

NOTES OF DECISIONS

In general 1

1. In general

The common‑law offense of robbery is essentially the commission of larceny with force. State v. Al‑Amin (S.C.App. 2003) 353 S.C. 405, 578 S.E.2d 32, rehearing denied, certiorari denied, habeas corpus dismissed 2011 WL 3439531, appeal dismissed 458 Fed.Appx. 290, 2011 WL 6358013, certiorari denied 132 S.Ct. 1931, 182 L.Ed.2d 791. Robbery 1

**SECTION 16‑11‑330.** Robbery and attempted robbery while armed with deadly weapon.

 (A) A person who commits robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted. A person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence.

 (B) A person who commits attempted robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, is guilty of a felony and, upon conviction, must be imprisoned not more than twenty years.

HISTORY: 1962 Code Section 16‑333; 1952 Code Section 16‑333; 1942 Code Section 1140‑1; 1941 (42) 86; 1966 (54) 2102; 1975 (59) 743; 1993 Act No. 184, Section 170,; 1995 Act No. 7, Part I Section 4; 1996 Act No. 362, Section 1; 1996 Act No. 441, Section 1.

CROSS REFERENCES

Additional penalty for unlawfully carrying pistol or firearm onto premises of business selling alcoholic liquors, beers or wines for on‑premises consumption, see Section 16‑23‑465.

Additional punishment for possession of firearm or knife during commission of, or attempt to commit, violent crime, see Section 16‑23‑490.

Custody of convicted persons, designation of place of confinement, participation in work release and training program, see Section 24‑3‑20.

Eligibility for work release, see Section 24‑13‑125.

Post‑conviction DNA procedures, see Section 17‑28‑10 et seq.

Preservation of DNA evidence, see Section 17‑28‑310 et seq.

Prohibition against release of offender into community in which he committed violent crime, see Section 24‑13‑650.

Requirement that part of sentence be served as prerequisite to parole and deductions in time for earned work credits, see Section 24‑21‑610.

Sentencing, see Section 17‑25‑20 et seq.

Violent crimes defined, see Section 16‑1‑60.

Library References

Robbery 11, 30.

Westlaw Topic No. 342.

C.J.S. Robbery Sections 6, 14 to 16, 32 to 38, 101 to 105, 107, 112, 125 to 126, 132 to 133, 140.

RESEARCH REFERENCES

ALR Library

67 ALR 6th 103 , Parts of Human Body, Other Than Feet, as Deadly or Dangerous Weapons or Instrumentalities for Purposes of Statutes Aggravating Offenses Such as Assault and Robbery.

10 ALR 4th 8 , Adequacy of Defense Counsel’s Representation of Criminal Client Regarding Guilty Pleas.

Encyclopedias

Am. Jur. 2d Criminal Law Section 1113, Elements of Proof as to Claim of Ineffective Assistance of Counsel, Generally.

S.C. Jur. Appeal and Error Section 72, Exceptions to the First Requirement of Raising Issues Below.

S.C. Jur. Appeal and Error Section 77, Pleadings.

S.C. Jur. Assault and Battery Section 13, Use of a Deadly Weapon.

S.C. Jur. Burglary Section 9, Punishment.

S.C. Jur. Probation, Parole, and Pardon Section 14, Summary of Parole Eligibility Calculations.

S.C. Jur. Probation, Parole, and Pardon Section 16, Statutory Disqualifications from Parole Eligibility.

LAW REVIEW AND JOURNAL COMMENTARIES

Criminal Law—Unexplained Possession Principle Challenged on Fifth Amendment Grounds. 20 S.C. L. Rev. 457.

Attorney General’s Opinions

Under the 1986 Omnibus Criminal Justice Improvements Act, individuals convicted of murder are not entitled to reductions in time prior to parole eligibility through the use of earned work credits. Prisoners convicted of any violent crimes, as defined in Section 16‑1‑60, for a criminal event that occurred after June 3, 1986, and who have a prior conviction at any time before or after June 3, 1986, for one of the specified crimes, would not be eligible for parole consideration on the recent conviction and must complete service of their entire sentences. Under the provisions of Sections 24‑21‑645 and 24‑21‑650, the review in two years upon rejection, of prisoners in confinement for a violent crime, is applicable to the entire violent offender population. Under the provisions of Section 24‑21‑610, all burglary in the second degree convictions would not be eligible for parole until they have served at least one‑third of their sentence. Any and all offenses of burglary in the first degree and burglary in the second degree under Section 16‑11‑312(B) carry all consequences of a “violent crime” regardless of the statutory aggravating circumstances shown. 1986 Op.Atty.Gen., No 86‑102, p 309 (1986 WL 192060).

The eligibility for parole consideration of a prisoner convicted of armed robbery is determined by construing the parole statutes in conjunction with the amendment to the armed robbery statute. 1975‑76 Op.Atty.Gen., No 4531, p 394 (1976 WL 23148).

NOTES OF DECISIONS

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1. In general

Applied in State v Harvey (1969) 253 SC 328, 170 SE2d 657. State v Jordan (1972) 258 SC 340, 188 SE2d 780. Bethea v State (1974) 262 SC 255, 204 SE2d 12. State v Lino (1974) 263 SC 50, 208 SE2d 256. Fields v Martin (1974, DC SC) 372 F Supp 954.

“Strong arm robbery” is defined under common law as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear. (Per Konduros, J., with one judge concurring.) Abney v. State (S.C.App. 2014) 408 S.C. 41, 757 S.E.2d 544, rehearing denied, certiorari denied. Robbery 11

“Armed robbery” is the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear. State v. Porter (S.C.App. 2010) 389 S.C. 27, 698 S.E.2d 237, certiorari denied, appeal from dismissal of hapeas corpus dismissed 657 Fed.Appx. 181, 2016 WL 4916871. Robbery 11

For a defendant to be guilty of armed robbery in conjunction with a homicide, the State must prove the victim’s death and the taking are part of a continuous chain of events so interconnected as to be inseparable. State v. Douglas (S.C.App. 2004) 359 S.C. 187, 597 S.E.2d 1, certiorari granted, affirmed in part, reversed in part 369 S.C. 424, 632 S.E.2d 845, rehearing denied. Robbery 11

“Robbery” is defined as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear. State v. Al‑Amin (S.C.App. 2003) 353 S.C. 405, 578 S.E.2d 32, rehearing denied, certiorari denied, habeas corpus dismissed 2011 WL 3439531, appeal dismissed 458 Fed.Appx. 290, 2011 WL 6358013, certiorari denied 132 S.Ct. 1931, 182 L.Ed.2d 791. Robbery 1

Words alone are not sufficient to establish a representation of a deadly weapon, for purposes of the armed robbery statute, which allows a finding of armed robbery when the robber alleged he was armed with a deadly weapon, either by action or words, while using a representation of a deadly weapon; to establish armed robbery offense under that provision, state had to show evidence corroborating allegation of being armed, or in other words, the use of a physical representation of a deadly weapon. State v. Muldrow (S.C. 2002) 348 S.C. 264, 559 S.E.2d 847. Robbery 11

A defendant may be convicted of armed robbery if the jury concludes that the robber alleged that he was armed under the requisite circumstances without having to conclude that he was, in fact, so armed. State v. Jones (S.C.App. 2000) 342 S.C. 248, 536 S.E.2d 396, rehearing denied. Robbery 11

Because the offense of robbery while alleging to be armed with a deadly weapon contains a different element from offense of armed robbery while actually armed with a deadly weapon, it is not a narrower charge fitting within the broader description of armed robbery while actually armed with a deadly weapon. State v. Jones (S.C.App. 2000) 342 S.C. 248, 536 S.E.2d 396, rehearing denied. Robbery 11

A defendant cannot be guilty of robbery in forcibly taking his own property from another person. State v. Jackson (S.C.App. 1993) 315 S.C. 219, 433 S.E.2d 19, rehearing denied, grant of post‑conviction relief reversed 329 S.C. 345, 495 S.E.2d 768. Robbery 4

The State was not required to elect between the charges of robbery and larceny since distinct criminal offenses may arise from a single act and, therefore, there was no error in the trial court submitting both charges to the jury. State v. Austin (S.C. 1989) 299 S.C. 456, 385 S.E.2d 830. Criminal Law 29(3)

The offense of armed robbery occurs when a person commits a robbery while armed with a deadly weapon, and the display of the deadly weapon is not essential element of the crime. State v. Nix (S.C.App. 1986) 288 S.C. 492, 343 S.E.2d 627. Robbery 11

In a prosecution for armed robbery in which the trial judge ruled that the indictment charging the defendants with armed robbery would be sent to the jury on the question of attempted armed robbery, the defendants were properly convicted of the attempted crime where the robbery had been terminated only by the attempted escape and subsequent murder of the victim, and the resultant flight of the defendants from the scene. State v. Hiott (S.C. 1981) 276 S.C. 72, 276 S.E.2d 163.

2. Constitutional issues

Defense counsel’s advice to defendant who ultimately entered guilty plea that he could be convicted of armed robbery without proof of a physical representation of a deadly weapon rendered counsel’s performance deficient, such that counsel was ineffective. Sellner v. State (S.C. 2016) 416 S.C. 606, 787 S.E.2d 525. Criminal Law 1920

Robbery defendant alleging ineffective assistance of counsel failed to show prejudice resulting from counsel’s failures to object to officer’s testimony regarding a prior burglary, to challenge State’s false comment in opening statement, and to object to trial court’s disallowing cross‑examination of victim regarding the dismissal of victim’s criminal charge, where evidence of guilt was overwhelming; witnesses identified defendant as the perpetrator from photographic lineup, victim’s status as a convicted felon and his criminal record were presented at trial, shotgun recovered near the restaurant had defendant’s fingerprint on it, and when police told defendant he was the subject of a robbery investigation, defendant abandoned the child he was holding and fled. Smalls v. State (S.C.App. 2016) 415 S.C. 490, 783 S.E.2d 817, rehearing denied, certiorari granted. Criminal Law 1927; Criminal Law 1935; Criminal Law 1944

Trial counsel was deficient for failing to object to trial court’s ruling disallowing her from cross‑examining robbery victim about the dismissal of victim’s carjacking charge on the same day defendant’s case was called for trial; victim’s testimony provided key evidence for the State’s case, yet the State failed to inform trial counsel about the dismissal of his carjacking charge until the morning of defendant’s trial, trial counsel neither sought a ruling on the record concerning whether she could cross‑examine victim nor requested to proffer any questions about the circumstances surrounding the dismissal or victim’s potential motivations, and counsel explained that she did not put her discussion with the trial court regarding such evidence on the record due to inexperience. Smalls v. State (S.C.App. 2016) 415 S.C. 490, 783 S.E.2d 817, rehearing denied, certiorari granted. Criminal Law 1935

Trial counsel was deficient for failing to challenge solicitor’s comment in opening statement that police saw robbery defendant at the scene of the crime; defense counsel did not recall any discovery materials indicating that police saw defendant at the scene of the robbery, none of the State’s police witnesses testified at trial that they observed defendant at the scene after the robbery, and defense counsel could have either objected at time of opening statement, or pointed out during closing arguments that the State failed to prove its assertion. Smalls v. State (S.C.App. 2016) 415 S.C. 490, 783 S.E.2d 817, rehearing denied, certiorari granted. Criminal Law 1944

Trial counsel was deficient for failing to object to officer’s testimony that robbery defendant had committed a prior burglary; trial counsel admitted that it was a “huge problem” when the State mentioned defendant burglarized someone else’s house, counsel had “no idea” why she did not object and move for a mistrial, no other evidence in the record supported the contention that defendant committed the prior burglary, and no arguments were made demonstrating why prosecutor’s inquiry into prior burglary would have been proper. Smalls v. State (S.C.App. 2016) 415 S.C. 490, 783 S.E.2d 817, rehearing denied, certiorari granted. Criminal Law 1927

Armed robbery defendant showed that he was prejudiced by counsel’s failure to communicate plea offer to defendant prior to sentencing, and thus defendant was denied effective assistance; counsel testified the plea offer was for ten years imprisonment, defendant was sentenced to twenty years’ imprisonment, and defendant testified he would have taken State’s plea offer had counsel told him about it. Bell v. State (S.C.App. 2014) 410 S.C. 436, 765 S.E.2d 4. Criminal Law 1920

Defense counsel’s failure to extend minimum sentence plea offer to armed robbery defendant prior to sentencing constituted deficient performance, as required to support claim of ineffective assistance of counsel, even though solicitor disavowed the plea offer during sentencing portion of the trial. Bell v. State (S.C.App. 2014) 410 S.C. 436, 765 S.E.2d 4. Criminal Law 1920

Robbery defendant was not prejudiced by trial counsel’s failure to call witness to testify as to victim’s motivation for framing defendant, where any error in excluding the testimony was harmless because physical evidence corroborated victims’ testimony. Bagwell v. State (S.C.App. 2014) 410 S.C. 259, 763 S.E.2d 630, rehearing denied, certiorari denied. Criminal Law 1924

Trial counsel’s deficient performance in failing to seek DNA testing of blood found on pieces of glass from victim’s patio door prejudiced defendant, and thus amounted to ineffective assistance of counsel in robbery prosecution; the bloody glass was the only evidence corroborating victim’s testimony that defendant exited victim’s apartment through the door, and State referenced defendant running through the glass in both its opening and closing arguments. Bagwell v. State (S.C.App. 2014) 410 S.C. 259, 763 S.E.2d 630, rehearing denied, certiorari denied. Criminal Law 1891

Trial counsel’s decision not to seek DNA testing of blood found on pieces of glass from victim’s patio door amounted to deficient performance supporting robbery defendant’s ineffective assistance of counsel claim; State used the bloody pieces of glass as circumstantial evidence of victim’s guilt, the test results could have supported defendant’s alibi, and counsel had a duty to make an independent investigation into the facts and not rely on her belief that the State would perform the testing. Bagwell v. State (S.C.App. 2014) 410 S.C. 259, 763 S.E.2d 630, rehearing denied, certiorari denied. Criminal Law 1913

Trial counsel’s failure to request a jury instruction on strong arm robbery, as a lesser included offense of armed robbery, did not prejudice defendant, and therefore did not constitute ineffective assistance of counsel; counsel believed that they were winning their case, so he did not feel it was in defendant’s best interest to ask for a jury instruction on strong armed robbery. Abney v. State (S.C.App. 2014) 408 S.C. 41, 757 S.E.2d 544, rehearing denied, certiorari denied. Criminal Law 1950

Application to defendant of “Two‑Strikes” law, resulting in sentence of life imprisonment without possibility of parole for his convictions for first‑degree burglary, armed robbery, and kidnapping, did not amount to cruel and unusual punishment; burglary, armed robbery, and kidnapping were grave offenses of the most serious nature, and when considered along with defendant’s prior offenses, two of which were for attempted armed robbery and one of which was for assault and battery with intent to kill, penalty of life without parole for each of offenses for which defendant was convicted was not extreme. State v. Johnson (S.C.App. 2002) 350 S.C. 543, 567 S.E.2d 486, rehearing denied, certiorari denied. Sentencing And Punishment 1513

Defendant’s sentence of life imprisonment without the possibility of parole under “Two‑Strikes” law did not violate the separation of powers doctrine on basis that law deprives the judiciary of “all judicial discretion” in the exercise of its sentencing function; judicial discretion in sentencing was subject to statutory restriction without any violation of the separation of powers doctrine. State v. Johnson (S.C.App. 2002) 350 S.C. 543, 567 S.E.2d 486, rehearing denied, certiorari denied. Constitutional Law 2371; Sentencing And Punishment 1210

There was reasonable probability that outcome of trial would have been different, but for trial counsels’ failure to object to improper jury instruction, that if jury did not reach verdict on murder charges, all murder and non‑murder charges would have to be retried, which established prejudice necessary to establish ineffective assistance of trial counsel, and which mandated retrial on murder charge, where jury may have convicted defendant of one count of murder and acquitted him of other count to avoid retrial of non‑murder charges as trial judge had instructed, and nothing distinguished defendant’s involvement, particularly intent, in murder for which he was convicted from murder for which he was acquitted. Pauling v. State (S.C. 2002) 350 S.C. 278, 565 S.E.2d 769. Criminal Law 1948

The constitutional prohibition against double jeopardy did not bar a defendant’s punishment for both armed robbery and possession of a weapon during a violent crime. The double jeopardy clause does no more than prevent the sentencing court from prescribing greater punishment than the legislature intended. Since armed robbery is a violent crime under Section 16‑1‑60, and Section 16‑23‑490 expressly provides additional punishment for possession of a weapon during the commission of a violent crime as defined in Section 16‑1‑60, it is clear from the face of the statute that the legislature intended to allow cumulative punishment for armed robbery and possession of a weapon during a violent crime. State v. Bolden (S.C. 1990) 303 S.C. 41, 398 S.E.2d 494.

Imposition of minimum mandatory sentence without opportunity for parole for crime of armed robbery does not constitute cruel and unusual punishment. State v. Johnson (S.C. 1981) 276 S.C. 444, 279 S.E.2d 606.

There is no violation of equal protection by statute which provides that any person under age of 21 sentenced under Youthful Offenders Act for crime of armed robbery shall receive minimum mandatory sentence of 3 years without possibility of parole, while convicted armed robbers between 21 and 25 may not be sentenced as youthful offender. State v. Johnson (S.C. 1981) 276 S.C. 444, 279 S.E.2d 606. Constitutional Law 3106; Infants 1006(16)

Consecutive sentences for conviction of armed robbery and unlawful possession of pistol did not constitute double jeopardy because proof of armed robbery does not necessitate proof of unlawful possession of pistol but only that robbery was committed while armed with deadly weapon. State v. Lawrence (S.C. 1976) 266 S.C. 423, 223 S.E.2d 856. Double Jeopardy 145

3. Indictment

Trial court had subject matter jurisdiction over armed robbery charge, even though indictment failed to allege that defendant intended to permanently deprive the store owner of property, as intent to permanently deprive was implicit in definition of armed robbery. Broom v. State (S.C. 2002) 351 S.C. 219, 569 S.E.2d 336. Robbery 17(2)

There is no requirement that an armed robbery indictment contain an allegation of an intent to permanently deprive the owner of the property. Broom v. State (S.C. 2002) 351 S.C. 219, 569 S.E.2d 336. Robbery 17(2)

Variance between indictment charging defendant with committing armed robbery while possessing a pistol and evidence that victim did not actually see gun but believed that defendant had gun because defendant kept his hand in his pocket during robbery was fatal, and thus trial court lacked subject matter jurisdiction to convict defendant for armed robbery by “alleging, either by action or words, he was armed while using a representation of a deadly weapon,” as there was no indictment charging him with that offense when jury was sworn. State v. Jones (S.C.App. 2000) 342 S.C. 248, 536 S.E.2d 396, rehearing denied. Robbery 20

Defendant was not entitled to instruction on coercion, in prosecution for carjacking, in absence of evidence that victim or anyone else actually compelled him to take victim’s car. State v. Holliday (S.C.App. 1998) 333 S.C. 585, 510 S.E.2d 436, rehearing denied, certiorari denied. Robbery 27(6)

4. Deadly weapon

It is the use or alleged use of a deadly weapon that distinguishes armed robbery from robbery, and the employment of force or threat of force that differentiates a robbery from a larceny. State v. Moore (S.C.App. 2007) 374 S.C. 468, 649 S.E.2d 84, rehearing denied, certiorari denied, denial of post‑conviction relief affirmed 399 S.C. 641, 732 S.E.2d 871. Robbery 6; Robbery 11

Whether an object has been used as a deadly weapon for purposes of armed robbery depends upon the facts and circumstances of each case. State v. Simmons (S.C. 2004) 360 S.C. 33, 599 S.E.2d 448, rehearing denied, certiorari denied 125 S.Ct. 1068, 543 U.S. 1124, 160 L.Ed.2d 1074. Robbery 11

“Armed robbery” occurs when a person commits robbery while armed with a deadly weapon. State v. Douglas (S.C.App. 2004) 359 S.C. 187, 597 S.E.2d 1, certiorari granted, affirmed in part, reversed in part 369 S.C. 424, 632 S.E.2d 845, rehearing denied. Robbery 11

State may prove the corpus delicti of armed robbery by establishing that a robbery was committed and either one of two additional elements: (1) that the robber was armed with a deadly weapon, or (2) that the robber alleged he was armed with a deadly weapon, either by action or words, while using a representation of a deadly weapon or any object. State v. Dodd (S.C.App. 2003) 354 S.C. 13, 579 S.E.2d 331, habeas corpus dismissed 2008 WL 5378260. Robbery 11

Although defendant who robbed a convenience store made an extra‑judicial statement in which he admitted to threatening to kill the store clerk, defendant never alleged that he was armed nor used an item to represent a deadly weapon, and thus, to prove corpus delicti of armed robbery aliunde his confession, the State was required to establish that defendant was armed with a deadly weapon. State v. Dodd (S.C.App. 2003) 354 S.C. 13, 579 S.E.2d 331, habeas corpus dismissed 2008 WL 5378260. Criminal Law 413.94(21)

Fact that defendant who robbed a convenience store threatened a clerk that he would kill her if she did not do as he told her was sufficient to corroborate defendant’s confession to having a gun with him during a robbery of a convenience store, thus establishing deadly weapon element of armed robbery; although his threat, unaccompanied by any representation of a deadly weapon, would not have been independently sufficient to establish the element of a deadly weapon, the threat was sufficient to corroborate his confession to being armed. State v. Dodd (S.C.App. 2003) 354 S.C. 13, 579 S.E.2d 331, habeas corpus dismissed 2008 WL 5378260. Criminal Law 413.94(21)

Hand or fist may be “deadly weapon” for purposes of armed robbery. State v. Bennett (S.C. 1997) 328 S.C. 251, 493 S.E.2d 845, appeal after new sentencing hearing 369 S.C. 219, 632 S.E.2d 281, certiorari denied, certiorari denied 127 S.Ct. 681, 166 L.Ed.2d 530. Robbery 11

Whether defendant’s hand or fist was deadly weapon was question of fact in armed robbery prosecution given disparity in size between victim and defendant. State v. Bennett (S.C. 1997) 328 S.C. 251, 493 S.E.2d 845, appeal after new sentencing hearing 369 S.C. 219, 632 S.E.2d 281, certiorari denied, certiorari denied 127 S.Ct. 681, 166 L.Ed.2d 530. Robbery 26

“Deadly weapon” is generally defined as any article, instrument or substance which is likely to produce death or great bodily harm. State v. Scurry (S.C.App. 1996) 322 S.C. 514, 473 S.E.2d 61. Assault And Battery 56

Armed robbery may be proved by showing that the defendant became armed before asportation of the stolen property. It is not necessary that the perpetrator be armed throughout the commission of the crime. State v. Middleton (S.C. 1988) 295 S.C. 318, 368 S.E.2d 457, certiorari denied 109 S.Ct. 189, 488 U.S. 872, 102 L.Ed.2d 158, rehearing denied 109 S.Ct. 406, 488 U.S. 961, 102 L.Ed.2d 393, habeas corpus dismissed 855 F.Supp. 837, affirmed 77 F.3d 469, certiorari denied 117 S.Ct. 199, 136 L.Ed.2d 135, rehearing denied 117 S.Ct. 449, 136 L.Ed.2d 345. Robbery 11

A gun used in a robbery is a deadly weapon regardless of its alleged inoperability. State v. Henderson (S.C.App. 1985) 286 S.C. 465, 334 S.E.2d 519. Robbery 11

When a defendant commits robbery without a deadly weapon, but becomes armed with a deadly weapon before asportation of the victim’s property, a conviction for armed robbery under Section 16‑11‑330 will stand. State v. Keith (S.C. 1985) 283 S.C. 597, 325 S.E.2d 325. Robbery 11

5. Asportation

Elements of robbery and armed robbery include asportation of the property. State v. Moore (S.C.App. 2007) 374 S.C. 468, 649 S.E.2d 84, rehearing denied, certiorari denied, denial of post‑conviction relief affirmed 399 S.C. 641, 732 S.E.2d 871. Robbery 10; Robbery 11

Asportation is an element of robbery and armed robbery. State v. Douglas (S.C.App. 2004) 359 S.C. 187, 597 S.E.2d 1, certiorari granted, affirmed in part, reversed in part 369 S.C. 424, 632 S.E.2d 845, rehearing denied. Robbery 10; Robbery 11

6. Lesser included offense

Included in armed robbery is the lesser included offense of “robbery,” which is defined as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear. State v. Mitchell (S.C. 2009) 382 S.C. 1, 675 S.E.2d 435. Indictment And Information 191(9); Robbery 1

Larceny is a lesser‑included offense of the crime of armed robbery. State v. Moore (S.C.App. 2007) 374 S.C. 468, 649 S.E.2d 84, rehearing denied, certiorari denied, denial of post‑conviction relief affirmed 399 S.C. 641, 732 S.E.2d 871. Indictment And Information 191(9)

Included in armed robbery is the lesser included offense of robbery. State v. Moore (S.C.App. 2007) 374 S.C. 468, 649 S.E.2d 84, rehearing denied, certiorari denied, denial of post‑conviction relief affirmed 399 S.C. 641, 732 S.E.2d 871. Indictment And Information 189(11)

Larceny is a lesser‑included offense of armed robbery. State v. Al‑Amin (S.C.App. 2003) 353 S.C. 405, 578 S.E.2d 32, rehearing denied, certiorari denied, habeas corpus dismissed 2011 WL 3439531, appeal dismissed 458 Fed.Appx. 290, 2011 WL 6358013, certiorari denied 132 S.Ct. 1931, 182 L.Ed.2d 791. Indictment And Information 191(9)

Grand larceny is not a lesser‑included offense of robbery or armed robbery; overruling State v. Lawson, 279 S.C. 266, 305 S.E.2d 249, Young v. State, 259 S.C. 383, 192 S.E.2d 212, and State v. Ziegler, 274 S.C. 6, 260 S.E.2d 182. State v. Parker (S.C. 2002) 351 S.C. 567, 571 S.E.2d 288. Indictment And Information 191(9)

Grand larceny is not a lesser‑included offense of robbery or armed robbery; overruling State v. Lawson, 279 S.C. 266, 305 S.E.2d 249, Young v. State, 259 S.C. 383, 192 S.E.2d 212 (1972), and State v. Ziegler, 274 S.C. 6, 260 S.E.2d 182. Joseph v. State (S.C. 2002) 351 S.C. 551, 571 S.E.2d 280. Indictment And Information 191(9)

Because grand larceny has the element of “in excess of one thousand dollars” it is not a lesser‑included offense of armed robbery, which has no monetary element. State v. Parker (S.C.App. 2001) 344 S.C. 250, 543 S.E.2d 255, rehearing denied, certiorari granted, affirmed on other grounds 351 S.C. 567, 571 S.E.2d 288. Indictment And Information 191(5)

Larceny is a lesser included offense within robbery, and punishment for both offenses arising out of the same incident is impermissible. State v. Austin (S.C. 1989) 299 S.C. 456, 385 S.E.2d 830. Criminal Law 29(11)

Robbery is a lesser included offense of armed robbery as defined by Section 16‑11‑330. State v. Scipio (S.C. 1984) 283 S.C. 124, 322 S.E.2d 15.

