CHAPTER 23

Offenses Involving Weapons

ARTICLE 1

Handguns

**SECTION 16‑23‑10.** Definitions.

 When used in this article:

 (1) “Handgun” means any firearm designed to expel a projectile and designed to be fired from the hand, but shall not include any firearm generally recognized or classified as an antique, curiosity, or collector’s item, or any that does not fire fixed cartridges.

 (2) “Dealer” means any person engaged in the business of selling firearms at retail or any person who is a pawnbroker.

 (3) “Crime of violence” means murder, manslaughter (except negligent manslaughter arising out of traffic accidents), rape, mayhem, kidnapping, burglary, robbery, housebreaking, assault with intent to kill, commit rape, or rob, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year.

 (4) “Fugitive from justice” means any person who has fled from or is fleeing from any law enforcement officer to avoid prosecution or imprisonment for a crime of violence.

 (5) “Subversive organization” means any group, committee, club, league, society, association, or combination of individuals the purpose of which, or one of the purposes of which, is the establishment, control, conduct, seizure, or overthrow of the government of the United States or any state or political subdivision thereof, by the use of force, violence, espionage, sabotage, or threats or attempts of any of the foregoing.

 (6) “Conviction”‘ as used herein shall include pleas of guilty, pleas of nolo contendere, and forfeiture of bail.

 (7) “Division” means the State Law Enforcement Division.

 (8) “Purchase” or “sell” means to knowingly buy, offer to buy, receive, lease, rent, barter, exchange, pawn or accept in pawn.

 (9) “Person” means any individual, corporation, company, association, firm, partnership, society, or joint stock company.

 (10) “Luggage compartment” means the trunk of a motor vehicle which has a trunk; however, with respect to a motor vehicle which does not have a trunk, the term “luggage compartment” refers to the area of the motor vehicle in which the manufacturer designed that luggage be carried or to the area of the motor vehicle in which luggage is customarily carried. In a station wagon, van, hatchback vehicle, truck, or sport utility vehicle, the term “luggage compartment” refers to the area behind the rearmost seat.

HISTORY: 1962 Code Section 16‑129; 1965 (54) 578; 1975 (59) 582; 1976 Act No. 685 Sections 1‑3; 2004 Act No. 294, Section 1, eff August 16, 2004; 2014 Act No. 123 (S.308), Section 2.D, eff February 11, 2014.

Editor’s Note

2010 Act No. 273, Section 7.B, provides:

“The common law offenses of assault and battery with intent to kill, assault with intent to kill, assault and battery of a high and aggravated nature, simple assault and battery, assault of a high and aggravated nature, aggravated assault, and simple assault are abolished for offenses occurring on or after the effective date of this act [June 2, 2010].”

2010 Act No. 277, Section 5, provides:

“The requirements of Section 56‑1‑80 of the 1976 Code, as amended by Section 3 of this act, must be met upon the renewal of an existing driver’s license or special identification card of a person convicted of a crime of violence as defined in Section 16‑23‑10(3) in this State on or after July 1, 2011.”

CROSS REFERENCES

Constitutional right to keep and bear arms, see SC Const. Art. I, Section 20.

Disposition of revenue received by State Law Enforcement Division from fees or licenses related to enforcement of this provision, see Section 23‑3‑50.

Identifying code affixed on driver’s license of person convicted of certain crimes, see Section 56‑1‑148.

Regulation of firearms, generally, see Section 23‑31‑10 et seq.

Surrender of driver’s license by person convicted of certain crimes, see Section 56‑1‑146.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mayhem Section 3, South Carolina Authorities.

Forms

Am. Jur. Pl. & Pr. Forms Weapons and Firearms Section 1 , Introductory Comments.

Attorney General’s Opinions

An identifying code is to be placed on the driver’s license or special information card of any person who has been convicted of, or pled guilty or nolo contendere to a crime of violence defined by Section 16‑23‑10, and the Department of Motor Vehicles is required to disclose the identifying code to the public pursuant to the Freedom of Information Act. S.C. Op.Atty.Gen. (April 5, 2011) 2011 WL 1740749.

A court could interpret the term rape in S.C. Code Ann Section 16‑23‑10(3) to include the varying degrees of criminal sexual conduct. S.C. Op.Atty.Gen. (March 29, 2011) 2011 WL 1444723.

A court could interpret the terms robbery and rob to include armed robbery and strong arm robbery, but would likely not expand the terms to include other crimes such as carjacking, purse snatching, or crimes which occur in close proximity to ATM machines. S.C. Op.Atty.Gen. (March 29, 2011) 2011 WL 1444723.

A court could replace the crime of assault with intent to kill, which was abolished by the Omnibus Crime Bill, with the crime of attempted murder. S.C. Op.Atty.Gen. (March 29, 2011) 2011 WL 1444723.

A court would likely not expand the crime of burglary to include other similar crimes. S.C. Op.Atty.Gen. (March 29, 2011) 2011 WL 1444723.

A court would likely not expand the plain meaning of assault with intent to commit any offense punishable by imprisonment for more than one year, but would probably construe it literally. S.C. Op.Atty.Gen. (March 29, 2011) 2011 WL 1444723.

A court would probably not limit the application of 2010 Act No. 277 to only those burglaries designated as violent under Section 16‑1‑60, but could interpret the term burglary to include all burglaries. S.C. Op.Atty.Gen. (March 29, 2011) 2011 WL 1444723.

Magistrate’s Constable does not have general authority as peace officer and does not have power to arrest without warrant for misdemeanor committed in his presence. Magistrate’s Constable is authorized to carry pistol under certain conditions, provided they have received required training by SLED. Magistrate’s Constables are required by statute to receive training by SLED and to attend Criminal Justice Academy. 1984 Op.Atty.Gen., No 84‑87, p 209 (1984 WL 159894).

There is no provision in the Firearms Law requiring a wholesaler to be licensed for dealing in the wholesale distribution of firearms governed therein. 1964‑65 Op.Atty.Gen., No 1924, p 219 (1965 WL 8080).

NOTES OF DECISIONS

In general 1

Crime of violence 2

1. In general

In the context of involuntary manslaughter, a person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self‑defense at the time of the shooting. State v. Cabrera‑Pena (S.C. 2004) 361 S.C. 372, 605 S.E.2d 522. Homicide 766

Magistrate’s Constable does not have general authority as peace officer and does not have power to arrest without warrant for misdemeanor committed in his presence. Magistrate’s Constable is authorized to carry pistol under certain conditions, provided they have received required training by SLED. Magistrate’s Constables are required by statute to receive training by SLED and to attend Criminal Justice Academy. 1984 Op Atty Gen, No. 84‑87, p. 209.

There is no provision in the Firearms Law requiring a wholesaler to be licensed for dealing in the wholesale distribution of firearms governed therein. 1964‑65 Op Atty Gen, No 1924, p 219.

2. Crime of violence

Defendant’s prior conviction of strong arm robbery qualified as “crime of violence,” as predicate offense for multiple convictions of possession of a pistol by a person convicted of a crime of violence, despite omission of strong arm robbery from statutory list of crimes classified as violent for purposes of state law, where specifically applicable statutory definition of “crime of violence” included strong arm robbery. Fernanders v. State (S.C. 2004) 359 S.C. 130, 597 S.E.2d 787. Weapons 180(2)

**SECTION 16‑23‑20.** Unlawful carrying of handgun; exceptions.

 It is unlawful for anyone to carry about the person any handgun, whether concealed or not, except as follows, unless otherwise specifically prohibited by law:

 (1) regular, salaried law enforcement officers, and reserve police officers of a state agency, municipality, or county of the State, uncompensated Governor’s constables, law enforcement officers of the federal government or other states when they are carrying out official duties while in this State, deputy enforcement officers of the Natural Resources Enforcement Division of the Department of Natural Resources, and retired commissioned law enforcement officers employed as private detectives or private investigators;

 (2) members of the Armed Forces of the United States, the National Guard, organized reserves, or the State Militia when on duty;

 (3) members, or their invited guests, of organizations authorized by law to purchase or receive firearms from the United States or this State or regularly enrolled members, or their invited guests, of clubs organized for the purpose of target shooting or collecting modern and antique firearms while these members, or their invited guests, are at or going to or from their places of target practice or their shows and exhibits;

 (4) licensed hunters or fishermen who are engaged in hunting or fishing or going to or from their places of hunting or fishing while in a vehicle or on foot;

 (5) a person regularly engaged in the business of manufacturing, repairing, repossessing, or dealing in firearms, or the agent or representative of this person, while possessing, using, or carrying a handgun in the usual or ordinary course of the business;

 (6) guards authorized by law to possess handguns and engaged in protection of property of the United States or any agency of the United States;

 (7) members of authorized military or civil organizations while parading or when going to and from the places of meeting of their respective organizations;

 (8) a person in his home or upon his real property or a person who has the permission of the owner or the person in legal possession or the person in legal control of the home or real property;

 (9) a person in a vehicle if the handgun is:

 (a) secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle; however, this item is not violated if the glove compartment, console, or trunk is opened in the presence of a law enforcement officer for the sole purpose of retrieving a driver’s license, registration, or proof of insurance. If the person has been issued a concealed weapon permit pursuant to Article 4, Chapter 31, Title 23, then the person also may secure his weapon under a seat in a vehicle, or in any open or closed storage compartment within the vehicle’s passenger compartment; or

 (b) concealed on or about his person, and he has a valid concealed weapons permit pursuant to the provisions of Article 4, Chapter 31, Title 23;

 (10) a person carrying a handgun unloaded and in a secure wrapper from the place of purchase to his home or fixed place of business or while in the process of changing or moving one’s residence or changing or moving one’s fixed place of business;

 (11) a prison guard while engaged in his official duties;

 (12) a person who is granted a permit under provision of law by the State Law Enforcement Division to carry a handgun about his person, under conditions set forth in the permit, and while transferring the handgun between the permittee’s person and a location specified in item (9);

 (13) the owner or the person in legal possession or the person in legal control of a fixed place of business, while at the fixed place of business, and the employee of a fixed place of business, other than a business subject to Section 16‑23‑465, while at the place of business; however, the employee may exercise this privilege only after: (a) acquiring a permit pursuant to item (12), and (b) obtaining the permission of the owner or person in legal control or legal possession of the premises;

 (14) a person engaged in firearms‑related activities while on the premises of a fixed place of business which conducts, as a regular course of its business, activities related to sale, repair, pawn, firearms training, or use of firearms, unless the premises is posted with a sign limiting possession of firearms to holders of permits issued pursuant to item (12);

 (15) a person while transferring a handgun directly from or to a vehicle and a location specified in this section where one may legally possess the handgun.

 (16) Any person on a motorcycle when the pistol is secured in a closed saddlebag or other similar closed accessory container attached, whether permanently or temporarily, to the motorcycle.

HISTORY: 1962 Code Section 16‑129.1; 1965 (54) 578; 1974 (58) 2871; 1975 (59) 630; 1980 Act No. 349; 1982 Act No. 404; 1993 Act No.181, Section 274; 1995 Act No. 85, Section 3; 1996 Act No. 407, Section 2; 1996 Act No. 464, Section 3; 2004 Act No. 294, Sections 1, 2, eff August 16, 2004; 2006 Act No. 336, Section 1, eff June 2, 2006; 2007 Act No. 28, Section 1, eff May 14, 2007; 2014 Act No. 123 (S.308), Section 2.C, eff February 11, 2014.

CROSS REFERENCES

Deputy wildlife conservation officers, generally, see Section 50‑3‑315.

Issuance of permits, see Section 23‑31‑215.

Transfer of jurisdiction, see Section 63‑19‑1210.

Library References

Weapons 162 to 184, 198.

Westlaw Topic No. 406.

C.J.S. Weapons Sections 24 to 31, 37 to 56.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Homicide Section 3, Excusable Homicides.

Attorney General’s Opinions

1. Generally

City of Columbia Emergency Ordinance, which bans the carrying and brandishment of firearms and dangerous weapons on public property in a 250 foot zone extending from the boundaries of the Capitol grounds, is preempted by State law, and thus unconstitutional. S.C. Op.Atty.Gen. (July 20, 2015) 2015 WL 4596713.

Discussion of the disposition of weapons seized by law enforcement for offenses other than those covered by the Preservation of Evidence Act. S.C. Op.Atty.Gen. (June 3, 2013) 2013 WL 2732900.

A member of county council, who is a constable appointed by the Governor, is authorized to carry a handgun to county council meetings. SC Op.Atty.Gen. (Jan. 16, 2007) 2007 WL 419402.

The legality of carrying a firearm while operating a motorcycle. SC Op.Atty.Gen. (Feb. 28, 2003) 2003 WL 21040139.

A state agency’s policy may not alter the right of a citizen to carry a pistol secured in the glove compartment, console or trunk of his/her vehicle. SC Op.Atty.Gen. (March 8, 2000) 2000 WL 773737.

A person with a Concealed Weapons Permit may carry a concealed weapon on his or her person as authorized by the Law Abiding Citizens Self‑Defense Act of 1996 in an automobile. SC Op.Atty.Gen. (April 19, 1999) 1999 WL 387043.

The glove compartment exception and a gun located in a center console of a vehicle. SC Op.Atty.Gen. (June 4, 1996) 1996 WL 452692.

An individual convicted of a violent offense in South Carolina may not purchase or possess a pistol, pursuant to Section 16‑23‑30, regardless of whether he/she subsequently receives a pardon. SC Op.Atty.Gen. (April 23, 1996) 1996 WL 265802.

Upon successful completion of a pretrial intervention program following an arrest for the offenses of carrying a concealed weapon, carrying a weapon on school property, and impersonating a law enforcement officer, there would not be a conviction which would prevent the weapon involved in these violations from being returned to the individual. Consideration may be given to requiring a defendant entering a PTI program to agree to have any weapon involved in an offense confiscated as a condition to the defendant entering a program. 1988 Op.Atty.Gen., No 88‑78, p 223 (1988 WL 383561).

Circuit judge may impose monetary contributions to public defender fund instead of fine when sentencing defendants for violations of Sections 16‑23‑20 and 16‑23‑30. 1984 Op.Atty.Gen., No 84‑119, p 272 (1984 WL 159926).

Pistols confiscated pursuant to violations of Article I of Title 16 or Article III of Title 23 may be turned over to the City Police for issue within that department. 1978, Op.Atty.Gen., No 78‑21, p 33 (1978 WL 22507).

Section 16‑23‑20(12) provides that persons granted pistol permits by the State Law Enforcement Division may carry such weapons about their persons in the circumstances and under the conditions set forth in their particular permit; section 40‑17‑120 contains the specific requirements which must be met for the issuance of a pistol permit by the State Law Enforcement Division. 1978 Op.Atty.Gen., No 78‑6, p 14 (1978 WL 22494).

