

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

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JUN 15 2023

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

GEORGE HOLMES,

APPELLANT

APPELLATE CASE NO. 2022-000728

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Tr. 1; Tr. 50; Tr. 79-92; Tr. 94-119; Tr. 122-176; Tr. 178-196; Tr. 201-236;
Tr. 242-243; Tr. 253-258;
- (2) State's Exhibit No. 2 (Surveillance Video); State's Exhibit Nos. 8-10
(Photographs); State's Exhibit No. 28 (Photograph);
- (3) Indictments;
- (4) Sentence Sheets.

I certify that this designation contains no matter which is irrelevant to this appeal.

s/ Lara M. Caudy _____

Lara M. Caudy
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This 19th day of April, 2023.

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS3

ARGUMENT

1.

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

2.

The trial judge erred by denying Appellant’s motion for a directed verdict for the offense of safecracking where the state alleged Appellant attempted to pry open an automated teller machine (ATM) since an ATM does not constitute “a safe used for keeping money or other valuables” as intended by the legislature for purposes of S.C. Code Ann. § 16-11-390.9

3.

The trial judge erred by denying Appellant’s motion to relieve counsel and proceed *pro se* without conducting the proper inquiry pursuant to Faretta v. California, 422 U.S. 806 (1975) in violation of Appellant’s federal and state constitutional rights..... 12

CONCLUSION.....17

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?

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 re-raise this motion at a time in the future if he so chooses.

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

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

The 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,

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