

AUGUST 1974

C8685  
3. P55  
1974/8  
Copy 1

POLICE OFFICER'S HANDBOOK

THE CRIMINAL LAW

**S. C. STATE LIBRARY**

NOV 28 2004

**STATE DOCUMENTS**

PART III

DEATH PENALTY STATUTE

EMBEZZLEMENT

LARCENY BY BREACH OF TRUST

FLEMING'S NOTEBOOK...Chapter 103

United States v. Bradshaw

(Warrantless Search of Motor Vehicle)

Prepared under the direction of E. Fleming Mason  
Producer of Crime-to-Court ETV Law Enforcement  
Informational Programs, in cooperation with South  
Carolina Educational Television Network with funds  
provided through the South Carolina Criminal  
Justice Academy.

LAW ENFORCEMENT - ETV TRAINING PROGRAM

POLICE OFFICER'S HANDBOOK

---

DEATH PENALTY STATUTE

EMBEZZLEMENT

LARCENY BY BREACH OF TRUST

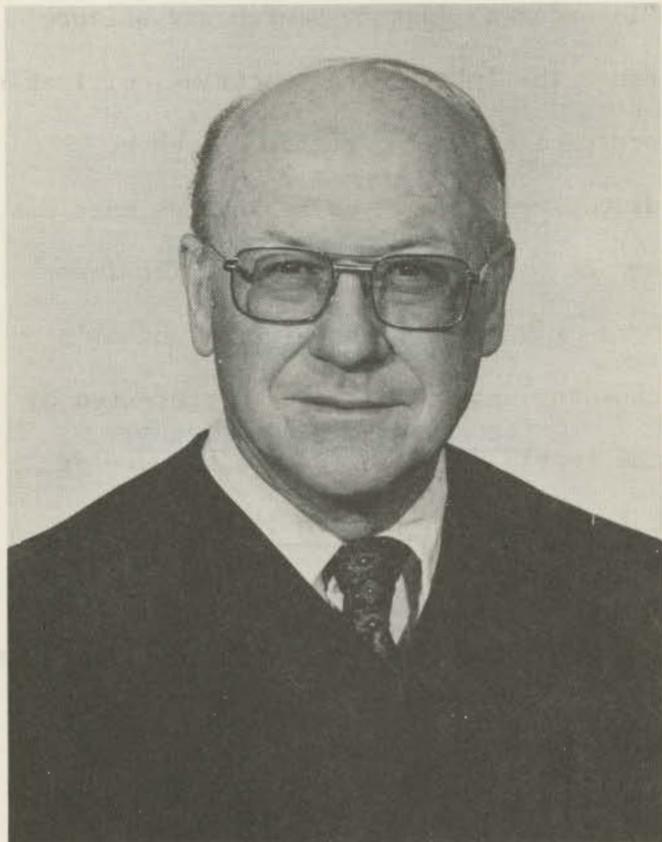
---

By

Joseph C. Coleman  
Deputy Attorney General  
State of South Carolina

Endorsed by

South Carolina Governor, John C. West  
South Carolina Law Enforcement Division  
South Carolina Sheriffs' Association  
South Carolina Enforcement Officers' Association  
South Carolina Police Chiefs' Executive Association  
South Carolina FBI National Academy Associates  
South Carolina Southern Police Institute Associates



Charles E. Simons  
U.S. District Judge  
South Carolina

"In order to justify search and seizure under the 'plain-view' doctrine, officer's presence at the point from which he discovers evidence in plain-view must not amount to unjustifiable intrusion into areas with respect to which defendant's expectations of privacy are protected by the Fourth Amendment, and discovery of evidence must have been inadvertant.

"In other words, the officer must have been justified in being where he was, and the 'plain-view' of the contraband must have been more or less accidental."

Charles E. Simons  
U.S. District Judge  
South Carolina

CONTENTS

	Page
Comment by Honorable Charles E. Simons.....	2
The Death Penalty (1974 Statute - S.C.).....	4
Embezzlement.....	10
Larceny by Fraudulent Breach of Trust.....	12
Obtaining Goods by False Pretenses.....	14
FLEMING'S NOTEBOOK...Chapter 103.....	18
<u>United States v. Bradshaw</u> .....	19
(Warrantless Search of Motor Vehicle).....	20

THE DEATH PENALTY

On July 2, 1974, the General Assembly of South Carolina, enacted into law a bill providing the penalty of death for murder committed in a variety of circumstances. The penalty will apply only to murders committed after July 2, 1974, the effective date of the act.

