

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

RECEIVED

AUG 17 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
Appellate Defender

South Carolina Commission on Indigent
Defense

Division of Appellate Defense

PO Box 11589

Columbia, SC 29211-1589

(803) 734-1330

ATTORNEY FOR APPELLANT

This 19th day of April, 2023.

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).~~

Relevant Facts

After the state's presentation of evidence, Appellant moved for a directed verdict. Tr. 188, ll. 11-12. Defense counsel argued that the structure housing the ATM Appellant allegedly entered does not constitute a "building" for purposes of S.C. Code Ann. § 16-11-312(B)(3). Citing Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Plan. Comm'n, 426 S.C. 97, 105, 825 S.E.2d 721, 726 (Ct. App. 2019), counsel emphasized "the importance of reading an entire section of statutory language together." Tr. 190, l. 19 – 191, l. 2. He argued that when the sections of Title 16, Chapter 11, Article 5 are read together, the enclosure in this case is explicitly excluded from being a "building" for purposes of second degree burglary. He explained that subsection (F) of S.C. Code Ann. § 16-11-380, which criminalizes bank robbery and solicitation of a person using an ATM, provides, "A building or structure does not include an enclosure erected solely for the purpose of containing an otherwise outdoor or detached ATM or automated banking device." Tr. 191, ll. 3-15. Counsel asserted that the enclosure in this case is a ~~"stand-alone structure"~~ in "the middle of a parking lot" that was only "erected" for the sole "purpose of keeping this ATM out of the rain." Tr. 191, ll. 16-23. Consequently, counsel concluded that when § 16-11-312(B) and § 16-11-380(F) are read as a whole, the enclosure is

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.

Relevant Facts:

At the conclusion of the state's case, Appellant moved for a directed verdict for the offense of safecracking. Defense counsel argued that the automated teller machine (ATM) did not constitute a "safe" for purposes of S.C. Code Ann. § 16-11-390. He asserted that a safe is "for holding and protecting and preventing from public access. It's supposed to be something where you can put your most prized possessions and valuables, or whatever they are in a place that is not accessible to the public." Tr. 192, ll. 16-24. However, an ATM is "like a vending machine." It is "stocked" with cash "specifically to give it out to the public," not to protect it from the public. Tr. 192, l. 25 – 193, l. 5. He concluded that an "ATM cannot be construed as . . . a safe" for purposes of safecracking. Tr. 193, ll. 5-16.

The assistant solicitor argued the ATM "is a secured box" used for keeping money and therefore meets the definition of a "safe" pursuant to the statute. Tr. 195, l. 16 – 196, l. 6.

The trial judge agreed with the solicitor and denied the motion for a directed verdict. She found there was evidence to meet the elements of the offense and it was "a jury issue." Tr. 196, ll. 9-13.

Standard of Review

"In criminal cases, the appellate court sits to ~~review errors of law only~~" State v. Larmand, 415 S.C. 23, 29, 780 S.E.2d 892, 895 (2015) (citing State v. Baccus, 367 S.C. 41, 48,

The trial judge erred 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.

Relevant Facts

Shortly after testimony began, defense counsel informed the judge during a recorded bench conference that Appellant wished to be heard on a motion to relieve counsel. Counsel explained that Appellant had "indicated" that he wanted "to fire" both of his attorneys. Tr. 122, ll. 20-23. The judge immediately responded, "He [Appellant] would have to represent himself. Not happening." Tr. 123, ll. 1-2. After the bench conference concluded, defense counsel again stated that Appellant wished to be heard on a motion to relieve counsel before the jury returned to the courtroom. Tr. 123, ll. 7-13. When permitted to speak, Appellant expressed dissatisfaction with his attorneys because counsel failed to impeach Deputy Jonathan Hewitt with a prior inconsistent statement Hewitt had made during Appellant's preliminary hearing. Tr. 123, l. 15 – 124, l. 7. Appellant expressed frustration that Hewitt had "lied under oath" thereby committing perjury and defense counsel did not impeach Hewitt when Hewitt testified before the jury. Tr. 124, ll. 3-20. Defense counsel confirmed Appellant was "upset" that counsel did not ask Hewitt "if he lied under oath at Mr. Holmes's preliminary hearing." Tr. 125, ll. 7-10.