The only exception to Section 16‑23‑20 prohibiting the carrying of concealed weapons by anyone other than law enforcement officers is the rule permitting the possession of a pistol in a vehicle if the pistol is secured in a closed glove compartment or in a closed trunk. 1976‑77 Op.Atty.Gen., No 77‑361, p 287 (1977 WL 24699).

The “stun gun” and “bean bag gun” are not illegal, per se; however, they may be considered weapons within the phraseology of other statutes concerning the sale and possession of weapons in certain situations. 1976‑77 Op.Atty.Gen., No 77‑360, p 287 (1977 WL 24698).

Under the provisions of Section 16‑23‑20, Code of Laws of S.C., 1976, it is unlawful for an individual to carry a pistol in a purse, unless specifically authorized by statutory provision or State Law Enforcement Division approval. 1976‑77 Op.Atty.Gen., No 77‑401, p 327 (1977 WL 24737).

The South Carolina Pistol Act does not authorize a person to carry a pistol about his person at his place of employment. 1975‑76 Op.Atty.Gen., No 4535, p 399 (1976 WL 23152).

There is no State law prohibiting a person who has been convicted of a crime of violence from possessing a rifle or shotgun; however, such person may not possess a pistol. 1974‑75 Op.Atty.Gen., No 3926, p 12 (1975 WL 22224).

A regular licensed firearms dealer may sell pistols door to door. 1966‑67 Op.Atty.Gen., No 2214, p 8 (1975 WL 22224).

Unlawful or concealed weapon is on or about the person if it is readily accessible and convenient for immediate use. It need not be actually touching the person of the defendant. [Construing repealed Code 1962 Section 16‑144], 1963‑64 Op.Atty.Gen., No 1704, p 164 (1964 WL 8326).

2. Law enforcement officers

Discussion of whether a Department of Public Safety Special Constable may carry a weapon onto school property. S.C. Op.Atty.Gen. (April 2, 2013) 2013 WL 1695522.

Since Department of Corrections (SCDOC) wardens are engaged in their “official duties” 24 hours a day, seven days a week, they would be authorized as Class 2 law enforcement officers (jailers) to carry SCDOC‑issued firearms at all times. S.C. Op.Atty.Gen. (November 6, 2012) 2012 WL 5705581.

The authority of various university and college law enforcement officers in this State to carry handguns. SC Op.Atty.Gen. (May 12, 2006) 2006 WL 1574908.

The right of a Code Enforcement Officer to be issued and to carry a weapon or pistol. SC Op.Atty.Gen. (April 24, 1997) 1997 WL 255969.

Discussion of whether an off duty law enforcement officer engaging in social activities, may carry a pistol into a business which sells alcoholic beverages, outside his/her jurisdiction. SC Op.Atty.Gen. (August 8, 1996) 1996 WL 549532.

Reserve police officers may not receive compensation for working ballgames or fairs, even if such activities are pursuant to specific orders of chief. Reserve police officers not working pursuant to specific orders of chief will not be functioning as reserve police officers and would not have any law enforcement authority of reserve officers. 1984 Op.Atty.Gen., No 84‑136, p 330 (1984 WL 159942).

A city policeman may lawfully carry his pistol on his person while outside the territorial jurisdiction of the municipality in which he is employed. 1971‑72 Op.Atty.Gen., No 3261, p 58 (1972 WL 20408).

This section [Code 1962 Section 16‑129.1], as amended, permits policemen to carry their service revolvers on their persons between their homes and their duty stations. 1970‑71 Op.Atty.Gen., No 3154, p 115 (1971 WL 17528).

Persons issued special deputy commissions are not empowered to carry firearms. 1966‑67 Op.Atty.Gen., No 2244, p 50 (1967 WL 8560).

3. Private detectives

There is no provision authorizing the granting of a permit to a private detective to carry a pistol at any time. 1964‑65 Op.Atty.Gen., No 1906, p 196 (1965 WL 8063).

Private detectives, licensed by the chief of the South Carolina law enforcement division, are specifically instructed at the time of the issuance of the commission that the carrying of a pistol is prohibited and to so do would justify the suspension of their license. 1962‑63 Op.Atty.Gen., No 1567, p 136, (1963 WL 8317), construing repealed Code 1962 Section 16‑144.

4. Hunters and fishermen

An individual under the age of twenty‑one years possessing a valid hunting or fishing license is not authorized to carry a pistol on his person while going to or from such place of hunting or fishing. 1969‑70 Op.Atty.Gen., No 3060, p 356 (1970 WL 12329).

Pistols may be carried while hunting or fishing. 1969‑70 Op.Atty.Gen., No 2919, p 166 (1970 WL 12201).

It is lawful for a licensed hunter or fisherman to have a pistol in his possession while hunting or fishing but when being carried in any vehicle the pistol must be in a closed trunk or glove compartment. 1968‑69 Op.Atty.Gen., No 2664, p 83 (1969 WL 10666).

This section [Code 1962 Section 16‑129.1] (commonly called the “Gun Law”), in allowing pistols to be carried to and from hunting, does not authorize one to carry pistols into the Wateree Reservoir where such guns are prohibited. 1966‑67 Op.Atty.Gen., No 2311, p 131 (1967 WL 8621).

5. Dealer

Individual regularly engaged in business dealings in firearms would be authorized to carry pistol in ordinary course of his business. Additional permit authorizing such carrying would not be necessary. Op.Atty.Gen. 92‑08 (1992 WL 682792).

NOTES OF DECISIONS

In general 1

Admissibility of evidence 4

Constitutional issues 2

Lesser included offenses 3

1. In general

Section 16‑23‑20 clearly states that it is unlawful to carry a pistol, and the exceptions are not descriptive of the offense. Thus, the State is not required to negate each exception to the offense of unlawfully carrying a pistol to sustain its burden of proof. The statutory exceptions are matters of defense for which a defendant bears the burden of production. State v. Clarke (S.C. 1990) 302 S.C. 423, 396 S.E.2d 827. Weapons 250

One convicted of carrying a pistol could not bring himself within the exception in Section 16‑23‑20(9) relating to pistols “secured in a closed glove compartment or closed trunk” where an F.B.I. agent observed the pistol in the defendant’s briefcase when the defendant opened the briefcase inside his car. State v. Henderson (S.C.App. 1985) 285 S.C. 320, 329 S.E.2d 448.

2. Constitutional issues

Double jeopardy did not bar a prosecution for the unlawful carrying of a pistol after the defendant had been tried for a traffic violation of changing lanes improperly, where a police officer had stopped the defendant’s vehicle and cited him for changing lanes improperly pursuant to Section 56‑5‑1900, and during the stop the officer observed a gun in a holster next to the driver’s seat and the defendant was also charged with unlawfully carrying a pistol pursuant to Section 16‑23‑20, since the offenses share no common elements of proof and did not arise from the same unlawful act. State v. Clarke (S.C. 1990) 302 S.C. 423, 396 S.E.2d 827.

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. Lesser included offenses

Unlawful carrying of pistol was not lesser included offense of possession of firearm or knife during commission of violent crime; defendant could be convicted for possessing firearm or knife during commission of violent crime while lawfully carrying pistol. State v. Kirby (S.C.App. 1996) 325 S.C. 390, 481 S.E.2d 150. Criminal Law 29(15); Indictment And Information 191(.5)

4. Admissibility of evidence

Guilty pleas of other occupants of defendant’s van were not admissible for purpose of establishing that guns and drugs found in defendant’s van did not belong to defendant, in prosecution for possession with intent to distribute crack cocaine, unlawful possession of a pistol, and unlawful carrying of a pistol. State v. Moore (S.C.App. 1999) 337 S.C. 104, 522 S.E.2d 354. Criminal Law 422(2)

**SECTION 16‑23‑30.** Sale or delivery of handgun to and possession by certain persons unlawful; stolen handguns.

 (A) It is unlawful for a person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange, or transport for sale into this State any handgun to:

 (1) a person who has been convicted of a crime of violence in any court of the United States, the several states, commonwealths, territories, possessions, or the District of Columbia or who is a fugitive from justice or a habitual drunkard or a drug addict or who has been adjudicated mentally incompetent;

 (2) a person who is a member of a subversive organization;

 (3) a person under the age of eighteen, but this shall not apply to the issue of handguns to members of the Armed Forces of the United States, active or reserve, National Guard, State Militia, or R. O. T. C., when on duty or training or the temporary loan of handguns for instructions under the immediate supervision of a parent or adult instructor; or

 (4) a person who by order of a circuit judge or county court judge of this State has been adjudged unfit to carry or possess a firearm, such adjudication to be made upon application by any police officer, or by any prosecuting officer of this State, or sua sponte, by the court, but a person who is the subject of such an application is entitled to reasonable notice and a proper hearing prior to any such adjudication.

 (B) It is unlawful for a person enumerated in subsection (A) to possess or acquire handguns within this State.

 (C) A person shall not knowingly buy, sell, transport, pawn, receive, or possess any stolen handgun or one from which the original serial number has been removed or obliterated.

HISTORY: 1962 Code Section 16‑129.2; 1965 (54) 578; 2004 Act No. 294, Section 1, eff August 16, 2004; 2006 Act No. 336, Section 4, eff June 2, 2006; 2008 Act No. 192, Section 1, eff April 2, 2008.

CROSS REFERENCES

Domestic violence, firearms and ammunition prohibitions, penalties, see Section 16‑25‑30.

Library References

Weapons 146 to 157.

Westlaw Topic No. 406.

C.J.S. Weapons Sections 65 to 69.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Probation, Parole, and Pardon Section 30, The Order of Pardon and Its Effect.

Attorney General’s Opinions

Discussion of whether a person with a felony conviction or a CDV conviction may hunt with a muzzleloader. SC Op.Atty.Gen. (March 17, 2008) 2008 WL 903969.

This section could be construed so as to prohibit an individual under the age of twenty‑one from working as an evidence room custodian where the inventory would include handguns or where the individual would have to transport handguns. SC Op.Atty.Gen. (Jan. 4, 2006) 2006 WL 148715.

The crime of attempted housebreaking would not prohibit a person from possessing or purchasing a pistol under sections 23‑31‑140 and 16‑23‑30 of the Code. Convictions of either attempted murder or attempted rape would appear to disqualify a person from purchasing or possessing a handgun. A “Saturday night special” which was legally purchased in another state could not be legally possessed in South Carolina. 1988 Op.Atty.Gen., No 88‑38, p 117 (1988 WL 383521).

Circuit judge may impose monetary contributions to public defender fund instead of fine when sentencing defendants for violations of Sections 16‑23‑20 and 16‑23‑30. 1984 Op.Atty.Gen., No 84‑119, p 272 (1984 WL 159926).

Pistols confiscated pursuant to violations of Article I of Title 16 or Article III of Title 23 may be turned over to the City Police for issue within that department. 1978, Op.Atty.Gen., No 78‑21, p 33 (1978 WL 22507).

Unless exempted by a specific exception as indicated in Section 23‑23‑40, Code of Laws of South Carolina, 1976, a law enforcement officer in a municipality of more than two thousand five hundred persons or which has at least five full‑time police officers must be at least twenty‑one (21) years of age in order to be able to perform the full duties of a law‑enforcement officer; an individual under twenty‑one (21) years of age, eligible by means of a particular exception to become a law enforcement officer, would be prohibited by Section 16‑23‑30, Code of Laws of South Carolina, 1976 from possessing or acquiring a pistol in his capacity as a law enforcement officer. 1978 Op.Atty.Gen., No 78‑92, p 118 (1978 WL 22571).

The Fairfield County Sheriff’s Department may employ a 19‑year old process server and commission him with arrest powers; however, he would be prohibited by his age from being a certified law enforcement officer under Section 23‑23‑50 (B)(7), and he would be prohibited under Section 16‑23‑30 from purchasing a pistol. 1976‑77 Op.Atty.Gen., No 77‑340, p 272 (1977 WL 24679).

An individual under the age of twenty‑one years possessing a valid hunting or fishing license is not authorized to carry a pistol on his person while going to or from such place of hunting or fishing. 1969‑70 Op.Atty.Gen., No 3060, p 356 (1970 WL 12329).

NOTES OF DECISIONS

In general 2

Constitutional issues 3

Validity 1

1. Validity

Statute prohibiting persons under age 21 from possessing handgun violated state constitutional provision guaranteeing defendant right to “be deemed sui juris and endowed with full legal rights and responsibilities, provided that General Assembly may restrict sale of alcoholic beverages to persons until age 21.” State v. Bolin (S.C. 2008) 378 S.C. 96, 662 S.E.2d 38. Weapons 106(4); Weapons 112(2)

Statute prohibiting persons under age 21 from possessing handgun did not violate defendant’s constitutional right to bear arms, in that statute did not restrict defendant’s possession of other types of guns. State v. Bolin (S.C. 2008) 378 S.C. 96, 662 S.E.2d 38. Weapons 106(3); Weapons 112(2)

2. In general

Felony exclusion of accidental death and dismemberment insurance policy applied where insured was 19 years old and shot himself while playing with his own pistol that he was unaware was loaded, and incident occurred in state where possession of pistol by person under age 21 was felony. Simpson v. Safeco Life Insurance Co. (C.A.4 (S.C.) 2002) 26 Fed.Appx. 268, 2002 WL 80651, Unreported. Insurance 2593

Applicant’s right to purchase a firearm was restored when he was pardoned of criminal sexual conduct with a minor. Brunson v. Stewart (S.C.App. 2001) 345 S.C. 283, 547 S.E.2d 504, rehearing denied, certiorari denied. Pardon And Parole 24

3. Constitutional issues

First justification for a search of the passenger compartment of a vehicle incident to the arrest of a recent occupant of the vehicle under Gant v. Arizona, i.e., unsecured arrestee within reaching distance of the passenger compartment at the time of the search, did not apply to a search of the passenger compartment of a vehicle after defendant, who was an vehicle occupant, was arrested for unlawful possession of a handgun with its serial number removed; several police officers had handcuffed defendant and three other vehicle occupants and were closely supervising them while other officers searched the vehicle, and the likelihood of the handcuffed, supervised men reaching the passenger compartment to obtain a weapon or destroy evidence was highly unlikely. 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 71.1(5)

Police officers who had reasonable suspicion that four men in a parked vehicle were involved in an armed robbery had probable cause to arrest the men and search the vehicle when a handgun with its serial number removed became visible on the vehicle’s floorboard once the last man exited the vehicle. 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 63.4(16)

**SECTION 16‑23‑50.** Penalties; disposition of fines; forfeiture and disposition of handguns.

 (A)(1) A person, including a dealer, who violates the provisions of this article, except Section 16‑23‑20, is guilty of a felony and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than five years, or both.

 (2) A person violating the provisions of Section 16‑23‑20 is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

 (B) In addition to the penalty provided in this section, the handgun involved in the violation of this article must be confiscated. The handgun must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated handgun may use it within the agency, transfer it to another law enforcement agency for the lawful use of that agency, trade it with a retail dealer licensed to sell handguns in this State for a handgun or any other equipment approved by the agency, or destroy it. A weapon must not be disposed of in any manner until the results of any legal proceeding in which it may be involved are finally determined. If the State Law Enforcement Division seized the handgun, the division may keep the handgun for use by its forensic laboratory. Records must be kept of all confiscated handguns received by the law enforcement agencies under the provisions of this article.