At one time, South Carolina, like many other states, provided that death could be imposed as the penalty for murder...and some other crimes...but only if the trial jury chose to impose that penalty. For the crime of murder, the only alternative penalty was life imprisonment.

In June, 1972, in a case entitled Furman v. Georgia, 408 US 238, 33 Led 2d 346, 92 S Ct 2726, the Supreme Court of the United States ruled that it was not lawful for the jury to be given the choice of imposing the sentence of death, or, in the

alternative, life imprisonment or some other sentence provided by law. For this reason, the South Carolina Supreme Court directed that the sentences of those under sentence of death for murder be changed to life imprisonment, saying, in effect, that the Furman decision had outlawed the death penalty in South Carolina's law as that law read at that time. The Furman ruling did not hold that the death penalty itself was unconstitutional ...only that a jury could not be given the power to choose the penalty to be imposed.

The General Assembly of South Carolina has now taken from the jury the right to impose the sentence, making death the only penalty that may be imposed for murder in certain circumstances, and life imprisonment the only penalty for murder in any other circumstance.

PENALTIES FOR MURDER

SECTION 1. Section 16-52 of the 1962 Code is amended to read:

"Section 16-52. Whoever is guilty of murder under the following circumstances shall suffer the penalty of death:

(1) Murder committed while in the commission of the following crimes or acts: (a) rape; (b) assault with intent to ravish; (c) kidnapping; (d) burglary; (e) robbery while armed with a deadly weapon; (f) larceny with use of a deadly weapon; (g) housebreaking; (h) killing by poison; (i) lying in wait.

(2) Murder committed for hire based on some consideration of value.

(3) Murder of a law enforcement officer or correctional officer while acting in the line of duty.

(4) The person convicted of committing the murder had previously been convicted of murder, or was convicted of committing more than one murder.

(5) Murder that is willful, deliberate and premeditated."

Whoever is guilty of murder under any other circumstance shall suffer the penalty of life imprisonment. PROVIDED, however, that notwithstanding the provisions of this section, under no circumstances shall a female who is pregnant with child be executed so long as she is in that condition.

SECTION 2. In the event any person who shall be charged with murder shall, after investigation by the court, be determined to be unable financially to retain adequate legal counsel, the court shall appoint such qualified and experienced counsel to defend such defendant in the trial of the action.

Such appointed counsel shall be paid such fee and costs as the court shall deem appropriate.

SECTION 3. The Supreme Court shall review each conviction of a capital offense by any court in this State.

SECTION 4. Section 16-72 of the 1962 Code is amended to read:

"Section 16-72. Any person convicted of rape or assault with intent to ravish unless sentenced under the provisions of Section 16-52 shall be confined at hard labor in the State Penitentiary for a term not exceeding forty years or less than five years in the discretion of the presiding judge."

SECTION 5. Section 16-91 of the 1962 Code, as last amended by Act 835 of 1966, is further amended to read:

"Section 16-91. Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever and hold such person for ransom or reward, except when a minor is seized or taken by a parent thereof, shall

be guilty of a felony and, upon conviction, shall suffer the punishment of life imprisonment unless sentenced for murder as provided in Section 16-52."

SECTION 6. Any person arrested, charged or indicted under Section 16-52 prior to the enactment of this act shall be tried and sentenced as provided by the law in force at the time of the commission of the crime.

EMBEZZLEMENT

It is frequently assumed that the crime of embezzlement is stealing goods or money entrusted to the defendant, but the crime of embezzlement is not a 'common law' crime, such as murder, larceny, and many others. Embezzlement is only what the law says it is...and in South Carolina, the General Assembly has enacted only one statute relating to embezzlement. That statute has to do only with public funds. In all other cases, some other crime must be charged.

EMBEZZLEMENT OF PUBLIC

FUNDS...Section 16-363,

1962 Code of Laws of South

Carolina

All officers and other persons charged with the safekeeping, transfer and disbursements of any public funds who shall embezzle the same shall be guilty of a felony and, upon conviction thereof, shall be punished by fine and imprisonment, in the discretion of the court, such fine and imprisonment to be proportioned to the amount of the embezzlement. The person convicted of such felony shall be disqualified from ever holding any office of honor or emolument in this State;..."