Appellant stated that he wanted to call his prior attorney, only identified as Mr. Stephens, who represented him during his preliminary hearing, as a witness to testify concerning Hewitt's false testimony. Defense counsel informed the judge that Stephens was "on stand-by." Tr. 125, ll. 11-22. The judge told Appellant that he could later call Stephens as a witness. Tr. 125, ll. 23-

~~The State v. George Holmes~~
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

PLEASE SEE
Arrest Warrant: 2018A0710200400

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
COPYRIGHT (c) 2019 BY THE STATE OF SOUTH CAROLINA
Current through 2019 Act No. 90, subject to technical revisions by the Code Commissioner as authorized by law before official publication.
End of Document
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~~The State v. George Holmes~~
Notes Of Decisions (10) Dismiss the offense of Safecracking
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
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
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. Shelout v. State (S.C. 1965) 247 S.C. 1, 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.

I'm Not guilty GH

Constitutional Issues
GH Ten year minimum sentence for safecracking with tools does not constitute cruel and unusual punishment. Stockton v. Leake (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.
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

Indictment 2018A0710200400 I'm Not guilty GH
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.

GH Questions for Jury
GH In a prosecution for armed robbery and safecracking, the court improperly denied defendant's motion for directed verdict.
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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 ~~Earett v. California, 492 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 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,

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/ Lara M. Gaudy~~

~~Lara M. Gaudy~~
~~Appellate Defender~~

ATTORNEY FOR APPELLANT

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

The Carolina Court of Appeals
The Supreme Court of South Carolina
Clerk of Court of Beaufort South Carolina

Mr. Colin J Hamilton, Esquire
Bar No. 104439, 14 Circuit
Assistant Public Defender
Post office Box 525
1905 Duke Street, Room 210
Beaufort, SC 29901

ORDER MOTION
OF TERMINATION RECEIVED

JUN 29 2022

SC Court of Appeals

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

Dear SCACR,

Big Complaint: Ineffective Assistant of Council - Creditability of
Mr. Colin J Hamilton, Esq., Bar No. 104439, Assistant Public Defender 14th Circuit...
As representing me, of my trial - N-Statute: SafeCracking 16-11-390, in general
Miller v. State of SC D.C.S.C. 1970, 309 F. Supp. 1287...
Perjury and Subornation, When B.C.D.O., Affiant, Jonathan M Hewitt,
At my Preliminary hearing On 2-1-2019, he committed Perjury 16-9-10,
B.C.S.O. Jonathan M Hewitt, Committed, Perjury and Subornation,
under Oath. Oath, false statement, testimony, Affidavit,
Perjury generally, Nature of Preliminary hearing 21. On 2-1-2019,
Creditability of Jonathan M Hewitt, at my trial On May 18, 2022, ...
My Arrest Warrant #2018A0110200399, States, (non violent) Burglary 2nd
degree, But the Jury trial Convicted me, burglary 2nd degree (Violent)
How!!! Mr. Colin J Hamilton, Is Ineffective Assistant of Council, Also
Motion by Charles W. Patrick, III, appointed Counsel, held on
March 25, 2020, order for my bond, Stated I, George Holmes,
shall be release on my own recognizance and Motion order
for Competency to Stand trial Evaluation Pursuant to
STATE V. BLAIR

with kindest regards I'm ^{Thanks} George Holmes
George Holmes

The State v. George Holmes, Appellant Case No. 2022-000728

ORDER MOTION
TO BE RELEASED

Warrant No.(s) 2018AD710200399, 2018AD710200400
Indictment No.(s) 2019GS0700039, 2019GS0700040

ORDER

The Circuit Court applied the wrong Standard of review, and under the Correct Standard of review. Please See:

Arrest Warrant No. 2018AD710200399, States "Non-violent burglary 2nd degree, Conflict ORDER; on February 26, 2020. Stated Defendant, George Holmes, is charged with Burglary (non-violent) 2nd degree, "Non-violent" offense. Motion by Charles W. Patrick, III, On March 25, 2020, Order Granting Defendant Motion for Bond is hereby ordered as follows: George Holmes, shall be released on his own recognizance; shall be on house arrest; Order for Competency to stand trial Evaluation Pursuant to STATE v. BLAIR. "States" George Holmes, charged with one (1) count of Burglary 2nd degree (non-violent) Please See: Summons No. 607774 Defendant's Copy incident Report #18S324616. May 18, 2022, The Trial Convicted of Burglary 2nd degree (violent) Sentence Sheet and Notice of Appeal Shows (Violent).

The Circuit Court applied the wrong Standard of review and under the Correct Standard of review.

CREDIBILITY: OF B.C.S.O. Jonathan M Hewitt, 2-1-2019.

ACQUITTAL: That the evidence is insufficient to support a conviction.

with kindest Regards I'm ^{Thanks,} ~~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: [REDACTED]
Sex: M Race: B Height: 5 7 Weight: 240

DL State: SC DL #: [REDACTED]
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 12/28/2018

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)

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 318

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 (L.S.)

Signature of Issuing Judge
Mark Francis Fitzgibbons
Judge Code: 7050

Judge's Address 104 Ribaut Rd
Beaufort, SC 29901-2207
Judge's Telephone (843)255-5700

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

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

Certified - A True Copy
Jeri Ann Rosebeau - Clerk of Court
Beaufort County, SC - Jennifer Peroff

3-1-2023

Arthur Miller and John N. Johnson, Petitioners,
State of South Carolina et al. Respondents.

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2023 APR 17 PM 12:14

United States District Court, D. South Carolina,
Columbia Division. Fed. 17, 1970. 309 F. Supp. 1287
(Approx. 8 pages) Civ. A. No. 70-2

5) Such reason apparently was never conveyed to appointed counsel, who would undoubtedly have been relieved to have been released from representation; nor did the petitioner explain how he expected to pay such counsel. There is perhaps an implication in the record that the appointed counsel failed adequately to protect the petitioners right in not raising the plea that, since the petitioners had not actually succeeded in opening the safe involved in their prosecution, they could not BE Guilty OF 'Safecracking'; only of, to use the words of one of the petitioners, 'Safetampering'. However, it has been authoritatively held, in the construction of the South Carolina 'Safecracking' Statute, 'It is not essential to constitute a safe cracking that he shall be Successful in his attempt to break open the safe'.

State v. O'Day (1906) 74 S.C. 448, 450, 54 S.E.

607, 608; See, also, Shelnut v. State (1965) 247 S.C.
41, 45, 145 S.E.2d 420; cf.

United States ex rel. Sadler v. Pennsylvania (D.C. Pa. 1969)

306 F. Supp. 102, 106. It is thus clear that 'Safetampering' in Section 16-337 of the South Carolina Code.

George Holmes

George Holmes

5-27-2019

APPEAL

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.

TO: ~~Courtney Gibbes~~ - Public defender - Laurent 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. Ofc Jonathan M Hewitt - B.C.S.O 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...

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SEP 14 2022

SC Court of Appeals

With kind

for your time regards I'm

6-13-2022 2018-N-2018A0710200399...

Thanks

George Holmes
George Holmes

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SEP 14 2022

S.C. SUPREME COURT

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JUN 16 2022

S.C. SUPREME COURT

RECEIVED

JUN 16 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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AUG 17 2023

SC Court of Appeals

Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GEORGE HOLMES,

APPELLANT

APPELLATE CASE NO. 2022-000728

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon William M. Blich, Jr., Esquire, at the primary email address listed in the Attorney Information System (AIS); and on ~~George Holmes~~, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 19th day of April, 2023.

s/ Lara M. Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

George Holmes #289114
Lee CE/F-7-85
990 Wisack Highway
Bishopville, SC 29010



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AUG 14 2023
S.C. SUPREME COURT

Alan McCrory Wilson, Clerk of Court
Post office Box 11330
Columbia, South Carolina 29211

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LEGAL MAIL ONLY