7. Pleas

Facts presented by the State did not include the requisite corroborating evidence for armed robbery; during the plea hearing, the State did not allege defendant was armed, nor did it allege defendant took any type of action which would allow a witness to reasonably believe he was armed. Sellner v. State (S.C. 2016) 416 S.C. 606, 787 S.E.2d 525. Criminal Law 273(4.1)

Defendant’s guilty plea, which was made while objecting to sentence of life without parole, was not an invalid, “conditional guilty plea” in prosecution for armed robbery, kidnapping, and assault and battery with intent to kill, since sentencing was separate issue from guilt and distinct phase of criminal process. Easter v. State (S.C. 2003) 355 S.C. 79, 584 S.E.2d 117. Criminal Law 273(4.1)

8. Arguments of counsel

State improperly vouched for witness’s credibility in its opening statement, as solicitor’s statement that “I’ll say this from the bottom of my heart, that there is one soul, who was at one time unclean and is now clean” amounted to a personal assurance of witness’s veracity because solicitor emphatically stated that witness was “now clean,” i.e., worthy of belief, and state’s abundant use of religiously‑tinged language enhanced impropriety of opening statement, in that repeated references to witness’s soul and his expected testimony as his opportunity to cleanse his soul rose to level of assurance of witness’s credibility. Gilchrist v. State (S.C. 2002) 350 S.C. 221, 565 S.E.2d 281. Criminal Law 2069

9. Jury

Juror unintentionally concealed information on voir dire for armed robbery prosecution in responding to question about whether he had been victim of serious crime; juror’s failure to recall his attack was reasonable since attack occurred approximately 40 years prior to prosecution, it was reasonable that juror did not recall his attack until he began to draw from his own experiences while considering evidence, juror testified that he was unsure whether his attack was a “serious crime,” and it was reasonable that juror was unable to distinguish between “serious” and “non‑serious” crimes. State v. Sparkman (S.C. 2004) 358 S.C. 491, 596 S.E.2d 375, post‑conviction relief granted 2007 WL 8434578. Jury 131(18)

Defendant was not prejudiced by juror’s unintentional concealment of facts on voir dire for armed robbery prosecution; juror unintentionally concealed that he was victim of an attack, after being informed of juror’s attack, trial judge asked every member of jury if juror’s comments persuaded them to convict defendant and no one answered affirmatively, juror testimony was clearly “contrary” to inference of bias or prejudice, and judge was in best position to make factual decision concerning effects of juror’s alleged misconduct. State v. Sparkman (S.C. 2004) 358 S.C. 491, 596 S.E.2d 375, post‑conviction relief granted 2007 WL 8434578. Criminal Law 1166.15

10. Admissibility of evidence

State satisfied requirements for admissibility of defendant’s booking photo in armed robbery trial; State had demonstrable need to introduce the photo because it included a side‑view of defendant’s face, which enabled jury to compare image of defendant with still image of offender obtained from surveillance video, booking photo did not suggest defendant had criminal record because trial court redacted marks on the photo indicating it was taken as a result of arrest, and photo was not introduced in a way as to draw attention to its origin or implication, given that it was introduced in connection with testimony that the photo was an accurate depiction of defendant when he was arrested for the current offense. State v. Green (S.C.App. 2015) 412 S.C. 65, 770 S.E.2d 424, rehearing denied, certiorari denied. Criminal Law 438(3)

Probative value of defendant’s booking photo was not substantially outweighed by the danger of unfair prejudice, and thus the photo was admissible in armed robbery trial, where there was nothing on the face of the photo or about the manner in which it was introduced that suggested defendant had a prior criminal record, and the photo was cumulative to other evidence admitted at trial. State v. Green (S.C.App. 2015) 412 S.C. 65, 770 S.E.2d 424, rehearing denied, certiorari denied. Criminal Law 438(7)

Defendant waived his right to counsel following arraignment, at which he requested appointment of counsel, by signing Miranda waiver prior to giving statement during police‑initiated interview, such that interview did not violate defendant’s right to counsel and statement was admissible at trial for assault and battery of a high and aggravated nature, armed robbery, possessing a firearm during the commission of a violent crime, and criminal conspiracy, absent allegations that defendant requested that his counsel be present or that his waiver was otherwise not knowing and voluntary. State v. Reid (S.C. 2014) 408 S.C. 461, 758 S.E.2d 904, rehearing denied. Criminal Law 1752

Under the Confrontation Clause, trial court was required to let defendant charged with armed robbery cross examine state’s cooperating witness as to her avoidance of at least one mandatory minimum sentence after she agreed to testify against the defendant in prosecution for armed robbery. State v. Whatley (S.C.App. 2014) 407 S.C. 460, 756 S.E.2d 393, rehearing denied, certiorari denied. Criminal Law 662.7

Robbery defendant, who had objected to relevance of evidence that he gave arresting officer false identifying information, could not argue for first time on appeal that he was entitled to inference that his evasive conduct upon arrest was attributable to his effort to avoid arrest for violating his probation. State v. Martin (S.C.App. 2013) 403 S.C. 19, 742 S.E.2d 42. Criminal Law 1043(3)

Evidence that defendant gave arresting officer false identifying information upon being arrested in another state nearly a year after bank robbery was inadmissible in prosecution for armed robbery and conspiracy to commit armed robbery, as no nexus existed between false information and bank robbery; officer gave no reason for stopping defendant, police had not previously contacted defendant, defendant had not been warned that he was under investigation, and defendant had made no statements to others about being sought for bank robbery. State v. Martin (S.C.App. 2013) 403 S.C. 19, 742 S.E.2d 42. Criminal Law 351(5)

Trial court did not abuse its discretion in armed robbery prosecution by allowing State to introduce evidence of defendant’s flight from police officers while he was assisting them in the recovery of the weapon used in armed robbery; defendant was assisting officers in armed robbery investigation, and thus was keenly aware of armed robbery charge. State v. Robinson (S.C.App. 2004) 360 S.C. 187, 600 S.E.2d 100, rehearing denied, certiorari denied. Criminal Law 351(3)

Witness’s testimony that, prior to murder, co‑conspirators told him they “had a lick,” indicating an intent to rob victim during pending drug deal, was not hearsay, in trial for murder, armed robbery, and conspiracy to commit armed robbery; rather, statement was made in furtherance of conspiracy, as evidenced by witness’s agreement to accompany co‑conspirators in robbery. State v. Anderson (S.C.App. 2004) 357 S.C. 514, 593 S.E.2d 820, rehearing denied, certiorari denied. Criminal Law 423(3)

Armed robbery was a “crime of dishonesty,” and thus evidence of defendant’s prior armed robbery conviction was admissible in murder trial to attack defendant’s credibility; it was the larcenous element of taking property of another which made the action dishonest. State v. Al‑Amin (S.C.App. 2003) 353 S.C. 405, 578 S.E.2d 32, rehearing denied, certiorari denied, habeas corpus dismissed 2011 WL 3439531, appeal dismissed 458 Fed.Appx. 290, 2011 WL 6358013, certiorari denied 132 S.Ct. 1931, 182 L.Ed.2d 791. Witnesses 337(19)

Victim’s in court identification testimony was admissible, even though victim chose not to make selection from the one photographic lineup she was shown, where she described the scene as well‑lit, victim testified that she had heightened degree of attention during incident, which she described in great detail, and victim was with perpetrator for some fifteen minutes. State v. McCord (S.C.App. 2002) 349 S.C. 477, 562 S.E.2d 689. Criminal Law 339.9(3)

Testimony from victim’s friend that he gave victim a middle‑school yearbook with defendant’s picture in it because the friend had heard rumors that defendant was involved in shooting “a guy and a girl” was not “hearsay,” in prosecution for assault and battery with intent to kill (ABIK); the testimony was not offered to prove that defendant committed the crimes but instead to explain victim’s identification of defendant in the yearbook, which led in turn to defendant’s arrest and the identification of defendant from photographic line‑up, it was repeatedly made clear during the trial that the information the friend had received was “rumor” that came “from the street,” and the friend testified that some of the “stuff” he would hear was not true. Rhodes v. State (S.C. 2002) 349 S.C. 25, 561 S.E.2d 606. Criminal Law 419(2)

Statements by police officers in prosecution for armed robbery that referenced other robberies that were committed in different counties during the day defendant was arrested were not offered to prove that defendant committed the other robberies, and thus, were not hearsay and were admissible to explain why officers were pursuing defendant. Caprood v. State (S.C. 2000) 338 S.C. 103, 525 S.E.2d 514, rehearing denied. Criminal Law 419(3)

Victim’s photo line‑up testimony was admissible as reliable in armed robbery case, where victim testified that she saw robber subsequently identified as defendant three times during the robbery, that the lighting at time of robbery was normal household lighting, her general physical description of the robber without the gun fit defendant, at the time of his arrest, defendant was wearing a large gold ring on his right hand that was compatible with the one victim described to police after the robbery, victim viewed the photo line‑ups only six days after the robbery, and no evidence was presented at trial that indicated the circumstances surrounding the array were tainted. State v. Brown (S.C.App. 1998) 333 S.C. 185, 508 S.E.2d 38. Criminal Law 339.7(1)

In a prosecution for armed robbery, evidence that the defendant had smoked crack cocaine during the night before the robbery should have been excluded where there was nothing in the record to indicate a logical relevance between use of crack cocaine the night before the robbery and the robbery which occurred at 6:10 a.m. the following day; evidence of the defendant’s cocaine use was not essential to a full presentation of the State’s case, nor was it so intimately connected with the crimes charged that its introduction was appropriate to complete the story of the crime. State v. Bolden (S.C. 1990) 303 S.C. 41, 398 S.E.2d 494.

In a prosecution for murder and armed robbery, there was sufficient evidence to deny the defendant’s motion for a directed verdict for the crime of armed robbery and to sustain the aggravating circumstance of robbery while armed with a deadly weapon, in spite of the defendant’s argument that the State failed to establish that money was taken from the person or presence of the victim, where approximately $1,056.60 was missing from the Hess station where the victim was murdered and the defendant had approximately $946.37 on his person. State v. Childs (S.C. 1989) 299 S.C. 471, 385 S.E.2d 839.

Malicious destruction of personal property is crime of moral turpitude, and may be used to impeach credibility of defendant as witness where defendant is charged with armed robbery; prior conviction may be used to impeach witnesses’ credibility only if conviction involves crime of moral turpitude. State v. Perry (S.C. 1988) 294 S.C. 311, 364 S.E.2d 201. Witnesses 345(2)

Testimony relative to shooting of robbery victim was not admissible in evidence to prove either a murder or the robbery, but it was admissible to prove that one of the defendants was armed at the time the victim was deprived of his property through the use of force; and fact that witness to shooting could not identify either of robbery defendants as the one who had the weapon did not render her testimony inadmissible. State v. Williams (S.C. 1976) 266 S.C. 325, 223 S.E.2d 38.

11. Questions for jury

Circumstantial evidence that defendant’s fingerprint was found on stolen vehicle, which was located two miles from victim’s home within 30 minutes of crime, that defendant denied he had contact with victim’s vehicle, knew victim, or knew where he lived, that one assailant had exited vehicle and assaulted victim before leaving scene, that defendant and alleged accomplice were in same vocational rehabilitation program, and that DNA evidence on duct tape removed from victim’s head was matched to alleged accomplice, was sufficient to raise question for jury as to defendant’s guilt in prosecution for first‑degree burglary, armed robbery, kidnapping, and other crimes. State v. Pearson (S.C. 2016) 415 S.C. 463, 783 S.E.2d 802. Burglary 45; Criminal Law 741(2); Robbery 26

Question of whether instrument used in commission of robbery qualifies as deadly weapon, thereby qualifying incident as armed robbery, is factual determination for jury. State v. Bennett (S.C. 1997) 328 S.C. 251, 493 S.E.2d 845, appeal after new sentencing hearing 369 S.C. 219, 632 S.E.2d 281, certiorari denied, certiorari denied 127 S.Ct. 681, 166 L.Ed.2d 530. Robbery 26

Question of whether instrument used in commission of robbery qualifies as “deadly weapon,” thereby qualifying incident as armed robbery, is factual determination for jury. State v. Scurry (S.C.App. 1996) 322 S.C. 514, 473 S.E.2d 61. Robbery 26

Whether instrument qualifies as deadly weapon within meaning of armed robbery statute is jury question. State v. Gourdine (S.C. 1996) 322 S.C. 396, 472 S.E.2d 241. Robbery 26

A defendant was not entitled to a directed verdict of acquittal to a charge of armed robbery of a convenience store on the basis that the BB gun used to rob the store was not a deadly weapon within the meaning of Section 16‑11‑330. A BB gun is capable of producing death or great bodily harm, and thus fell within the definition of a deadly weapon. State v. Heck (S.C.App. 1991) 304 S.C. 345, 404 S.E.2d 514, certiorari denied, certiorari denied 112 S.Ct. 900, 502 U.S. 1043, 116 L.Ed.2d 802.

Testimony of robbery victim that he believed instrument held by defendant was real gun and testimony of codefendant who had previously pled guilty to armed robbery growing out of same incident, was sufficient evidence to submit question of whether or not toy gun used in commission of robbery qualified incident as armed robbery to jury for factual determination, such that trial judge correctly refused motion for directed verdict. State v. Tasco (S.C. 1987) 292 S.C. 270, 356 S.E.2d 117.

Although it appeared that the defendant was unaware of the final planning of a robbery and did not accompany the perpetrators, evidence that defendant appeared at the scene twice and viewed the commission of the crime, that defendant explained his appearance as accommodating the perpetration of the crime, and that the defendant received a portion of the proceeds was sufficient evidence for submission of case of armed robbery to the jury. State v. Hill (S.C. 1977) 268 S.C. 390, 234 S.E.2d 219, certiorari denied 98 S.Ct. 211, 434 U.S. 870, 54 L.Ed.2d 147.

Trial judge did not err in refusing motion to direct a verdict of not guilty on armed robbery charge where jury could consider evidence that one defendant had a pistol, that two other defendants forced victim out of his car and were last seen chasing him, that very soon thereafter the victim was shot on another street by an assailant whose description warranted the conclusion that he was one of the defendants, that the place where the shooting occurred and the place where the victim was taken from his car are in close proximity, that the two incidents were close in point of time, and that the victim’s empty billfold was found in the vicinity. State v. Williams (S.C. 1976) 266 S.C. 325, 223 S.E.2d 38.

12. Instructions

Trial court properly refused armed robbery defendant’s requested jury charges on identification, which instructed jury to consider various factors in evaluating identification testimony, such as whether witness experienced stress or fright at time of the observation, and instead gave only standard identification charge, which accurately stated state law in instructing jurors to consider whether witness had adequate opportunity to observe the offender, how long or short a time was available, how far or close the witness was, the lighting conditions, and whether witness had chance to see or know the offender in the past; substance of requested charges were covered by standard charge, some of requested charges would have been improper instructions into matters of fact or comments on weight of evidence, and jury was properly instructed concerning credibility of witness testimony. State v. Green (S.C.App. 2015) 412 S.C. 65, 770 S.E.2d 424, rehearing denied, certiorari denied. Criminal Law 829(16)

Defendant, in prosecution for armed robbery, was entitled to instruction on robbery as a lesser‑included offense; evidence indicated that only weapons involved were fists and a stick, and whether such weapons qualified as a deadly weapon was a question of fact for jury. State v. Simmons (S.C. 2004) 360 S.C. 33, 599 S.E.2d 448, rehearing denied, certiorari denied 125 S.Ct. 1068, 543 U.S. 1124, 160 L.Ed.2d 1074. Criminal Law 795(2.75)

Defendant could not escape conviction for kidnapping by asserting that kidnapping was merely incidental to offense of armed robbery; trial judge charged jury that in order for it to convict defendant of both offenses, it must find that he had the requisite intent to commit two separate offenses. State v. East (S.C.App. 2003) 353 S.C. 634, 578 S.E.2d 748. Criminal Law 29(13)

Single count indictment charging armed robbery was insufficient to apprise defendants that they could be convicted of grand larceny. State v. Parker (S.C.App. 2001) 344 S.C. 250, 543 S.E.2d 255, rehearing denied, certiorari granted, affirmed on other grounds 351 S.C. 567, 571 S.E.2d 288. Indictment And Information 71.4(8)

Defendant charged with accessory before the fact to armed robbery, which required use of deadly weapon, was entitled to instruction on lesser included offense of accessory before the fact to strong arm robbery, which involved taking of property by violence or by putting victim in fear, based on evidence that toy guns were used in robbery and that victim believed guns used were fake. State v. Gourdine (S.C. 1996) 322 S.C. 396, 472 S.E.2d 241. Robbery 27(5)

The trial court properly instructed the jury that it could not convict the defendant of robbery if the jury found that the property taken belonged to the defendant because one element of the offense of larceny is that the property taken was the personal property of another; a person cannot steal his own property. State v. Jackson (S.C.App. 1993) 315 S.C. 219, 433 S.E.2d 19, rehearing denied, grant of post‑conviction relief reversed 329 S.C. 345, 495 S.E.2d 768.

Trial court did not err in refusing to charge robbery as lesser included offense of armed robbery where there was no evidence that defendant was guilty of lesser included offense. State v. Drayton (S.C. 1987) 293 S.C. 417, 361 S.E.2d 329, certiorari denied 108 S.Ct. 1060, 484 U.S. 1079, 98 L.Ed.2d 1021, dismissal of post‑conviction relief affirmed 312 S.C. 4, 430 S.E.2d 517, rehearing denied, certiorari denied 114 S.Ct. 607, 510 U.S. 1014, 126 L.Ed.2d 572, rehearing denied 114 S.Ct. 1142, 510 U.S. 1159, 127 L.Ed.2d 451.

13. Sufficiency of evidence

Circumstantial evidence in armed robbery trial, including presence of defendant’s fingerprint on rear of victim’s vehicle and fact that defendant previously attended job training program with co‑defendant, whose DNA was found on duct‑tape used in crime, was insufficient to submit case to jury; evidence was presented that defendant may have had an opportunity to come into contact with the vehicle before the crimes occurred, including that defendant had previously done yard work for victim, and State did not offer any timing evidence to contradict reasonable explanations for the presence of the fingerprint, and it would be speculative to infer relationship between two co‑defendants, who denied knowing each other, considering that approximately 25 individuals were in the training program. State v. Pearson (S.C.App. 2014) 410 S.C. 392, 764 S.E.2d 706, rehearing denied, certiorari granted, reversed 415 S.C. 463, 783 S.E.2d 802. Robbery 26

Sufficient evidence supported conviction for armed robbery; defendant entered store, store employee observed him pick up two cases of chewing tobacco and proceed past point of sale toward exit without paying, when employee approached defendant as he reached the exit, defendant presented a pocket knife and threatened to kill employee if he “tried something,” and, thus, it was clear that defendant did not complete the asportation of the chewing tobacco until after he employed the threat of force to secure his escape and retain possession of the goods. State v. Mitchell (S.C. 2009) 382 S.C. 1, 675 S.E.2d 435. Robbery 24.15(2)

Evidence did not rise above the level of creating a mere suspicion that defendant committed an armed robbery, and thus, trial court’s denial of defendant’s motion for a directed verdict on the charge of armed robbery was error; victim’s wallet was discovered almost a month after his murder, with no fingerprints or any evidence to connect it to defendant, and the contents of the wallet appeared to be intact. State v. Frazier (S.C.App. 2007) 375 S.C. 575, 654 S.E.2d 280, rehearing denied, certiorari granted, affirmed in part, reversed in part 386 S.C. 526, 689 S.E.2d 610. Robbery 26

Evidence was sufficient to support conviction for armed robbery; store’s loss prevention officer confronted defendant immediately after he walked out front doors of store but before he left parking lot, defendant, while still standing on store grounds, employed weapon to threaten officer with force and create fear, gun allowed defendant to remove merchandise from store’s domain, threat of weapon was contemporaneous to and not separable with his taking of goods from store premises, and defendant’s crime continued as he attempted his escape through parking lot, where his threat to officer raised offense from larceny to armed robbery. State v. Moore (S.C.App. 2007) 374 S.C. 468, 649 S.E.2d 84, rehearing denied, certiorari denied, denial of post‑conviction relief affirmed 399 S.C. 641, 732 S.E.2d 871. Robbery 24.15(2)

Evidence was sufficient to establish that victim’s murder and taking of victim’s property were part of single transaction or continuous sequence of events as required to support conviction for armed robbery; victim was shot five times in his head, his house appeared to be ransacked and his wallet was missing, wallet was found in bottom of creek with murder weapon and in same vicinity as items identified as belonging to defendant, and given violent nature of victim’s death, it could be inferred that force used to commit homicide also facilitated taking. State v. Douglas (S.C.App. 2004) 359 S.C. 187, 597 S.E.2d 1, certiorari granted, affirmed in part, reversed in part 369 S.C. 424, 632 S.E.2d 845, rehearing denied. Robbery 24.15(2)

Evidence was legally sufficient to sustain conviction on lesser offense of strong arm robbery, given that defendant was convicted by jury of armed robbery, but insufficient evidence supported finding that defendant either used deadly weapon or representation of deadly weapon, and armed robbery included all elements of strong arm robbery. State v. Muldrow (S.C. 2002) 348 S.C. 264, 559 S.E.2d 847. Robbery 24.15(1)

14. Sentence and punishment

Defendant’s prior conviction for armed robbery was a conviction for a “most serious offense” within meaning of recidivist statute, and thus trial court was required to sentence defendant to life without parole for subsequent armed robbery conviction, even though defendant was 17 years old when he committed prior armed robbery, where defendant had been tried as an adult in general sessions court for the prior armed robbery. State v. Green (S.C.App. 2015) 412 S.C. 65, 770 S.E.2d 424, rehearing denied, certiorari denied. Sentencing and Punishment 1260

Sentence of life in prison without parole imposed on defendant for his second armed robbery conviction, pursuant to recidivist statute requiring life without parole for defendants convicted of “most serious offense” who had prior conviction for such an offense, did not violate Eighth Amendment prohibition against cruel and unusual punishment, even though defendant was a juvenile at the time he committed his first armed robbery and had not completed his sentence for that offense when he was convicted for his second armed robbery; defendant was an adult when he was sentenced for his second conviction, and state’s Supreme Court had never ruled that defendant must complete first sentence before he could be sentenced to life without parole for a subsequent most serious offense. State v. Green (S.C.App. 2015) 412 S.C. 65, 770 S.E.2d 424, rehearing denied, certiorari denied. Sentencing and Punishment 1421; Sentencing and Punishment 1513

Evidence was sufficient to show that defendant and the individual previously convicted were one and the same, and thus, State satisfied its burden of proof that defendant had been convicted of the prior offenses that triggered the “Two‑Strikes” law; State proffered certified copies of court records showing that defendant had previously pled guilty to two counts of attempted armed robbery and one count of assault and battery with intent to kill, and defendant offered no evidence to suggest that he was not that individual. State v. Johnson (S.C.App. 2002) 350 S.C. 543, 567 S.E.2d 486, rehearing denied, certiorari denied. Sentencing And Punishment 1381(6)

Remand for resentencing by post‑conviction relief (PCR) court was required, where defendant was sentenced in excess of the maximum penalty for armed robbery. Roscoe v. State (S.C. 2001) 345 S.C. 16, 546 S.E.2d 417. Criminal Law 1181.5(8)

A youthful offender convicted of possession with intent to distribute crack cocaine is not precluded from receiving a sentence under the Youthful Offender Act (YOA), even though the YOA permits the trial judge to suspend a sentence and grant probation while the crack statute prohibits suspension and probation. Since the legislature has specifically excluded YOA sentences for certain offenses ‑ convictions which carry a sentence of less than one year or a maximum sentence of death or life imprisonment as set forth in Section 24‑19‑10(f), and armed robbery as set forth in Section 16‑11‑330(1) ‑ it can be inferred that the legislature intended the YOA to apply to youthful offenders guilty of all other offenses. Although the legislature has provided for a mandatory minimum sentence for possession with intent to distribute crack cocaine, there is no conflict between the crack statute and the YOA since a YOA sentence is not specifically excluded by the crack statute. State v. Burton (S.C. 1990) 301 S.C. 305, 391 S.E.2d 583.