HISTORY: 1962 Code Section 16‑129.7; 1965 (54) 578; 1975 (59) 582; 1976 Act No. 585; 1986 Act No. 367; 1986 Act No. 532, Section 4; 1988 Act No. 457, Section 1; 1993 Act No. 184, Section 189; 1994 Act No. 497, Part II, Section 36J; 1998 Act No. 297, Section 1; 2004 Act No. 294, Section 1, eff August 16, 2004.

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.

Disposition under this section of weapons seized from violators of shellfishing laws, see Section 44‑1‑151.

Library References

Weapons 340 to 344, 350 to 352.

Westlaw Topic No. 406.

C.J.S. Weapons Sections 70 to 71.

Attorney General’s Opinions

This section does not authorize a law enforcement agency to dispose of confiscated handguns by transferring them to a licensed auctioneer holding a federal firearm license to sell handguns regardless of how the proceeds are used. S.C. Op.Atty.Gen. (August 27, 2015) 2015 WL 5254330.

Discussion of whether the Sheriff’s Department, Clerk of Court, and County Administrator can enter into an agreement whereby the Sheriff’s Department sells confiscated weapons to a retail gun dealer with the proceeds being used to purchase equipment and supplies for the Sheriff’s Department. SC Op.Atty.Gen. (March 31, 1997) 1997 WL 208045.

How best to dispose of weapons which have been previously confiscated for various offenses that occur within the unincorporated areas of Horry County. SC Op.Atty.Gen. (June 13, 1995) 1995 WL 803680.

Procedure to dispose of confiscated or forfeited weapons by police department, which would permit licensed firearms dealer to bid on such weapons or offer weapons and equipment in trade for use within department, is inconsistent with certain state statutes, and should not be followed where in conflict with State law. 1985 Op.Atty.Gen., No 85‑112, p 313 (1985 WL 166081).

Circuit judge may impose monetary contributions to public defender fund instead of fine when sentencing defendants for violations of Sections 16‑23‑20 and 16‑23‑30. 1984 Op.Atty.Gen., No 84‑119, p 272 (1984 WL 159926).

Pistols confiscated pursuant to violations of Article I of Title 16 or Article III of Title 23 may be turned over to the City Police for issue within that department. 1978, Op.Atty.Gen., No 78‑21, p 33 (1978 WL 22507).

In the absence of authority by way of statute or by charter empowering a municipality to forfeit concealed weapons, it cannot be done. [Construing repealed Code 1962 Section 16‑144] 1962‑63 Op.Atty.Gen., No 1584, p 156 (1963 WL 8331).

Under repealed code 1962 Section 16‑144, a pistol carried and not concealed was not forfeited but was returnable to the owner when its use as evidence had been fulfilled. 1962‑63 Op.Atty.Gen., No 1567, p 136 (1963 WL 8317).

NOTES OF DECISIONS

In general 1

Insurance 2

Review 3

1. In general

Order directing clerk of court to supervise destruction of weapons that were confiscated in connection with criminal prosecutions was ambiguous and contradictory, and thus clerk could not be criminally convicted of contempt of court for failure to comply with order, where on one hand, it ordered clerk to destroy certain weapons, but on other hand, it ordered clerk to comply with statutes that required him to conduct public auction of items. County of Greenville v. Mann (S.C. 2001) 347 S.C. 427, 556 S.E.2d 383. Contempt 20

Circuit court did not have authority to order court clerk to supervise destruction of weapons that were confiscated in connection with criminal prosecutions, and thus clerk could not be criminally convicted of contempt for failing to comply with such illegal order, given that there were very specific statutes that dealt with disposal of confiscated weapons, and by those statutes, legislature did not give clerk, sheriff, or anyone else authority to destroy weapons without first attempting to auction them. County of Greenville v. Mann (S.C. 2001) 347 S.C. 427, 556 S.E.2d 383. Contempt 21

2. Insurance

Felony exclusion of accidental death and dismemberment insurance policy applied where insured was 19 years old and shot himself while playing with his own pistol that he was unaware was loaded, and incident occurred in state where possession of pistol by person under age 21 was felony. Simpson v. Safeco Life Insurance Co. (C.A.4 (S.C.) 2002) 26 Fed.Appx. 268, 2002 WL 80651, Unreported. Insurance 2593

3. Review

Appellate court would apply statutes governing disposition of weapons and ammunitions that were confiscated in connection with criminal prosecutions as they existed at time that circuit court issued order directing clerk of court to supervise destruction of such weapons, on appeal of order finding clerk in contempt of court for failure to timely supervise destruction pursuant to order, even though statutes were subsequently amended or repealed. County of Greenville v. Mann (S.C. 2001) 347 S.C. 427, 556 S.E.2d 383. Contempt 66(7)

**SECTION 16‑23‑55.** Procedure for returning found handgun.

 (A) A handgun that is found and turned over to a law enforcement agency must be held for a period of ninety days. During that period, the agency shall make a diligent effort to determine:

 (1) if the handgun is stolen;

 (2) if the handgun has been used in the commission of a crime; and (3) the true owner of the handgun.

 (B) At least twice during the ninety‑day holding period, the agency shall advertise the handgun with its full description in a newspaper having general circulation in the county where the handgun was found.

 (C) After the ninety days have elapsed from publication of the first advertisement, and upon request of the individual who found and turned over the handgun, the agency shall return the handgun to this person if the individual fully completes the application process as described in Section 23‑31‑140 and in federal law, and pays all advertising and other costs incidental to returning the handgun. No handgun may be returned until the individual fully completes the application.

 (D) Upon proper completion of the application, the law enforcement agency shall provide copies of the application in compliance with Section 23‑31‑140.

HISTORY: 1989 Act No. 172, Section 1; 2004 Act No. 294, Section 1, eff August 16, 2004.

Editor’s Note

Section 23‑31‑140, referenced in subsections (C) and (D), was repealed by 2012 Act No. 285.

Library References

Weapons 350 to 352.

Westlaw Topic No. 406.

C.J.S. Weapons Sections 70 to 71.

Attorney General’s Opinions

A county sheriff’s office may return a firearm to an individual who found the firearm after it has been determined that the firearm was not stolen and the person can legally possess the firearm. SC Op.Atty.Gen. (August 10, 2009) 2009 WL 2844868.

**SECTION 16‑23‑60.** Construction.

 Provisions of this article must not be construed to grant any additional police powers not authorized by law, and do not in any manner affect the powers of constables commissioned by the Governor.

HISTORY: 1962 Code Section 16‑129.8; 1974 (58) 2871; 2004 Act No. 294, Section 1, eff August 16, 2004.

Library References

Weapons 107.

Westlaw Topic No. 406.

C.J.S. Weapons Sections 1 to 4, 7 to 11, 14 to 18.

ARTICLE 3

Machine Guns, Sawed‑off Shotguns and Rifles

**SECTION 16‑23‑210.** Definitions.

 When used in this article:

 (a) “Machine gun” applies to and includes any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any combination or parts designed and intended for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

 (b) “Sawed‑off shotgun” means a shotgun having a barrel or barrels of less than eighteen inches in length or a weapon made from a shotgun which as modified has an overall length of less than twenty‑six inches or a barrel or barrels of less than eighteen inches in length.

 (c) “Shotgun” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each pull of the trigger. The term includes any such weapon which may be readily restored to fire a fixed shotgun shell but does not include an antique firearm as defined in this section.

 (d) “Sawed‑off rifle” means a rifle having a barrel or barrels of less than sixteen inches in length or a weapon made from a rifle which as modified has an overall length of less than twenty‑six inches or a barrel or barrels of less than sixteen inches in length.

 (e) “Rifle” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger. The term includes any such weapon which may be readily restored to fire a fixed cartridge but does not include an antique firearm as described in this section.

 (f) “Antique firearm” means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

 (g) “Military firearm” means any military weapon, firearm, or destructive device, other than a machine gun, that is manufactured for military use by a firm licensed by the federal government pursuant to a contract with the federal government and does not include a pistol, rifle, or shotgun which fires only one shot for each pull of the trigger.

HISTORY: 1962 Code Section 16‑121; 1952 Code Section 16‑121; 1942 Code Section 1258‑1; 1934 (38) 1288; 1975 (59) 135; 1990 Act No. 564, Section 1; 1999 Act No. 71, Section 1.

Attorney General’s Opinions

The “stun gun” and “bean bag gun” are not illegal, per se; however, they may be considered weapons within the phraseology of other statutes concerning the sale and possession of weapons in certain situations. 1976‑77 Op.Atty.Gen., No 77‑360, p 287 (1977 WL 24698).

**SECTION 16‑23‑220.** Unlawful transportation of machine gun, military firearm, or sawed‑off shotgun or rifle within State.

 It is unlawful for a person to transport from one place to another in this State or for any railroad company, express company, or other common carrier or any officer, agent, or employee of any of them or other person acting in their behalf knowingly to ship or to transport from one place to another in this State a machine gun or firearm commonly known as a machine gun, military firearm, sawed‑off shotgun, or sawed‑off rifle, except as provided in Sections 16‑23‑250 and 23‑31‑330.

 A person who violates the provisions of this section, upon conviction, must be punished pursuant to Section 16‑23‑260.

HISTORY: 1962 Code Section 16‑122; 1952 Code Section 16‑122; 1942 Code Section 1258‑1; 1934 (38) 1288; 1975 (59) 135; 1990 Act No. 564, Section 1; 1993 Act No. 184, Section 42.

Library References

Weapons 112, 151.

Westlaw Topic No. 406.

C.J.S. Weapons Sections 1 to 5, 9 to 11, 32, 69.

**SECTION 16‑23‑230.** Unlawful storing, keeping, or possessing of machine gun, military firearm, or sawed‑off shotgun or rifle.

 It is unlawful for a person to store, keep, possess, or have in possession or permit another to store, keep, possess, or have in possession a machine gun or firearm commonly known as a machine gun, military firearm, sawed‑off shotgun, or sawed‑off rifle, except as provided in Sections 16‑23‑250 and 23‑31‑330.

 A person who violates the provisions of this section, upon conviction, must be punished pursuant to Section 16‑23‑260.

HISTORY: 1962 Code Section 16‑123; 1952 Code Section 16‑123; 1942 Code Section 1258‑1; 1934 (38) 1288; 1975 (59) 135; 1990 Act No. 564, Section 1; 1993 Act No. 184, Section 43.

CROSS REFERENCES

Regulation of ownership of machine guns, sawed‑off shotguns, and rifles, see Section 23‑31‑310 et seq.

Library References

Weapons 112, 160 to 184.

Westlaw Topic No. 406.

C.J.S. Weapons Sections 1 to 5, 9 to 11, 24 to 32, 37, 40 to 50, 56.

**SECTION 16‑23‑240.** Unlawful sale, rental, or giving away of machine gun, military firearm, or sawed‑off shotgun or rifle; exceptions.

 It is unlawful for a person to sell, rent, give away, or participate in any manner, directly or indirectly, in the sale, renting, giving away, or otherwise disposing of a machine gun, or firearm commonly known as a machine gun, military firearm, sawed‑off shotgun, or sawed‑off rifle, except as provided in Sections 16‑23‑250 and 23‑31‑330.

 A person who violates the provisions of this section, upon conviction, must be punished pursuant to Section 16‑23‑260.

HISTORY: 1962 Code Section 16‑124; 1952 Code Section 16‑124; 1942 Code Section 1258‑1; 1934 (38) 1288; 1975 (59) 135; 1990 Act No. 564, Section 1; 1993 Act No. 184, Section 44.

Library References

Weapons 112, 148.

Westlaw Topic No. 406.

C.J.S. Weapons Sections 1 to 5, 9 to 11, 32.

**SECTION 16‑23‑250.** Exceptions to application of article.

 The provisions of this article do not apply to the Army, Navy, or Air Force of the United States, the National Guard, and organizations authorized by law to purchase or receive machine guns, military firearms, or sawed‑off shotguns or sawed‑off rifles, from the United States or from this State and the members of these organizations. Any peace officer of the State or of a county or other political subdivision, state constable, member of the highway patrol, railway policeman or warden, superintendent, head keeper or deputy of a state prison, correction facility, workhouse, county jail, city jail, or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases or persons on duty in the postal service of the United States or a common carrier while transporting direct to a police department, military, or naval organization or person authorized by law to possess or use a machine gun, or sawed‑off shotgun, or sawed‑off rifle, may possess machine guns, or sawed‑off shotguns, or sawed‑off rifles, when required in the performance of their duties. The provisions of this section must not be construed to apply to machine guns, or sawed‑off shotguns, or sawed‑off rifles kept for display as relics and which are rendered harmless and not usable.

 The provisions of this article do not apply to any manufacturer of machine guns or military firearms licensed pursuant to the provisions of 18 U. S. C. Section 921 et seq., any person authorized to possess these weapons by the United States Department of the Treasury, the Bureau of Alcohol, Tobacco and Firearms, or any other federal agency empowered to grant this authorization, any common or contract carrier transporting or shipping any machine gun or military firearm to or from the manufacturer if the transportation or shipment is not prohibited by federal law, or persons licensed pursuant to Section 23‑31‑370.

HISTORY: 1962 Code Section 16‑125; 1952 Code Section 16‑125; 1942 Code Section 1258‑1; 1934 (38) 1288; 1975 (59) 135; 1978 Act No. 541 Section 3; 1986 Act No. 532, Section 1; 1990 Act No. 564, Section 1; 2001 Act No. 106, Section 1.

Library References

Weapons 156.

Westlaw Topic No. 406.

Attorney General’s Opinions

Discussion of whether the text added in 2001 applies only to machine guns and military firearms or whether it also applies to sawed‑off shotguns and rifles. SC Op.Atty.Gen. (Feb. 28, 2002) 2002 WL 399642.

The “stun gun” and “bean bag gun” are not illegal, per se; however, they may be considered weapons within the phraseology of other statutes concerning the sale and possession of weapons in certain situations. 1976‑77 Op.Atty.Gen., No 77‑360, p 287 (1977 WL 24698).

**SECTION 16‑23‑260.** Penalties.

 A person violating the provisions of this article is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

HISTORY: 1962 Code Section 16‑127; 1952 Code Section 16‑127; 1942 Code Section 1258‑1; 1990 Act No. 564, Section 1; 1993 Act No. 184, Section 45.

Library References

Weapons 340 to 344.

Westlaw Topic No. 406.

**SECTION 16‑23‑270.** Article not applicable to antique firearms.

 The provisions of this article shall not apply to antique firearms.

HISTORY: 1975 (59) 135; 1990 Act No. 564, Section 1.

Library References

Weapons 112, 199.