BREACH OF TRUST

Breach of trust with fraudulent intention occurs when some person is lawfully in possession of money or goods of another, but, instead of doing with such money or goods that which he should do, uses them for his own purposes, thus depriving the owner of his money or his goods.

Such an act was not larceny, or stealing, under the common law...because such money or goods were not unlawfully taken in the first place. Common law larceny required that the stolen items must be "feloniously or unlawfully taken and carried away". It was necessary that a law be passed to make fraudulent breach of trust constitute 'larceny'. The General Assembly has enacted such a statute.

LARCENY BY BREACH OF TRUST

(Sec. 16-365, 1962 Code of Laws)

Any person committing a breach of trust with a fraudulent intention shall be held guilty of larceny and so shall any person who shall hire or counsel any other person to commit a breach of trust with a fraudulent intention.

DEFINITION OF BREACH OF TRUST

"A breach of trust is where personal property of appreciable value and of which larceny may be committed is put into the possession of another; and when it is so put into his possession it becomes a trust, and while it so remains, if he conceives the purpose to convert that property to his own use, and does it with intention to deprive the owner of that property, then that is a breach of trust with fraudulent intent." State v. Shirer, 20 SC 392.

BREACH OF TRUST IS LARCENY

"This section (16-365) makes the offense larceny in general terms, and when placed under the general terms, and when placed under the general head of larceny, it partakes of all the incidents thereto, and is governed by the law applicable to larceny..." State v. McCann, 167 SC 393, 166 SE 411.

GOODS OR MONEY

OBTAINED BY FRAUD

When possession of the property is obtained through artifice, trick, or other fraud, then such possession was not lawfully obtained, and the crime is common law 'larceny', and not larceny by fraudulent breach of trust. State v. McCann, 167 SC 393, 166 SE 411.

AGENT OF COMPANY

USING COMPANY MONEY

When the agent of a company receives money which he knows belongs to his employer, with intent to defraud his employer, he is guilty of larceny by breach of trust with fraudulent intent. State v. Ezzard, 40 SC 312, 18 SE 1025.

OBTAINING MONEY OR GOODS

BY MEANS OF FALSE PRETENSES

(Section 16-366, 1962 Code)

Any person who shall by any false pretense or representation obtain the signature of any person to any written instrument or shall obtain from any other person any chattel, money, valuable security or other property real or personal, with intent to cheat and defraud any person, such property shall be guilty of a misdemeanor and shall, on conviction, be sentenced to pay a fine not exceeding five hundred dollars and undergo an imprisonment not exceeding three years; PROVIDED, that if the sum in the written instrument or the value of the property so obtained does not exceed seventy-five dollars the case shall be triable in the magistrate's court and the punishment shall be not more than is permitted by law without presentment or indictment of the grand jury.

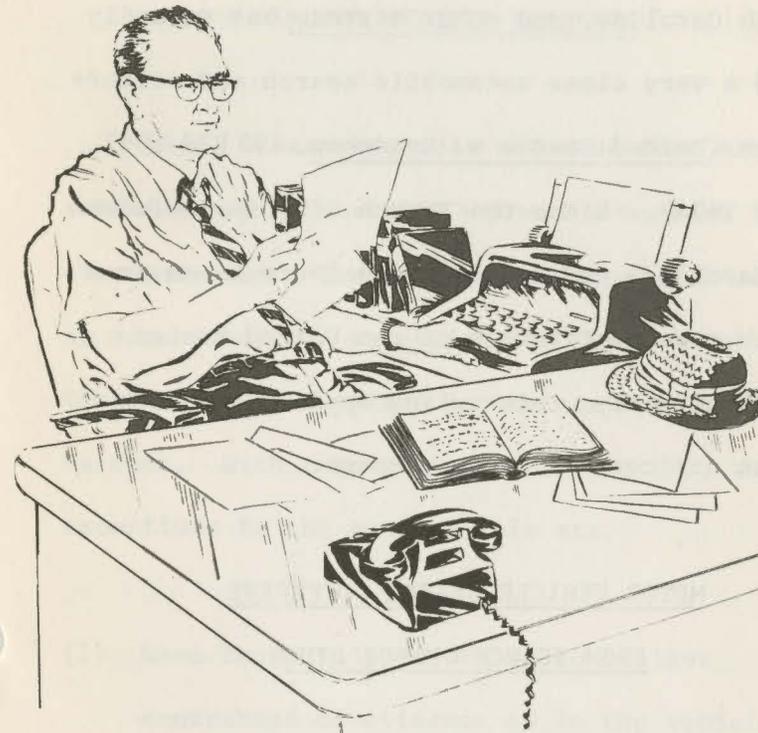
PROMISE TO PAY OR DO SOMETHING

ELSE IS NOT A FALSE PRETENSE

False pretense is such a false representation of an existing or past fact, by one who knows it not to be true, and is used to induce the person to whom it is made to part with something of value.