Defendant, who is twenty‑one years or more at time of conviction of armed robbery, may not be sentenced under the Youthful Offenders Act even though he was twenty years old when crime was committed. State v. Cutler (S.C. 1980) 274 S.C. 376, 264 S.E.2d 420. Infants 3036(4)

A felony at common law, no special punishment for robbery, whether committed on the highway or elsewhere, is fixed by statute; it falls, therefore, under Code 1962 Section 17‑552. But where one commits robbery while armed with a pistol or other deadly weapon defined in Code 1962 Section 16‑145, a special punishment is provided by this section [Code 1962 Section 16‑333] and it is immaterial, so far as the punishment is concerned, whether the robbery committed by one so armed takes place on or near a highway or elsewhere. Dukes v. State (S.C. 1966) 248 S.C. 227, 149 S.E.2d 598.

Sentencing under this section [Code 1962 Section 16‑333] would only be proper if a deadly weapon were used, and where instrument used in striking was in question, defendant should not have been sentenced under this section [Code 1962 Section 16‑333] but under Code 1962 Section 17‑553 construed with Code 1962 Section 17‑552. State v. Self (S.C. 1954) 225 S.C. 267, 82 S.E.2d 63.

Maximum sentence not shown to be abuse of court’s discretion. State v. Scates (S.C. 1948) 212 S.C. 150, 46 S.E.2d 693.

15. Harmless error

Trial court’s error in failing to allow defendant charged with armed robbery to cross examine state’s cooperating witness as to a mandatory minimum sentence she avoided, in violation of the Confrontation Clause, was harmless, where witness’ testimony was cumulative, the restriction on questions regarding the sentence she avoided was the only limitation, and defendant was able to question witness as to her potential bias and inconsistent statements. State v. Whatley (S.C.App. 2014) 407 S.C. 460, 756 S.E.2d 393, rehearing denied, certiorari denied. Criminal Law 1168(2)

Erroneous admission of evidence that robbery defendant gave arresting officer false identifying information upon being arrested in another state nearly a year after bank robbery was harmless, where state presented ample competent evidence of defendant’s guilt, including consistent accomplice testimony, eyewitness descriptions of gunman’s attire and pillowcase money bag matching accomplices’ descriptions of clothing and bag defendant carried on day of the robbery, and disinterested party’s testimony that he loaned defendant small, black pellet gun night before robbery. State v. Martin (S.C.App. 2013) 403 S.C. 19, 742 S.E.2d 42. Criminal Law 1169.1(7)

Trial court’s error in failing to hold a hearing to allow defendant to challenge alleged co‑participant’s show‑up identification was not harmless in armed robbery trial, even though there was circumstantial evidence of defendant’s participation in robbery by way of his apprehension with co‑participant and events surrounding the apprehension; admission of identification effectively destroyed defendant’s defense that he and co‑participant were with each other the entire day of the crime and that he did not know anything about the robbery. State v. Miller (S.C. 2006) 367 S.C. 329, 626 S.E.2d 328. Criminal Law 339.11(2); Criminal Law 1169.1(5)

A defendant convicted of armed robbery was entitled to a new trial based on the wrongful exclusion of the out‑of‑court statements of 2 witnesses where the statements (1) were identical in detail to the in‑court testimony, (2) served to exculpate the defendant, and (3) contradicted the testimony of the victim, who was the sole witness; thus, the exclusion of these statements was not harmless. State v. Doctor (S.C. 1992) 306 S.C. 527, 413 S.E.2d 36.

16. Reversible error

Jury instruction that committing crime under instructions of another was no defense to crime was not implicated by facts of armed robbery case, and thus giving such “orders of another” instruction constituted reversible error; defendant did not argue that another person had instructed him to commit crime, but rather that because defendant thought entire event was staged Central Intelligence Agency (CIA) operation, it was not criminal act. State v. Blurton (S.C. 2002) 352 S.C. 203, 573 S.E.2d 802. Criminal Law 814(8); Criminal Law 1172.6

Prejudice clearly flowed from counsel’s erroneous failure to object to state’s opening statement vouching for credibility of witness’s credibility, warranting reversal of conviction for attempted robbery, as witness was state’s key witness and his credibility was crucial to government’s case, especially as defendant essentially presented a “mere presence” defense, such that believing witness was only way jury could convict defendant, and witness’s credibility was questionable in light of his admitted drug use at time of crime, his prior convictions, and his interest in providing favorable testimony for state to obtain leniency in his own case. Gilchrist v. State (S.C. 2002) 350 S.C. 221, 565 S.E.2d 281. Criminal Law 1166.10(1); Criminal Law 1944

17. New trial

Although a verdict of guilty of the separate offenses of murder and of armed robbery but not guilty of murder while in the commission of a robbery while armed with a deadly weapon was inconsistent, a new trial would not be granted where the inconsistency did not prejudice the right of the defendant. State v. Hall (S.C. 1977) 268 S.C. 524, 235 S.E.2d 112. Criminal Law 1178

18. Review

Court of Appeals had no authority to review armed robbery defendant’s mandatory sentence of life without parole, imposed pursuant to the recidivist statute, where defendant’s sentence was within the limits provided by statute for the discretion of the trial court, and record did not reveal that the sentence was the result of prejudice, oppression, or corrupt motive by the trial court. State v. Green (S.C.App. 2015) 412 S.C. 65, 770 S.E.2d 424, rehearing denied, certiorari denied. Criminal Law 1023(11)

Failure to except to charge of armed robbery, or to request any other charge, when given opportunity to do so under 1962 Code Section 17‑513.1 [1976 Code Section 17‑23‑100] waived right to complain on appeal of alleged error in the charge. State v. Williams (S.C. 1976) 266 S.C. 325, 223 S.E.2d 38. Criminal Law 1038.1(1); Criminal Law 1038.3

**SECTION 16‑11‑340.** Required placards in retail establishments as to consequences of conviction of armed robbery.

 The South Carolina Department of Revenue, with funds already appropriated to the department, shall print and distribute to each business establishment in this State, to which has been issued a retail sales tax license, a cardboard placard not less than eight inches by eleven inches which shall bear the following inscription in letters not less than three‑fourths inch high:

 “BY ACT OF THE SOUTH CAROLINA GENERAL ASSEMBLY ANY PERSON CONVICTED OF ARMED ROBBERY SHALL SERVE A SENTENCE OF NO LESS THAN SEVEN YEARS AT HARD LABOR WITHOUT PAROLE.”

 Such placard shall be prominently displayed in all retail establishments to which they are issued.

HISTORY: 1975 (59) 743; 1993 Act No.181, Section 273.

**SECTION 16‑11‑345.** Cardboard placards.

 The cardboard placard described in Section 16‑11‑340 also shall be provided to operators of motor vehicles being used for the transportation of passengers for hire by the Department of Revenue. The size of the placard for this purpose shall be approximately two and one‑half inches by five and one‑half inches with appropriately sized letters. The placard shall be prominently displayed in the operator’s vehicle.

HISTORY: 1994 Act No. 444, Section 2.

**SECTION 16‑11‑350.** Train robbery by stopping train.

 Any person or persons who (a) may stop, cause to be stopped, impede or cause to be impeded any locomotive engine or any car on any railroad in this State by force or threats or by intimidation of those in charge thereof or otherwise for the purpose of taking therefrom or causing to be delivered up to such persons or person anything of value to be appropriated to his or their own use or (b) may conspire together so to do shall be guilty of train robbery and, on conviction thereof, shall be punished by confinement in the Penitentiary not less than two years nor more than twenty years.

HISTORY: 1962 Code Section 16‑334; 1952 Code Section 16‑334; 1942 Code Section 1151; 1932 Code Section 1151; Cr. C. ‘22 Section 45; Cr. C. ‘12 Section 192; 1902 (23) 1095.

Library References

Robbery 4, 30.

Westlaw Topic No. 342.

C.J.S. Robbery Sections 5 to 12, 101 to 105, 109, 125, 130, 140.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Extortion, Blackmail, and Threats Section 21, Threats to Compel.

S.C. Jur. Extortion, Blackmail, and Threats Section 22, Threats to Frighten.

**SECTION 16‑11‑360.** Robbery after entry upon train.

 Any and all persons who may hereafter enter upon any locomotive engine or car on any railroad in this State and by threats, the exhibition of deadly weapons or the discharge of any pistol or gun on or near any such engine or car induce or compel any person on such engine or car to submit and deliver up or allow to be taken therefrom or from him or them anything of value shall be guilty of train robbery and, on conviction thereof, shall be punished by imprisonment in the Penitentiary not less than ten years nor more than twenty years.

HISTORY: 1962 Code Section 16‑335; 1952 Code Section 16‑335; 1942 Code Section 1152; 1932 Code Section 1152; Cr. C. ‘22 Section 46; Cr. C. ‘12 Section 193; 1902 (23) 1095.

Library References

Robbery 4, 30.

Westlaw Topic No. 342.

C.J.S. Robbery Sections 5 to 12, 101 to 105, 109, 125, 130, 140.

**SECTION 16‑11‑370.** Robbery of operators of motor vehicles for hire.

 A person who, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, robs or attempts the robbery of a person engaged in the performance of his duties as an operator of a motor vehicle being used for the transportation of passengers for hire is guilty of a felony and, upon conviction, must be sentenced as provided by Section 16‑11‑330.

HISTORY: 1962 Code Section 16‑335.1; 1962 (52) 2180; 1994 Act No. 444, Section 1.

Library References

Robbery 4, 30.

Westlaw Topic No. 342.

C.J.S. Robbery Sections 5 to 12, 101 to 105, 109, 125, 130, 140.

**SECTION 16‑11‑380.** Entering bank, depository or building and loan association with intent to steal; theft or solicitation of person using automated teller machine.

 (A) It is unlawful for a person to enter a building or part of a building occupied as a bank, depository, or building and loan association with intent to steal money, securities for money, or property, either by force, intimidation, or threats.

 (B) It is unlawful for a person to steal money, securities for money, or property, either by force, intimidation, or threats, from a person who is using or who has just finished using a bank night depository, an automated teller machine (ATM), or another automated banking device, as defined in Section 16‑14‑10, or in the vicinity of a bank depository, an ATM, or another automated banking device.

 (C) It is unlawful for a person to beg, panhandle, or solicit money from, or otherwise harass, a person using, who has just finished using, or who is in the vicinity of a bank night depository, an ATM, or another automated banking device.

 (D) A person who violates the provisions of:

 (1) subsection (A) is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years;

 (2) subsection (B) is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than twenty years, or both; and

 (3) subsection (C) is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

 (E) A separate location code, premise code, or designation for a bank night depository, an ATM, or other automated banking device offense must be added to the South Carolina Incident Based Reporting System. Law enforcement personnel are required to use this location code, premise code, or designation when completing incident reports for all criminal activity occurring at or in the vicinity of a bank night depository, an ATM, or another automated banking device in accordance with the provisions of this section.

 (F) To the extent that this section applies to bank night depositories, ATMs, and other automated banking devices, it applies only to these devices which are not located in a building or structure and those to which banking customers have access when they are outside a building or structure. A building or structure does not include an enclosure erected solely for the purpose of containing an otherwise outdoor or detached ATM or automated banking device. However, the provisions of this section do apply to drive‑through banking terminals.

 (G) As used in this section, “vicinity” means within the sight of a reasonable person.

HISTORY: 1962 Code Section 16‑336; 1952 Code Section 16‑336; 1942 Code Section 1141; 1932 Code Section 1141; Cr. C. ‘22 Section 35; Cr. C. ‘12 Section 180; 1908 (25) 1112; 1956 (49) 1743; 1993 Act No. 184, Section 171; 2007 Act No. 72, Section 2, eff June 13, 2007.

CROSS REFERENCES

Sentencing, see Section 17‑25‑20 et seq.

Library References

Burglary 9(3), 49.

Westlaw Topic No. 67.

C.J.S. Burglary Sections 1 to 4, 11, 13, 17 to 18, 21 to 22, 175 to 179.

NOTES OF DECISIONS

In general 1

1. In general

Credit union was a “depository” covered by statute prohibiting a person from entering “a building or part of a building occupied as a bank, depository, or building and loan association with intent to steal money.” Samuels v. State (S.C. 2004) 356 S.C. 635, 591 S.E.2d 606. Burglary 4

**SECTION 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.

HISTORY: 1962 Code Section 16‑337; 1952 Code Section 16‑337; 1942 Code Section 1150; 1932 Code Section 1150; Cr. C. ‘22 Section 44; Cr. C. ‘12 Section 191; 1904 (14) 396; 1907 (25) 580; 1955 (49) 65; 1993 Act No. 184, Section 172.

CROSS REFERENCES

Making, mending or possessing tools, nitroglycerine, etc., used in safecracking, see Section 16‑11‑20.

Sentencing, see Section 17‑25‑20 et seq.

Library References

Burglary 2, 30.

Westlaw Topic No. 67.

C.J.S. Burglary Sections 1 to 4, 19, 107 to 115.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

Indictment 3

Questions for jury 4

1. In general

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.

“Safetampering” falls within the crime defined as “safecracking” in this section [Code 1962 Section 16‑337]. Miller v. State of S. C. (D.C.S.C. 1970) 309 F.Supp. 1287. Burglary 2

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

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 Section 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 Section 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.

2. 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 Section 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.

The contention that this section [Code 1962 Section 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

3. Indictment

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.

4. Questions for jury

In a prosecution for armed robbery and safecracking, the court improperly denied defendant’s motion for directed verdict on the safecracking charge where there was no evidence that any explosives, tools or other implements were used. State v. Ford (S.C. 1982) 278 S.C. 384, 296 S.E.2d 866.

ARTICLE 6

Protection of Persons and Property Act

**SECTION 16‑11‑410.** Citation of article.

 This article may be cited as the “Protection of Persons and Property Act”.

HISTORY: 2006 Act No. 379, Section 1, eff June 9, 2006.

**SECTION 16‑11‑420.** Intent and findings of General Assembly.

 (A) It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person’s home is his castle and to extend the doctrine to include an occupied vehicle and the person’s place of business.

 (B) The General Assembly finds that it is proper for law‑abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.

 (C) The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed.

 (D) The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.

 (E) The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.

HISTORY: 2006 Act No. 379, Section 1, eff June 9, 2006.

NOTES OF DECISIONS

In general 1

1. In general

Immunity finding pursuant to provision in Persons and Property Act providing that a person “who is attacked in another place where he has a right to be, including, but not limited to, his place of business,” could have been made even if location of homicide was defendant’s residence; General Assembly’s intent was to provide protections of Act to persons within their own home facing not only unwelcome intruders but also attackers, including those who were initially invited into home and later placed homeowner in reasonable fear of death or great bodily injury. State v. Douglas (S.C.App. 2014) 411 S.C. 307, 768 S.E.2d 232, certiorari dismissed as improvidently granted 416 S.C. 627, 788 S.E.2d 686. Homicide 770

**SECTION 16‑11‑430.** Definitions.

 As used in this article, the term:

 (1) “Dwelling” means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night.

 (2) “Great bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

 (3) “Residence” means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

 (4) “Vehicle” means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

HISTORY: 2006 Act No. 379, Section 1, eff June 9, 2006.

NOTES OF DECISIONS

Great bodily harm 1

1. Great bodily harm

Trial court did not abuse its discretion by failing to assess defendant’s intoxication, in determining whether defendant was entitled to immunity from murder prosecution under the Protection of Persons and Property Act; court implicitly found that a reasonable, sober person facing defendant’s circumstances would have believed shooting victim was necessary to prevent great bodily harm to himself, and court noted that law enforcement did not obtain defendant’s specific blood‑alcohol level despite fact that he was in custody. State v. Douglas (S.C.App. 2014) 411 S.C. 307, 768 S.E.2d 232, certiorari dismissed as improvidently granted 416 S.C. 627, 788 S.E.2d 686. Homicide 795

Sufficient evidence existed that defendant reasonably believed shooting victim was necessary to prevent great bodily harm and that he acted in self‑defense, as required for immunity from murder prosecution under the Protection of Persons and Property Act, even though defendant condoned and participated in drinking binge at his home with victim; several photographs of defendant showed severe bruising on his upper arms, a black eye, a scraped knee, and several marks on his legs and chest, defendant’s testimony indicated that victim’s violent behavior was an unreasonable reaction to defendant’s reasonable demand for victim to return defendant’s medicine, objective forensic evidence was consistent with defendant’s testimony, and victim previously choked defendant and had to be pulled off of him. State v. Douglas (S.C.App. 2014) 411 S.C. 307, 768 S.E.2d 232, certiorari dismissed as improvidently granted 416 S.C. 627, 788 S.E.2d 686. Homicide 1198

**SECTION 16‑11‑440.** Presumption of reasonable fear of imminent peril when using deadly force against another unlawfully entering residence, occupied vehicle or place of business.

 (A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

 (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

 (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

 (B) The presumption provided in subsection (A) does not apply if the person:

 (1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder; or

 (2) sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship, of the person against whom the deadly force is used; or

 (3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

 (4) against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or occupied vehicle in the performance of his official duties, and he identifies himself in accordance with applicable law or the person using force knows or reasonably should have known that the person entering or attempting to enter is a law enforcement officer.

 (C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16‑1‑60.

 (D) A person who unlawfully and by force enters or attempts to enter a person’s dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16‑1‑60.

 (E) A person who by force enters or attempts to enter a dwelling, residence, or occupied vehicle in violation of an order of protection, restraining order, or condition of bond is presumed to be doing so with the intent to commit an unlawful act regardless of whether the person is a resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder.

HISTORY: 2006 Act No. 379, Section 1, eff June 9, 2006.

Library References

Assault and Battery 67 to 69, 82.

Homicide 757 to 761, 766, 920, 921.

Westlaw Topic Nos. 37, 203.

C.J.S. Assault Sections 106 to 116, 135 to 137.

C.J.S. Homicide Sections 166 to 177, 182 to 186, 191, 293 to 294.

NOTES OF DECISIONS

In general 1

Construction and application 2

Harmless error 5

Instructions 3

Necessity 3.5

Review 6

Sufficiency of evidence 4

1. In general

Defendant must establish the elements of self‑defense in order to prevail on a claim for immunity under Protection of Persons and Property Act. State v. Scott (S.C.App. 2017) 420 S.C. 108, 800 S.E.2d 793. Criminal Law 286

Absent a showing that a defendant has been attacked, a request for immunity, pursuant to section of Protection of Persons and Property Act, which would excuse the duty to retreat, must fail, and a defendant must present his evidence of self‑defense to a jury. State v. Scott (S.C.App. 2017) 420 S.C. 108, 800 S.E.2d 793. Criminal Law 286

One who uses deadly force in response to an attack in his or her own home by a cohabitant can seek immunity from prosecution under provision of Protection of Persons and Property Act relating to immunity for use of deadly force by a person who is not engaged in an unlawful activity and who is attacked in “another place” where he has a right to be, provided the person can establish his reasonable fear of the attacker. State v. Jones (S.C. 2016) 416 S.C. 283, 786 S.E.2d 132. Homicide 768; Homicide 795

“Another place” encompasses a residence, within meaning of provision of Protection of Persons and Property Act relating to immunity for use of deadly force by a person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent commission of a violent crime. State v. Jones (S.C. 2016) 416 S.C. 283, 786 S.E.2d 132. Homicide 768

Trial court did not abuse its discretion by failing to assess defendant’s intoxication, in determining whether defendant was entitled to immunity from murder prosecution under the Protection of Persons and Property Act; court implicitly found that a reasonable, sober person facing defendant’s circumstances would have believed shooting victim was necessary to prevent great bodily harm to himself, and court noted that law enforcement did not obtain defendant’s specific blood‑alcohol level despite fact that he was in custody. State v. Douglas (S.C.App. 2014) 411 S.C. 307, 768 S.E.2d 232, certiorari dismissed as improvidently granted 416 S.C. 627, 788 S.E.2d 686. Homicide 795

Under the common‑law castle doctrine, the absence of a duty to retreat does not extend to a visitor or social guest in the home of another, unless the attacker is an intruder. State v. Curry (S.C. 2013) 406 S.C. 364, 752 S.E.2d 263. Homicide 802

Murder defendant was not entitled to immunity from prosecution under Protection of Persons and Property Act, where testimony of defendant and eyewitnesses was in direct conflict as to whether victim attacked defendant. State v. Curry (S.C. 2013) 406 S.C. 364, 752 S.E.2d 263. Criminal Law 286

Defendant charged with murder was not entitled to statutory presumption of reasonable fear of imminent peril of death or great bodily injury afforded to person who uses deadly force when attacked by or attempting to remove another from dwelling, residence, or occupied vehicle, where victim was social guest and rightfully in apartment in which shooting occurred. State v. Curry (S.C. 2013) 406 S.C. 364, 752 S.E.2d 263. Homicide 920

Protection of Persons and Property Act creates a presumption of reasonable fear of imminent peril of death or great bodily injury to a person who uses deadly force if he is attacked by or attempting to remove another from a dwelling, residence, or occupied vehicle; however, such presumption does not apply if the victim has an equal right to be in the dwelling or residence. State v. Curry (S.C. 2013) 406 S.C. 364, 752 S.E.2d 263. Homicide 920

2. Construction and application

Defendant was entitled to immunity under section of Protection of Persons and Property Act providing that person who was not engaged in unlawful activity and who was attacked in place where he had right to be, had no duty to retreat and had right to stand his ground and meet force with force, if he reasonably believed it was necessary to prevent death or great bodily injury to himself, in murder prosecution, although victim was in different vehicle than person who first shot at defendant; defendant was not engaged in unlawful activity at time of shooting, defendant was in place he had right to be, inside his home and immediately outside his home, someone in vehicle outside defendant’s home shot first, and defendant shot to defend himself and did not remember directly where he was aiming or whether he shot two or three times because he was being shot at himself. State v. Scott (S.C.App. 2017) 420 S.C. 108, 800 S.E.2d 793. Criminal Law 286

In a case in which a murder defendant claims immunity under the Protection of Persons and Property Act, a valid case of self‑defense must exist, and the trial court must necessarily consider the elements of self‑defense in determining the defendant’s entitlement to immunity. State v. Jones (S.C. 2016) 416 S.C. 283, 786 S.E.2d 132. Homicide 766

Immunity finding pursuant to provision in Persons and Property Act providing that a person “who is attacked in another place where he has a right to be, including, but not limited to, his place of business,” could have been made even if location of homicide was defendant’s residence; General Assembly’s intent was to provide protections of Act to persons within their own home facing not only unwelcome intruders but also attackers, including those who were initially invited into home and later placed homeowner in reasonable fear of death or great bodily injury. State v. Douglas (S.C.App. 2014) 411 S.C. 307, 768 S.E.2d 232, certiorari dismissed as improvidently granted 416 S.C. 627, 788 S.E.2d 686. Homicide 770

The Protection of Persons and Property Act could not be applied retroactively, and therefore, defendant, whose charged criminal acts including voluntary manslaughter occurred four months prior to the Act’s effective date, was not entitled to jury instruction on presumptions set forth in the Act, specifically, for purposes of self‑defense, that one is presumed to have reasonable fear of imminent peril when using deadly force against another unlawfully entering his or her residence, occupied vehicle, or place of business; statutory language indicated that the Act was to have no effect on pending actions, criminal prosecutions, rights, duties, or liabilities, and that all laws repealed or amended by the Act must be treated as remaining in full force and effect. State v. Bolin (S.C.App. 2009) 381 S.C. 557, 673 S.E.2d 885, habeas corpus denied 2016 WL 5424834. Homicide 751