Westlaw Topic No. 406.

C.J.S. Weapons Sections 1 to 5, 9 to 11, 32, 53.

**SECTION 16‑23‑280.** Manufacture and sale of machine guns by licensed manufacturer.

 Notwithstanding the provisions of this article, machine guns or military firearms manufactured by a firm licensed by the federal government and subject to the Federal Gun Control Act may be legally manufactured, transported, possessed, and sold within the State by the manufacturer thereof.

HISTORY: 1978 Act No. 541 Section 1; 1990 Act No. 564, Section 1.

Library References

Weapons 156.

Westlaw Topic No. 406.

ARTICLE 5

Miscellaneous Offenses

**SECTION 16‑23‑405.** Definition of “weapon”; confiscation and disposition of weapons used in commission or in furtherance of crime.

 (A) Except for the provisions relating to rifles and shotguns in Section 16‑23‑460, as used in this chapter, “weapon” means firearm (rifle, shotgun, pistol, or similar device that propels a projectile through the energy of an explosive), a blackjack, a metal pipe or pole, or any other type of device, or object which may be used to inflict bodily injury or death.

 (B) A person convicted of a crime, in addition to a penalty, shall have a weapon used in the commission or in furtherance of the crime confiscated. Each weapon must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated weapon may use it within the agency, transfer it to another law enforcement agency for the lawful use of that agency, trade it with a retail dealer licensed to sell pistols in this State for a pistol or other equipment approved by the agency, or destroy it. A weapon may not be disposed of until the results of all legal proceedings in which it may be involved are finally determined. A firearm seized by the State Law Enforcement Division may be kept by the division for use by its forensic laboratory.

HISTORY: 1986 Act No. 532, Section 5; 1998 Act No. 297, Section 2; 2008 Act No. 337, Section 1, eff June 25, 2008.

Library References

Weapons 109.

Westlaw Topic No. 406.

C.J.S. Weapons Sections 1 to 6, 9 to 11, 32 to 35.

Attorney General’s Opinions

Discussion of whether the Sheriff’s Department, Clerk of Court and County Administrator can enter into an agreement whereby the Sheriff’s Department sells confiscated weapons to a retail gun dealer with the proceeds being used to purchase equipment and supplies for the Sheriff’s Department. SC Op.Atty.Gen. (March 31, 1997) 1997 WL 208045.

NOTES OF DECISIONS

In general 1

Review 2

1. In general

Order directing clerk of court to supervise destruction of weapons that were confiscated in connection with criminal prosecutions was ambiguous and contradictory, and thus clerk could not be criminally convicted of contempt of court for failure to comply with order, where on one hand, it ordered clerk to destroy certain weapons, but on other hand, it ordered clerk to comply with statutes that required him to conduct public auction of items. County of Greenville v. Mann (S.C. 2001) 347 S.C. 427, 556 S.E.2d 383. Contempt 20

Circuit court did not have authority to order court clerk to supervise destruction of weapons that were confiscated in connection with criminal prosecutions, and thus clerk could not be criminally convicted of contempt for failing to comply with such illegal order, given that there were very specific statutes that dealt with disposal of confiscated weapons, and by those statutes, legislature did not give clerk, sheriff, or anyone else authority to destroy weapons without first attempting to auction them. County of Greenville v. Mann (S.C. 2001) 347 S.C. 427, 556 S.E.2d 383. Contempt 21

2. Review

Appellate court would apply statutes governing disposition of weapons and ammunitions that were confiscated in connection with criminal prosecutions as they existed at time that circuit court issued order directing clerk of court to supervise destruction of such weapons, on appeal of order finding clerk in contempt of court for failure to timely supervise destruction pursuant to order, even though statutes were subsequently amended or repealed. County of Greenville v. Mann (S.C. 2001) 347 S.C. 427, 556 S.E.2d 383. Contempt 66(7)

**SECTION 16‑23‑410.** Pointing firearm at another person.

 It is unlawful for a person to present or point at another person a loaded or unloaded firearm.

 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. This section must not be construed to abridge the right of self‑defense or to apply to theatricals or like performances.

HISTORY: 1962 Code Section 16‑141; 1952 Code Section 16‑141; 1942 Code Section 1119; 1932 Code Section 1119; Cr. C. ‘22 Section 17; Cr. C. ‘12 Section 162; 1910 (26) 694; 1993 Act No. 184, Section 46.

Library References

Weapons 187, 342.

Westlaw Topic No. 406.

C.J.S. Weapons Sections 57 to 61.

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

26 Am. Jur. Trials 327, Representation of an Alien in Exclusion, Rescission and Deportation Hearings.

S.C. Jur. Children and Families Section 108, Adjudicatory Hearing.

Attorney General’s Opinions

Discussion of whether weapons may be fired in subdivisions. SC Op.Atty.Gen. (Dec. 22, 2005) 2005 WL 3689158.

Offense of pointing firearm is not crime of moral turpitude. 1991 Op.Atty.Gen., No 91‑11, p 43 (1991 WL 474741).

NOTES OF DECISIONS

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1. In general

State must offer direct or circumstantial evidence that a person specifically intended to present a firearm at someone before a conviction may be sustained for presenting a firearm. In re Spencer R. (S.C.App. 2010) 387 S.C. 517, 692 S.E.2d 569. Weapons 292

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

In proceeding before court where there was conflicting testimony as to alleged violation of firearm statute, it was for the trial judge to determine this issue of fact. State v. Wharton (S.C. 1975) 263 S.C. 437, 211 S.E.2d 237.

2. Constitutional issues

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)

3. Elements of offense

Phrase “to present” within statute governing crime of presenting a firearm means to offer to view in a threatening manner, or to show in a threatening manner. In re Spencer R. (S.C.App. 2010) 387 S.C. 517, 692 S.E.2d 569. Weapons 187

Elements of presenting a firearm are: (1) presenting, (2) a loaded or unloaded firearm, (3) at another. In re Spencer R. (S.C.App. 2010) 387 S.C. 517, 692 S.E.2d 569. Weapons 187

The offenses of pointing and presenting a firearm and assault with intent to kill legally constitute separate and distinct offenses. The elements which the State must prove to justify a conviction of the charge of pointing a firearm under Section 16‑23‑410 are (1) a pointing or presenting; (2) a loaded or unloaded firearm; and (3) at another. On the other hand, the elements which constitute the common law offense of assault with intent to kill are (1) an unlawful attempt; (2) to commit a violent injury; (3) to the person of another; (4) with malicious intent; and (5) accompanied by the present ability to complete the act. Thus, a defendant’s double jeopardy rights were not violated by convictions on both of these charges arising from the same event. However, the imposition of cumulative sentences was improper where there was no factual distinction between the offenses charged in that the sole factual basis for both charges was that the defendant pointed and fired a firearm at the victim. State v. Walsh (S.C. 1988) 300 S.C. 427, 388 S.E.2d 777.

4. Defenses

To establish self‑defense, four elements must be present: (1) defendant must be without fault in bringing on the difficulty; (2) defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, (3) if his defense is based upon his belief of imminent danger, defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained belief that he was actually in imminent danger and that circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life, and (4) defendant had no other probable means of avoiding the danger. State v. Slater (S.C. 2007) 373 S.C. 66, 644 S.E.2d 50. Homicide 774; Homicide 787; Homicide 799

5. Lesser included offenses

Pointing and presenting a firearm is not a lesser included offense of assault with intent to kill and therefore the conviction; assault with intent to kill does not require the use of a firearm, and pointing and presenting a firearm has not traditionally been considered a lesser included offense of assault with intent to kill. State v. Burton (S.C. 2003) 356 S.C. 259, 589 S.E.2d 6, rehearing denied. Indictment And Information 191(.5)

6. Indictments

Amendment to indictment for pointing firearm at police officer, which replaced charge regarding original police officer with another officer, substituted different charge from charge presented to grand jury and divested circuit court of subject matter jurisdiction to try defendant for pointing firearm; statute indicated crime involved pointing firearm against one person, and although defendant originally could have been charged with two counts of crime, he was not. State v. Bryson (S.C.App. 2003) 357 S.C. 106, 591 S.E.2d 637, rehearing denied. Criminal Law 102

7. Admissibility of evidence

A defendant on trial for pointing and presenting a firearm in violation of Section 16‑23‑410 was not entitled to the suppression of testimony regarding his threats against the Wildlife Officer at whom he pointed his firearm, despite the state’s failure to respond to a Rule 5, SCRCrimP, discovery request allegedly served by the defendant, since the defendant was given the opportunity to view and copy the state’s file on the matter, yet he never requested a continuance or recess in order to do so. State v. Davis (S.C.App. 1992) 309 S.C. 56, 419 S.E.2d 820.

The trial court did not err in allowing testimony concerning prior altercations involving the defendant, who was on trial for pointing and presenting a firearm in violation of Section 16‑23‑410, where the testimony concerned complaints received by Wildlife Officers about the harassment of others in the area of the defendant’s arrest, and the testimony was admitted as background information as to why the officers were in the area. State v. Davis (S.C.App. 1992) 309 S.C. 56, 419 S.E.2d 820.

A defendant on trial for pointing and presenting a firearm in violation of Section 16‑23‑410 was properly cross‑examined regarding prior instances of pointing his firearm at others where he had denied pointing his rifle at the Wildlife Officer in the incident charged and thus the questions were relevant and proper for impeachment; moreover, since the defendant denied each instance, no prejudice to him resulted. State v. Davis (S.C.App. 1992) 309 S.C. 56, 419 S.E.2d 820.

8. Questions for jury

Whether defendant was guilty of pointing shotgun during commission of robbery based on his orchestration of robbery was question for jury, in prosecution for pointing a firearm. State v. Jennings (S.C.App. 1999) 335 S.C. 82, 515 S.E.2d 107. Weapons 306

A defendant on trial for pointing and presenting a firearm in violation of Section 16‑23‑410 was not entitled to a directed verdict based on self‑defense where it was undisputed that he approached a Wildlife Officer’s unmarked truck on a public road with his rifle in his hand, and the officer testified that the defendant then shouldered the gun and ordered him to stop under threat of death. State v. Davis (S.C.App. 1992) 309 S.C. 56, 419 S.E.2d 820.

9. Instructions

Trial court acted within its discretion in sending written copy of entire charge to jury during its deliberation, despite jury’s note requesting only “a copy printout of the statute of the three charges” of lynching, pointing and presenting a firearm, and conspiracy, where court had already re‑charged jury orally on the law of the three charged offenses in response to jury’s earlier note requesting clarification on such law. State v. Lemire (S.C.App. 2013) 406 S.C. 558, 753 S.E.2d 247, rehearing denied, certiorari denied. Criminal Law 863(2)

Evidence did not support instruction on self‑defense, in murder prosecution; defendant approached an altercation that was already underway with a loaded weapon by his side, which activity could be reasonably calculated to bring about difficulty that arose, defendant acted in violation of the law by carrying a weapon, and defendant’s unlawful possession of the weapon was the proximate cause of the homicide, in that he carried cocked weapon, in open view, into an already violent attack in which he had no prior involvement. State v. Slater (S.C. 2007) 373 S.C. 66, 644 S.E.2d 50. Homicide 776; Homicide 780

The trial court did not err in refusing to charge Section 50‑3‑130, relating to the requirement that Wildlife Officers be attired in uniform while on duty, in a prosecution for pointing and presenting a firearm in violation of Section 16‑23‑410 against a Wildlife Officer patrolling a rural road in an unmarked truck, since the state of the officer’s dress was immaterial to whether the defendant was guilty of the crime of pointing and presenting a firearm. State v. Davis (S.C.App. 1992) 309 S.C. 56, 419 S.E.2d 820.

10. Sufficiency of evidence

Evidence was insufficient to support adjudication of delinquency for crime of presenting a firearm, as to friend of victim and victim’s mother; no testimony proved juvenile intended to specifically threaten victim’s friend and mother when juvenile was sitting on his property near school bus stop with gun, and victim’s mother admitted juvenile did not even turn towards her or see her when she initially observed juvenile holding his assault rifle. In re Spencer R. (S.C.App. 2010) 387 S.C. 517, 692 S.E.2d 569. Infants 2640(11)

Evidence was sufficient to support juvenile’s adjudication of delinquency for crime of presenting a firearm; although juvenile did not wave or point assault rifle directly at victim, school had suspended juvenile for three days after altercation occurred between juvenile and one of victim’s friends, juvenile sat in view of school bus stop for extended period of time while displaying his assault rifle, and witnesses testified that juvenile said he wanted to shoot victim. In re Spencer R. (S.C.App. 2010) 387 S.C. 517, 692 S.E.2d 569. Infants 2640(11)

11. Sentence and punishment

South Carolina statute prohibiting pointing and presenting firearm required that offender point, present, or show firearm at another in threatening manner, and thus defendant’s prior South Carolina conviction for pointing and presenting firearm was “crime of violence” supporting career offender enhancement under Sentencing Guidelines. U.S. v. King (C.A.4 (S.C.) 2012) 673 F.3d 274, certiorari denied 133 S.Ct. 216, 568 U.S. 862, 184 L.Ed.2d 111. Sentencing and Punishment 1285

Defendant’s prior South Carolina convictions for pointing a firearm at another were crimes of violence that could serve as predicate offenses supporting career offender status during sentencing for possession of firearm by convicted felon, where South Carolina statute criminalized pointing or presenting a loaded or unloaded firearm at another person. U.S. v. Asar (C.A.4 (S.C.) 2012) 480 Fed.Appx. 207, 2012 WL 1593034, Unreported, post‑conviction relief denied 2012 WL 4809145, appeal dismissed 516 Fed.Appx. 256, 2013 WL 1287403, certiorari denied 133 S.Ct. 2870, 186 L.Ed.2d 921. Sentencing and Punishment 1285

12. Reversible error

Any error in trial court’s provision of written copy of entire charge to jury during its deliberation was not prejudicial to defendant and thus did not constitute reversible error with respect to convictions for lynching, pointing and presenting a firearm; court demonstrated cautious exercise of discretion in sending written charge to jury room only when it became clear that jury was still unable to reach verdict despite having been orally re‑charged on the law of the three charged offenses. State v. Lemire (S.C.App. 2013) 406 S.C. 558, 753 S.E.2d 247, rehearing denied, certiorari denied. Criminal Law 1172.1(5)

Any error in trial court’s failure to pair its mid‑deliberation provision of one written copy of entire jury charge to foreperson for delivery to jury room with instruction that jurors were to refrain from “picking and choosing” from entire charge was not prejudicial and thus did not constitute reversible error with respect to convictions for lynching, pointing and presenting a firearm; although jury reached a unanimous verdict on all three charges less than two hours after foreperson returned to jury room with written charge, juror neglect of portions of entire written charge was but one speculative explanation of many for any brevity of deliberation, in light of variety of factors that could have influenced length of deliberation. State v. Lemire (S.C.App. 2013) 406 S.C. 558, 753 S.E.2d 247, rehearing denied, certiorari denied. Criminal Law 1172.1(5)

