

STATEMENT OF ISSUES ON APPEAL

1.

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

2.

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

3.

Did the trial judge err by summarily denying Appellant's motion to relieve counsel and proceed *pro se* without conducting the proper inquiry pursuant to Faretta v. California, 422 U.S. 806 (1975) in violation of Appellant's federal and state constitutional rights?

RECEIVED

MAY 22 2023

SC Court of Appeals

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

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

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

MR. HOLMES: **I’ll represent myself.** Mental health and all – **let’s represent myself.** And tell the Lord Jesus, **I’ll represent myself. I don’t want his service. I’ll represent myself.**

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

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

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

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

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

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

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

Standard of Review

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

242 F.3d 1191, 1198 (9th Cir. 2000)). “Specifically, we review a circuit judge’s findings of historical fact for clear error; however, we review the denial of the right of self-representation based upon those findings of fact de novo.” Id. (citing United States v. Bush, 404 F.3d 263, 270 (4th Cir. 2005)). “In doing so, this Court must consider the defendant’s testimony, history, and the circumstances of his decision, as presented to the circuit judge at the time the defendant made his request.” Id. (citing United States v. Singleton, 107 F.3d 1091, 1097 (4th Cir. 1997)).

Discussion

The trial judge erred by denying Appellant’s motion to relieve counsel and represent himself without conducting the proper inquiry pursuant to Faretta v. California, 422 U.S. 806 (1975) in violation of Appellant’s federal and state constitutional rights.

“A South Carolina criminal defendant has the constitutional right to represent himself under both the federal and state constitutions.” State v. Barnes, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014) (citing State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010)). “This right must be preserved even if the court believes that the defendant will benefit from the advice of counsel.” State v. Fuller, 337 S.C. 236, 241, 523 S.E.2d 168, 170 (1999) (citing United States v. Singleton, 107 F.3d 1091 (4th Cir. 1997)).

“Recognizing that it may be to the defendant’s detriment to be allowed to proceed *pro se*, his knowing, intelligent and voluntary decision ‘must be honored out of that respect for the individual which is the lifeblood of the law.’” Barnes, 407 S.C. at 35-36, 753 S.E.2d at 550 (quoting Faretta v. California, 422 U.S. 806, 834 (1975)). “Under Faretta, the trial judge has the responsibility to make sure that the defendant is informed of the dangers and disadvantages of self-representation, and that he makes a knowing and intelligent waiver of his right to counsel.” Id. at 36, 753 S.E.2d at 550 (citing State v. Reed, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998)).

summarily rejected Appellant's request to relieve his counsel and represent himself without conducting any Faretta colloquy. It is apparent from the record that Appellant did not seek to delay his trial, which had already begun. Rather, he was dissatisfied with his attorney because his attorney failed to properly impeach a key witness. Notably, despite telling Appellant he could call Mr. Stephens, his prior attorney, as a witness, the defense rested without presenting any evidence.

Since the trial judge here failed to make the proper inquiries under Faretta and did not honor Appellant's desire to waive his right to counsel and proceed *pro se*, respectfully this Court should reverse Appellant's conviction and remand for a new trial.

George Holmes #289114
Lee CJ/F-2-2121
190 Wisack Hwy
Bishopville SC 29010

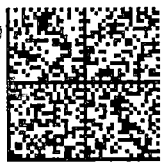
RECEIVED

MAY 22 2023

SC Court of Appeals

SC Court of Appeal
Post office Box 11629
Columbia South Carolina 29211

COLUMBIA SC 290
17 MAY 2023 PM 2



US POSTAGE TM FITNEY BOWES
ZIP 29210 \$ 000.60⁰
02 4W
0000378725 MAY 17 2023

LEGAL MAIL ONLY

20211-162929