3. Instructions

Jury instruction regarding lack of duty to retreat when attacked in a place where a person had a right to be was not warranted as part of self‑defense instruction, despite murder defendant’s assertion that he was heir to property at which incident occurred, such that he did not have duty to retreat, where defendant arrived at or near area in question, exited his vehicle, yelled something at victim, and then fired his shotgun at victim, after which he approached victim, kicked him, and yelled “die motherfucker, die.” State v. McCray (S.C.App. 2015) 413 S.C. 76, 773 S.E.2d 914. Homicide 1485

Trial court’s giving of jury instructions in murder prosecution in accordance with both Protection of Persons and Property Act and common‑law castle doctrine did not create ambiguity prejudicial to defendant, as shooting did not occur in defendant’s own residence and victim was not intruder. State v. Curry (S.C. 2013) 406 S.C. 364, 752 S.E.2d 263. Criminal Law 1172.1(4)

Trial court’s error in instructing jury in murder prosecution in accordance with Protection of Persons and Property Act was beneficial to defendant and did not warrant new trial, where trial court had previously denied defendant immunity under the Act. State v. Curry (S.C. 2013) 406 S.C. 364, 752 S.E.2d 263. Criminal Law 1172.7

Trial court erred, in murder prosecution, in instructing jury in accordance with Protection of Persons and Property Act, where court had previously ruled that defendant was not entitled to immunity under Act. State v. Curry (S.C. 2013) 406 S.C. 364, 752 S.E.2d 263. Homicide 1473

3.5. Necessity

Defendant was not entitled to immunity under provision of Protection of Persons and Property Act stating that person who was attacked in place where he had right to be had no duty to retreat and had right to meet attacker with deadly force if he reasonably believed it was necessary to prevent death or great bodily injury to himself, in prosecution for voluntary manslaughter and possession of weapon during commission of violent crime; while defendant was in place that he was allowed to be, his use of deadly force against victim was not necessary to prevent his own death or injury or commission of violent crime, and, assuming that there was attack by victim previously, there was no such event at time of shooting and, thus, there was no force to meet, as victim was walking away from defendant when he was shot. State v. Oates (S.C.App. 2017) 421 S.C. 1, 803 S.E.2d 911. Criminal Law 286

4. Sufficiency of evidence

Evidence supported defendant’s claim of self‑defense in murder prosecution arising from fatal stabbing of live‑in boyfriend in which she asserted immunity from prosecution under Protection of Persons and Property Act; defendant stated that as she was leaving the apartment boyfriend grabbed her, asked her if she was mad, and began shaking her while telling her “It’s over. It’s your fault,” defendant’s belief that she was in imminent danger of losing her life or sustaining great bodily injury was reasonable given boyfriend actions toward her earlier in the evening of punching defendant, dragging her by her hair, and forcing her back into the apartment, and defendant had no duty to retreat because she was attacked in her own home. State v. Jones (S.C. 2016) 416 S.C. 283, 786 S.E.2d 132. Homicide 768; Homicide 795

Sufficient evidence existed that defendant reasonably believed shooting victim was necessary to prevent great bodily harm and that he acted in self‑defense, as required for immunity from murder prosecution under the Protection of Persons and Property Act, even though defendant condoned and participated in drinking binge at his home with victim; several photographs of defendant showed severe bruising on his upper arms, a black eye, a scraped knee, and several marks on his legs and chest, defendant’s testimony indicated that victim’s violent behavior was an unreasonable reaction to defendant’s reasonable demand for victim to return defendant’s medicine, objective forensic evidence was consistent with defendant’s testimony, and victim previously choked defendant and had to be pulled off of him. State v. Douglas (S.C.App. 2014) 411 S.C. 307, 768 S.E.2d 232, certiorari dismissed as improvidently granted 416 S.C. 627, 788 S.E.2d 686. Homicide 1198

5. Harmless error

Defendant was not entitled to immunity under provision of Protection of Persons and Property Act allowing presumption of having reasonable fear of imminent peril or death or great bodily injury when person against whom deadly force was used removed or was attempting to remove another person against his will from occupied vehicle in prosecution for voluntary manslaughter and possession of weapon during commission of violent crime; while defendant alleged that victim was forcing him from his truck at gunpoint, there were at least three other witnesses who stated that argument between two men had subsided and that everyone was calm when defendant shot victim, and, since court found defendant’s version of events incredible, failure to address last phrase of provision did not constitute reversible error. State v. Oates (S.C.App. 2017) 421 S.C. 1, 803 S.E.2d 911. Criminal Law 286

Any inaccuracy in trial court’s characterization of toxicologist’s testimony that victim’s blood‑alcohol level would have “most probably” lead to victim’s aggressive and violent behavior was harmless, in determining whether defendant was entitled to immunity from murder prosecution under the Protection of Persons and Property Act; toxicologist’s testimony that blood‑alcohol level “can” cause severe aggression, emotional instability, and violence for an experienced drinker provided support for court’s recognition of testimony as relevant to victim’s aggressive behavior prior to shooting, and defendant recounted his knowledge of victim’s history of burglary, armed robbery, assaulting a woman and two police officers, in addition to incident in which he choked defendant. State v. Douglas (S.C.App. 2014) 411 S.C. 307, 768 S.E.2d 232, certiorari dismissed as improvidently granted 416 S.C. 627, 788 S.E.2d 686. Criminal Law 1166(1)

Any error in admission of police officers’ testimony concerning specific instances of victim’s violent conduct was harmless, in determining whether defendant was entitled to immunity from murder prosecution under the Protection of Persons and Property Act, where fact that victim had a history of violent behavior was well‑established, without objection from the State, prior to admission of officers’ testimony. State v. Douglas (S.C.App. 2014) 411 S.C. 307, 768 S.E.2d 232, certiorari dismissed as improvidently granted 416 S.C. 627, 788 S.E.2d 686. Criminal Law 1169.1(7)

6. Review

A claim of immunity under the Protection of Persons and Property Act requires a pretrial determination using a preponderance of the evidence standard, which appellate court reviews under an abuse of discretion standard of review. State v. Scott (S.C.App. 2017) 420 S.C. 108, 800 S.E.2d 793. Criminal Law 286; Criminal Law 1149

State did not fail to preserve appellate review of whether trial court abused its discretion in admitting police officers’ testimony concerning specific instances of victim’s violent conduct, in determining whether defendant was entitled to immunity from murder prosecution under the Protection of Persons and Property Act; court was sufficiently apprised of State’s continuing objections such that it had an opportunity to consider and rule on them before issuing its order granting immunity, and State’s objections at trial adequately covered both relevance and improper character evidence to the extent evidence went beyond what defendant had already referenced in his own testimony. State v. Douglas (S.C.App. 2014) 411 S.C. 307, 768 S.E.2d 232, certiorari dismissed as improvidently granted 416 S.C. 627, 788 S.E.2d 686. Criminal Law 1043(1)

**SECTION 16‑11‑450.** Immunity from criminal prosecution and civil actions; law enforcement officer exception; costs.

 (A) A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

 (B) A law enforcement agency may use standard procedures for investigating the use of deadly force as described in subsection (A), but the agency may not arrest the person for using deadly force unless probable cause exists that the deadly force used was unlawful.

 (C) The court shall award reasonable attorneys’ fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of a civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (A).

HISTORY: 2006 Act No. 379, Section 1, eff June 9, 2006.

Library References

Assault and Battery 67 to 69.

Costs 194.28.

Homicide 757 to 761, 766.

Westlaw Topic Nos. 37, 102, 203.

C.J.S. Assault Sections 106 to 116.

C.J.S. Homicide Sections 166 to 177, 182 to 186, 191.

NOTES OF DECISIONS

In general 1

Harmless error 5

Instructions 3

Presumptions and burden of proof 2

Review 6

Sufficiency of evidence 4

1. In general

Trial court did not abuse its discretion by failing to assess defendant’s intoxication, in determining whether defendant was entitled to immunity from murder prosecution under the Protection of Persons and Property Act; court implicitly found that a reasonable, sober person facing defendant’s circumstances would have believed shooting victim was necessary to prevent great bodily harm to himself, and court noted that law enforcement did not obtain defendant’s specific blood‑alcohol level despite fact that he was in custody. State v. Douglas (S.C.App. 2014) 411 S.C. 307, 768 S.E.2d 232, certiorari dismissed as improvidently granted 416 S.C. 627, 788 S.E.2d 686. Homicide 795

The duty to retreat need not be shown in a murder case in which a defendant seeks immunity from prosecution under the Protection of Persons and Property Act. State v. Douglas (S.C.App. 2014) 411 S.C. 307, 768 S.E.2d 232, certiorari dismissed as improvidently granted 416 S.C. 627, 788 S.E.2d 686. Homicide 799

In a murder case in which a defendant claims immunity from prosecution under the Protection of Persons and Property Act, a valid case of self‑defense must exist, and the trial court must necessarily consider the elements of self‑defense in determining a defendant’s entitlement to immunity. State v. Douglas (S.C.App. 2014) 411 S.C. 307, 768 S.E.2d 232, certiorari dismissed as improvidently granted 416 S.C. 627, 788 S.E.2d 686. Homicide 766

In a case in which a murder defendant claims immunity under the Protection of Persons and Property Act, a valid case of self‑defense must exist, and the trial court must necessarily consider the elements of self‑defense in determining the defendant’s entitlement to immunity, including all elements of self‑defense save the duty to retreat. State v. Curry (S.C. 2013) 406 S.C. 364, 752 S.E.2d 263. Criminal Law 286; Homicide 766

When applicable, the Protection of Persons and Property Act provides immunity from prosecution. State v. Curry (S.C. 2013) 406 S.C. 364, 752 S.E.2d 263. Criminal Law 286

While the Protection of Persons and Property Act may be considered “offensive” in the sense that immunity thereunder operates as a bar to prosecution, such immunity is predicated on an accused demonstrating the elements of self‑defense to the satisfaction of the trial court by the preponderance of the evidence. State v. Curry (S.C. 2013) 406 S.C. 364, 752 S.E.2d 263. Criminal Law 286

In South Carolina, a writ of prohibition is not an appropriate remedy for criminal defendants denied immunity under the Protection of Persons and Property Act. State v. Isaac (S.C. 2013) 405 S.C. 177, 747 S.E.2d 677. Prohibition 5(4)

Right to immunity from criminal liability under Protection of Persons and Property Act did not apply retroactively to defendant charged with murder, burglary, and related offenses prior to Act’s effective date; rather, law in effect at time crimes were committed controlled. State v. Isaac (S.C. 2013) 405 S.C. 177, 747 S.E.2d 677. Criminal Law 286

Defendant was entitled to immunity from prosecution for murder pursuant to Protection of Persons and Property Act, where victim was attempting to force his way into defendant’s residence at the time defendant shot and killed the victim. State v. Duncan (S.C. 2011) 392 S.C. 404, 709 S.E.2d 662, rehearing denied. Homicide 788

Immunity from criminal prosecution pursuant to the Protection of Persons and Property Act was properly determined pre‑trial, rather than being treated as an affirmative defense to be raised at trial; while the Act did not explicitly provide a procedure for determining immunity, by using the words “immune from criminal prosecution,” the legislature intended to create a true immunity, and not simply an affirmative defense, thus, immunity was a complete bar to prosecution. State v. Duncan (S.C. 2011) 392 S.C. 404, 709 S.E.2d 662, rehearing denied. Homicide 788

2. Presumptions and burden of proof

Claim of immunity under the Protection of Persons and Property Act requires a pretrial determination using a preponderance of the evidence standard, which is reviewed on appeal under an abuse of discretion standard of review. State v. Curry (S.C. 2013) 406 S.C. 364, 752 S.E.2d 263. Criminal Law 286; Criminal Law 1149

When a party raises the question of statutory immunity pursuant to the Protection of Persons and Property Act prior to trial, the proper standard for the circuit court to use in determining immunity is a preponderance of the evidence. State v. Duncan (S.C. 2011) 392 S.C. 404, 709 S.E.2d 662, rehearing denied. Homicide 1194

3. Instructions

Proffered instruction on self‑defense that, if defendant justified in firing first shot, he was justified in continuing to shoot until it was apparent that danger to his life and body had ceased was adequately covered by entire charge on self‑defense, in trial for murder, including instruction that person could use such force as was reasonably necessary, even to point of taking human life, where such was reasonable. State v. Marin (S.C. 2016) 415 S.C. 475, 783 S.E.2d 808. Criminal Law 829(5)

Murder defendant contending that he shot the victim in self‑defense was not entitled to jury instruction under provision of Protection of Persons and Property Act granting immunity from prosecution for a person who acted lawfully in self‑defense; provision was not relevant to the work of a jury, but merely established a procedure under which a trial court could grant immunity before trial begins, and jury was properly charged on the substantive law of self‑defense. State v. Marin (S.C.App. 2013) 404 S.C. 615, 745 S.E.2d 148, certiorari granted, affirmed as modified 415 S.C. 475, 783 S.E.2d 808. Homicide 1345

4. Sufficiency of evidence

Sufficient evidence existed that defendant reasonably believed shooting victim was necessary to prevent great bodily harm and that he acted in self‑defense, as required for immunity from murder prosecution under the Protection of Persons and Property Act, even though defendant condoned and participated in drinking binge at his home with victim; several photographs of defendant showed severe bruising on his upper arms, a black eye, a scraped knee, and several marks on his legs and chest, defendant’s testimony indicated that victim’s violent behavior was an unreasonable reaction to defendant’s reasonable demand for victim to return defendant’s medicine, objective forensic evidence was consistent with defendant’s testimony, and victim previously choked defendant and had to be pulled off of him. State v. Douglas (S.C.App. 2014) 411 S.C. 307, 768 S.E.2d 232, certiorari dismissed as improvidently granted 416 S.C. 627, 788 S.E.2d 686. Homicide 1198

5. Harmless error

Any inaccuracy in trial court’s characterization of toxicologist’s testimony that victim’s blood‑alcohol level would have “most probably” lead to victim’s aggressive and violent behavior was harmless, in determining whether defendant was entitled to immunity from murder prosecution under the Protection of Persons and Property Act; toxicologist’s testimony that blood‑alcohol level “can” cause severe aggression, emotional instability, and violence for an experienced drinker provided support for court’s recognition of testimony as relevant to victim’s aggressive behavior prior to shooting, and defendant recounted his knowledge of victim’s history of burglary, armed robbery, assaulting a woman and two police officers, in addition to incident in which he choked defendant. State v. Douglas (S.C.App. 2014) 411 S.C. 307, 768 S.E.2d 232, certiorari dismissed as improvidently granted 416 S.C. 627, 788 S.E.2d 686. Criminal Law 1166(1)

Any error in admission of police officers’ testimony concerning specific instances of victim’s violent conduct was harmless, in determining whether defendant was entitled to immunity from murder prosecution under the Protection of Persons and Property Act, where fact that victim had a history of violent behavior was well‑established, without objection from the State, prior to admission of officers’ testimony. State v. Douglas (S.C.App. 2014) 411 S.C. 307, 768 S.E.2d 232, certiorari dismissed as improvidently granted 416 S.C. 627, 788 S.E.2d 686. Criminal Law 1169.1(7)

6. Review

State did not fail to preserve appellate review of whether trial court abused its discretion in admitting police officers’ testimony concerning specific instances of victim’s violent conduct, in determining whether defendant was entitled to immunity from murder prosecution under the Protection of Persons and Property Act; court was sufficiently apprised of State’s continuing objections such that it had an opportunity to consider and rule on them before issuing its order granting immunity, and State’s objections at trial adequately covered both relevance and improper character evidence to the extent evidence went beyond what defendant had already referenced in his own testimony. State v. Douglas (S.C.App. 2014) 411 S.C. 307, 768 S.E.2d 232, certiorari dismissed as improvidently granted 416 S.C. 627, 788 S.E.2d 686. Criminal Law 1043(1)

The Court of Appeals reviews a trial court’s pretrial determination of immunity under the Protection of Persons and Property Act for an abuse of discretion. State v. Douglas (S.C.App. 2014) 411 S.C. 307, 768 S.E.2d 232, certiorari dismissed as improvidently granted 416 S.C. 627, 788 S.E.2d 686. Criminal Law 1148

Supreme court would elect to treat murder defendant’s motion for immunity under Protection of Persons and Property Act, made at directed verdict stage of trial, as preserving defendant’s claim of immunity for appellate review, where statute was silent as to procedure to be followed in seeking immunity thereunder and case law interpreting statute to require pretrial determination by trial court was published after defendant’s case was tried. State v. Curry (S.C. 2013) 406 S.C. 364, 752 S.E.2d 263. Criminal Law 1044.2(1)

Order denying defendant’s request for hearing to determine whether he was entitled to immunity on charges for murder and related offenses under Protection of Persons and Property Act did not finally determination substantial cause of action or defense, and thus, was not immediately appealable order. State v. Isaac (S.C. 2013) 405 S.C. 177, 747 S.E.2d 677. Criminal Law 1023(3)

An order granting a request for immunity under the Protection of Persons and Property Act is immediately appealable because it is a final order in the case; however, an order denying a request for immunity is not a final order in the case. State v. Isaac (S.C. 2013) 405 S.C. 177, 747 S.E.2d 677. Criminal Law 1023(3)

Order denying defendant’s request for hearing to determine immunity from charges for murder and related offenses under Protection of Persons and Property Act was not appealable interlocutory order or decree in court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing appointment of receiver. State v. Isaac (S.C. 2013) 405 S.C. 177, 747 S.E.2d 677. Criminal Law 1023(3)

ARTICLE 7

Trespasses and Unlawful Use of Property of Others

**SECTION 16‑11‑510.** Malicious injury to animals and other personal property.

 (A) It is unlawful for a person to wilfully and maliciously cut, shoot, maim, wound, or otherwise injure or destroy any horse, mule, cattle, hog, sheep, goat, or any other kind, class, article, or description of personal property, or the goods and chattels of another.

 (B) A person who violates the provisions of this section is guilty of a:

 (1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the injury to the property or the property loss is worth ten thousand dollars or more;

 (2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the injury to the property or the property loss is worth more than two thousand dollars but less than ten thousand dollars;

 (3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, if the injury to the property or the property loss is worth two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned, not more than thirty days, or both.

HISTORY: 1962 Code Section 16‑381; 1952 Code Section 16‑381; 1942 Code Section 1183; 1932 Code Section 1183; Cr. C. ‘22 Section 73; Cr. C. ‘12 Section 222; Cr. C. ‘02 Section 170; G. S. 2500; R. S. 165; 1712 (2) 478, 521; 1857 (12) 605; 1861 (12) 903; 1892 (21) 115; 1894 (21) 824; 1964 (53) 1724; 1981 Act No. 76, Section 1; 1993 Act No. 171, Section 3; 1993 Act No. 184, Section 104; 1998 Act No. 272, Section 1; 2010 Act No. 273, Section 16.A, eff June 2, 2010.

CROSS REFERENCES

Applicability of provisions pertaining to use of uniform traffic ticket, see Section 56‑7‑10.

Damaging or tampering with vehicle, see Section 16‑21‑90.

Interference with traffic control devices, see Section 56‑5‑1030.

Offense of driving vehicle through planted fields, see Section 46‑1‑131.

Library References

Animals 45.

Malicious Mischief 1, 12.

Westlaw Topic Nos. 28, 248.

C.J.S. Animals Sections 198 to 225, 486, 507 to 531.

C.J.S. Malicious or Criminal Mischief or Damage to Property Sections 1 to 2, 4 to 10, 17.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Animals Section 18, Offense of Cruelty‑ Generally.

S.C. Jur. Assault and Battery Section 40, Assault of Unintended Victims.

S.C. Jur. Homicide Section 5, Victims.

S.C. Jur. Magistrates and Municipal Judges Section 22, Jurisdiction.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 3

Indictment 2

Questions for jury 4

1. In general

It is not necessary to prove malice towards the owner of the property. State v Toney (1881) 15 SC 409. State v Doig (1845) 31 SCL 179. State v Murphy (1910) 86 SC 268, 68 SE 570.

The elements of malicious mischief are willful, unlawful and malicious damage to the property of another; these elements are not synonymous, and thus each must be established in seeking to convict a defendant. State v. Bryant (S.C. 1994) 316 S.C. 216, 447 S.E.2d 852. Malicious Mischief 1

A dog is personal property within the terms of this section [Code 1962 Section 16‑381]. State v. Cooper (S.C. 1918) 110 S.C. 256, 96 S.E. 398.

Destruction of a large amount of oil in an oil tank was held to be within the meaning of the words “personal property” as used in this section [Code 1962 Section 16‑381]. State v. Switzer (S.C. 1901) 59 S.C. 225, 37 S.E. 818.

A charge that the prisoner shot “one sow” is good. Shubrick v. State (S.C. 1870) 2 S.C. 21.

2. Indictment

It is sufficient if the indictment contains a general description of the offense in the words of the section, although the manner of killing be not described. State v. Cantrell (S.C. 1834). Indictment And Information 110(23)

3. Admissibility of evidence

Under 1962 Code Section 16‑381 [1976 Code Section 16‑11‑510], question of amount of injury to the property determines jurisdiction of the court to try the offense, and where this question was left solely for the jury to determine along with the other factual issues, written estimates of damage admitted without the testimony of the persons making them were inadmissible hearsay, the admission of which constituted prejudicial error. State v. Wright (S.C. 1976) 266 S.C. 160, 221 S.E.2d 870.

4. Questions for jury

Circumstantial evidence introduced by State in burglary trial raised fact issue for jury as to defendant’s guilt; forensic evidence placed defendant within community center and, more specifically, at the two places where the crimes had occurred, his fingerprint was found on a manipulated television set in community room where a window had been broken, his blood was recovered just beneath spot a stolen television had been mounted, and testimony suggested that defendant would have no reason to be in the community room because he was not involved in any of the groups that met there. State v. Bennett (S.C. 2016) 415 S.C. 232, 781 S.E.2d 352. Burglary 45

In a criminal action arising from a fight between a police officer and an arrestee in which the officer’s car was damaged, the Court of Appeals correctly held that a charge of malicious injury to personal property should not have been submitted to the jury, since the state failed to provide any evidence that the defendant intend to cause damage to the patrol car when he threw the officer against it. State v. Bryant (S.C. 1994) 316 S.C. 216, 447 S.E.2d 852.

The trial court properly refused to grant a directed verdict to defendants charged with breaking into several motor vehicles, grand larceny, and malicious destruction of personal property where evidence was presented that the defendants were in a strange neighborhood in the middle of the night, a series of vehicles had been entered and items stolen therefrom near the time and place the defendants were apprehended, one of the stolen items was in the defendants’ possession, the defendants’ mother’s car was parked on a side road near a cache of stolen goods, and the defendants’ excuse that the car had broken down was unsupported. State v. Nall (S.C.App. 1991) 304 S.C. 332, 404 S.E.2d 202. Burglary 45; Larceny 68(1); Malicious Mischief 10

**SECTION 16‑11‑520.** Malicious injury to tree, house, outside fence, or fixture; trespass upon real property.

 (A) It is unlawful for a person to wilfully and maliciously cut, mutilate, deface, or otherwise injure a tree, house, outside fence, or fixture of another or commit any other trespass upon real property of another.

 (B) A person who violates the provisions of this section is guilty of a:

 (1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the injury to the property or the property loss is worth ten thousand dollars or more;

 (2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the injury to the property or the property loss is worth more than two thousand dollars but less than ten thousand dollars;

 (3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, if the injury to the property or the property loss is worth two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both.

HISTORY: 1962 Code Section 16‑382; 1952 Code Section 16‑382; 1942 Code Section 1184; 1932 Code Section 1184; Cr. C. ‘22 Section 74; Cr. C. ‘12 Section 223; Cr. C. ‘02 Section 171; G. S. 2501; R. S. 166; 1857 (12) 605; 1892 (21) 93; 1893 (21) 411; 1894 (21) 824; 1935 (39) 262; 1964 (53) 1724; 1981 Act No. 76, Section 2; 1993 Act No. 171, Section 4; 1993 Act No. 184, Section 105; 1998 Act No. 272, Section 2; 2010 Act No. 273, Section 16.B, eff June 2, 2010.

CROSS REFERENCES

Unlawful to injure plants, shrubs, or trees along certain highways, see Section 57‑23‑20.

Negligent, wilful or wanton damage to highway facilities, see Section 57‑7‑10.

Wanton or wilful injury to bridges, see Section 57‑13‑110.

Library References

Malicious Mischief 1, 12.

Trespass 80, 83, 91.

Westlaw Topic Nos. 248, 386.