Any error in trial court’s decisions to supply jury with only one written copy of entire charge and to supply that copy solely to foreperson for delivery to jury room was not prejudicial and thus did not constitute reversible error with respect to convictions for lynching, pointing and presenting a firearm, and conspiracy; although less than one hour after foreperson returned to jury room with written charge jury sent out note that it had “[r]eached a verdict on three charges, deadlocked on the remaining,” co‑defendant was on trial for same three charges as defendant, and jury confusion caused by written charge was but one speculative explanation of many for note’s wording. State v. Lemire (S.C.App. 2013) 406 S.C. 558, 753 S.E.2d 247, rehearing denied, certiorari denied. Criminal Law 1172.1(5)

If there is any evidence in the record from which it could reasonably be inferred that defendant acted in self‑defense, he is entitled to instructions on the defense, and the trial judge’s refusal to do so is reversible error. State v. Slater (S.C. 2007) 373 S.C. 66, 644 S.E.2d 50. Criminal Law 1173.2(3); Homicide 1473

13. Review

Defendant failed to preserve for appeal the argument that he was entitled to directed verdicts on charges of lynching and conspiracy, where at trial only co‑defendant moved for directed verdicts on such charges, and defendant neither requested to join in co‑defendant’s motion nor moved for similar relief. State v. Lemire (S.C.App. 2013) 406 S.C. 558, 753 S.E.2d 247, rehearing denied, certiorari denied. Criminal Law 1044.1(7); Criminal Law 1044.2(1)

**SECTION 16‑23‑415.** Taking firearm or other weapon from law enforcement officer.

 An individual who takes a firearm, stun gun, or taser device from the person of a law enforcement officer or a corrections officer is guilty of a felony and, upon conviction, must be imprisoned for not more than five years, or fined not more than five thousand dollars, or both, if all of the following circumstances exist at the time the firearm is taken:

 (1) the individual knows or has reason to believe the person from whom the weapon is taken is a law enforcement officer or a corrections officer;

 (2) the law enforcement officer or corrections officer is performing his duties as a law enforcement officer or a corrections officer, or the individual’s taking of the weapon is directly related to the law enforcement officer’s or corrections officer’s professional responsibilities;

 (3) the individual takes the weapon without consent of the law enforcement officer or corrections officer;

 (4) the law enforcement officer is authorized by his employer to carry the weapon in the line of duty; and

 (5) the law enforcement officer or corrections officer is authorized by his employer to carry the weapon while off duty and has identified himself as a law enforcement officer.

HISTORY: 2006 Act No. 379, Section 3, eff June 9, 2006.

Library References

Obstructing Justice 117, 176.

Weapons 162, 342.

Westlaw Topic Nos. 282, 406.

C.J.S. Escape and Related Offenses; Rescue Section 32.

C.J.S. Obstructing Justice or Governmental Administration Sections 11 to 19, 22 to 34, 36 to 66, 73 to 74, 80, 85 to 89, 93 to 94.

C.J.S. Weapons Sections 24 to 31, 41 to 50.

**SECTION 16‑23‑420.** Possession of firearm on school property; concealed weapons.

 (A) It is unlawful for a person to possess a firearm of any kind on any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, other post‑secondary institution, or in any publicly owned building, without the express permission of the authorities in charge of the premises or property. The provisions of this subsection related to any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, or other post‑secondary institution, do not apply to a person who is authorized to carry a concealed weapon pursuant to Article 4, Chapter 31, Title 23 when the weapon remains inside an attended or locked motor vehicle and is secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle.

 (B) It is unlawful for a person to enter the premises or property described in subsection (A) and to display, brandish, or threaten others with a firearm.

 (C) 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.

 (D) This section does not apply to a guard, law enforcement officer, or member of the armed forces, or student of military science. A married student residing in an apartment provided by the private or public school whose presence with a weapon in or around a particular building is authorized by persons legally responsible for the security of the buildings is also exempted from the provisions of this section.

 (E) For purposes of this section, the terms “premises” and “property” do not include state or locally owned or maintained roads, streets, or rights‑of‑way of them, running through or adjacent to premises or property owned, operated, or controlled by a private or public school, college, university, technical college, or other post‑secondary institution, which are open full time to public vehicular traffic.

 (F) This section does not apply to a person who is authorized to carry concealed weapons pursuant to Article 4, Chapter 31 of Title 23 when upon any premises, property, or building that is part of an interstate highway rest area facility.

HISTORY: 1962 Code Section 16‑141.1; 1969 (56) 319; 1993 Act No. 184, Section 47; 1996 Act No. 464, Section 6; 2002 Act No. 274, Section 1, eff May 28, 2002; 2004 Act No. 294, Section 3, eff August 16, 2004; 2009 Act No. 32, Section 2, eff June 2, 2009.

Library References

Weapons 162, 342.

Westlaw Topic No. 406.

C.J.S. Weapons Sections 24 to 31, 41 to 50.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Colleges and Universities Section 22, Discipline Matters.

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

Attorney General’s Opinions

Only if express permission is given by relevant authorities may a person with a concealed weapons permit, including municipal employees, carry a firearm of any kind in a publicly owned building. The Legislature has expressly preempted any local regulation dealing with the carrying of concealable weapons, and any attempt to regulate this area through a municipal ordinance is not authorized and would be deemed invalid by a court. S.C. Op.Atty.Gen. (April 2, 2012) 2012 WL 1260182.

Off‑duty police officers and reserve officers are allowed to carry weapons on school property. SC Op.Atty.Gen. (June 4, 2007) 2007 WL 1934797.

The possession of firearms on Francis Marion University property. SC Op.Atty.Gen. (April 1, 2005) 2005 WL 1024597.

How the new concealable weapons law affects the state’s college campuses. SC Op.Atty.Gen. (Sept. 20, 1996) 1996 WL 599441.

NOTES OF DECISIONS

Constitutional issues 1

Questions for jury 2

1. Constitutional issues

Search of defendant was reasonable and violated none of his constitutional rights where search was conducted in courtroom, at direction and in presence of trial judge just prior to civil hearing in which defendant was litigant, the judge acting to preserve safety of those participating in court proceedings and pursuant to reliable information that defendant carried weapon and had previously made threats against an attorney and a neighbor. State v. Shelton (S.C. 1978) 270 S.C. 577, 243 S.E.2d 455.

2. Questions for jury

Defendant was not entitled to directed verdict by reason of failure of state to offer evidence to show his conduct did not fall within one of exceptions to Section 16‑23‑420 where record shows defendant was in courtroom to respond to civil process which, as matter of law, did not authorize him to bring pistol with him. State v. Shelton (S.C. 1978) 270 S.C. 577, 243 S.E.2d 455.

**SECTION 16‑23‑430.** Carrying weapon on school property; concealed weapons.

 (A) It shall be unlawful for any person, except state, county, or municipal law enforcement officers or personnel authorized by school officials, to carry on his person, while on any elementary or secondary school property, a knife, with a blade over two inches long, a blackjack, a metal pipe or pole, firearms, or any other type of weapon, device, or object which may be used to inflict bodily injury or death.

 (B) This section does not apply to a person who is authorized to carry a concealed weapon pursuant to Article 4, Chapter 31, Title 23 when the weapon remains inside an attended or locked motor vehicle and is secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle.

 (C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than five years, or both. Any weapon or object used in violation of this section may be confiscated by the law enforcement division making the arrest.

HISTORY: 1962 Code Section 16‑141.2; 1971 (57) 535; 1990 Act No. 579, Section 1; 1993 Act No. 184, Section 48; 2009 Act No. 32, Section 1, eff June 2, 2009.

Editor’s Note

1990 Act No. 579, Section 7, eff June 12, 1990, provides as follows:

“SECTION 7. This act may be cited as the ‘Safe Schools Act of 1990’.”

Library References

Weapons 171, 342.

Westlaw Topic No. 406.

C.J.S. Weapons Sections 37, 40.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 102, Transfer of Jurisdiction.

Attorney General’s Opinions

The Georgetown County School Board policy that prohibits concealed weapon permit holders from entering or parking on school property with a weapon locked securely in the trunk or glove box of their attended or locked motor vehicle is inconsistent with and preempted by Section 16‑23‑430. SC Op.Atty.Gen. (Dec. 15, 2009) 2009 WL 5205409.

While a knife with a blade over two inches long would certainly violate this section, a court could find that a minor’s possession on school grounds of a knife with a blade less than two inches long is also a violation. SC Op.Atty.Gen. (Feb. 15, 2000) 2000 WL 356785.

Upon successful completion of a pretrial intervention program following an arrest for the offenses of carrying a concealed weapon, carrying a weapon on school property, and impersonating a law enforcement officer, there would not be a conviction which would prevent the weapon involved in these violations from being returned to the individual. Consideration may be given to requiring a defendant entering a PTI program to agree to have any weapon involved in an offense confiscated as a condition to the defendant entering a program. 1988 Op.Atty.Gen., No 88‑78, p 223 (1988 WL 383561).

NOTES OF DECISIONS

In general 1

1. In general

Juvenile violated statute prohibiting carrying weapons on school property when he brought an inoperative firearm onto school grounds, even though firearm would be unable “to inflict bodily injury or death.” In re Thomas Edward D. (S.C.App. 2001) 344 S.C. 329, 543 S.E.2d 578. Weapons 112(6); Weapons 171

It is a per se violation to bring a firearm onto school grounds, regardless of whether it could be used to inflict bodily injury or death, and the same is true with a knife that has a blade over two inches, a blackjack, or a metal pipe or pole; it is only “any other type of device or object” that must be capable of inflicting bodily injury or death. In re Thomas Edward D. (S.C.App. 2001) 344 S.C. 329, 543 S.E.2d 578. Weapons 171

Single‑edged razor with blade less than two inches in length carried by minor while on school property was not “knife,” but was “other type of weapon, device or object which may be used to inflict bodily injury or death,” within meaning of statute prohibiting person from carrying, while on elementary or secondary school property, inter alia, knife or any other type of weapon, device or object which may be used to inflict bodily injury or death. Garvin v. State (S.C. 1996) 324 S.C. 104, 477 S.E.2d 470.

**SECTION 16‑23‑440.** Discharging firearms at or into dwellings, structures, enclosures, vehicles or equipment; penalties.

 (A) It is unlawful for a person to discharge or cause to be discharged unlawfully firearms at or into a dwelling house, other building, structure, or enclosure regularly occupied by persons. A person who violates the provisions of this subsection is guilty of a felony and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than ten years, or both.

 (B) It is unlawful for a person to discharge or cause to be discharged unlawfully firearms at or into any vehicle, aircraft, watercraft, or other conveyance, device, or equipment while it is occupied. A person who violates the provisions of this subsection is guilty of a felony and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than ten years, or both.

HISTORY: 1962 Code Section 16‑142; 1952 Code Section 16‑142; 1942 Code Section 1120; 1932 Code Section 1120; Cr. C. ‘22 Section 18; Cr. C. ‘12 Section 163; 1910 (26) 785; 1988 Act No. 469; 1993 Act No. 184, Section 49; 2001 Act No. 98, Section 1.

Library References

Weapons 188, 342.

Westlaw Topic No. 406.

C.J.S. Weapons Sections 62 to 64.

Attorney General’s Opinions

Discussion of whether weapons may be fired in subdivisions. SC Op.Atty.Gen. (Dec. 22, 2005) 2005 WL 3689158.

NOTES OF DECISIONS

In general 1

Sentence and punishment 2

1. In general

Defendant who discharged a firearm into the wall of a bank while he was inside of the bank violated statute that made it “unlawful for a person to discharge or cause to be discharged unlawfully firearms at or intoa dwelling house or other building or structure regularly occupied by persons”; statute applied to defendant whether he discharged firearm from inside bank building or outside. State v. Lawrence (S.C.App. 2002) 349 S.C. 129, 561 S.E.2d 633. Weapons 188(4)

2. Sentence and punishment

Defendant’s prior South Carolina conviction for discharging a firearm into a dwelling was a “crime of violence,” and thus qualified as a predicate offense for career offender classification under the Sentencing Guidelines, where discharging a firearm into a dwelling was similar to aggravated assault, and, by its terms, the South Carolina statute underlying defendant’s conviction involved conduct that presented a serious potential risk of physical injury to another. U.S. v. Ross (C.A.4 (S.C.) 2011) 416 Fed.Appx. 289, 2011 WL 894301, Unreported, post‑conviction relief dismissed in part 2013 WL 1303048, appeal dismissed 544 Fed.Appx. 197, 2013 WL 5754417, post‑conviction relief dismissed 2016 WL 3523875. Sentencing and Punishment 1285

**SECTION 16‑23‑450.** Placing loaded trap gun, spring gun or like device.

 It shall be unlawful for any person to construct, set or place a loaded trap gun, spring gun or any like device in any manner in any building or in any place within this State, and any violation of the provisions of this section shall constitute a misdemeanor and be punished by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment of not less than thirty days nor more than one year or by both fine and imprisonment, in the discretion of the court.

HISTORY: 1962 Code Section 16‑143; 1952 Code Section 16‑143; 1942 Code Section 1121; 1932 Code Section 1121; 1931 (37) 78.

Library References

Weapons 185, 342.

Westlaw Topic No. 406.

C.J.S. Weapons Sections 57 to 64.

**SECTION 16‑23‑460.** Carrying concealed weapons; forfeiture of weapons.

 (A) A person carrying a deadly weapon usually used for the infliction of personal injury concealed about his person is guilty of a misdemeanor, must forfeit to the county, or, if convicted in a municipal court, to the municipality, the concealed weapon, and must be fined not less than two hundred dollars nor more than five hundred dollars or imprisoned not less than thirty days nor more than ninety days.

 (B) The provisions of this section do not apply to:

 (1) A person carrying a concealed weapon upon his own premises or pursuant to and in compliance with Article 4, Chapter 31 of Title 23; or

 (2) peace officers in the actual discharge of their duties.

 (C) The provisions of this section also do not apply to rifles, shotguns, dirks, slingshots, metal knuckles, knives, or razors unless they are used with the intent to commit a crime or in furtherance of a crime.

HISTORY: 1962 Code Section 16‑145; 1952 Code Section 16‑145; 1942 Code Section 1256; 1932 Code Section 1256; Cr. C. ‘22 Section 151; Cr. C. ‘12 Section 158; Cr. C. ‘02 Section 130; G. S. 2472; R. S. 129; 1880 (17) 448; 1894 (21) 824; 1897 (22) 423; 1900 (23) 446; 1922 (32) 905; 1965 (54) 578; 1975 (59) 743; 1986 Act No. 532, Section 6; 1996 Act No. 464, Section 4; 2008 Act No. 337, Section 2, eff June 25, 2008.

CROSS REFERENCES

Armed robbery, see Section 16‑11‑330.

