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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 stand alone 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

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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 Farettà 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,

CONCLUSION

Based on the foregoing argument, this Court should direct a verdict of acquittal for the offenses of second degree burglary and safecracking. In the alternative, Appellant respectfully requests this Court reverse his convictions and remand for a new trial.

Respectfully submitted,

~~s/ Tara M. Gandy~~

~~Tara M. Gandy~~
~~Appellate Defender~~

ATTORNEY FOR APPELLANT

~~This 19th day of April 2023.~~

The State vs George Holmes, Appellate case No. 2018-000128
Code of Laws of South Carolina 1976 Annotated
Title 16: Crimes and Offenses
Chapter 11: Offenses Against Property
Article 5: Burglary, Housebreaking, Robbery and the like

Code 1976 § 16-11-390

§ 16-11-390. Safecracking

Currentness

PLEASE SEE

Arrest Warrant: 2018A0710200400

16-11-0390

It is unlawful for a person to use explosives, tools, or any other implement in or about a safe used for keeping money or other valuables with intent to commit larceny or any other crime.

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

Credits

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

Notes of Decisions (10)

Code 1976 § 16-11-390, SC ST § 16-11-390
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Current through 2019 Act No. 90, subject to technical revisions by the Code Commissioner as authorized by law before official publication.

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Mr. George Holmes did not commit the offense of Safecracking
Notes Of Decisions (10) Dismiss
(In general) indictment: 2018A0710200400 16-11-0390

GH It is not essential to constitute a safecracker that he shall be successful in his attempt to break open the safe. Miller v. State of S. C. (D.C.S.C. 1970) 309 F.Supp. 1287.

GH "Safetampering" falls within the crime defined as "safecracking" in this section [Code 1962 § 16-337]. Miller v. State of S. C. (D.C.S.C. 1970) 309 F.Supp. 1287. Burglary 2
George Holmes

GH Defendant's possession, following larceny of safe, of property of the nature stolen, with his admission to others that he had obtained them from the safe in subject, were sufficient to sustain his conviction of the offense of safecracking. State v. Blue (S.C. 1975) 264 S.C. 468, 215 S.E.2d 905. Burglary 45
George Holmes

GH Use of a hammer to remove a safe in one county, although it was not opened until carried into a second county, constituted a violation of this section [Code 1962 § 16-337], such as to give a court of the first county jurisdiction over the case. Shalnut v. State (S.C. 1965) 247 S.C. 41, 145 S.E.2d 420.

GH The subject of the act from which this section [Code 1962 § 16-337] is taken was expressed in the title thereof. State v. O'Day (S.C. 1906) 74 S.C. 448, 54 S.E. 607.

Constitutional Issues

GH Ten year minimum sentence for safecracking with tools does not constitute cruel and unusual punishment. Stockton v. Lecke (S.C. 1977) 269 S.C. 459, 237 S.E.2d 896.

GH This section [Code 1962 § 16-337] is not unconstitutional by reason of the fact that life imprisonment is directed upon conviction if the jury does not recommend mercy, and not less than ten years' imprisonment is directed when the jury does recommend mercy. State v. Haulcomb (S.C. 1973) 260 S.C. 260, 195 S.E.2d 601, appeal dismissed 94 S.Ct. 229, 414 U.S. 886, 38 L.Ed.2d 134.
George Holmes

GH The contention that this section [Code 1962 § 16-337] is not sufficiently definite to place a person of common intelligence on notice as to what is prohibited is clearly without merit. The offense is designated in bold-faced letters "SAFECRACKING." State v. Haulcomb (S.C. 1973) 260 S.C. 260, 195 S.E.2d 601, appeal dismissed 94 S.Ct. 229, 414 U.S. 886, 38 L.Ed.2d 134. Larceny 2
George Holmes

Indictment 2018A0710200400
GH Where an indictment on its face specifically sets forth the charge of safecracking as the fourth count, its plain language is not to be ignored merely because on the outside of the indictment the several counts are tabulated in a different order. Crady v. State (S.C. 1966) 248 S.C. 522, 151 S.E.2d 670.