C.J.S. Malicious or Criminal Mischief or Damage to Property Sections 1 to 2, 4 to 10, 17.

C.J.S. Trespass Sections 158, 161, 173.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Logs and Timber Section 49, Malicious Injury to Trees of Another Under S. C. Code Ann. S16‑11‑520.

S.C. Jur. Logs and Timber Section 50, Knowingly Removing or Transporting Timber, Logs or Lumber Without Consent of Owner Under S. C. Code Ann. S16‑11‑580.

S.C. Jur. Logs and Timber Section 52, Payment of Three Times Fair Market Value of Timber as a Defense to Prosecution Under S.C. Code Ann.Ss 16‑11‑520, 16‑11‑580, and 16‑11‑610.

LAW REVIEW AND JOURNAL COMMENTARIES

A guide to the common law of nuisance in South Carolina. 45 S.C. L. Rev. 337 (Winter 1994).

NOTES OF DECISIONS

Generally 1

Damages 3

Malice 2

1. Generally

The legislature was careful to guard against a too free resort to this section [Code 1962 Section 16‑382] by penalizing a prosecutor, in that if he brought a criminal prosecution, he is debarred from bringing a civil suit for the same injury by Code 1962 Section 10‑15. State v. Weeks (S.C. 1937) 185 S.C. 277, 194 S.E. 12.

Under this section [Code 1962 Section 16‑382] a magistrate has jurisdiction of a complaint for a criminal trespass, where the damages are less than twenty dollars, even though defendant sets up as his defense, under a plea of not guilty, that the prosecutors have no title, but that title is in his wife. State v. Holcomb (S.C. 1902) 63 S.C. 22, 40 S.E. 1017.

Magistrates had no jurisdiction of complaint for criminal trespass before the act of 1892, the punishment being left to the discretion of the trial judge. State v. Mays (S.C. 1886) 24 S.C. 190.

A mere license to plant the land in possession of owner does not give possession of real property required by this section [Code 1962 Section 16‑382] such as will sustain an indictment for malicious trespass for cutting up the crop planted. State v. Gadsden (S.C. 1884) 20 S.C. 456.

2. Malice

In trial on charge of malicious injury to real property, trial judge errs in charging jury that malice may be implied from unlawful act willfully done, until contrary is proved, since such charge may have effect of shifting burden of proof to person on trial. State v. Lewellyn (S.C. 1984) 281 S.C. 199, 314 S.E.2d 326. Criminal Law 778(5)

In State v Davis, 88 SC 229, 70 SE 811 it was held that in an indictment for malicious mischief it is not necessary to show personal ill will against the owner of the property, but malice as an ingredient of the offense may be inferred from the wilful doing of an unlawful act without just cause or excuse, and both wilfulness and malice may be inferred when the unlawful act is done in such a wanton and reckless spirit as to show a mind disposed to mischief. Malice is a term of art, implying wickedness and excluding a just cause or excuse. It is implied from an unlawful act wilfully done, until the contrary be proved. State v. Weeks (S.C. 1937) 185 S.C. 277, 194 S.E. 12.

‑ In State v Toney (1881) 15 SC 409, the court held that the terms “unlawfully,” “wilfully” and “maliciously,” used in this section [Code 1962 Section 16‑382], are not synonymous and were not intended to express the same idea. They have each a different signification and import different degrees of guilt. State v. Weeks (S.C. 1937) 185 S.C. 277, 194 S.E. 12.

The word “maliciously,” as used in this section [Code 1962 Section 16‑382], should be construed with a view to the popular conception of its meaning; that is, that the cutting, mutilating, defacing, or the otherwise injuring of the real property of another has to be done from an innate or sheer meanness growing out of a heart fatally bent on mischief and the act must denote a depraved and wicked spirit; that it is the intent of the doer that someone suffer an unnecessary injury to his property. State v. Weeks (S.C. 1937) 185 S.C. 277, 194 S.E. 12. Malicious Mischief 1

To justify a conviction under this section [Code 1962 Section 16‑382], the State must prove or put in evidence facts from which no other reasonable conclusion could be reached but that the accused had malice in his heart or was acting maliciously. State v. Weeks (S.C. 1937) 185 S.C. 277, 194 S.E. 12.

3. Damages

Where defendant threw live nuts of nut grass on another’s land, the damages to the land from a crop of nut grass was the proximate result, and it was improper to limit the damages to that occurring at the time the nuts were thrown on the land. State v. Des Champs (S.C. 1923) 126 S.C. 416, 120 S.E. 491. Malicious Mischief 12

Under the proviso of this section [Code 1962 Section 16‑382], limiting the punishment for malicious injury to realty where the damage does not exceed twenty dollars, the amount of damage is that which results from the wrongful act or trespass as a natural and probable consequence. State v. Des Champs (S.C. 1923) 126 S.C. 416, 120 S.E. 491. Malicious Mischief 12

An indictment charging defendant with setting fire to a fodder house and a corn crib which fails to allege that the damage exceeded $20.00 is not within the jurisdiction of the court of general sessions. State v. Jeter (S.C. 1896) 47 S.C. 2, 24 S.E. 889.

**SECTION 16‑11‑523.** Obtaining nonferrous metals unlawfully; disruption of communication or electrical service.

 (A) For purposes of this section, “nonferrous metals” means metals not containing significant quantities of iron or steel, including, but not limited to, copper wire, copper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and copper, catalytic converters, lead‑acid batteries, steel propane gas tanks, and stainless steel beer kegs or containers.

 (B) It is unlawful for a person to wilfully and maliciously cut, mutilate, deface, or otherwise injure any personal or real property, including any fixtures or improvements, for the purpose of obtaining nonferrous metals in any amount.

 (C) A person who violates a provision of this section is guilty of a:

 (1) misdemeanor, and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both, if the direct injury to the property, the amount of loss in value to the property, the amount of repairs necessary to return the property to its condition before the act, or the property loss, including fixtures or improvements, is less than five thousand dollars; or

 (2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the direct injury to the property, the amount of loss in value to the property, the amount of repairs necessary to return the property to its condition before the act, or the property loss, including fixtures or improvements, is five thousand dollars or more.

 (D)(1) A person who violates the provisions of this section and the violation results in great bodily injury to another person is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years. For purposes of this subsection, “great bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

 (2) A person who violates the provisions of this section and the violation results in the death of another person is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

 (E) A person who violates the provisions of this section and the violation results in disruption of communication or electrical service to critical infrastructure or more than ten customers of the communication or electrical service is guilty of a misdemeanor, and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

 (F) If a person is convicted of violating the provisions of this section and the person has been issued a permit pursuant to Section 16‑17‑680, the permit must be revoked.

 (G)(1) A public or private owner of personal or real property is not civilly liable to a person who is injured during the theft or attempted theft, by the person or a third party, of nonferrous metals in any amount.

 (2) A public or private owner of personal or real property is not civilly liable for a person’s injuries caused by a dangerous condition created as a result of the theft or attempted theft of nonferrous metals in any amount, of the owner when the owner of personal or real property did not know and could not have reasonably known of the dangerous condition.

 (3) This subsection does not create or impose a duty of care upon a owner of personal or real property that would not otherwise exist under common law.

HISTORY: 2008 Act No. 260, Section 2, eff June 4, 2008; 2009 Act No. 26, Section 1, eff June 2, 2009; 2010 Act No. 273, Section 16.C, eff June 2, 2010; 2011 Act No. 68, Section 1, eff August 17, 2011; 2012 Act No. 242, Section 1, eff December 15, 2012.

Library References

Larceny 1, 88.

Westlaw Topic No. 234.

C.J.S. Larceny Sections 1 to 9, 15, 71 to 72.

**SECTION 16‑11‑525.** Commissioners deemed owners of Housing Authority property for certain purposes; exemption from liability.

 For the sole purpose of determining whether or not any public housing authority property has been maliciously injured as the offense of malicious mischief is defined in Section 16‑11‑520, and as to whether or not there has been a trespass upon the property as this offense is defined under Section 16‑11‑600, in all prosecutions under these penal statutes and other statutes of a like nature, the members of the board of commissioners of each state, county, or municipal housing authority in this State, in their official capacity, are deemed to be the owners and possessors of all property of each particular housing authority under their jurisdiction. Nothing in this section may be construed to create personal liability for a commissioner for loss, injury, or damage to the person or property of any other person or entity who suffers injury while on or adjacent to housing authority property as a tenant, an invitee, or a trespasser.

HISTORY: 1994 Act No. 419, Section 1.

Library References

Malicious Mischief 1.

Trespass 78.

Westlaw Topic Nos. 248, 386.

C.J.S. Malicious or Criminal Mischief or Damage to Property Sections 1 to 2, 4 to 10.

**SECTION 16‑11‑530.** Malicious injury to real property; school trustees deemed owners of school property.

 For the purpose of determining whether or not any school property has been maliciously injured as the offense of malicious mischief is defined in Section 16‑11‑520 and as to whether or not there has been a trespass upon such property as this offense is defined in Section 16‑11‑600 and for all prosecutions under these penal statutes and other statutes of a like nature, the trustees of the respective school districts in this State in their official capacity shall be deemed to be the owners and possessors of all school property.

HISTORY: 1962 Code Section 16‑383; 1952 Code Section 16‑383; 1942 Code Section 1184; 1932 Code Section 1184; Cr. C. ‘22 Section 74; Cr. C. ‘12 Section 223; Cr. C. ‘02 Section 171; G. S. 2501; R. S. 166; 1857 (12) 605; 1892 (21) 93; 1893 (21) 411; 1894 (21) 824; 1935 (39) 262.

Library References

Malicious Mischief 1.

Trespass 78.

Westlaw Topic Nos. 248, 386.

C.J.S. Malicious or Criminal Mischief or Damage to Property Sections 1 to 2, 4 to 10.

Attorney General’s Opinions

The laws governing trespass as they relate to public library buildings, including the State Library. SC Op.Atty.Gen. (Feb. 17, 2009) 2009 WL 580552.

NOTES OF DECISIONS

In general 1

Sufficiency of evidence 2

1. In general

For purposes of a prosecution for trespass, under Section 16‑11‑620, public school land is “owned and possessed” by the respective school district trustees, pursuant to Section 16‑11‑530; in other words, a trespass upon school lands is a trespass “on the premises of another” as proscribed by Section 16‑11‑620. In Interest of Joseph B. (S.C. 1983) 278 S.C. 502, 299 S.E.2d 331.

2. Sufficiency of evidence

Circumstantial evidence introduced by State in burglary trial raised fact issue for jury as to defendant’s guilt; forensic evidence placed defendant within community center and, more specifically, at the two places where the crimes had occurred, his fingerprint was found on a manipulated television set in community room where a window had been broken, his blood was recovered just beneath spot a stolen television had been mounted, and testimony suggested that defendant would have no reason to be in the community room because he was not involved in any of the groups that met there. State v. Bennett (S.C. 2016) 415 S.C. 232, 781 S.E.2d 352. Burglary 45

State did not present substantial circumstantial evidence to reasonably prove defendant’s guilt, but at most, the evidence presented merely raised a suspicion that defendant committed the crimes, and thus, evidence was not sufficient to support defendant’s convictions for burglary in the second degree, petty larceny, and malicious injury to real property; defendant was a frequent visitor to community center prior to the crime, spending much of his time in the computer room, and thus, it would not be unexpected to find defendant’s DNA in the computer room and his fingerprint in the community room, and though the exact locations of the DNA and fingerprint evidence raised a suspicion of defendant’s guilt, the evidence did not rise above suspicion. State v. Bennett (S.C.App. 2014) 408 S.C. 302, 758 S.E.2d 743, certiorari granted, reversed 415 S.C. 232, 781 S.E.2d 352. Burglary 41(6); Criminal Law 566

**SECTION 16‑11‑535.** Malicious injury to place of worship.

 Whoever shall wilfully, unlawfully, and maliciously vandalize, deface, damage, or destroy or attempt to vandalize, deface, damage, or destroy any place, structure, or building of worship or aid, agree with, employ, or conspire with any person to do or cause to be done any of the acts mentioned above is guilty of a felony and, upon conviction, must be imprisoned not less than six months nor more than ten years or fined not more than ten thousand dollars, or both.

HISTORY: 1986 Act No. 485; 1996 Act No. 356, Section 2.

Library References

Malicious Mischief 1, 12.

Westlaw Topic No. 248.

C.J.S. Malicious or Criminal Mischief or Damage to Property Sections 1 to 2, 4 to 10, 17.

**SECTION 16‑11‑560.** Burning or cutting untenanted or unfinished buildings.

 It is unlawful for a person to maliciously, unlawfully, and wilfully burn or cause to be burned, cut or cause to be cut, or destroyed any untenanted or unfinished house or building or any frame of timber of another person made and prepared for or towards the making of a house, so that the house is not suitable for the purposes for which it was prepared.

 A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

HISTORY: 1962 Code Section 16‑384; 1952 Code Section 16‑384; 1942 Code Section 1182; 1932 Code Section 1182; Cr. C. ‘22 Section 72; Cr. C. ‘12 Section 217; Cr. C. ‘02 Section 162; G. S. 2845; R. S. 159; 1712 (2) 478; 1887 (19) 794; 1911 (27) 129; 1993 Act No. 184, Section 173.

Library References

Arson 8, 11, 45.

Malicious Mischief 1, 12.

Westlaw Topic Nos. 36, 248.

C.J.S. Arson Sections 1 to 2, 13 to 14, 22 to 25, 70.

C.J.S. Malicious or Criminal Mischief or Damage to Property Sections 1 to 2, 4 to 10, 17.

NOTES OF DECISIONS

In general 1

1. In general

It is not a defense upon trial for burning an untenanted house that prisoner had been acquitted on trial for arson for same burning. State v. Jenkins (S.C. 1884) 20 S.C. 351.

**SECTION 16‑11‑570.** Injury or destruction of buildings or crops by tenant.

 It is unlawful for a tenant to wilfully and maliciously cut, deface, mutilate, burn, destroy, or otherwise injure a dwelling house, outhouse, erection, building, or crops in his possession.

 A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

HISTORY: 1962 Code Section 16‑385; 1952 Code Section 16‑385; 1942 Code Section 1182; 1932 Code Section 1182; Cr. C. ‘22 Section 72; Cr. C. ‘12 Section 217; Cr. C. ‘02 Section 162; G. S. 2845; R. S. 159; 1712 (2) 478; 1887 (19) 794; 1911 (27) 129; 1993 Act No. 184, Section 174.

Library References

Arson 9, 11, 45.

Crops 8.

Malicious Mischief 1, 12.

Westlaw Topic Nos. 36, 111, 248.

C.J.S. Arson Sections 1 to 2, 13 to 14, 22 to 23, 26 to 29, 70.

C.J.S. Crops Sections 11, 16, 18.

C.J.S. Malicious or Criminal Mischief or Damage to Property Sections 1 to 2, 4 to 10, 17.

NOTES OF DECISIONS

In general 1

1. In general

An indictment charging the burning of a fodder house is insufficient to charge a misdemeanor under this section [Code 1962 Section 16‑385], in the absence of an allegation that defendant was a tenant of the building burned. State v. Jeter (S.C. 1896) 47 S.C. 2, 24 S.E. 889.

**SECTION 16‑11‑580.** Cutting, removing, or transporting forest products without consent of landowner; fraudulently acquiring forest products; penalties.

 (A) It is unlawful for a person to knowingly and wilfully:

 (1) cut, destroy, or remove forest products without the consent of the landowner;

 (2) aid, hire, or counsel another person to cut, destroy, or remove forest products without the consent of the landowner;

 (3) obtain or acquire forest products under false pretenses or with fraudulent intent; or

 (4) transport forest products if the person knows that the forest products have been cut, removed, obtained, or acquired from the property of a landowner in violation of the provisions of this subsection.

 (B) If the value of the forest products is one thousand dollars or less, a person who violates the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction:

 (1) for a first offense, must be fined not more than fifteen hundred dollars or imprisoned for not more than thirty days, or both; and

 (2) for a second or subsequent offense, must be fined not less than two thousand dollars and not more than five thousand dollars or imprisoned for not more than sixty days, or both.

 (C) If the value of the forest products is more than one thousand dollars but less than five thousand dollars, a person who violates the provisions of subsection (A):

 (1) for a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not less than five thousand dollars and not more than ten thousand dollars or imprisoned for not more than five years, or both; and

 (2) for a second or subsequent offense, is guilty of a felony and, upon conviction, must be fined not less than ten thousand dollars and not more than twenty thousand dollars or imprisoned for not more than ten years.

 (D) If the value of the forest products is five thousand dollars or more, a person who violates the provisions of subsection (A):

 (1) for a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not less than ten thousand dollars and not more than twenty thousand dollars or imprisoned for not more than ten years, or both; and

 (2) for a second or subsequent offense, is guilty of a felony and, upon conviction, must be fined not less than ten thousand dollars and not more than twenty thousand dollars or imprisoned for not more than ten years.

 (E) As used in this section, “forest products” include, but are not limited to, timber, trees, logs, lumber, or pine straw or any other products in the forest, whether merchantable or nonmerchantable, and which are located on any land in this State, whether publicly or privately owned.

HISTORY: 1962 Code Section 16‑385.1; 1960 (51) 1706; 1963 (53) 37; 2004 Act No. 273, Section 1, eff July 16, 2004 and applicable to offenses committed on or after that date; 2012 Act No. 225, Section 1, eff July 1, 2012.

CROSS REFERENCES

Applicability of provisions pertaining to use of uniform traffic ticket, see Section 56‑7‑10.

Cutting, etc., trees or shrubs in State forests, see Section 48‑23‑70.

Dealers in crossties keeping records, see Section 16‑17‑670.

Injuring plants and trees along beautified section of highway, see Section 57‑23‑20.

Negligent, wilful or wanton damage to highway trees or shrubs, see Section 57‑7‑10.

Library References

Trespass 83, 91.

Westlaw Topic No. 386.

C.J.S. Trespass Sections 161, 173.

RESEARCH REFERENCES

Encyclopedias

122 Am. Jur. Proof of Facts 3d 467, Proof of Intentional Timber Trespass.

S.C. Jur. Logs and Timber Section 50, Knowingly Removing or Transporting Timber, Logs or Lumber Without Consent of Owner Under S. C. Code Ann. S16‑11‑580.

S.C. Jur. Shipping Law Section 115, Transporting Stolen Timber.

Treatises and Practice Aids

45 Causes of Action 2d 655, Cause of Action for Damages Resulting from Timber Trespass.

Attorney General’s Opinions

The authority of Forestry Commission Officers to enforce this section. SC Op.Atty.Gen. (Oct. 1, 1996) 1996 WL 679427.

**SECTION 16‑11‑590.** Destruction of sea oat or Venus’s flytrap plants.

 It shall be unlawful for any person to cut, collect, break or otherwise destroy sea oat plants, Venus’s‑flytrap plants or any part on public property or on private property without the owner’s consent. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than two hundred dollars or imprisoned not more than thirty days nor less than five days. Each violation shall constitute a separate offense.

HISTORY: 1962 Code Section 16‑385.2; 1961 (52) 427; 1980 Act No. 417.

**SECTION 16‑11‑600.** Entry on another’s pasture or other lands after notice; posting notice.

 Every entry upon the lands of another where any horse, mule, cow, hog or any other livestock is pastured, or any other lands of another, after notice from the owner or tenant prohibiting such entry, shall be a misdemeanor and be punished by a fine not to exceed one hundred dollars, or by imprisonment with hard labor on the public works of the county for not exceeding thirty days. When any owner or tenant of any lands shall post a notice in four conspicuous places on the borders of such land prohibiting entry thereon, a proof of the posting shall be deemed and taken as notice conclusive against the person making entry, as aforesaid, for the purpose of trespassing.

HISTORY: 1962 Code Section 16‑386; 1952 Code Section 16‑386; 1942 Code Section 1190; 1932 Code Section 1190; Cr. C. ‘22 Section 81; Cr. C. ‘12 Section 241; Cr. C. ‘02 Section 186; G. S. 2507; R. S. 176; 1866 (13) 406; 1883 (18) 43; 1898 (22) 811; 1954 (48) 1705.

CROSS REFERENCES

Applicability of provisions pertaining to use of uniform traffic ticket, see Section 56‑7‑10.

Library References

Trespass 81, 91.

Westlaw Topic No. 386.

C.J.S. Trespass Sections 162, 173.

Attorney General’s Opinions

An individual has the right to retain ownership of entire tract, or a portion of a tract of fastlands down to the mean high‑water mark and has the right to keep trespassers off his property whether they come across his property from the fastland side or come across his property line from the water side. 1968‑69 Op.Atty.Gen., No 2624, p 23 (1969 WL 10627).

NOTES OF DECISIONS

In general 1

Constitutional issues 2

“Entry” and “notice” 3

1. In general

This section [Code 1962 Section 16‑386] forbids any person, irrespective of his race or color, to make entry upon the lands of another after notice from the owner or tenant prohibiting such entry. City of Charleston v. Mitchell (S.C. 1961) 239 S.C. 376, 123 S.E.2d 512, reversed 84 S.Ct. 1901, 378 U.S. 551, 12 L.Ed.2d 1033. Trespass 81

This section [Code 1962 Section 16‑386] is not a racial segregation one. City of Charleston v. Mitchell (S.C. 1961) 239 S.C. 376, 123 S.E.2d 512, reversed 84 S.Ct. 1901, 378 U.S. 551, 12 L.Ed.2d 1033.

This section [Code 1962 Section 16‑386] was meant to furnish the owner or tenant in possession of land the legal means to prevent any intrusion thereon by another after notice prohibiting any entry on the land. State v. Green (S.C. 1892) 35 S.C. 266, 14 S.E. 619.

2. Constitutional issues

The fact that the State of South Carolina provides a system of courts where a company can enforce its legal rights against trespassers upon its private property in violation of this section [Code 1962 Section 16‑386] and the acts of its judicial officers in their official capacities, does not constitute State action enforcing racial segregation in violation of the Fourteenth Amendment. Charleston v Mitchell (1961) 239 SC 376, 123 SE2d 512, revd on other grounds 378 US 551, 12 L Ed 2d 1033, 84 S Ct 1901. Peterson v Greenville (1963) 373 US 244, 10 L Ed 2d 323, 83 S Ct 1119.

Defendants’ arrest by the police officer at the instance of the store manager was not in furtherance of an unlawful policy of racial discrimination and did not constitute State action in violation of defendants’ rights under the Fourteenth Amendment. City of Columbia v. Bouie (S.C. 1962) 239 S.C. 570, 124 S.E.2d 332, certiorari granted 83 S.Ct. 1690, 374 U.S. 805, 10 L.Ed.2d 1030, reversed 84 S.Ct. 1697, 378 U.S. 347, 12 L.Ed.2d 894.

There is no statute in this State which forbids discrimination by the owner of a restaurant of people on account of race or color. City of Charleston v. Mitchell (S.C. 1961) 239 S.C. 376, 123 S.E.2d 512, reversed 84 S.Ct. 1901, 378 U.S. 551, 12 L.Ed.2d 1033.

In the absence of statute, the operator of a privately‑owned business may accept some customers and reject others on purely personal grounds. City of Charleston v. Mitchell (S.C. 1961) 239 S.C. 376, 123 S.E.2d 512, reversed 84 S.Ct. 1901, 378 U.S. 551, 12 L.Ed.2d 1033.

The Fourteenth Amendment erects no shield against mere private conduct, however discriminatory or wrongful. City of Charleston v. Mitchell (S.C. 1961) 239 S.C. 376, 123 S.E.2d 512, reversed 84 S.Ct. 1901, 378 U.S. 551, 12 L.Ed.2d 1033. Constitutional Law 3027

3. “Entry” and “notice”

An affidavit alleging trespass after notice is sufficient. State v Tenny (1900) 58 SC 215, 36 SE 555. State v Hallback (1894) 40 SC 298, 18 SE 919.

The South Carolina Supreme Court has construed this section [Code 1962 Section 16‑386] to cover not only the act of entry on the premises of another after receiving notice not to enter, but also the act of remaining on the premises of another after receiving notice to leave. This interpretation is at variance with the statutory language and has no support in prior South Carolina decisions. Bouie v. City of Columbia (U.S.S.C. 1964) 84 S.Ct. 1697, 378 U.S. 347, 12 L.Ed.2d 894. Trespass 88

While such a construction is of course valid for the future, it may not be applied retroactively, any more than a legislative enactment may be, to impose criminal penalties for conduct committed at a time when it was not fairly stated to be criminal. Bouie v. City of Columbia (U.S.S.C. 1964) 84 S.Ct. 1697, 378 U.S. 347, 12 L.Ed.2d 894.