Disposition under this section of weapons seized from violators of shellfishing laws, see Section 44‑1‑151.

Inapplicability of general definition of “weapon” to provisions of this section relative to rifles and shotguns, see Section 16‑23‑405.

Indictment for carrying concealed weapons in case of crimes, jurisdiction of offense and disposition of fines, see Section 17‑19‑40.

Punishment for commission of crimes with concealed weapon, see Section 16‑3‑610.

Library References

Weapons 168, 350 to 352.

Westlaw Topic No. 406.

C.J.S. Weapons Sections 42 to 44, 47 to 50, 70 to 71.

LAW REVIEW AND JOURNAL COMMENTARIES

To have and to hold: Factors to consider before divorcing South Carolina from the concealed weapons permit requirement. Joseph D. Spate, 68 S.C. L. Rev. 597 (Spring 2017).

Attorney General’s Opinions

Discussion of the disposition of weapons seized by law enforcement for offenses other than those covered by the Preservation of Evidence Act. S.C. Op.Atty.Gen. (June 3, 2013) 2013 WL 2732900.

The question of what constitutes a deadly weapon is a factual question dependent upon the particular circumstances prevailing at the time the item is carried. 1987 Op.Atty.Gen., No 87‑4, p 22 (1987 WL 245413).

Carrying a pistol is not a crime involving moral turpitude. 1982 Op.Atty.Gen., No 82‑36, p 41 (1982 WL 155006).

Pistols confiscated pursuant to violations of Article I of Title 16 or Article III of Title 23 may be turned over to the City Police for issue within that department. 1978, Op.Atty.Gen., No 78‑21, p 33 (1978 WL 22507).

A magistrate has no jurisdiction of the offense of carrying a concealed pistol. 1965‑66 Op.Atty.Gen., No 2109, p 215 (1966 WL 8570).

Members of coroner’s office are not peace officers and may not carry side arms. 1965‑66 Op.Atty.Gen., No 2105, p 210 (1966 WL 8567).

Mere possession of a blackjack is not unlawful except where provisions of this section [Code 1962 Section 16‑145] are violated. 1965‑66 Op.Atty.Gen., No 2188, p 323 (1966 WL 8629).

Since both repealed Code 1962 Section 16‑144 and Code 1962 Section 16‑145 use the identical phraseology “about the person,” it is almost certain that the phrase has the same meaning in both sections. 1963‑64 Op.Atty.Gen., No 1704, p 164 (1964 WL 8326).

Unlawful or concealed weapon is on or about the person if it is readily accessible and convenient for immediate use. It need not be actually touching the person of the defendant. 1963‑64 Op.Atty.Gen., No 1704, p 164 (1964 WL 8326).

Municipality may enact ordinance providing for the forfeiture of a weapon upon conviction in municipal court for violation of this section [Code 1962 Section 16‑145]. 1962‑63 Op.Atty.Gen., No 1584, p 156 (1963 WL 8331).

NOTES OF DECISIONS

In general 1

1. In general

Cited in State v Williams (1894) 40 SC 373, 19 SE 5. Laurens v Crawford (1899) 55 SC 594, 33 SE 728. State v McClenton (1901) 59 SC 226, 37 SE 819. State v Edwards (1903) 68 SC 318, 47 SE 395. State v Norton (1904) 69 SC 454, 48 SE 464. State v Johnson (1905) 70 SC 384, 50 SE 8. State v Hasty (1907) 76 SC 105, 56 SE 669. Long v McMillan (1955) 226 SC 598, 86 SE2d 477.

State must prove that weapon was concealed about the person. State v. Johnson (S.C. 1881) 16 S.C. 187.

**SECTION 16‑23‑465.** Additional penalty for unlawfully carrying pistol or firearm onto premises of business selling alcoholic liquor, beer or wine for on‑premises consumption; exceptions.

 (A) In addition to the penalties provided for by Sections 16‑11‑330, 16‑11‑620, 16‑23‑460, 23‑31‑220, and Article 1, Chapter 23, Title 16, a person convicted of carrying a firearm into a business which sells alcoholic liquor, beer, or wine for consumption on the premises is guilty of a misdemeanor, and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than two years, or both.

 In addition to the penalties described above, a person who violates this section while carrying a concealable weapon pursuant to Article 4, Chapter 31, Title 23 must have his concealed weapon permit revoked for a period of five years.

 (B)(1) This section does not apply to a person carrying a concealable weapon pursuant to and in compliance with Article 4, Chapter 31, Title 23; however, the person shall not consume alcoholic liquor, beer, or wine while carrying the concealable weapon on the business’ premises. A person who violates this item may be charged with a violation of subsection (A).

 (2) A property owner, holder of a lease interest, or operator of a business may prohibit the carrying of concealable weapons into the business by posting a “NO CONCEALABLE WEAPONS ALLOWED” sign in compliance with Section 23‑31‑235. A person who carries a concealable weapon into a business with a sign posted in compliance with Section 23‑31‑235 may be charged with a violation of subsection (A).

 (3) A property owner, holder of a lease interest, or operator of a business may request that a person carrying a concealable weapon leave the business’ premises, or any portion of the premises, or request that a person carrying a concealable weapon remove the concealable weapon from the business’ premises, or any portion of the premises. A person carrying a concealable weapon who refuses to leave a business’ premises or portion of the premises when requested or refuses to remove the concealable weapon from a business’ premises or portion of the premises when requested may be charged with a violation of subsection (A).

HISTORY: 1977 Act No. 45; 1993 Act No. 184, Section 190; 1996 Act No. 464, Section 5; 2002 Act No. 274, Section 2, eff May 28, 2002; 2014 Act No. 123 (S.308), Section 1, eff February 11, 2014.

Library References

Weapons 171, 342.

Westlaw Topic No. 406.

C.J.S. Weapons Sections 37, 40.

Attorney General’s Opinions

A concealed weapons permit holder may not carry a firearm onto the premises of an establishment which serves alcohol. SC Op.Atty.Gen. (April 17, 2001) 2001 WL 564590.

Discussion of whether an off duty law enforcement officer engaging in social activities, may carry a pistol into a business which sells alcoholic beverages, outside his/her jurisdiction. SC Op.Atty.Gen. (August 8, 1996) 1996 WL 549532.

**SECTION 16‑23‑470.** Illegal possession of tear‑gas gun or ammunition.

 (A) It is unlawful for anyone except an authorized law enforcement officer to possess, use, transport, sell, or buy a tear‑gas machine or gun, or its parts, or any ammunition, shells, or equipment that may be used in a tear‑gas gun or machine. It is lawful for a person for self‑defense purposes only to possess, use, transport, sell, or buy a tear‑gas machine or gun, or its parts, or ammunition, shells, or equipment for a tear‑gas machine or gun, but the capacity of a tear‑gas cartridge, shell, or container shall not exceed fifty cubic centimeters nor shall a tear‑gas machine or gun have the capability of shooting a cartridge, shell, or container of more than fifty cubic centimeters.

 (B) 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 or fined not more than five thousand dollars, or both.

 (C) Except as permitted above, nothing in this section prohibits the purchase, sale, transportation, or use of tear gas for the destruction of insects or rodents if tear gas is not in containers or shells suitable for use in a tear‑gas gun, equipment, or machine and if the purchaser has written authority for the purchase and use of tear gas from the county agent of the county in which he resides.

HISTORY: 1962 Code Section 16‑147; 1952 Code Section 16‑147; 1948 (45) 1857; 1978 Act No. 603; 1993 Act No. 184, Section 191.

Library References

Weapons 162, 342.

Westlaw Topic No. 406.

C.J.S. Weapons Sections 24 to 31, 41 to 50.

Attorney General’s Opinions

The law in South Carolina regarding the purchase of ammunition. SC Op.Atty.Gen. (Feb. 29, 2008) 2008 WL 608963.

**SECTION 16‑23‑480.** Manufacture or possession of article designed to cause damage by fire or other means.

 It is unlawful for a person to manufacture, cause to be manufactured, or possess any object or article which is designed to cause damage by fire or any other means to person or property either by ignition, detonation, or other means. It is unlawful for a person to possess any object or article solely for the purpose of causing damage by fire or other means to person or property either by ignition, detonation, or other means.

 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 16‑148; 1969 (56) 320; 1993 Act No. 184, Section 50.

Library References

Weapons 149, 341.

Westlaw Topic No. 406.

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

 (A) If a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16‑1‑60, he must be imprisoned five years, in addition to the punishment provided for the principal crime. This five‑year sentence does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime.

 (B) Service of the five‑year sentence is mandatory unless a longer mandatory minimum term of imprisonment is provided by law for the violent crime. The court may impose this mandatory five‑year sentence to run consecutively or concurrently.

 (C) Except as provided in this subsection, the person sentenced under this section is not eligible during this five‑year period for parole, work release, or extended work release. The five years may not be suspended and the person may not complete his term of imprisonment in less than five years pursuant to good‑time credits or work credits, but may earn credits during this period. The person is eligible for work release, if the person is sentenced for voluntary manslaughter (Section 16‑3‑50), kidnapping (Section 16‑3‑910), carjacking (Section 16‑3‑1075), burglary in the second degree (Section 16‑11‑312(B)), armed robbery (Section 16‑11‑330(A)), or attempted armed robbery (Section 16‑11‑330(B)), the crime did not involve any criminal sexual conduct or an additional violent crime as defined in Section 16‑1‑60, and the person is within three years of release from imprisonment.

 (D) As used in this section, “firearm” means any machine gun, automatic rifle, revolver, pistol, or any weapon which will, or is designed to, or may readily be converted to expel a projectile; “knife” means an instrument or tool consisting of a sharp cutting blade whether or not fastened to a handle which is capable of being used to inflict a cut, slash, or wound.

 (E) The additional punishment may not be imposed unless the indictment alleged as a separate count that the person was in possession of a firearm or visibly displayed what appeared to be a firearm or visibly displays a knife during the commission of the violent crime and conviction was had upon this count in the indictment. The penalties prescribed in this section may not be imposed unless the person convicted was at the same time indicted and convicted of a violent crime as defined in Section 16‑1‑60.

HISTORY: 1962 Code Section 16‑149; 1970 (56) 1968; 1986 Act No. 462, Section 28; 1993 Act No. 184, Section 51; 2010 Act No. 273, Section 27, eff June 2, 2010.

Library References

Indictment and Information 113.

Pardon and Parole 44.

Sentencing and Punishment 76.

Westlaw Topic Nos. 210, 284, 350H.

C.J.S. Indictments and Informations Sections 172 to 176.

RESEARCH REFERENCES

Encyclopedias

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

NOTES OF DECISIONS

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1. In general

A conviction for voluntary manslaughter was a prerequisite for a conviction for possession of a weapon during the commission of a violent crime. Cook v. State (S.C. 2015) 415 S.C. 551, 784 S.E.2d 665, rehearing denied. Weapons 194(2)

Five‑year consecutive sentence for possession of a weapon during the commission of a violent crime was inapplicable to defendant also sentenced to life without parole for murder. State v. Palmer (S.C.App. 2016) 415 S.C. 502, 783 S.E.2d 823, rehearing denied. Sentencing and Punishment 620

The trial court did not have subject matter jurisdiction to accept a defendant’s guilty plea to the charge of violating Section 16‑23‑490 providing additional punishment for visibly displaying a knife during a violent crime where the weapon displayed, a barbecue fork, did not fulfill the statute’s definition of a knife; penal statutes are construed strictly against the state, and it is not sufficient that the weapon “appears to be a knife.” Williams v. State (S.C. 1991) 306 S.C. 89, 410 S.E.2d 563.

A barbecue fork used to stab a victim does not qualify as a “knife” within the meaning of Section 16‑23‑490, which provides additional punishment for visibly displaying a knife during the commission of a violent crime, where the fork had no “sharp cutting blade” and thus did not fit the description of a “knife” contained in the statute. Williams v. State (S.C. 1991) 306 S.C. 89, 410 S.E.2d 563. Sentencing And Punishment 78

2. Constitutional issues

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

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.

3. Possession

One can be convicted of possession of a firearm based upon proof of either actual or constructive possession. State v. Jennings (S.C.App. 1999) 335 S.C. 82, 515 S.E.2d 107. Weapons 166; Weapons 167

Proof of constructive possession, along with knowledge of the presence of the firearm, is sufficient to support a conviction for possession of a firearm. State v. Jennings (S.C.App. 1999) 335 S.C. 82, 515 S.E.2d 107. Weapons 167

To prove constructive possession of firearm, the state must show that the defendant had dominion and control, or the right to exercise dominion and control, over the firearm. State v. Jennings (S.C.App. 1999) 335 S.C. 82, 515 S.E.2d 107. Weapons 167

Constructive possession of firearm may be established through either direct or circumstantial evidence, and possession may be shared, but possession requires more than mere presence of firearm. State v. Jennings (S.C.App. 1999) 335 S.C. 82, 515 S.E.2d 107. Weapons 167; Weapons 291(2)

4. Nexus between possession and crime

Nexus between actual or constructive possession of a firearm and the furtherance of a violent crime must be established in order to convict a defendant for possessing a firearm during the commission of a violent crime. State v. Whitesides (S.C. 2012) 397 S.C. 313, 725 S.E.2d 487. Weapons 192

Nexus between possession of a firearm and the commission of a violent crime may be established by showing that the firearm furthered, advanced, or helped in the commission of the crime. State v. Whitesides (S.C. 2012) 397 S.C. 313, 725 S.E.2d 487. Weapons 192

Nexus between possession of a firearm and drug trafficking, as required to support a conviction of possession of a firearm during the commission of a violent crime, exists if the firearm is accessible to the trafficker and thereby provides defense against anyone who might attempt to rob the trafficker of his drugs or drug profits; similarly, possessing a gun, and letting that possession become common knowledge, lessens the chances that a robbery will be attempted. State v. Whitesides (S.C. 2012) 397 S.C. 313, 725 S.E.2d 487. Weapons 194(3)

Trial court’s findings of fact were sufficient to support finding of nexus between defendant’s possession of a firearm and his commission of violent crime of trafficking in marijuana, as required to support conviction of possession of a firearm during the commission of a violent crime, despite court’s finding that defendant constructively possessed firearms found in his car and his safe, where trial court found, based upon witness’ statement admitted into evidence, that defendant ordinarily carried a pistol for the purpose of letting others know that he was armed while dealing drugs. State v. Whitesides (S.C. 2012) 397 S.C. 313, 725 S.E.2d 487. Weapons 294(6)

5. Lesser included offenses

Unlawful carrying of pistol was not lesser included offense of possession of firearm or knife during commission of violent crime; defendant could be convicted for possessing firearm or knife during commission of violent crime while lawfully carrying pistol. State v. Kirby (S.C.App. 1996) 325 S.C. 390, 481 S.E.2d 150. Criminal Law 29(15); Indictment And Information 191(.5)