Questions for Jury

GH In a prosecution for armed robbery and safecracking, the court improperly denied defendant's motion for directed verdict.
George Holmes

The State v. George Holmes Appellate Case No. 2022-000728

ARREST WARRANT

2018A0710200400

STATE OF SOUTH CAROLINA

County/ Municipality of

Beaufort

THE STATE

189324618

against

George Holmes

Address:

Phone: SSN:

Sex: M Race: B Height: 5 7 Weight: 240

DL State: SC DL #:

DOB: Agency ORI #: SC0070000

Prosecuting Agency: Beaufort County Sheriff's Office

Prosecuting Officer: Jonathan M Hewitt - S00393

Offense: Burglary / Safecracking

Offense Code: 0141

Code/Ordinance Sec: 16-11-0390

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Beaufort County General Sessions

PO Box 1128

102 Ribaut Road, Rm. 208

Beaufort, SC 299011128

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Beaufort

Personally appeared before me the affiant Jonathan M Hewitt who

being duly sworn deposes and says that defendant George Holmes

did within this county and state on or about 12/28/2018 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of Beaufort)

in the following particulars:

DESCRIPTION OF OFFENSE: Burglary / Safecracking

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on December 28th, 2018, at approximately 0128 hours, the defendant, one George Holmes did knowingly, willingly and unlawfully violate the laws of the State of South Carolina in that he did commit the offense of Safecracking. The defendant unlawfully broke into the Navy Federal Credit Union ATM. Upon gaining entry, attempted to force entry into the ATM box to steal the currency located within. The incident was captured on surveillance footage, Holmes was positively identified and a BCSO Tracking Team was recalled and tracked to the location he was found. This incident did occur at 102 Sea Island Parkway, Beaufort, Beaufort County, South Carolina and within the jurisdiction of the Beaufort County Sheriff's Office. The Affiant and others are witness to the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Beaufort

Affiant's Address 2001 Duke St

Beaufort, SC 29902-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/28/2018 defendant George Holmes

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Beaufort) as set forth below.

DESCRIPTION OF OFFENSE: Burglary / Safecracking

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 12/28/2018

Signature of Issuing Judge (L.S.)

Mark Francis Fitzgibbons

Judge Code: 7060

Judge's Address 104 Ribaut Rd

Beaufort, SC 29901-2207

Judge's Telephone (843)255-5700

Issuing Court: County/ Municipality/ Circuit

Magistrate

Municipal

Circuit

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Statutes: Intent
0 Statutes: Plain language; Plain ordinary
Common, or literal meaning
1/2 Statutes: In general; factors considered

Certified - A True Copy

Jerri Ann Rosebeau - Clerk of Court
Beaufort County, SC - Jennifer Perloff

~~3-24-2019~~

RE: Motion to dismiss indictment: 2018A0710200400; because of Denial of Speedy trial; Lack of Prosecution; Failure to bring indictment in next term; Tape recording of February 1 2019 of my Preliminary hearing at Beaufort Magistrate

APPEAL 6-13-2022 G.H. ~~George Holmes~~

TO: ~~Courtney Gibbes~~ - Public defender - Lauren Heath Carroway; Judges of General Sessions, Mullen, Buckner, Goldsmith, John Cooper Clerk of Court & SC Commission of indigent defense... The SC Commission of Lawyers Conduct & Chief Justice Issac M. Stone III, Solicitor, 14th Judicial Circuit

Complaint: On February 1 2019, At my Preliminary hearing Beaufort Magistrate

The Presiding Judge was Mark Francis Fitzgibbons on February 1 2019. ~~of Jonathan M Hewitt - BCSO~~ ~~Proof of witness alleged lies by stating that the safe was crack open.~~ I'd like to introduced the tape into evidence of specific facts, why ofc Jonathan M Hewitt testimony is not sufficient or isn't trialable or appropriate to support any convictions of indictment: 2018A0710200400

The evidence of the tape recording of the witness statement I Demand for Speedy trial or dismissal of Indictments: 2018A0710200400...

6-13-2022 ^{-N-} 2018A0710200399...

Thanks

With kind regards for your time I'm

~~George Holmes~~
George Holmes

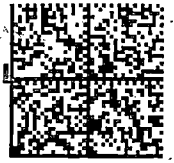
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Bishopville, SC 29010

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S.C. SUPREME COURT



Patricia A Howard
Clerk of Court
Post office Box 11330
Columbia SC 29211

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