When a similarly unforeseeable state‑court construction of a criminal statute is applied retroactively to subject a person to criminal liability for past conduct, the effect is to deprive him of due process of law in the sense of fair warning that his contemplated conduct constitutes a crime. Bouie v. City of Columbia (U.S.S.C. 1964) 84 S.Ct. 1697, 378 U.S. 347, 12 L.Ed.2d 894. Constitutional Law 4504

Entry means an occupancy or possession contrary to the wishes and in derogation of the rights of the person having actual or constructive possession. City of Charleston v. Mitchell (S.C. 1961) 239 S.C. 376, 123 S.E.2d 512, reversed 84 S.Ct. 1901, 378 U.S. 551, 12 L.Ed.2d 1033.

The word “entry” is synonymous with the word “trespass.” City of Charleston v. Mitchell (S.C. 1961) 239 S.C. 376, 123 S.E.2d 512, reversed 84 S.Ct. 1901, 378 U.S. 551, 12 L.Ed.2d 1033.

One who remains after being directed to leave is guilty of a wrongful entry. City of Charleston v. Mitchell (S.C. 1961) 239 S.C. 376, 123 S.E.2d 512, reversed 84 S.Ct. 1901, 378 U.S. 551, 12 L.Ed.2d 1033.

Even though original entrance is peaceful and authorized. City of Charleston v. Mitchell (S.C. 1961) 239 S.C. 376, 123 S.E.2d 512, reversed 84 S.Ct. 1901, 378 U.S. 551, 12 L.Ed.2d 1033.

Although an entry on land may be effected peaceably or even with the permission of the owner, the person making such entry may, by reason of subsequent conduct while there be held to be guilty of a forcible trespass. City of Charleston v. Mitchell (S.C. 1961) 239 S.C. 376, 123 S.E.2d 512, reversed 84 S.Ct. 1901, 378 U.S. 551, 12 L.Ed.2d 1033.

It is not necessary that the person giving the notice should hold the legal title to the land. State v. Green (S.C. 1892) 35 S.C. 266, 14 S.E. 619.

The terms of this section [Code 1962 Section 16‑386] must be given their ordinary acceptation, and they do not restrict the offense to those only who so enter under claim of title. State v. Cockfield (S.C. 1867) 15 Rich. 53.

An affidavit must show plainly that the offense charged is entry upon lands with notice, and not mere trespass upon them. State v. Mays (S.C. 1886) 24 S.C. 190.

**SECTION 16‑11‑610.** Entry on another’s lands for various purposes without permission.

 Any person entering upon the lands of another for the purpose of hunting, fishing, trapping, netting; for gathering fruit, wild flowers, cultivated flowers, shrubbery, straw, turf, vegetables or herbs; or for cutting timber on such land, without the consent of the owner or manager, shall be deemed guilty of a misdemeanor and upon conviction shall, for a first offense, be fined not more than two hundred dollars or imprisoned for not more than thirty days, for a second offense, be fined not less than one hundred dollars nor more than two hundred dollars or imprisoned for not more than thirty days and, for a third or subsequent offense, be fined not less than five hundred dollars nor more than one thousand dollars or imprisoned for not more than six months or both. A first or second offense prosecution resulting in a conviction shall be reported by the magistrate or city recorder hearing the case to the communications and records division of the South Carolina Law Enforcement Division which shall keep a record of such conviction so that any law enforcement agency may inquire into whether or not a defendant has a prior record. Only those offenses which occurred within a period of ten years, including and immediately preceding the date of the last offense, shall constitute prior offenses within the meaning of this section.

HISTORY: 1962 Code Section 16‑387; 1952 Code Section 16‑387; 1942 Code Section 1191; 1932 Code Section 1191; Cr. C. ‘22 Section 82; Cr. C. ‘12 Section 242; 1905 (24) 906; 1927 (35) 377; 1979 Act No. 62 Section 1.

CROSS REFERENCES

Applicability of provisions pertaining to use of uniform traffic ticket, see Section 56‑7‑10.

Hunting, fishing, etc., on lands of others without consent, see Section 50‑1‑90.

Stealing crops from the field, see Section 46‑1‑20.

Stealing melons or fruit, see Section 46‑1‑30.

Theft of tobacco plants from beds, see Section 46‑1‑40.

Library References

Trespass 76, 91.

Westlaw Topic No. 386.

C.J.S. Trespass Sections 152, 154, 156 to 158, 168, 173.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Game and Fish Section 38, Trespass to Hunt or Fish.

S.C. Jur. Logs and Timber Section 51, Entry Upon Another’s Land for Purpose of Cutting Timber Without Consent of Owner Under S. C. Code Ann. S16‑11‑610.

Forms

Am. Jur. Pl. & Pr. Forms Trespass Section 1 , Introductory Comments.

Attorney General’s Opinions

A person who sends a dog on the premises of another in search or pursuit of game but does not go on the premises himself would not violate this section [Code 1962 Section 16‑387] or Code 1962 Section 28‑8. 1963‑64 Op.Atty.Gen., No 1627, p 53 (1964 WL 8259); 1967‑68 Op.Atty.Gen., No 2562, p 260 (1968 WL 8954).

**SECTION 16‑11‑615.** Payment of treble damages; discharge from further penalty.

 In all criminal prosecutions for violation of the provisions of Sections 16‑11‑520, 16‑11‑580, and 16‑11‑610, relating to cutting or destroying timber, the defendant may plead the payment of not to exceed exactly three times the fair market value of the timber as determined by a registered forester and upon the plea being legally established and the payment of all costs accrued at the time of the plea he must be discharged from further penalty. If it is necessary to institute civil action to recover the fair market value of the timber, the State, in case of state lands, and the owner, in case of private lands, shall receive damages of not to exceed exactly three times the fair market value of the timber established by a registered forester if judgment is in favor of the State or the owner.

HISTORY: 1985 Act No. 33.

Library References

Criminal Law 277.

Trespass 52, 84.

Westlaw Topic Nos. 110, 386.

C.J.S. Trespass Sections 141, 163 to 167.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Logs and Timber Section 52, Payment of Three Times Fair Market Value of Timber as a Defense to Prosecution Under S.C. Code Ann.Ss 16‑11‑520, 16‑11‑580, and 16‑11‑610.

NOTES OF DECISIONS

In general 1

1. In general

Timber statute was not exclusive remedy for recovering damages associated with improper removal of landowner’s timber, and thus, landowner was able to bring additional causes of action; although timber statute provided that landowner could institute civil action to recover up to three times fair market value of timber cut, nothing in statute provided that it was exclusive remedy for all kinds of damages, and landowner specifically waived his action under timber statute before trial began and proceeded only on claim for trespass. Wimberly v. Barr (S.C.App. 2004) 359 S.C. 414, 597 S.E.2d 853. Trespass 61

**SECTION 16‑11‑617.** Entry on another’s land for purpose of cultivating marijuana.

 It is unlawful for a person to enter on the land of another for the purpose of cultivating or attempting to cultivate marijuana. The provisions of this section are cumulative to other provisions of law. To constitute a violation of this section, a minimum of twenty‑five marijuana plants must be cultivated. A person violating the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not more than five years and fined not more than five thousand dollars.

HISTORY: 1986 Act No. 486; 1993 Act No. 184, Section 28.

Library References

Trespass 79, 91.

Westlaw Topic No. 386.

C.J.S. Trespass Sections 152, 159, 173.

NOTES OF DECISIONS

In general 1

Construction and application 2

Sufficiency of evidence 3

1. In general

No evidence indicated that defendant “cultivated” marijuana on land of another, even though videotape depicted person matching defendant’s description in field of marijuana, picking or harvesting plants, witness’s testimony regarding encounter with defendant suggested that defendant was depicted on tape, and investigator testified that fields were cultivated, given that man in video was not tilling or breaking up soil, was not planting seeds, was not transplanting young marijuana plants, was not applying fertilizer, or otherwise preparing or improving soil. State v. Walker (S.C. 2002) 349 S.C. 49, 562 S.E.2d 313. Controlled Substances 22

2. Construction and application

Court had to strictly construe statute prohibiting cultivation of marijuana on land of another against state and in favor of defendant, given that it was criminal statute. State v. Walker (S.C. 2002) 349 S.C. 49, 562 S.E.2d 313. Controlled Substances 7

3. Sufficiency of evidence

Evidence sufficient to sustain a conviction for manufacturing marijuana may not always be sufficient to sustain a conviction for cultivating marijuana on the lands of another, even where there is no dispute the property belonged to someone other than the defendant, given that the manufacturing statute, when read in conjunction with the definitional statute, equates the act of “harvesting” with the offense of “manufacturing,” but the does not equate “harvesting” with “cultivating.” State v. Walker (S.C. 2002) 349 S.C. 49, 562 S.E.2d 313. Controlled Substances 22

**SECTION 16‑11‑620.** Entering premises after warning or refusing to leave on request; jurisdiction and enforcement.

 Any person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative shall, on conviction, be fined not more than two hundred dollars or be imprisoned for not more than thirty days.

 All municipal courts of this State as well as those of magistrates may try and determine criminal cases involving violations of this section occurring within the respective limits of such municipalities and magisterial districts. All peace officers of the State and its subdivisions shall enforce the provisions hereof within their respective jurisdictions.

 The provisions of this section shall be construed as being in addition to, and not as superseding, any other statutes of the State relating to trespass or entry on lands of another.

HISTORY: 1962 Code Section 16‑388; 1960 (51) 1729; 1981 Act No. 76, Section 3; 1996 Act No. 279, Section 1.

CROSS REFERENCES

Additional penalty for unlawfully carrying pistol or firearm onto premises of business selling alcoholic liquors, beers or wines for on‑premises consumption, exceptions, see Section 16‑23‑465.

Applicability of provisions pertaining to use of uniform traffic ticket, see Section 56‑7‑10.

Issuance of permits, see Section 23‑31‑215.

Library References

Burglary 9(3), 49.

Westlaw Topic No. 67.

C.J.S. Burglary Sections 1 to 4, 11, 13, 17 to 18, 21 to 22, 175 to 179.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. False Imprisonment Section 13, Lawfulness.

S.C. Jur. Magistrates and Municipal Judges Section 22, Jurisdiction.

LAW REVIEW AND JOURNAL COMMENTARIES

Sloan, Standing up to stalkers: South Carolina’s antistalking law is a good first step. 45 S.C. L. Rev. 383 (Winter 1994).

Attorney General’s Opinions

Discussion of a proposed land‑use regulation permitting the Anderson Soil and Water Conservation District and each watershed director of the watersheds within the Anderson Soil and Water Conservation District the authority to issue and enforce criminal trespass notices. S.C. Op.Atty.Gen. (November 25, 2014) 2014 WL 6893894.

Discussion of placing individuals on trespass notice with regards to apartment complexes and government housing. S.C. Op.Atty.Gen. (June 5, 2013) 2013 WL 3133638.

If a process server acts within the scope of his duties, it is unlikely a court will find him violating any trespass laws. S.C. Op.Atty.Gen. (February 06, 2013) 2013 WL 650580.

The laws governing trespass as they relate to public library buildings, including the State Library. SC Op.Atty.Gen. (Feb. 17, 2009) 2009 WL 580552.

Discussion of whether this section is violated if an adult son refuses to leave his parents house. SC Op.Atty.Gen. (July 16, 1998) 1998 WL 746103; (May 12, 1998) 1998 WL 317591.

Trespassing on private property after a warning is issued by the owner of said property. SC Op.Atty.Gen. (April 23, 1997) 1997 WL 255963.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

Lawful entry 4

Lesser included offenses 3

Probable cause 5

1. In general

Statutory criminal trespass involves either (1) the entry of a dwelling house, place of business, or the premises of another within six months after being warned against such entry , or (2) the failure to leave a dwelling house, place of business or premises of another after having been requested to leave. State v. Cross (S.C.App. 1994) 323 S.C. 41, 448 S.E.2d 569, amended on denial of rehearing, rehearing denied. Trespass 81

For purposes of a prosecution for trespass, under Section 16‑11‑620, public school land is “owned and possessed” by the respective school district trustees, pursuant to Section 16‑11‑530; in other words, a trespass upon school lands is a trespass “on the premises of another” as proscribed by Section 16‑11‑620. In Interest of Joseph B. (S.C. 1983) 278 S.C. 502, 299 S.E.2d 331.

This section [Code 1962 Section 16‑388] is clearly for the purpose of protecting the rights of the owners or those in control of private property and the owner of such property may lawfully forbid any and all persons to enter or remain upon any part of his premises which are not devoted to public use. State v. Hanapole (S.C. 1970) 255 S.C. 258, 178 S.E.2d 247.

Since this section [Code 1962 Section 16‑388] applies only to private property, a conviction thereunder for an alleged trespass upon public property is not warranted and cannot be sustained. State v. Hanapole (S.C. 1970) 255 S.C. 258, 178 S.E.2d 247.

This section [Code 1962 Section 16‑388] applies only to private property and has no application to public property. State v. Hanapole (S.C. 1970) 255 S.C. 258, 178 S.E.2d 247.

Accused not prejudiced by failure to require city to elect particular statute upon which prosecution based, where warrant charged single offense of trespass and jury instructed as to guilt of trespass as defined in this section [Code 1962 Section 16‑388]. City of Rock Hill v. Hamm (S.C. 1962) 241 S.C. 420, 128 S.E.2d 907, certiorari granted 84 S.Ct. 1902, 377 U.S. 988, 12 L.Ed.2d 1042, vacated 85 S.Ct. 384, 379 U.S. 306, 13 L.Ed.2d 300, rehearing denied 85 S.Ct. 698, 379 U.S. 995, 13 L.Ed.2d 614. Criminal Law 260.11(5)

This section [Code 1962 Section 16‑388] is clearly for the purpose of protecting the rights of the owners or those in control of private property. City of Greenville v. Peterson (S.C. 1961) 239 S.C. 298, 122 S.E.2d 826, certiorari granted 82 S.Ct. 1577, 370 U.S. 935, 8 L.Ed.2d 806, reversed 83 S.Ct. 1119, 373 U.S. 244, 10 L.Ed.2d 323, concurring opinion 83 S.Ct. 1133, 373 U.S. 244, 10 L.Ed.2d 323.

2. Constitutional issues

A prosecution for participation in a lunch‑counter “sit in” pending under this section [Code 1962 Section 16‑388] was abated by passage of the Civil Rights Act of 1964, 78 Stat 241, even though the conduct involved occurred prior to the enactment of the act. Hamm v. City of Rock Hill (U.S.S.C. 1964) 85 S.Ct. 384, 379 U.S. 306, 13 L.Ed.2d 300, rehearing denied 85 S.Ct. 698, 379 U.S. 995, 13 L.Ed.2d 614.

Convictions of negroes “sitting‑in” at a lunch counter for not leaving when requested to do so by the manager, cannot stand, even assuming that the manager would have acted as he did independently of the city’s segregation ordinance. Peterson v. City of Greenville, S. C. (U.S.S.C. 1963) 83 S.Ct. 1119, 373 U.S. 244, 10 L.Ed.2d 323, concurring opinion 83 S.Ct. 1133, 373 U.S. 244, 10 L.Ed.2d 323.

This section [Code 1962 Section 16‑388] makes no reference to race or color. City of Greenville v. Peterson (S.C. 1961) 239 S.C. 298, 122 S.E.2d 826, certiorari granted 82 S.Ct. 1577, 370 U.S. 935, 8 L.Ed.2d 806, reversed 83 S.Ct. 1119, 373 U.S. 244, 10 L.Ed.2d 323, concurring opinion 83 S.Ct. 1133, 373 U.S. 244, 10 L.Ed.2d 323.

Although the general public has an implied license to enter any retail store, the proprietor or his agent is at liberty to revoke this license at any time and to eject such individual if he refuses to leave when requested to do so, and may lawfully forbid any and all persons, regardless of reason, race or religion, to enter or remain upon any part of his premises which are not devoted to public use. City of Greenville v. Peterson (S.C. 1961) 239 S.C. 298, 122 S.E.2d 826, certiorari granted 82 S.Ct. 1577, 370 U.S. 935, 8 L.Ed.2d 806, reversed 83 S.Ct. 1119, 373 U.S. 244, 10 L.Ed.2d 323, concurring opinion 83 S.Ct. 1133, 373 U.S. 244, 10 L.Ed.2d 323. Constitutional Law 3260(1)

The operator of a privately‑owned business may accept some customers and reject others on purely personal grounds in the absence of a statute to the contrary. City of Greenville v. Peterson (S.C. 1961) 239 S.C. 298, 122 S.E.2d 826, certiorari granted 82 S.Ct. 1577, 370 U.S. 935, 8 L.Ed.2d 806, reversed 83 S.Ct. 1119, 373 U.S. 244, 10 L.Ed.2d 323, concurring opinion 83 S.Ct. 1133, 373 U.S. 244, 10 L.Ed.2d 323. Constitutional Law 3027

In the absence of a statute forbidding discrimination based on race or color, the operator of a privately‑owned place of business has the right to select the clientele he will serve irrespective of color. City of Greenville v. Peterson (S.C. 1961) 239 S.C. 298, 122 S.E.2d 826, certiorari granted 82 S.Ct. 1577, 370 U.S. 935, 8 L.Ed.2d 806, reversed 83 S.Ct. 1119, 373 U.S. 244, 10 L.Ed.2d 323, concurring opinion 83 S.Ct. 1133, 373 U.S. 244, 10 L.Ed.2d 323. Constitutional Law 3260(1)

The Fourteenth Amendment erects no shield against merely private conduct, however, discriminatory or wrongful. City of Greenville v. Peterson (S.C. 1961) 239 S.C. 298, 122 S.E.2d 826, certiorari granted 82 S.Ct. 1577, 370 U.S. 935, 8 L.Ed.2d 806, reversed 83 S.Ct. 1119, 373 U.S. 244, 10 L.Ed.2d 323, concurring opinion 83 S.Ct. 1133, 373 U.S. 244, 10 L.Ed.2d 323. Constitutional Law 3027

3. Lesser included offenses

Statutory trespass is not a lesser included offense of first degree burglary: statutory trespass requires a prior warning against entry or a request to leave while burglary does not require these elements. State v. Cross (S.C.App. 1994) 323 S.C. 41, 448 S.E.2d 569, amended on denial of rehearing, rehearing denied. Indictment And Information 191(.5)

4. Lawful entry

Even if defendant were title owner of home in which his father was residing, police officers acted within the scope of their power when they arrested defendant without a warrant for trespass after notice when defendant refused to leave father’s residence after being asked to do so; statute did not exclude an owner from class of persons who may be convicted of trespass after notice. State v. Tyndall (S.C.App. 1999) 336 S.C. 8, 518 S.E.2d 278, rehearing denied. Arrest 63.1; Trespass 81

Although an entry by a person on the premises of another may initially be lawful, the person becomes a trespasser when the person fails to depart after being asked to leave by the owner. Wright v. United Parcel Service, Inc. (S.C.App. 1994) 315 S.C. 521, 445 S.E.2d 657. Trespass 13

Police officers were not required, under Section 16‑11‑620, to leave the premises when requested to do so where the officers were responding to a complaint and therefore had legal cause to be on the property, since the statute refers to a person who is on the property “without legal cause or good excuse.” Furthermore, the statute provides a monetary fine or imprisonment as the remedy and does not grant the landowners the right to eject. Town of Springdale v. Butler (S.C. 1989) 299 S.C. 276, 384 S.E.2d 697.

5. Probable cause

Police officer had probable cause to arrest arrestee for offense of trespass after notice, and thus arrestee could not maintain action for false imprisonment and malicious prosecution; arrestee was told by police officer to leave premises of convenience store, but arrestee refused to do so. Jackson v. City of Abbeville (S.C.App. 2005) 366 S.C. 662, 623 S.E.2d 656. False Imprisonment 13; Malicious Prosecution 18(2)

Reasonable officer would have had probable cause to believe that arrestee had committed a criminal offense, and thus, an officer was entitled to qualified immunity on the arrestee’s Sections 1983 claim alleging that her Fourth Amendment rights were violated when she was arrested for trespassing; at the time of her arrest the officer knew that the arrestee was prohibited from entering the property of any hotel or motel within the city, and minutes after she signed a trespass warning in his presence, he saw her on the premises of an inn in the city. Bryant v. City Of Cayce (C.A.4 (S.C.) 2009) 332 Fed.Appx. 129, 2009 WL 1262407, Unreported, on remand 2010 WL 10827078. Civil Rights 1376(6)

**SECTION 16‑11‑625.** Public library trespass; warning; appeal; penalties.

 (A)(1) A person who enters a public library, without legal cause or good excuse, after having been warned not to do so by the library director, the branch manager, or the acting branch manager of the library in consultation with the library director is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or be imprisoned not more than thirty days.

 (2) A copy of the warning provided for by subsection (A)(1) must be given to the person in writing, in the presence of a law enforcement officer, and must state:

 (a) the alleged criminal law violation or the alleged violation of the library’s code of conduct promulgated by the library’s board of trustees under the authority provided by Section 4‑9‑37(b);

 (b) the duration of the prohibition to return; and

 (c) the procedure by which the person may appeal the warning to the library board of trustees. The person receiving notice of trespass wishing to appeal the notice must submit a request for a hearing to the board within five business days of receiving the notice. The board of trustees of the library must then provide a hearing within ten business days of the request for an appeal.

 (B) A violation of the provisions of this section is triable in the appropriate municipal or magistrates court with jurisdiction over the offense. Any law enforcement officer of this State or a subdivision of this State may enforce the provisions of this section within their respective jurisdictions.

 (C) The provisions of this section must be construed as in addition to, and not as superseding, another statute relating to trespass or unlawful entry on lands of another.

HISTORY: 2014 Act No. 296 (S.813), Section 1, eff August 27, 2014.

Library References

Trespass 76, 91.

Westlaw Topic No. 386.

C.J.S. Trespass Sections 152, 154, 156 to 158, 168, 173.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Boundaries and Land Surveying Section 30, Trespass to Try Title and Trespass.

**SECTION 16‑11‑630.** Refusing to leave certain public premises during hours when they are regularly closed.

 Any person who, during those hours of the day or night when the premises owned or occupied by a state, county or municipal agency are regularly closed to the public, shall refuse or fail, without justifiable cause, to leave those premises upon being requested to do so by a law enforcement officer or guard, watchman or custodian responsible for the security or care of the premises, shall be deemed guilty of a misdemeanor and upon conviction, be fined not more than one hundred dollars or be imprisoned for not more than thirty days.

HISTORY: 1962 Code Section 16‑388.1; 1968 (56) 657.

Library References

Trespass 81, 91.

Westlaw Topic No. 386.

C.J.S. Trespass Sections 162, 173.

**SECTION 16‑11‑640.** Unlawful entry into enclosed places.

 It shall be unlawful for any person not an occupant, owner or invitee to enter any private property enclosed by walls or fences with closed gates between the hours of six P.M. and six A.M. The provisions of this section shall not apply to any justifiable emergency entry or to premises which are not posted with clearly visible signs prohibiting trespass upon the enclosed premises. The provisions of this section are supplemental to existing law relating to trespass and punishment therefor. Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than twenty‑five dollars nor more than two hundred dollars or imprisoned for not more than thirty days.

HISTORY: 1962 Code Section 16‑388.2; 1974 (58) 2636.

Library References

Trespass 81, 91.

Westlaw Topic No. 386.

C.J.S. Trespass Sections 162, 173.

NOTES OF DECISIONS

In general 1

1. In general

Proof that there was puddle of new oil on concrete surface located in front of store which had been broken into and that 3 sets of bicycle tire tracks, each of different size, ran through oil, and that there was set of tennis shoe footprints leading from oil to broken window and that defendants returned to store next day, each riding bicycles with tires of different widths, that defendants carefully examined premises, and that upon signal from lookout, one defendant proceeded to break storefront window with beer bottle was insufficient to prove that defendants committed larceny and housebreaking when window was first broken, but was sufficient to establish delinquency after second breaking. In Interest of Simmons (S.C. 1979) 273 S.C. 288, 255 S.E.2d 848.

**SECTION 16‑11‑650.** Removing, destroying or leaving down fences; penalties; magistrate court jurisdiction; easement holder’s rights.

 (A) A person, other than the owner or a person acting under the authority of the owner, who wilfully and knowingly removes, destroys, or leaves down any portion of a fence in this State intended to enclose animals of any kind or crops or uncultivated lands or who wilfully and knowingly leaves open or removes a gate or leaves down bars or other structure intended for the same purpose is guilty of a misdemeanor and must be punished by a fine of one thousand dollars or imprisonment for thirty days, or both.

 (B) The magistrates court is vested with jurisdiction to hear and dispose of these cases.

 (C) Nothing in this section shall affect an easement holder’s right and ability to maintain such easement and rights of way consistent with the provisions of the document granting such easement.

HISTORY: 1962 Code Section 16‑389; 1952 Code Section 16‑389; 1942 Code Section 1222; 1932 Code Section 1222; Cr. C. ‘22 Section 110; Cr. C. ‘12 Section 229; Cr. C. ‘02 Section 176; G. S. 1190; R. S. 171; 1881 (17) 593; 1903 (24) 111; 1921 (32) 200; 2009 Act No. 56, Section 1, eff upon approval (became law without the Governor’s signature on June 3, 2009).