5.5. Admissibility of evidence

Trial court failed to properly conduct required analysis prior to admitting prior bad acts evidence in trial for murder, possession of a weapon during the commission of a violent crime, and assault and battery in the third degree; trial court failed to consider relevancy of evidence, whether evidence fell within exception to rule prohibiting admission of prior bad acts evidence to prove character of defendant, and whether, if evidence fell within exception, whether evidence was clear and convincing and whether probative value of evidence outweighed prejudice to defendant. State v. King (S.C.App. 2016) 416 S.C. 92, 784 S.E.2d 252, rehearing denied, certiorari granted. Criminal Law 368.41; Criminal Law 374.22

6. Questions for jury

Whether defendant exercised such dominion and control over shotgun held by accomplice during robbery to amount to constructive possession of shotgun was question for jury, in prosecution for possession of firearm during commission of a violent crime. State v. Jennings (S.C.App. 1999) 335 S.C. 82, 515 S.E.2d 107. Weapons 305

7. Sufficiency of evidence

Jury’s conclusion that defendant was guilty of possession of a firearm during commission of violent crime under theory of accomplice liability was supported by evidence that defendant facilitated robbery and knew shooter intended to use firearm during commission of crime; state presented evidence that defendant helped orchestrate robbery and reconnoitered scene, that defendant knew shooter had rifle in his possession for use during robbery, and that defendant waited at getaway vehicle for shooter to return with proceeds from robbery. State v. Reid (S.C. 2014) 408 S.C. 461, 758 S.E.2d 904, rehearing denied. Weapons 296

8. Sentence and punishment

Mandatory, non‑parolable five‑year sentence imposed on defendant on his conviction for possession of a weapon during the commission of a violent crime, to run consecutively to his parolable sentence of life imprisonment on his conviction for murder, did not render defendant ineligible for parole; despite fact that weapons sentence was last one imposed and it was denoted as “consecutive,” there was no indication that weapons sentence was to be the last sentence to be served, and there was no indication that the general assembly intended the mandatory weapons sentence to negate any possibility of parole on other parolable offenses. Major v. South Carolina Dept. of Probation, Parole and Pardon Services (S.C. 2009) 384 S.C. 457, 682 S.E.2d 795. Pardon And Parole 51

A sentencing judge does not have the authority to determine defendant’s parole eligibility through sentencing, but has only the ability to order whether a sentence is consecutive or concurrent; in other words, a sentencing judge has the authority to structure a sentence, but this authority is specifically limited by the intention of the general assembly in its legislative enactments concerning parole‑eligible offenses and an inmate’s service of a sentence. Major v. South Carolina Dept. of Probation, Parole and Pardon Services (S.C. 2009) 384 S.C. 457, 682 S.E.2d 795. Pardon And Parole 54

Murder defendant, who was given death penalty, could not be sentenced for possession of a firearm in the commission of a violent offense. State v. Owens (S.C. 2001) 346 S.C. 637, 552 S.E.2d 745, rehearing denied, appeal after new sentencing hearing 362 S.C. 175, 607 S.E.2d 78, appeal after new sentencing hearing 378 S.C. 636, 664 S.E.2d 80, certiorari denied, certiorari denied 129 S.Ct. 1004, 173 L.Ed.2d 300, habeas corpus dismissed 2010 WL 146164. Criminal Law 29(15)

Post‑conviction relief (PCR) judge correctly ordered that defendant first serve his mandatory five year sentence for possession of weapon during commission of violent crime, before serving his 18 year sentence for first degree criminal sexual conduct and his life sentence for kidnapping; sentencing judge did not intend that defendant would serve his sentences without parole, but practical effect of Parole Board’s interpretation, under which mandatory five year sentence would be served last, was that defendant would be imprisoned for life with no chance for parole, even though he was eligible for parole on life sentence and 18 year sentence. Tilley v. State (S.C. 1999) 334 S.C. 24, 511 S.E.2d 689, rehearing denied. Sentencing And Punishment 1122

9. Review

Defendant preserved argument for review that trial court failed to conduct required analysis prior to admitting prior bad acts evidence in trial for murder, possession of a weapon during the commission of a violent crime, and assault and battery in the third degree, since argument was sufficiently specific, apparent from context, and clear; parties discussed state’s motion to introduce prior bad acts evidence in chambers, defense counsel moved on several occasions to exclude or redact portions of state’s exhibits, arguing inadmissibility under rule governing prior bad acts evidence, and circuit court stated defense counsel’s objections were protected for the record. State v. King (S.C.App. 2016) 416 S.C. 92, 784 S.E.2d 252, rehearing denied, certiorari granted. Criminal Law 1043(2)

Defendant failed to preserve argument for review that trial court failed to consider factors for granting mistrial in denying defendant’s motion for mistrial when state witness referenced defendant’s prior armed robbery charge shortly after court cautioned that any reference to charge would result in mistrial in prosecution for murder, possession of a weapon during the commission of a violent crime, and assault and battery in the third degree; defendant withdrew his motion for mistrial regarding witness’s testimony, and defendant did not make argument that court failed to consider factors for granting mistrial before trial judge. State v. King (S.C.App. 2016) 416 S.C. 92, 784 S.E.2d 252, rehearing denied, certiorari granted. Criminal Law 1039; Criminal Law 1044.1(1)

In prosecution for possession of a weapon during the commission of a violent crime, defendant’s objection, “I don’t believe the State has met its burden of linking him with any of the weapons and for that matter showing that he was guilty in any way of a violent crime,” although sufficient to preserve for appeal issues of whether defendant had constructive possession of weapon or committed a violent crime, failed to preserve for appeal claim that State failed to provide a sufficient nexus between any firearm and any violent crime. State v. Thompson (S.C.App. 2015) 413 S.C. 590, 776 S.E.2d 413, rehearing denied, reversed 419 S.C. 250, 797 S.E.2d 716. Criminal Law 1043(3)

Court of Appeals’ reversal of defendant’s conviction for voluntary manslaughter required reversal of his conviction for possession of a firearm during commission of a violent crime; the former was a prerequisite for the latter. State v. Smith (S.C.App. 2005) 363 S.C. 111, 609 S.E.2d 528. Criminal Law 1186.1

**SECTION 16‑23‑500.** Unlawful possession of a firearm by a person convicted of violent offense; confiscation; return of firearm to innocent owner.

 (A) It is unlawful for a person who has been convicted of a violent crime, as defined by Section 16‑1‑60, that is classified as a felony offense, to possess a firearm or ammunition within this State.

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

 (C)(1) In addition to the penalty provided in this section, the firearm or ammunition involved in the violation of this section must be confiscated. The firearm or ammunition must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated firearm or ammunition may use it within the agency, transfer it to another law enforcement agency for the lawful use of that agency, trade it with a retail dealer licensed to sell firearms or ammunition in this State for a firearm, ammunition, or any other equipment approved by the agency, or destroy it. A firearm or ammunition must not be disposed of in any manner until the results of any legal proceeding in which it may be involved are finally determined. If the State Law Enforcement Division seized the firearm or ammunition, the division may keep the firearm or ammunition for use by its forensic laboratory. Records must be kept of all confiscated firearms or ammunition received by the law enforcement agencies under the provisions of this section.

 (2) A law enforcement agency that receives a firearm or ammunition pursuant to this section shall administratively release the firearm or ammunition to an innocent owner. The firearm or ammunition must not be released to the innocent owner until the results of any legal proceedings in which the firearm or ammunition may be involved are finally determined. Before the firearm or ammunition may be released, the innocent owner shall provide the law enforcement agency with proof of ownership and shall certify that the innocent owner will not release the firearm or ammunition to the person who has been charged with a violation of this section which resulted in the confiscation of the firearm or ammunition. The law enforcement agency shall notify the innocent owner when the firearm or ammunition is available for release. If the innocent owner fails to recover the firearm or ammunition within thirty days after notification of the release, the law enforcement agency may maintain or dispose of the firearm or ammunition as otherwise provided in this section.

 (D) The judge that hears the case involving the violent offense, as defined by Section 16‑1‑60, that is classified as a felony offense, shall make a specific finding on the record that the offense is a violent offense, as defined by Section 16‑1‑60, and is classified as a felony offense. A judge’s failure to make a specific finding on the record does not bar or otherwise affect prosecution pursuant to this subsection and does not constitute a defense to prosecution pursuant to this subsection.

HISTORY: 2010 Act No. 273, Section 25, eff June 2, 2010; 2016 Act No. 154 (H.3545), Section 2, eff April 21, 2016.

Effect of Amendment

2016 Act No. 154, Section 2, in (C), inserted paragraph identifier (1), and added (2), relating to the release of a firearm to an innocent owner; and in (D), added the second sentence, relating to the failure to make a specific finding.

RESEARCH REFERENCES

Encyclopedias

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

Attorney General’s Opinions

Discussion of whether the Sheriff’s Department, Clerk of Court and County Administrator can enter into an agreement whereby the Sheriff’s Department sells confiscated weapons to a retail gun dealer with the proceeds being used to purchase equipment and supplies for the Sheriff’s Department. SC Op.Atty.Gen. (March 31, 1997) 1997 WL 208045.

NOTES OF DECISIONS

Collateral consequences 1

1. Collateral consequences

At sentencing in prosecution for unlawful possession of firearm by convicted felon, defendant’s prior conviction under Indiana law for knowing or intentional flight from law enforcement officer by vehicle was a violent felony for purposes of punishment enhancement under the Armed Career Criminal Act (ACCA), which contained a residual provision defining a violent felony as an offense involving conduct presenting a serious potential risk of physical injury to another; abrogating U.S. v. Harrison, 558 F.3d 1280. 18 U.S.C.A. Sykes v. U.S., 2011, 131 S.Ct. 2267, 564 U.S. 1, 180 L.Ed.2d 60. Sentencing and Punishment 1285

**SECTION 16‑23‑520.** Use, transportation, manufacture, possession, purchase, or sale of teflon‑coated ammunition.

 It is unlawful for a person to use, transport, manufacture, possess, distribute, sell, or buy any ammunition or shells that are coated with polytetrafluoroethylene (teflon).

 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 five thousand dollars, or both.

HISTORY: 1984 Act No. 340; 1993 Act No. 184, Section 52.

Library References

Weapons 162, 342.

Westlaw Topic No. 406.

C.J.S. Weapons Sections 24 to 31, 41 to 50.

Attorney General’s Opinions

The law in South Carolina regarding the purchase of ammunition. SC Op.Atty.Gen. (Feb. 29, 2008) 2008 WL 608963.

**SECTION 16‑23‑530.** Firearms; possession by or sale to unlawful alien; penalties.

 (A) It is unlawful for an alien unlawfully present in the United States to possess, purchase, offer to purchase, sell, lease, rent, barter, exchange, or transport into this State a firearm.

 (B) It is unlawful for a person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange, or transport for sale into this State a firearm to a person knowing that such person is not lawfully present in the United States.

 (C) A person violating the provisions of subsection (A) of this section is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

 (D) A person violating the provisions of subsection (B) of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than three years, or both.

HISTORY: 2008 Act No. 280, Section 15, eff June 4, 2008.

ARTICLE 7

Bombs, Destructive Devices, and Weapons of Mass Destruction

Editor’s Note

2002 Act No. 393, Section 45, provides as follows:

“This act takes effect upon approval by the Governor, and applies to offenses committed after its effective date and to causes of action arising or accruing on or after the effective date.”

**SECTION 16‑23‑710.** Definitions.

 For purposes of this article:

 (1) “Bacteriological weapon” and “biological weapon” mean devices which are designed in a manner as to permit the intentional release into the population or environment of microbiological or other biological materials, toxins, or agents, whatever their origin or method of production, in a manner not authorized by law, or any device, the development, production, or stockpiling of which is prohibited pursuant to the “Convention of the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and their Destruction”, 26 U.S.T. 583, TIAS 8063.

 (2) “Bomb” includes a destructive device capable of being detonated, triggered, or set off to release any substance or material that is destructive, irritating, odoriferous, or otherwise harmful to one or more organisms including, but not limited to, human beings, livestock, animals, crops or vegetation, or to earth, air, water, or any other material or substance necessary or required to sustain human or any other individual form of life, or to real or personal property.

 (3) “Bomb technician”, “explosive ordnance technician”, or “EOD technician” means either:

 (a) a law enforcement officer, fire official, emergency management official, or an employee of the State, its political subdivisions, or an authority of the State or a political subdivision, whose job title includes the designation of bomb technician, explosive ordnance disposal technician, or EOD technician and whose assigned duties include the rendering‑safe of improvised explosive devices, destructive devices, old or abandoned explosives, war relics, or souvenirs while acting in the performance of his official duties; or

 (b) an official or employee of the United States including, but not limited to, a member of the Armed Forces of the United States, who is qualified as an explosive ordnance disposal technician under the federal, state, or local laws or regulations while acting in the performance of his duty.

 (4) “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 considered both a separate building in itself and a part of the main building.

 (5) “Device” means an object, contrivance, instrument, technique, or any thing that is designed, manufactured, assembled, or capable of serving any purpose in a bomb, destructive device, explosive, incendiary, or weapon of mass destruction.

 (6) “Detonate” means to explode or cause to explode.

 (7) “Destructive device” means:

 (a) a bomb, incendiary device, or any thing that can detonate, explode, be released, or burn by mechanical, chemical, or nuclear means, or that contains an explosive, incendiary, poisonous gas, or toxic substance (chemical, biological, or nuclear materials) including, but not limited to, an incendiary or over‑pressure device, or any other device capable of causing damage, injury, or death;

 (b) a bacteriological weapon or biological weapon; or

 (c) a combination of any parts, components, chemical compounds, or other substances, either designed or intended for use in converting any device into a destructive device which has been or can be assembled to cause damage, injury, or death.

 (8) “Detonator” means a device containing a detonating charge used to initiate detonation in an explosive or any device capable of triggering or setting off an explosion or explosive charge including, but not limited to, impact or an impact device, a timing mechanism, electricity, a primer, primer or detonating cord, a detonating cap or device of any kind, detonating waves, electric blasting caps, blasting caps for use with safety fuses, shock tube initiator, and detonating cord delay connectors, or any other device capable of detonating or exploding a bomb, weapon of mass destruction, or destructive device.

 (9) “Distribute” means the actual or constructive delivery or the attempted transfer from one person to another.

 (10) “Explosive” means a chemical compound or other substance or a mechanical system intended for the purpose of producing an explosion capable of causing injury, death, or damage to property or an explosive containing oxidizing and combustible units or other ingredients in such proportions or quantities that ignition, fire, friction, concussion, percussion, or detonation may produce an explosion capable of causing injury, death, or damage to property. Explosives include, but are not limited to, the list of explosive materials published and periodically updated by the Bureau of Alcohol, Tobacco and Firearms.

 (11) “Hoax device” or “replica” means a device or object which has the appearance of a destructive device.

 (12) “Incendiary” means any material that:

 (a) causes, or is capable of causing, fire when it is lit or ignited; and

 (b) is used to ignite a flammable liquid or compound in an unlawful manner.