A mere promise to do something in the future is not such a pretense. State v. Haines, 23 SC 170.

FLEMING'S NOTEBOOK



FLEMING'S NOTEBOOK...Chapter 103:

The Fourth Circuit Court of Appeals in Richmond, the appeals court for the Federal District Courts of South Carolina, and other states, has recently decided a very close automobile search and seizure question (United States v. Bradshaw, 490 F2d 1097, Jan. 9, 1974). Since the Fourth Circuit includes South Carolina, and search and seizure is an area in which the Constitution of the United States controls directly, this ruling applies to South Carolina officers in every respect.

MOTOR VEHICLE SEARCH DIFFERENT

FROM SEARCH OF BUILDING

It has long ago been acknowledged by the courts that the search of a motor vehicle without a search warrant will be permitted many times when search of a building in the same circumstances is unlawful. The reason for the difference is that a motor

vehicle can in most cases be moved quickly...and the evidence lost forever...whereas, a building cannot be so easily removed from the scene.

MOTOR VEHICLE SEARCHES

This, of course, does not mean that motor vehicles may be searched without a warrant in all circumstances. The rules permitting such searches in some cases are exceptions to the general rule that no person or place may be searched without a warrant. With respect to motor vehicles, the exceptions to the general rule are:

- (1) When there is good reason to believe contraband or evidence is in the vehicle; and the motor vehicle is on the highway or other public place, from which place it can be quickly and easily moved.

(2) When the search is made incident to a lawful arrest. (Open and unlocked areas of car.)

(3) When the contraband or evidence is in 'plain sight' and no search is needed to find it.

FACTS OF BRADSHAW

A Federal agent and two state officers were making an 'open-fields' search of the farm of a known bootlegger in Western North Carolina, without a warrant...in the hope of coming upon evidence of moonshining. On a dirt road leading to the residence, the officers came upon an abandoned car. They went to the residence to inquire about the abandoned car. Knocks on the door bringing no response, the officers turned to leave, at which time they noticed a pickup truck parked in the yard ...with high sides and closed tailgate, so that the contents of the back of the truck could not be seen.

When the officers passed near the back of the truck, their nostrils were met with the unmistakable smell of moonshine. One of the officers looked through a crack in the tailgate boards and saw plastic containers of clear liquid. The moonshine was seized and the owner was charged and convicted of possession of non-tax-paid whiskey.

On appeal, the bootlegger argued that the warrantless search and seizure for and of the whiskey was unlawful.

ARGUMENT FOR THE  
SEARCH AND SEIZURE

It was argued for the officers that this was a case in which the contraband was in 'plain-view' and, therefore, no search warrant was needed.

Further, it was pointed out that the 'smell' of the liquor furnished probable cause to believe

that it was there and, since a motor vehicle was involved, a warrantless search was justified.

RULING OF THE COURT

As to the 'plain-view' argument, the court said that, although the officers had a right to be on the premises near the residence (to inquire about the abandoned car), smelling the liquor did not make it in 'plain-view', since one officer had to make a special effort to peer through a crack to see it.

Answering the argument that the search and seizure involved a motor vehicle, and the smell of the moonshine furnished probable cause to believe the truck contained illicit liquor, the Court said there was a great difference between a car 'on the highway', or in some other public place, on the one hand, and a car parked on private property, on the other.

The conviction was reversed.

It was more reasonable, the Court said, for two of the officers to have stayed with the truck while the other one went to obtain a search warrant. It is always safer to obtain a search warrant when possible in doubtful cases.

STATEWIDE LAW ENFORCEMENT DIVISION

THROUGH TELEVISION

S.C. Law Enforcement Training

Council Members:

J.P. Strom - Chairman  
Charles M. Skipper  
William T. Ivey  
I. Byrd Parnell  
Harold C. Swanson  
Daniel R. McLeod

P.F. Thompson  
James W. Webb  
William D. Leeke  
Robert W. Foster  
James L. Anderson  
James P. Ashmore

Clifford A. Moyer - Executive Director  
S.C. Criminal Justice Academy