Library References

Fences 28(1).

Westlaw Topic No. 171.

C.J.S. Fences Section 16.

**SECTION 16‑11‑660.** Traveling outside of road on cultivated lands.

 It shall be a misdemeanor for any person wilfully to walk, drive or ride or to allow his team to travel outside of the road on the cultivated lands of another, punishable as provided in Section 16‑11‑650; provided, that in case any person charged with this misdemeanor be brought before or reported to a magistrate he may discharge himself from any further proceedings therein by paying such fine within the above limits as the magistrate may impose.

HISTORY: 1962 Code Section 16‑390; 1952 Code Section 16‑390; 1942 Code Section 1224; 1932 Code Section 1224; Cr. C. ‘22 Section 112; Cr. C. ‘12 Section 232; Cr. C. ‘02 Section 178; G. S. 1192; R. S. 173; 1881 (17) 593.

**SECTION 16‑11‑670.** Pleading satisfaction in prosecutions under Sections 16‑11‑650 and 16‑11‑660.

 In all criminal prosecutions for violation of the provisions of Sections 16‑11‑650 and 16‑11‑660 the defendant may plead, as a matter of defense, the full satisfaction of all reasonable demands of the person aggrieved by such violation, and upon such plea being legally established and upon payment of all costs accrued up to the time of such plea he shall be discharged from further penalty.

HISTORY: 1962 Code Section 16‑391; 1952 Code Section 16‑391; 1942 Code Section 1225; 1932 Code Section 1225; Cr. C. ‘22 Section 113; Cr. C. ‘12 Section 233; Cr. C. ‘02 Section 179; G. S. 1193; R. S. 173; 1881 (17) 594.

Library References

Criminal Law 277.

Westlaw Topic No. 110.

**SECTION 16‑11‑680.** Altering and removing landmarks.

 If any person shall knowingly, wilfully, maliciously or fraudulently cut, fell, alter or remove any certain boundary tree or other allowed landmark, such person so offending shall be guilty of a misdemeanor and, upon conviction, shall be fined not exceeding one hundred dollars or imprisoned not exceeding thirty days.

HISTORY: 1962 Code Section 16‑392; 1952 Code Section 16‑392; 1942 Code Section 1166; 1932 Code Section 1166; Cr. C. ‘22 Section 59; Cr. C. ‘12 Section 197; 1902 (23) 1094.

CROSS REFERENCES

Injuring milepost, see Section 57‑7‑40.

Removing State line markers, see Section 16‑17‑580.

Library References

Boundaries 56.

Westlaw Topic No. 59.

C.J.S. Boundaries Sections 233 to 234.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Boundaries and Land Surveying Section 36, Criminal Acts.

**SECTION 16‑11‑690.** Failure to return boat, flat or tool used for mining phosphate.

 Any person being entrusted with any boat, flat or tools for gathering phosphate rock by the owner thereof for the purpose of mining or gathering phosphate rock who shall fail to return the same to the owner within two days after being required by such owner so to do shall be guilty of a misdemeanor and, upon conviction thereof before a court of competent jurisdiction, shall be fined in the sum of not more than fifty dollars or imprisoned not more than thirty days, in the discretion of the court. It shall be a complete defense to any indictment or prosecution instituted under this section if the defendant shall make it appear that his failure to return the property was due to his inability so to return the same, such inability not being the result of the defendant’s act, or that the agreed time in which such property was to be returned had not expired at the time of his failure to return the same.

HISTORY: 1962 Code Section 16‑393; 1952 Code Section 16‑393; 1942 Code Section 1205; 1932 Code Section 1205; Cr. C. ‘22 Section 93; Cr. C. ‘12 Section 254; Cr. C. ‘02 Section 195; 1900 (23) 445.

Library References

Embezzlement 11.

Westlaw Topic No. 146.

C.J.S. Embezzlement Sections 8, 16 to 18.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 119, Miscellaneous.

**SECTION 16‑11‑700.** Dumping litter on private or public property prohibited; exceptions; responsibility for removal; penalties.

 (A) A person, from a vehicle or otherwise, may not dump, throw, drop, deposit, discard, or otherwise dispose of litter or other solid waste, as defined by Section 44‑96‑40(46), upon public or private property or waters in the State including, but not limited to, a highway, park, beach, campground, forest land, recreational area, trailer park, road, street, or alley except:

 (1) on property designated by the State for the disposal of litter and other solid waste and the person is authorized to use the property for that purpose; or

 (2) into a litter receptacle in a manner that the litter is prevented from being carried away or deposited by the elements upon a part of the private or public property or waters.

 (B) Responsibility for the removal of litter from property or receptacles is upon the person convicted pursuant to this section of littering the property or receptacles. If there is no conviction for littering, the responsibility is upon the owner of the property.

 (C)(1) A person who violates the provisions of this section in an amount less than fifteen pounds in weight or twenty‑seven cubic feet in volume is guilty of a misdemeanor and, upon conviction, must be fined two hundred dollars or imprisoned for not more than thirty days for a first or second conviction, or fined five hundred dollars or imprisoned for not more than thirty days for a third or subsequent conviction. In addition to the fine or term of imprisonment, the court also must impose eight hours of litter‑gathering labor for a first conviction, sixteen hours of litter‑gathering labor for a second conviction, and twenty‑four hours of litter‑gathering labor for a third or subsequent conviction, or other form of public service, under the supervision of the court, as the court may order because of physical or other incapacities.

 (2) The fine for a deposit of a collection of litter or garbage in an area or facility not intended for public deposit of litter or garbage is one thousand dollars. The provisions of this item apply to a deposit of litter or garbage, as defined in Section 44‑67‑30(4), in an area or facility not intended for public deposit of litter or garbage. This item does not prohibit a private property owner from depositing litter or garbage as a property enhancement if the depositing does not violate applicable local or state health and safety regulations. In addition to a fine and for each offense pursuant to the provisions of this item, the court also shall impose a minimum of five hours of litter‑gathering labor or other form of public service, under the supervision of the court, as the court may order because of physical or other incapacities.

 (3) The court, instead of payment of the monetary fine imposed for a violation of this section, may direct the substitution of additional litter‑gathering labor or other form of public service, under the supervision of the court, as it may order because of physical or other incapacities not to exceed one hour for each five dollars of fine imposed.

 (4) In addition to other punishment authorized by this section, in the discretion of the court in which conviction is obtained, the person may be directed by the judge to pick up and remove from any public place or any private property, with prior permission of the legal owner of the property upon which it is established by competent evidence that the person has deposited litter, all litter deposited on the place or property by any person before the date of execution of sentence.

 (D) A person who violates the provisions of this section in an amount exceeding fifteen pounds in weight or twenty‑seven cubic feet in volume, but not exceeding five hundred pounds or one hundred cubic feet, is guilty of a misdemeanor and, upon conviction, must be fined not less than two hundred dollars nor more than five hundred dollars or imprisoned for not more than ninety days. In addition, the court shall require the violator to pick up litter or perform other community service commensurate with the offense committed, up to one hundred hours.

 (E)(1) A person who violates the provisions of this section in an amount exceeding five hundred pounds in weight or one hundred cubic feet in volume is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars nor more than one thousand dollars, or imprisoned not more than one year, or both. In addition, the court may order the violator to:

 (a) remove or render harmless the litter that he dumped in violation of this subsection;

 (b) repair or restore property damaged by, or pay damages for damage arising out of, his dumping of litter in violation of this subsection; or

 (c) perform community public service relating to the removal of litter dumped in violation of this subsection or relating to the restoration of an area polluted by litter dumped in violation of this subsection.

 (2) A court may enjoin a violation of this subsection.

 (3) A motor vehicle, vessel, aircraft, container, crane, winch, or machine involved in the disposal of more than five hundred pounds in weight or more than one hundred cubic feet in volume of litter in violation of this subsection is declared contraband and is subject to seizure and summary forfeiture to the State.

 (4) If a person sustains damages in connection with a violation of this subsection that gives rise to a felony against the person or his property, a court, in a civil action for those damages, shall order the wrongdoer to pay the injured party threefold the actual damages or two hundred dollars, whichever amount is greater. In addition, the court shall order the wrongdoer to pay the injured party’s court costs and attorney’s fees.

 (5) A fine imposed pursuant to this subsection must not be suspended, in whole or in part.

 (F)(1) When the penalty for a violation of this section includes litter‑gathering labor in addition to a fine or imprisonment, the litter‑gathering portion of the penalty is mandatory and must not be suspended; however, the court, upon the request of a person convicted of violating this section, may direct that the person pay an additional monetary penalty instead of the litter‑gathering portion of the penalty that must be equal to the amount of five dollars an hour of litter‑gathering labor. Probation must not be granted instead of the litter‑gathering requirement, except for a person’s physical or other incapacities.

 (2) Funds collected pursuant to this subsection instead of the mandatory litter‑gathering labor must be remitted to the county or municipality where the littering violation took place. The money collected may be used for the litter‑gathering supervision.

 (G) For purposes of the offenses established by this section, litter includes cigarettes and cigarette filters.

 (H) A prior violation within the meaning of this section means only a violation of this section which occurred within a period of five years including and immediately preceding the date of the last violation.

 (I) Magistrates and municipal courts have jurisdiction to try violations of subsections (A), (B), (C), and (D) of this section.

HISTORY: 1962 Code Section 16‑396; 1952 Code Section 33‑551; 1949 (46) 466; 1953 (48) 160; 1957 (50) 269; 1959 (51) 140; 1966 (54) 2290; 1967 (55) 209, 478; 1971 (57) 853; 1972 (57) 2563; 1973 (58) 205; 1978 Act No. 496 Section 7; 1987 Act No. 135 Section 1; 1988 Act No. 530, Sections 1, 3; 1991 Act No. 63, Section 2; 1992 Act No. 307, Section 1; 1993 Act No. 184, Section 92; 1994 Act No. 288, Section 1; 1994 Act No. 497, Part II, Section 36U; 1999 Act No. 100, Part II, Section 106; 2000 Act No. 387, Part II, Section 54B; 2000 Act No; 387, Part II, Section 92A; 2004 Act No. 306, Section 1, eff September 8, 2004.

Editor’s Note

Section 44‑67‑30(4), referenced in (C)(2), was repealed by 2015 Act No. 8.

CROSS REFERENCES

Applicability of provisions pertaining to use of uniform traffic ticket, see Section 56‑7‑10.

Putting foreign substance, etc., on highways, see Section 57‑7‑20.

Throwing or placing objects likely to injure vehicles on any highway, see Section 57‑7‑210.

Use of the enforcement officers’ official summons for littering violations, see Section 50‑3‑396.

Library References

Trespass 79.

Westlaw Topic No. 386.

C.J.S. Trespass Sections 152, 159.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 22, Jurisdiction.

S.C. Jur. Shipping Law Section 116, Littering in Waters.

Attorney General’s Opinions

Newspapers or advertising circulars being thrown on the right‑of‑ways of roads in Oconee County should probably not be considered litter. SC Op.Atty.Gen. (Nov. 27, 2006) 2006 WL 3522441.

The legislature did not intend to include unsolicited newspapers and advertising circulars placed on driveways as being within the definition of litter. SC Op.Atty.Gen. (Sept. 16, 2005) 2005 WL 2652374.

This section can be enforced even if the violation was not directly observed by a law enforcement officer. SC Op.Atty.Gen. (May 22, 2001) 2001 WL 790252.

Turkey feathers which escape from poultry trucks en route to processing do not constitute “litter,” and drivers of such trucks should not be prosecuted for violation of Litter Control Act. 1985 Op.Atty.Gen., No. 85‑34, p 107 (1985 WL 166004).

The word “beach,” as used in this section [Code 1962 Section 16‑396], means the area between the mean high‑water mark and the mean low‑water mark along the ocean, along a reservoir, along a lake or along a river. 1968‑69 Op.Atty.Gen., No 2666, p 85 (1969 WL 10668).

**SECTION 16‑11‑710.** Acceptance of cash bond in lieu of immediate court appearance in litter control prosecutions.

 When any person is charged with a violation of 16‑11‑700 or any county ordinance relating to litter control, any officer authorized to enforce such law or ordinance may accept a cash bond in lieu of requiring an immediate court appearance. Such bond shall not exceed the maximum fine provided for a conviction of the offense charged and may be forfeited to the court by the enforcement officer if the person charged fails to appear in court.

HISTORY: 1962 Code Section 16‑396.1; 1975 (59) 317.

Library References

Bail 73.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 144 to 149.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 116, Littering in Waters.

**SECTION 16‑11‑720.** Dumping trash in or along shoreline of Lake Greenwood; penalties.

 (1) It shall be unlawful for any person to dump, leave or throw any rubbish, trash, garbage, cans, bottles, containers, paper, oil, grease or other similar substances or dead animals into the waters or along the shoreline of Lake Greenwood.

 (2) Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars or be imprisoned for not more than thirty days.

HISTORY: 1962 Code Section 16‑396.1; 1971 (57) 490.

Library References

Environmental Law 746.

Westlaw Topic No. 149E.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 116, Littering in Waters.

**SECTION 16‑11‑725.** Rummaging through or stealing household garbage for purposes of committing identity theft; penalty; exception for officers of the law.

 (A) It is unlawful for a person to rummage through or steal another person’s household garbage or litter, as defined in Section 44‑67‑30(4), for the purpose of committing financial identity fraud or identity fraud or identity theft as defined in Sections 16‑13‑510 and 37‑20‑110.

 (B)(1) A person that violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred fifty dollars for the first violation and one thousand dollars for each subsequent violation.

 (2) A person who knowingly and wilfully violates the provisions of this section is guilty of a Class F felony and, upon conviction, must be imprisoned not more than five years and fined not more than one thousand dollars, or both.

 (C) A conviction pursuant to the provisions of this section and the possession of identifying information as defined in Section 16‑13‑510 is prima facie evidence of financial identity fraud, identity fraud, or identity theft pursuant to Sections 16‑13‑510 and 37‑20‑110.

 (D) This section does not prohibit a duly constituted officer of the law from performing his official duties in ferreting out offenders or suspected offenders against violating the laws of this State or a county or municipality for the purpose of apprehending the suspected violator. The provisions of this section must not be construed to give an officer any additional rights or powers upon private property but must be construed as preserving only his previous powers.

HISTORY: 2008 Act No. 190, Section 5, eff December 31, 2008.

Editor’s Note

Section 44‑67‑30(4), referenced in (A), was repealed by 2015 Act No. 8.

Library References

False Pretenses 19.

Trespass 79.

Westlaw Topic Nos. 170, 386.

C.J.S. False Pretenses Section 37.

C.J.S. Trespass Sections 152, 159.

**SECTION 16‑11‑730.** Malicious injury to or interference with microwave radio or television facilities; unauthorized use of facilities.

 Any person who shall (1) wilfully or maliciously break, injure or otherwise destroy or damage any of the posts, wires, towers or other materials or fixtures employed in the construction or use of any line of a television coaxial cable, or a microwave radio system or a community antenna television system or (2) wilfully or maliciously interfere with such structure so erected or (3) in any way attempt to lead from its uses or make use of the electrical signal or any portion thereof properly belonging to or in use or in readiness to be made use of for the purposes of using said electrical signal from any television coaxial cable company or microwave system or a community antenna television system or owner of such property shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding one thousand dollars or by imprisonment for not more than one year, or both, in the discretion of the court.

HISTORY: 1962 Code Section 16‑397; 1964 (53) 1742.

Library References

Telecommunications 1167.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 171.

**SECTION 16‑11‑740.** Malicious injury to telegraph, telephone or electric utility system.

 It is unlawful for a person, without the consent of the owner, to wilfully:

 (1) destroy, damage, or in any way injure a telegraph, telephone, electric utility system, satellite dish, or cable television system, including poles, cables, wires, fixtures, antennas, amplifiers, or other apparatus, equipment, or appliances;

 (2) obstruct, impede, or impair their services or transmissions or;

 (3) aid, agree with, employ, or conspire with a person to do or cause to be done any of the acts mentioned in this section.

 A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years.

HISTORY: 1962 Code Section 16‑399; 1969 (56) 651; 1989 Act No. 21, Section 1; 1993 Act No. 184, Section 29.

Library References

Electricity 21.

Telecommunications 716, 1011.

Westlaw Topic Nos. 145, 372.

C.J.S. Electricity Sections 136 to 137.

C.J.S. Telecommunications Sections 121 to 135.

**SECTION 16‑11‑750.** Unlawful injury or interference with electric lines.

 It shall be unlawful for any person within this State, wilfully and wantonly and without the consent of the owner, (a) to take down, remove, injure, obstruct, displace or destroy any line erected or constructed for the transmission of electrical current or any poles, towers, wires, conduits, cables, insulators or support upon which wires or cables may be suspended or any part of any such line or appurtenances or apparatus connected therewith, (b) to sever any wire or cable thereof or in any manner interrupt the transmission of electrical current over and along any such line, (c) to take down, remove, injure or destroy any house, shop, building or other structure or machinery connected with or necessary to the use of any line erected or constructed for the transmission of electrical current or (d) to wantonly or wilfully cause injury to any of the property mentioned in this section by means of fire. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned not longer than one year, or both fined and imprisoned, in the discretion of the court. But nothing herein contained shall operate to prevent any person from removing any such wires or apparatus affixed to his private property without his consent.

HISTORY: 1962 Code Section 24‑453; 1952 Code Section 24‑453; 1942 Code Section 1202; 1932 Code Section 1202; Cr. C. ‘22 Section 91; Cr. C. ‘12 Section 252; 1902 (23) 1102; 1904 (24) 443; 1908 (25) 1078.

Library References

Electricity 21.

Westlaw Topic No. 145.

C.J.S. Electricity Sections 136 to 137.

**SECTION 16‑11‑755.** Operation of certain motor vehicles on utility rights of way unlawful; penalties.

 (1) It shall be unlawful for any person other than the landowner or someone who specifically acts with his permission, or an employee or agent of the utility which owns the utility right‑of‑way concerned to operate a mini‑bike, motor‑bike, motorcycle, jeep, dune buggy, automobile, truck or other power driven vehicle on the land which constitutes the utility right‑of‑way if the utility, after obtaining permission of the landowner in writing, posts signs at conspicuous places on such right‑of‑way which read substantially as follows:

“NO TRESPASSING

 It is unlawful to operate a mini‑bike, motor‑bike, motorcycle, jeep, dune buggy, automobile, or truck upon this right‑of‑way. Violators will be subject to a fine of two hundred dollars.”

 (2) The prohibition of trespass as provided for in this section does not contradict or in any manner diminish the property rights of the owner of the land subject to the easement or of the utility’s rights in its easement.

 (3) Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than two hundred dollars for each offense.

HISTORY: 1979 Act No. 86 Section 1.

CROSS REFERENCES

Applicability of provisions pertaining to use of uniform traffic ticket, see Section 56‑7‑10.

Library References

Trespass 79.

Westlaw Topic No. 386.

C.J.S. Trespass Sections 152, 159.

**SECTION 16‑11‑760.** Parking on private property without permission; removal of vehicles; lien for towing and storage; sale of vehicles; penalty for violation.

 (A) It is unlawful for a person to park a vehicle, as defined in Section 56‑5‑5630, on the private property of another without the owner’s consent. If the property is for commercial use, the owner must post a notice in a conspicuous place on the borders of the property near each entrance prohibiting parking. Proof of the posting is considered notice conclusive against the person making entry.

 (B) A vehicle found parked on private property may be towed and stored at the expense of the registered owner or lienholder, and charges for towing, storing, preserving the vehicle, and expenses incurred if the owner and lienholder are notified pursuant to Section 29‑15‑10 constitute a lien against the vehicle, provided that the towing company makes notification to the law enforcement agency pursuant to Section 56‑5‑2525.

 (C) If the vehicle is not claimed by the owner, lienholder, or his agent, the vehicle must be sold pursuant to Section 29‑15‑10 by a magistrate in the county in which the vehicle was towed or stored.

 (D) A person violating the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not less than twenty‑five dollars nor more than one hundred dollars or imprisoned for not more than thirty days. This punishment is in addition to the other remedies authorized in this section.

HISTORY: 1962 Code Section 46‑807; 1958 (50) 1670; 1966 (54) 2075; 1987 Act No. 185 Section 1; 2003 Act No. 71, Section 2, eff June 25, 2003; 2004 Act No. 269, Section 10, eff July 6, 2004.

Library References

Automobiles 324, 359.1.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1504 to 1505, 1508 to 1510, 1529, 1545, 1572, 1656, 1659, 1707, 1714, 1728 to 1731, 1743, 1750 to 1751.

RESEARCH REFERENCES

Encyclopedias

42 Am. Jur. Proof of Facts 3d 355, Liability of Creditor and Repossession Agent for Wrongful Repossession and Tortious Acts Committed During Repossession.

S.C. Jur. Auctions and Auctioneers Section 23, Statutes Governing Auctions of Particular Properties.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

City ordinance which required property owners to place certain signs in their parking lots before they could lawfully have vehicle towed, and which imposed maximum rates wrecker service could charge for tows of unauthorized vehicles from private property, did not conflict with state statute providing that vehicles parked on private property without owner’s permission may be towed at owner’s expense if property owner has conspicuous sign at entrance; statute was silent as to content of signs, amounts to be charged for towing and storage, records to be maintained, or any of other details dealt with in ordinance, and mere differences in detail concerning location and number of signs to be posted did not render statutes conflicting. Quality Towing, Inc. v. City of Myrtle Beach (S.C. 2000) 340 S.C. 29, 530 S.E.2d 369. Automobiles 9; Automobiles 363; Municipal Corporations 592(2)

2. Constitutional issues

Police officer who effected a seizure of parked vehicle’s occupants had a reasonable suspicion that potential criminal activity was afoot, such that the seizure was justified; officer knew that there was a parked car in a closed and darkened church parking lot on a Tuesday night, the car was behind a fence with its lights off, there was no reason for the car to be behind the fence at that time of night when the church was closed, and the area where the car was parked was not readily open to the public, and the officer inferred from those facts that a couple might be parked in the vehicle “necking” on church grounds, a potential parking misdemeanor. Robinson v. State (S.C. 2014) 407 S.C. 169, 754 S.E.2d 862, certiorari denied 134 S.Ct. 2888, 189 L.Ed.2d 845, habeas corpus dismissed 2015 WL 6507146, appeal dismissed 644 Fed.Appx. 220, 2016 WL 1381744. Arrest 60.3(2)

**SECTION 16‑11‑770.** Illegal graffiti vandalism; penalty; removal or restitution.

 (A) As used in this section, “illegal graffiti vandalism” means an inscription, writing, drawing, marking, or design that is painted, sprayed, etched, scratched, or otherwise placed on structures, buildings, dwellings, statues, monuments, fences, vehicles, or other similar materials that are on public or private property and that are publicly viewable, without the consent of the owner, manager, or agent in charge of the property.

 (B) It is unlawful for a person to engage in the offense of illegal graffiti vandalism and, upon conviction, for a:

 (1) first offense, is guilty of a misdemeanor and must be fined not more than one thousand dollars or imprisoned not less than thirty days nor more than ninety days;

 (2) second offense, within ten years, is guilty of a misdemeanor and must be fined not more than two thousand five hundred dollars or imprisoned not more than one year; and

 (3) third or subsequent offense within ten years of a first offense, is guilty of a misdemeanor and must be fined not more than three thousand dollars or imprisoned not more than three years.

 (C) In addition to the penalties provided in subsection (B), a person convicted of the offense of illegal graffiti vandalism also may be ordered by the court to remove the illegal graffiti, pay the cost of the removal of the graffiti, or make further restitution in the discretion of the court.

HISTORY: 2007 Act No. 82, Section 9, eff June 12, 2007.

Library References

Malicious Mischief 1, 12.

Sentencing and Punishment 2154.

Westlaw Topic Nos. 248, 350H.

C.J.S. Malicious or Criminal Mischief or Damage to Property Sections 1 to 2, 4 to 10, 17.

Attorney General’s Opinions

The application of this section to individuals incarcerated by the State Department of Corrections or who are in the custody of the State Department of Juvenile Justice. SC Op.Atty.Gen. (August 22, 2007) 2007 WL 3244890.

**SECTION 16‑11‑780.** Prohibition on entering certain lands to discover, uncover, move, remove, or attempt to remove archaeological resource; definitions; penalty; exception.

 (A) As used in this section:

 (1) “Archaeological resource” means all artifacts, relics, burial objects, or material remains of past human life or activities that are at least one hundred years old and possess either archaeological or commercial value, including pieces of pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, rock paintings, rock carving, intaglios, graves, or human skeletal materials.

 (2) “Archaeological value” means the value of the data associated with the archaeological resource. This value may be appraised in terms of the costs of the retrieval of the scientific information that would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

 (3) “Commercial value” means the fair market value of the archaeological resource. When a violation has resulted in damage to the archaeological resource, the fair market value may be determined using the condition of the archaeological resource prior to the violation, to the extent its prior condition can be ascertained.