 (13) “Incendiary device” means a destructive device, however possessed or delivered, and by whatever name called, containing or holding a flammable liquid or compound, which is capable of being ignited by any means possible. Incendiary device includes, but is not limited to, any form of explosive, explosive bomb, grenade, missile, or similar device, whether capable of being carried or thrown by a person acting alone or with one or more persons, but does not include a device manufactured or produced for the primary purpose of illumination or for marking detours, obstructions, defective paving, or other hazards on streets, roads, highways, or bridges, when used in a lawful manner.

 (14) “Over‑pressure device” means a container filled with an explosive gas or expanding gas or liquid which is designed or constructed so as to cause the container to break, fracture, or rupture in a manner capable of causing death, injury, or property damage, and includes, but is not limited to, a chemical reaction bomb, an acid bomb, a caustic bomb, or a dry ice bomb.

 (15) “Parts” mean a combination of parts, components, chemical compounds, or other substances, designed or intended for use in converting any device into a destructive device.

 (16) “Poisonous gases” mean a toxic chemical or its precursors that through its chemical action or properties on life processes, causes death or injury to human beings or other living organisms. However, the term does not include:

 (a) riot control agents, smoke and obscuration materials, or medical products which are manufactured, possessed, transported, or used in accordance with the laws of this State or the United States;

 (b) tear gas devices designed to be carried on or about the person which contain not more than fifty cubic centimeters of the chemical; or

 (c) pesticides, as used in agriculture and household products.

 (17) “Property” means real or personal property of any kind including money, choses in action, and other similar interest in property.

 (18) “Terrorism” includes activities that:

 (a) involve acts dangerous to human life that are a violation of the criminal laws of this State;

 (b) appear to be intended to:

 (i) intimidate or coerce a civilian population;

 (ii) influence the policy of a government by intimidation or coercion; or

 (iii) affect the conduct of a government by mass destruction, assassination, or kidnapping; and

 (c) occur primarily within the territorial jurisdiction of this State.

 (19) “Weapon of mass destruction” means:

 (a) any destructive device as defined in item (7);

 (b) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

 (c) any weapon involving a disease organism; or

 (d) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.

HISTORY: 2000 Act No. 237, Section 6; 2002 Act No. 339, Section 13, eff July 2, 2002.

**SECTION 16‑23‑715.** Possession, threatened or attempted use of weapon of mass destruction for act of terrorism; penalty.

 A person who, without lawful authority, possesses, uses, threatens, or attempts or conspires to possess or use a weapon of mass destruction in furtherance of an act of terrorism is guilty of a felony and upon conviction:

 (1) in cases resulting in the death of another person, must be punished by death or by imprisonment for life; or

 (2) in cases which do not result in the death of another person, must be punished by imprisonment for not less than twenty‑five years nor more than life.

HISTORY: 2002 Act No. 339, Section 13, eff July 2, 2002.

Library References

Threats, Stalking, and Harassment 7, 55.

Westlaw Topic No. 377E.

**SECTION 16‑23‑720.** Use, counseling or soliciting others to use, possessing, or threatening to use destructive device; harboring terrorist.

 (A) It is unlawful for a person intentionally to use a destructive device or cause an explosion, or intentionally to aid, counsel, solicit another, or procure the use of a destructive device. A person who violates this subsection is guilty of a felony and, upon conviction:

 (1) in cases resulting in the death of another person where there was malice aforethought, must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years;

 (2) in cases resulting in the death of another person where there was not malice aforethought, must be imprisoned not less than ten years nor more than thirty years; and

 (3) in cases resulting in injury to a person, must be imprisoned for not less than ten years nor more than twenty‑five years.

 (B) A person who intentionally causes an explosion by means of a destructive device or aids, counsels, solicits another, or procures an explosion by means of a destructive device, which results in damage to a building or other real or personal property, or a person who attempts to injure another or damage or destroy a building or other real or personal property by means of a destructive device, is guilty of a felony and, upon conviction, must be imprisoned for not less than ten years nor more than twenty‑five years.

 (C) A person who knowingly possesses, manufactures, transports, distributes, or possesses with the intent to distribute a destructive device or any explosive, incendiary device, or over‑pressure device or toxic substance or material which has been configured to cause damage, injury, or death, or a person who possesses parts, components, or materials which when assembled constitute a destructive device is guilty of a felony and, upon conviction, must be imprisoned for not less than two years nor more than fifteen years.

 (D) A person who threatens, solicits another to threaten, or conspires to threaten to cause damage, injury, or death or to cause damage to or destroy a building or other real or personal property by means of destructive device is guilty of a felony and, upon conviction, must be imprisoned for not more than fifteen years.

 (E) A person who knowingly protects, harbors, or conceals another who is known by the person to have planned, executed, or committed any violation of the provisions of this article is guilty of a felony and, upon conviction, must be imprisoned for not more than fifteen years.

HISTORY: 2000 Act No. 237, Section 6; 2002 Act No. 339, Section 13, eff July 2, 2002.

CROSS REFERENCES

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

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 Subsections (C) and (D) of this section as exempt from classification of felonies and misdemeanors, see Section 16‑1‑10.

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

Library References

Explosives 4.

Westlaw Topic No. 164.

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

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: The Death Penalty. 31 S.C. L. Rev. 49.

**SECTION 16‑23‑730.** Hoax device or replica of destructive device or detonator; manufacture, possession or transport; threat to use; penalties.

 A person who knowingly manufactures, possesses, transports, distributes, uses or aids, or counsels, solicits another, or conspires with another in the use of a hoax device or replica of a destructive device or detonator which causes any person reasonably to believe that the hoax device or replica is a destructive device or detonator is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than one year or fined not more than ten thousand dollars, or both. A person who communicates or transmits to another person that a hoax device or replica is a destructive device or detonator with the intent to intimidate or threaten injury, to obtain property of another, or to interfere with the ability of another person to conduct or carry on his life, business, trade, education, religious worship, or to interfere with the operations and functions of any government entity is guilty of a felony and, upon conviction, must be imprisoned for not less than two years nor more than fifteen years.

HISTORY: 2000 Act No. 237, Section 6; 2002 Act No. 339, Section 13, eff July 2, 2002.

Library References

Obstructing Justice 120, 177.

Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental Administration Sections 74, 80, 93 to 94.

**SECTION 16‑23‑740.** Hindering explosive ordinance technician or law enforcement official while detecting or disarming destructive device; penalty.

 A person who knowingly and wilfully hinders or obstructs an explosive ordnance technician, bomb technician, law enforcement officer, fire official, emergency management official, public safety officer, animal trained to detect destructive devices, or any robot or mechanical device designed for or utilized by a law enforcement officer, fire official, emergency management official, public safety officer, or bomb technician of this State or of the United States while in the detection, disarming, or destruction of a destructive device is guilty of a felony and, upon conviction, must be imprisoned for not less than one year nor more than five years.

HISTORY: 2000 Act No. 237, Section 6; 2002 Act No. 339, Section 13, eff July 2, 2002.

Library References

Obstructing Justice 117, 178.

Westlaw Topic No. 282.

C.J.S. Escape and Related Offenses; Rescue Section 32.

C.J.S. Obstructing Justice or Governmental Administration Sections 11 to 19, 22 to 34, 36 to 66, 73 to 74, 80, 85 to 89.

**SECTION 16‑23‑750.** Conveying false information regarding attempted use of a destructive device; aiding or conspiring; penalty.

 A person who conveys or causes to be conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made to kill, injure, or intimidate any person or to damage or destroy any building or other real or personal property by means of an explosive, incendiary, or destructive device or who aids, employs, or conspires with any person to do or cause to be done any of the acts in this section, is guilty of a felony and, upon conviction, for a first offense must be imprisoned for not less than one year nor more than ten years. For a second or subsequent offense, the person must be imprisoned for not less than five years nor more than fifteen years. A sentence imposed for a violation of this section must not be suspended and probation must not be granted.

HISTORY: 2000 Act No. 237, Section 6; 2002 Act No. 339, Section 13, eff July 2, 2002.

Library References

Threats, Stalking, and Harassment 7, 55.

Westlaw Topic No. 377E.

NOTES OF DECISIONS

Constitutional issues 1

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1. Constitutional issues

Section 16‑11‑550, which prohibits the use of an “explosive or incendiary” devise, is unconstitutionally overbroad when construed to include the burning of a cross since “incendiary,” when used in conjunction with “explosive,” properly is defined as a bomb used to start a fire (Decided under former Section 16‑11‑550). State v. Ramsey (S.C. 1993) 311 S.C. 555, 430 S.E.2d 511.

2. Questions for jury

A defendant was not entitled to a directed verdict on a charge of aiding and conspiring to communicate a threat concerning an attempt to intimidate any individual by means of an incendiary device where the evidence showed that a cross burned in a police chief’s yard was built by the defendant, the chief was intimidated by the burning cross, and the cross was arguably an incendiary device, even though the defendant did not personally communicate a threat to the chief, since the defendant would be guilty of aiding or conspiring if he committed any of the acts required for the offense (Decided under former Section 16‑11‑550). State v. Garrett (S.C.App. 1991) 305 S.C. 203, 406 S.E.2d 910.

3. New trial

A defendant was not entitled to a new trial on the grounds of inconsistent verdicts where he was acquitted of a violation of the cross burning statute, but convicted of aiding and conspiring to communicate a threat concerning an attempt to intimidate any individual by means of an incendiary devise based on evidence that (1) a cross burned in a police chief’s yard was built by the defendant, (2) the chief was intimidated by the burning cross, (3) the cross was arguably an incendiary device, and (4) a threat was communicated to the chief, but not personally by the defendant (Decided under former Section 16‑11‑550). State v. Garrett (S.C.App. 1991) 305 S.C. 203, 406 S.E.2d 910.

**SECTION 16‑23‑760.** Admissibility of photographic evidence of destructive devices; custody of inert devices introduced into evidence.

 (A) Unless otherwise ordered by a court of competent jurisdiction, photographs, electronic imaging, video tapes, or other identification or analysis of a destructive device, explosive, incendiary, poisonous gas, toxic substance, whether chemical, biological, or nuclear material, or detonator identified by a qualified bomb technician or person qualified as a forensic expert in the field of destructive devices is admissible in any civil or criminal trial in lieu of production of the actual destructive device or detonator. Evidence transferred to the clerk of court by a qualified bomb technician for safekeeping must not be destroyed except pursuant to a court order issued by a court of competent jurisdiction.

 (B) If a destructive device, explosive, incendiary, poisonous gas, toxic substance, whether chemical, biological, or nuclear material, or detonator that has been rendered inert and safe is introduced into evidence in any criminal or civil trial, the clerk of court may retain custody or transfer custody of the destructive device or detonator to a qualified bomb technician for safekeeping only after the destructive device has been preserved as evidence by photograph, videotape, or other suitable means of identification.

HISTORY: 2000 Act No. 237, Section 6; 2002 Act No. 339, Section 13, eff July 2, 2002.

Library References

Clerks of Courts 69.

Criminal Law 388.2, 438(1), 444, 2048.

Westlaw Topic Nos. 79, 110.

C.J.S. Courts Section 341.

C.J.S. Criminal Law Sections 1382, 1388, 1396, 1406, 1408, 1421, 1695, 1699 to 1701.

**SECTION 16‑23‑770.** Forfeiture of property used or intended for use in violation of article; storage and destruction; exceptions.

 (A) All property used or intended for use in violation of this article and all proceeds derived from, realized from, or traced back to property used or intended for use in violation of this article is contraband and subject to forfeiture. Property subject to forfeiture must be seized by a law enforcement agency and forfeited to the State, a political subdivision of the State, or the seizing law enforcement agency.

 (B) On application of a seizing law enforcement agency, the circuit court may order the agency to destroy or transfer the seized device to any agency of this State or of the United States that can safely store or render harmless a destructive device, explosive, poisonous gas, or detonator if the court finds that it is impractical or unsafe for the seizing law enforcement agency to store the destructive device, explosive, poisonous gas, or detonator. Notwithstanding Section 16‑23‑760, the application for destruction of a destructive device may be made at anytime after seizure. Any destruction ordered pursuant to this subsection must be done in the presence of at least one credible witness or recorded on film, videotape, or other electronic imaging method. The court also may order the seizing agency or the agency to which the device, explosive, poisonous gas, or detonator is transferred to make a report of the destruction, take samples before the destruction, or both.

 (C) Nothing in subsection (A) or (B) prohibits a bomb technician, law enforcement officer, or fire official from taking action that will render an explosive, destructive device, poisonous gas, or detonator, or other object which is suspected of being an explosive, destructive device, poisonous gas, or detonator safe without prior approval of a court when the action is in the performance of his duties and is intended to protect lives or property which are in imminent danger.

 (D) The provisions of this article do not apply to the lawful use of:

 (1) fertilizers, propellant activated devices, or propellant activated industrial tools manufactured, imported, distributed, or used for their intended purposes;

 (2) pesticides which are manufactured, stored, transported, distributed, possessed, or used in accordance with Chapter 7, Title 2, the federal Insecticide, Fungicide, and Rodenticide Act and the Environmental Pesticide Control Act of 1972;

 (3) explosives, blasting agents, detonators, and other objects regulated and controlled by the South Carolina Explosives Control Act;

 (4) ammunition for small arms and firearms;

 (5) components of ammunition for small arms and firearms;

 (6) ammunition reloading equipment;

 (7) the use of small arms propellant when used in war reenactments;

 (8) firearms, as defined in Section 16‑8‑10; or

 (9) fireworks and explosives which are permitted to be sold, possessed, or used under Chapter 35 of Title 23.

 (E) The provisions of this article do not apply to the military or naval forces of the United States, to the duly organized military force of a state or territory, or to police or fire departments in this State when they are acting within their official capacities and in performance of their duties.

HISTORY: 2000 Act No. 237, Section 6; 2002 Act No. 339, Section 13, eff July 2, 2002.

Library References

Explosives 4.

Forfeitures 49.

Westlaw Topic Nos. 164, 180.

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

C.J.S. Forfeitures Sections 1, 15 to 33, 44, 49 to 78.

C.J.S. RICO (Racketeer Influenced and Corrupt Organizations) Sections 47 to 48, 50.

C.J.S. Weapons Sections 70 to 71.

**SECTION 16‑23‑780.** Reporting existence and location of destructive device or weapon of mass destruction.

 All state, county, and municipal law enforcement officers who encounter a known or suspected destructive device, biological or bacteriological weapon or a nuclear, biological, or chemical weapon of mass destruction in the course of their employment must immediately report the existence and location of the device or weapon to the State Law Enforcement Division for purposes of disseminating the information to law enforcement agencies, and to the appropriate state and local public health officials for purposes of enabling public health officials to assess the nature and extent of the threat of the device or weapon to public health.

HISTORY: 2002 Act No. 339, Section 13, eff July 2, 2002.