 (4) “Cost of restoration and repair” means the sum of the costs incurred for emergency restoration or repairs to an archaeological resource, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following:

 (a) reconstruction of the archaeological resource;

 (b) stabilization of the archaeological resource;

 (c) ground contour reconstruction and surface stabilization;

 (d) physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;

 (e) examination and analysis of the archaeological resource, including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining resources that cannot be otherwise conserved; or

 (f) preparation of reports relating to any of the activities described in this section.

 (5) “Posted lands” means lands where the State has complied with the notice or warning requirement which must either be posted or given to an offender pursuant to Section 16‑11‑600.

 (B) The court may call upon the Office of the State Archaeologist to provide evidence to assist in determining, calculating, or computing archaeological value, commercial value, or the cost of restoration and repair of an archaeological resource.

 (C) It is unlawful for a person to wilfully, knowingly, or maliciously enter upon the lands of another or the posted lands of the State and disturb or excavate a prehistoric or historic site for the purpose of discovering, uncovering, moving, removing, or attempting to remove an archaeological resource. Each unlawful entry and act of disturbance or excavation of a prehistoric or historic site constitutes a separate and distinct offense.

 (D) For a first offense, a person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined, imprisoned, or both, pursuant to the jurisdiction of magistrates as provided in Section 22‑3‑550.

 (E) For a second offense for violating this section on the same property as the first offense or on another posted property, a person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than one thousand dollars or more than three thousand dollars or imprisoned not more than three years, or both.

 (F) For a third or subsequent offense for violating this section on the same property as the first offense or on another posted property, a person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

 (G) For the purposes of subsections (E) and (F) of this section, a second, third, or subsequent offense on the same property as the first offense or on another posted property must include no offense that occurs more than ten years after conviction for the first offense.

 (H) All equipment and conveyances including, but not limited to, trailers, motor vehicles, and watergoing vessels that were used in connection with felony violations of this section are subject to forfeiture to the State in the same manner as equipment and conveyances are subject to forfeiture pursuant to Section 44‑53‑520, if the offender either owns the equipment or conveyance or is a resident of the equipment or conveyance owner’s household.

 (1) All equipment and conveyances subject to confiscation and forfeiture under this section may be confiscated by any law enforcement officer as provided in this section. The confiscating officer shall deliver the confiscated property immediately to the county or municipality where the offense occurred. The county or municipality shall notify the registered owner of the confiscated property by certified mail within seventy‑two hours of the confiscation. Upon notice, the registered owner has ten days to request a hearing before the court. The confiscation hearing must be held within ten days from the date of receipt of the request. The confiscated property must be returned to the registered owner if the registered owner shows by a preponderance of the evidence that he did not know the confiscated property was used in the commission of the crime, that he did not give permission for the confiscated property to be used in the commission of the crime, and that the confiscated property had not been used for a previous violation of this section on the posted land where this offense occurred or other posted land.

 (2) The county or municipality in possession of the confiscated property shall provide notice by certified mail of the confiscation to all lienholders of record within ten days of the confiscation.

 (3) Forfeiture of property is subordinate in priority to all valid liens and encumbrances.

 (4) A person whose property is subject to forfeiture under this section is entitled to a jury trial if requested.

 (I) The landowner, in the case of private lands, or the State, in the case of state lands, may bring a civil action for a violation of this section to recover the greater of the archaeological resource’s archaeological value or commercial value, and the cost of restoration and repair of the site where the archaeological resource was located, plus attorney’s fees and court costs.

 (J) Nothing contained in this section shall limit or interfere with a landowner’s lawful use of his property or with the state’s ability to conduct archaeological investigations or excavations on either state lands or private lands with the consent of the landowner.

 (K) Nothing contained in this section shall limit or interfere with:

 (1) a landowner’s lawful use of his property;

 (2) the lawful acts of a landowner’s employee, agent, or independent contractor acting in the scope of and in the course of his employment, agreement, or contract;

 (3) the lawful acts of a utility worker acting in the scope of and in the course of his employment; or

 (4) the state’s ability to conduct archaeological investigations or excavations on either state lands or private lands with the consent of the landowner.

HISTORY: 2010 Act No. 255, Section 1, eff June 11, 2010.

Library References

Environmental Law 98.

Trespass 79.

Westlaw Topic Nos. 149E, 386.

C.J.S. Health and Environment Section 147.

C.J.S. Trespass Sections 152, 159.

Attorney General’s Opinions

This section is applicable to any person who enters onto another person’s property or the posted lands of the State to disturb or excavate a site wherever such “archaeological resources” are located, with the intent to discover, uncover, move, remove, or attempt to remove such resources from these lands, except in accordance with and pursuant to the authority of this statute. S.C. Op.Atty.Gen. (February 11, 2013) 2013 WL 650579.

ARTICLE 8

Theft of Cable Television Service Act

**SECTION 16‑11‑810.** Short title.

 This article may be cited as the Theft of Cable Television Service Act.

HISTORY: 1984 Act No. 407.

**SECTION 16‑11‑815.** Definitions.

 As used in this article, “cable television service” includes (1) services provided by or through the facilities of any cable television system or closed circuit coaxial cable communication system, and (2) any transmission service used in connection with any cable television system or similar closed circuit coaxial cable communication system.

HISTORY: 1984 Act No. 407.

**SECTION 16‑11‑820.** Use of service without authorization or payment; presumption arising from connection of device to cable or closed circuit system.

 It is unlawful for any person knowingly to obtain or use cable television service without the authorization of, or payment to, the operator of the service. It is permissible to infer that the existence of any connection, wire, conductor, or other device whatsoever, between facilities of a cable television system or closed circuit coaxial cable communication system and the premises occupied by the person which makes possible the use of cable television service by any person without that use being specifically authorized by, or compensation paid to, the operator of cable television service indicates that the occupant of the premises has violated this section. If any person pays the amount charged for service provided by the operator of the cable television system, whether or not the amount billed is in conformity with the established charges for the service, the person is not guilty of any offense hereunder by reason of the use of the service.

HISTORY: 1984 Act No. 407; 1987 Act No. 95 Section 2.

Library References

Telecommunications 1254.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 250.

Attorney General’s Opinions

The “amount charged” defense. SC Op.Atty.Gen. (Feb. 28, 1995) 1995 WL 117043.

**SECTION 16‑11‑825.** Unauthorized connection or use of device to cable television system.

 It is unlawful for any person to make or use a connection not authorized by the operator of a cable television service, whether physical, electrical, mechanical, electronic, induction, or otherwise, or to attach any unauthorized device, or permit the attachment of any unauthorized connection or device to any cable, wire, or other component of a cable television system or service or to a television set connected into the system or service, for the purpose of permitting the reception and viewing of signals which are intended to be received and viewed only upon payment to the operator of the cable television system of the lawful charge therefor.

HISTORY: 1984 Act No. 407.

Library References

Telecommunications 1254.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 250.

**SECTION 16‑11‑830.** Aiding or abetting another person in obtaining cable service without payment.

 It is unlawful for any person to assist, instruct, aid or abet, or attempt to assist, instruct, aid or abet any other person in obtaining any cable television service without payment of the lawful charge therefor.

HISTORY: 1984 Act No. 407.

Library References

Telecommunications 1254.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 250.

**SECTION 16‑11‑835.** Sale, lease, or advertising of equipment for avoidance of cable service charge.

 It is unlawful for any person, firm, or corporation to advertise, promote the sale of, sell, rent, install, or use any instrument, apparatus, equipment, or device, or plans or instructions for making or assembling the same, designed or adapted to avoid the lawful charge for any cable television service.

HISTORY: 1984 Act No. 407.

Library References

Telecommunications 1254.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 250.

**SECTION 16‑11‑840.** Unauthorized device designed to decode or descramble cable television signal.

 It is unlawful for any person, without the express authorization of a franchised or other duly licensed cable television system, knowingly and wilfully to manufacture, import into this State, distribute, sell, offer to sell, possess for sale, advertise for sale, or install any device, or any plan or kit for a device or for a printed circuit, designed in whole or in part to decode, descramble, or otherwise make intelligible any encoded, scrambled, or other nonstandard signal carried by that cable television system. For the purposes of this section, “encoded, scrambled, or other nonstandard signal” includes, but is not limited to, any type of signal not intended to produce an intelligible program or service without the aid of a decoder, descrambler, filter, trap, or similar device.

HISTORY: 1984 Act No. 407.

Library References

Telecommunications 1254.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 250.

**SECTION 16‑11‑845.** Use, sale, or installation of converter for unauthorized reception of intelligible signals.

 It is unlawful for any person (a) to use a converter or similar device for the reception of intelligible signals without the authorization of the operator of the cable television system, (b) to sell a converter or similar device to any other person with knowledge that the person intends to use it for the reception of intelligible signals without the authorization of the operator of the cable television system or, (c) to install a converter or similar device for any other person with knowledge that the person intends to use it for the reception of intelligible signals without the authorization of the operator of the cable television system. This section does not prohibit the manufacture, distribution, or sale of any television receiver in which a converter has been incorporated by the manufacturer.

HISTORY: 1984 Act No. 407.

Library References

Telecommunications 1254.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 250.

**SECTION 16‑11‑850.** Receipt of signals from air by use of satellite dish or antenna.

 Nothing in this article makes it unlawful to receive or capture signals from the air by use of a satellite dish, antenna, or otherwise.

HISTORY: 1984 Act No. 407.

Library References

Telecommunications 1254.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 250.

**SECTION 16‑11‑855.** Penalties.

 Any person who violates any section of this article is guilty of a misdemeanor and upon conviction for a first offense must be fined not more than two hundred dollars or imprisoned for not more than thirty days and for a second and subsequent offense fined not more than one thousand dollars or imprisoned for not more than one year, or both.

HISTORY: 1984 Act No. 407.

Library References

Telecommunications 1254.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 250.

ARTICLE 9

Bootleg and Counterfeit Records, Tapes, and Recordings

**SECTION 16‑11‑910.** Prohibitions relative to sound recordings; application of section.

 (A) It is unlawful for a person to:

 (1) knowingly and wilfully transfer or cause to be transferred, for commercial advantage or private financial gain, without the consent of the owner, any sounds recorded on a phonograph record, disc, wire, tape, film, or other article on which sounds are recorded, with intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, the article on which such sounds are transferred;

 (2) advertise, offer for sale or resale, or sell or resell, or cause the sale or resale, or rent or cause the rental of, or possess for any of these purposes any article described in item (1) with the knowledge that the sounds on it have been transferred without the consent of the owner;

 (3) offer or make available for a fee, rental, or other form of compensation, directly or indirectly, any equipment or machinery with the knowledge that it will be used by another to reproduce, without the consent of the owner, a phonograph record, disc, wire, tape, film, or other article on which sounds have been transferred. The provisions of this item do not apply to reproduction in the home for private use and with no purpose of otherwise capitalizing commercially on the reproduction; or

 (4) transport for commercial advantage or private financial gain within this State or cause to be transported within this State an article with the knowledge that the sounds on it have been transferred without the consent of the owner.

 A person who violates this section, upon conviction, must be punished as provided for in Section 16‑11‑920.

 (B) As used in this section:

 (1) “Person” means an individual, partnership, corporation, company, association, any communications media including, but not limited to, radio or television, broadcasters or licensees, newspapers, magazines, or other publications, or media which offer facilities for the purposes stated in this chapter, or other legal entity.

 (2) “Owner” means the person who owns the original fixed sounds embodied in the master phonograph record, master disc, master tape, master film, or other article used for reproducing recorded sounds on phonograph records, discs, tapes, films, or other articles on which sound is or can be recorded and from which the transferred recorded sounds are directly or indirectly derived.

 (3) “Fixed” means embodied in a tangible medium of expression when its embodiment in an article, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.

 (4) “Article” means the tangible medium upon which sounds or images are recorded or otherwise stored and includes any original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.

 This section neither enlarges nor diminishes the right of parties in private litigation nor does it apply to the transfer by a radio or television broadcaster of any sounds (other than from the sound tract of a motion picture) intended for, or in connection with, broadcast transmission or related uses or for archival purposes. An owner of a record, disc, wire, tape, film, or other article or device which is transferred unlawfully or used in violation of this section has a cause of action in the circuit court of this State against the party committing the violation for all damages resulting therefrom, including actual, compensatory, incidental, and punitive.

HISTORY: 1975 (59) 592; 1989 Act No. 92, Section 1.

Library References

Copyrights and Intellectual Property 70.

Westlaw Topic No. 99.

C.J.S. Copyrights and Intellectual Property Sections 138 to 142, 144.

NOTES OF DECISIONS

Admissibility of evidence 2

Indictment 1

1. Indictment

Indictment provided court with subject matter jurisdiction to convict defendant video store owner of transfer of recorded sounds, even if it did not specifically allege that he acted with knowledge; indictment named offense charged, it listed code sections allegedly violated, it alleged that defendant rented, sold, or caused to be rented or sold seven counterfeit video tapes on specific dates, it listed those movies, and third count of indictment alleged that defendant possessed for purpose of selling, renting, or causing to be sold or rented, more than one hundred counterfeit video tapes. State v. Beam (S.C.App. 1999) 336 S.C. 45, 518 S.E.2d 297. Copyrights And Intellectual Property 70

2. Admissibility of evidence

Permitting expert to conduct switch test on video tapes during trial on charges of transfer of recorded sounds, in order to determine whether video tapes defendant rented and sold were counterfeit, did not deny defendant his right to effectively cross‑examine expert, despite defendant’s claim that only way he could have avoided test being conducted would have been to avoid questioning expert regarding his failure to use that test; counsel clearly made tactical decision to question state’s expert regarding available technology, but asked “one question too many.” State v. Beam (S.C.App. 1999) 336 S.C. 45, 518 S.E.2d 297. Criminal Law 488

Defendant convicted of transfer of recorded sounds, arising from allegation that he sold or rented counterfeit video tapes, “opened the door” for state’s expert to conduct switch point test on tapes during trial to determine whether they were counterfeit; once defense counsel cross‑examined state’s expert about existence of switch point test, its superiority over visual inspection in detection of counterfeit videos, and whether state should have been required to perform test on seized video tapes, state was free on redirect to ask expert to perform test, in part, to rehabilitate him. State v. Beam (S.C.App. 1999) 336 S.C. 45, 518 S.E.2d 297. Criminal Law 396(1); Criminal Law 490

**SECTION 16‑11‑911.** Definitions; unlawful recording of motion pictures.

 (A) As used in this section:

 (1) “Article” means the tangible medium upon which sounds or images are recorded or otherwise stored and includes any original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.

 (2) “Audiovisual recording device” means any device, camera, or audio or video recorder with the capability of recording, transferring, or transmitting sounds or images of a motion picture in part or in whole, including any device now existing or later developed.

 (3) “Person” means an individual, partnership, corporation, company, association, or other legal entity.

 (4) “Motion picture theater” means a movie theater, screening room, or other venue used primarily for the exhibition of a motion picture but does not include the lobby or other common areas, a personal residence, or retail establishment.

 (5) “Theater owner” means the owner, operator, or lessee of a motion picture theater and includes an employee or agent of the owner, operator, or lessee.

 (B) It shall be unlawful for any person to knowingly and wilfully operate an audiovisual recording device in a motion picture theater, with intent to record a motion picture, without written consent from the theater owner.

 (C) In any action brought by reason of having been delayed by a theater employee or agent on or near the premises of a theater establishment for the purpose of investigation concerning the unlawful operation of an audiovisual recording device, it shall be a defense to such action if:

 (1) the person was delayed in a reasonable manner and for a reasonable time to permit such investigation; and

 (2) reasonable cause existed to believe that the person delayed had committed the crime of unlawful operation of a recording device.

 (D) This section does not prevent any lawfully authorized investigative agency, law enforcement agency, protective services agency, or intelligence‑gathering agency of the local, state, or federal government from operating an audiovisual recording device in a motion picture theater where a motion picture is being exhibited as part of a lawfully authorized investigative, protective, law enforcement, or intelligence‑gathering activity.

HISTORY: 2005 Act No. 64, Section 1, eff May 23, 2005.

Library References

Copyrights and Intellectual Property 70, 108.

Westlaw Topic No. 99.

C.J.S. Copyrights and Intellectual Property Sections 138 to 142, 144, 159.

**SECTION 16‑11‑915.** Prohibitions relative to live performances; persons considered proper witnesses; application of section.

 (A) It is unlawful for a person to:

 (1) advertise or offer for sale or resale, or sell or resell, or cause the sale or resale, or rent or cause the rental of, or transport or cause to be transported, or possess for any of these purposes for commercial advantage or private financial gain any article containing a live performance with the knowledge that the live performance has been fixed without the consent of the owner of the live performance; or

 (2) record or fix or cause to be recorded or fixed on an article with the intent to sell for commercial advantage or private financial gain, the live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner of the live performance. The provisions of this item (2) shall not apply to reproduction in the home for private use and with no purpose of otherwise capitalizing commercially on the reproduction.

 A person who violates this section, upon conviction, must be punished as provided for in Section 16‑11‑920.

 (B) As used in this section:

 (1) “Person” means an individual, partnership, corporation, company, association, or other legal entity.

 (2) “Owner”, in the absence of a written agreement or operation of law to the contrary, is presumed to be the performer of the live performance.

 (3) “Fixed” means embodied in a tangible medium of expression when its embodiment in an article, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.

 (4) “Article” means the tangible medium upon which sounds or images are recorded or otherwise stored and includes any original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored, or a copy or reproduction which duplicates in whole or in part, the original.

 (5) “Live performance” means the recitation, rendering, or playing of a series of images or musical, spoken, or other sounds in any audible sequence.

 (C) For the purposes of this section, a person who is authorized to maintain custody and control over business records which reflect whether or not the owner consented to having the live performance recorded or fixed is a proper witness in any proceeding regarding the issue of consent.

 (D) A witness called pursuant to this section is subject to all rules of evidence relating to the competency of a witness to testify and the relevance and admissibility of the testimony offered.

 (E) This section neither enlarges nor diminishes the rights and remedies of parties in private litigation nor does it apply to the transfer by a radio or television broadcaster of any such sounds, other than from the sound tract of a motion picture, intended for, or in connection with, broadcast transmission or related uses or for archival purposes.

HISTORY: 1989 Act No. 92, Section 1.

Library References

Copyrights and Intellectual Property 70.

Westlaw Topic No. 99.

C.J.S. Copyrights and Intellectual Property Sections 138 to 142, 144.

**SECTION 16‑11‑920.** Penalties.

 (A) A person who violates the provisions of Section 16‑11‑911 is guilty of a misdemeanor and, upon conviction:

 (1) for a first offense, must be fined not more than five thousand dollars or imprisoned not more than one year, or both;

 (2) for a second offense, must be fined not more than ten thousand dollars or imprisoned not more than two years, or both;

 (3) for a third and each subsequent offense, must be fined not more than fifteen thousand dollars or imprisoned not more than three years, or both.

 (B) A person who violates the provisions of Section 16‑11‑910 or 16‑11‑915 is guilty of a felony and, upon conviction, must be fined not more than two hundred fifty thousand dollars or imprisoned not more than five years, or both, if the offense:

 (1) involves at least one thousand unauthorized articles embodying sound or sixty‑five unauthorized audio visual articles during any one hundred eighty‑day period; or

 (2) is a second or subsequent conviction under Section 16‑11‑910 or 16‑11‑915.

 (C) A person who violates the provisions of Section 16‑11‑910 or 16‑11‑915 is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred fifty thousand dollars or imprisoned not more than two years, or both, if the offense involved:

 (1) more than one hundred but less than one thousand unauthorized articles embodying sound during any one hundred eighty‑day period; or

 (2) more than ten but less than sixty‑five unauthorized audiovisual articles during any one hundred eighty‑day period.

 (D) A person who violates the provisions of Section 16‑11‑910 or 16‑11‑915 is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars for a first offense and not more than ten thousand dollars for a second or subsequent offense if the offense or both offenses involve not more than:

 (1) twenty‑five unauthorized articles embodying sound during any one hundred eighty‑day period; or

 (2) ten unauthorized audiovisual articles during any one hundred eighty‑ day period.

 (E) A person who violates any other provision of Section 16‑11‑910 or 16‑11‑915 is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty‑five thousand dollars or imprisoned not more than one year, or both.

 (F) If a person is convicted of a violation of Section 16‑11‑910, 16‑11‑911, or 16‑11‑915, the court shall order the forfeiture and destruction or other disposition of all:

 (1) infringing articles;

 (2) implements, devices, and equipment used or intended to be used in the manufacture of the infringing articles.

These penalties are not exclusive but are in addition to other penalties provided by law.

HISTORY: 1975 (59) 592; 1989 Act No. 92, Section 1; 1993 Act No. 184, Section 93; 2005 Act No. 64, Section 2, eff May 23, 2005.

Library References

Copyrights and Intellectual Property 70.

Westlaw Topic No. 99.

C.J.S. Copyrights and Intellectual Property Sections 138 to 142, 144.

**SECTION 16‑11‑930.** Illegal distribution of recordings without name and address of manufacturer and designation of featured artist.

 It is unlawful for a person to manufacture or knowingly sell, distribute, circulate, or cause to be sold, distributed, or circulated, advertise, resell or offer for sale or resale, or cause the sale or resale, or rent or cause the rental, or transport or cause to be transported, or possess for any of these purposes for commercial advantage or private financial gain, a phonograph record, tape, album of phonograph records or tapes, or any other article without the actual name and street address of the manufacturer, and the name of the actual performer or group prominently disclosed on the outside cover, box, or jacket containing the record, tape, album of records or tapes, or any other article. A person who violates this section, upon conviction, must be punished as provided for in Section 16‑11‑940. A law enforcement officer in this State, when charging a person with a violation of this section, if possible at the time of arrest, shall confiscate any records, tapes, albums, or other articles and, upon conviction of the person, the records, tapes, albums, or other articles must be destroyed.

 As used in this section:

 (1) “Person” means an individual, partnership, corporation, association, or other legal entity.

 (2) “Manufacturer” means a person who actually transfers or causes the transfer of any sound or images recorded on a phonograph record, disc, wire, tape, film, or other article on which sounds are recorded or assembles and transfers any product containing such transferred sounds or images as a component of it.

 (3) “Article” means the tangible medium upon which sounds or images are recorded or otherwise stored and includes any original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.

HISTORY: 1975 (59) 592; 1989 Act No. 92, Section 1.

Library References

Copyrights and Intellectual Property 70.

Westlaw Topic No. 99.

C.J.S. Copyrights and Intellectual Property Sections 138 to 142, 144.

**SECTION 16‑11‑940.** Penalties for violations of Section 16‑11‑930.

 (A) A person who violates the provisions of Section 16‑11‑930 is guilty of a felony and, upon conviction, must be fined not more than two hundred fifty thousand dollars or imprisoned not more than five years, or both, if the offense involves at least one thousand unauthorized articles embodying sound or at least sixty‑five unauthorized audio‑visual articles, or is a second or subsequent conviction under Section 16‑11‑930.

 (B) A person violating the provisions of Section 16‑11‑930 is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred fifty thousand dollars or imprisoned not more than two years, or both, if the offense involves more than one hundred but less than one thousand unauthorized articles embodying sound or more than ten but less than sixty‑five unauthorized audio‑visual articles.

 (C) A person violating the provisions of Section 16‑11‑930 is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars for a first offense and not more than ten thousand dollars for a second or subsequent offense if the offense or both offenses involve not more than twenty‑five unauthorized articles embodying sound or not more than ten unauthorized audio‑visual articles.

 (D) A person violating the provisions of Section 16‑11‑930 is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty‑five thousand dollars or imprisoned not more than one year, or both, in any other case.

 (E) If a person is convicted of a violation of Section 16‑11‑930, the court shall order the forfeiture and destruction or other disposition of all:

 (1) infringing articles;

 (2) implements, devices, and equipment used or intended to be used in the manufacture of the infringing articles.

 The penalties provided in this section are not exclusive and are in addition to any other penalties provided by law.

 (F) Each violation of Section 16‑11‑930 constitutes a separate offense.

HISTORY: 1975 (59) 592; 1989 Act No. 92, Section 1; 1993 Act No. 184, Section 94.

Library References

Copyrights and Intellectual Property 70.

Westlaw Topic No. 99.

C.J.S. Copyrights and Intellectual Property Sections 138 to 142, 144.

**SECTION 16‑11‑950.** Exceptions.

 The provisions of this article do not apply to sounds or calls of wild birds or animals.

HISTORY: 1975 (59) 592; 1989 Act No. 92, Section 1.

Library References

Copyrights and Intellectual Property 70.

Westlaw Topic No. 99.

C.J.S. Copyrights and Intellectual Property Sections 138 to 142, 144.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arson Section 3, Overview.