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AUG 25 2023

SC Court of Appeals

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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 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

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,

**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. Gandy~~  
~~Lara M. Gandy~~  
~~Appellate Defender~~

ATTORNEY FOR APPELLANT

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

(S)

George Holmes  
#289114

6-14-2022

# Request TO STAFF

In The Court of General  
Sessions  
Fourteenth Judicial Circuit

The Supreme Court of South Carolina

George Holmes, Petitioner, Appeal Motion To Release  
Warrant#

2018A0710200399-N-2018A0710200400

v.  
State of South Carolina, Respondent.

Appellate Case No. 2022-000728

**RECEIVED**

JUN 22 2022

## ORDER

SC Court of Appeals

This matter above Pursuant to a motion by George Holmes,  
Defendant to be Release from S.C.D.C. I order that  
on 6-14-2022..

FOR The Court

with kindest regards I me

Thanks

George Holmes  
George Holmes

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JUN 17 2022

S.C. SUPREME COURT

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

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

16-11-0390

I'm Not guilty

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)

COPYRIGHT (C) 2019 BY THE STATE OF SOUTH CAROLINA  
Code 1976 § 16-11-390, SC ST § 16-11-390  
Current through 2019 Act No. 90, subject to technical revisions by the Code Commissioner as authorized by law before official publication.  
End of Document  
© 2019 Thomson Reuters. No claim to original U.S. Government Works.

Mr. George Holmes did not commit the offense of Safecracking  
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.

GH Constitutional Issues  
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  
George Holmes

GH Indictment  
2018A0710200400 I'm Not guilty 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  
George Holmes  
In a prosecution for armed robbery and safecracking, the court improperly denied defendant's motion for directed verdict.

2018A0710200399

STATE OF SOUTH CAROLINA

County/  Municipality of

Beaufort

THE STATE  
against

18S324616

George Holmes

Address:

Saint Helena Island, SC 29920-5411

Sex:  M Race: B Height: 5 7 Weight: 240  
Date of Birth: SC DL #: \_\_\_\_\_

Agency ORI #: SC0070000

Arresting Agency: Beaufort County Sheriffs Office  
Arresting Officer: Jonathan M Hewitt - S00393

Charge: Burglary / Burglary (Non-Violent) - Second degree

Use Code: 0080

Ordinance Sec: 16-11-0312

Warrant is CERTIFIED FOR SERVICE in the  
County/  Municipality of

To be arrested and brought before me to be  
with according to the law. The accused to be

(L.S.)

Signature of Judge

RETURN

Copy of this arrest warrant was delivered to  
defendant George Holmes

12/28/18

[Signature]  
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Beaufort County General Sessions  
PO Box 1128  
102 Ribaut Road, Rm. 208  
Beaufort, SC 299011128

DEFENDANT COPY DEFENDANT COPY

DEFENDANT COPY DEFENDANT COPY

DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA  
 County/  Municipality of

Beaufort

AFFIDAVIT

DEFENDANT  
COPY

Form Approved by  
S.C. Attorney General  
April 21, 2003  
SCCA 518

Personally appeared before me the affiant Jonathan M Hewitt  
being duly sworn deposes and says that defendant George Holmes  
did within this county and state on or about 12/28/2018  
State of South Carolina (or ordinance of  County/  Municipality of Beaufort)  
in the following particulars: violate the criminal laws of the

DESCRIPTION OF OFFENSE: Burglary / Burglary (Non-Violent) - Second degree

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 Burglary in the 2nd Degree. The  
defendant unlawfully forced into the Navy Federal Credit Union ATM. He did so by using a crow bar to break through the outside  
door. Upon gaining entry attempted to force entry into the ATM box in an attempt 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 / Burglary (Non-Violent) - Second degree

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  
[Signature]  
Mark Francis Fitzgibbons  
Judge Code: 7060

(L.S.)

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

Issuing Court:  Magistrate  Municipal  Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

United States District Court, D. South Carolina, Columbia Division.

Arthur Miller and John N. Johnson, Petitioners,

v.  
State of South Carolina et al. Respondents.

Civ. A. No. 70-2.

Fed. 17, 1970

Attorneys and Law Firms

\*1288 Daniel R. McLeod, Atty. Gen., Emmett H. Clair, Asst. Atty. Gen., Columbia, S.C.

OPINION and ORDER

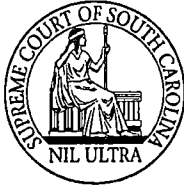
⑤ Such reason apparently was never conveyed to appointed counsel, who would undoubtedly have been relieved to have been released from representation; nor did the petitioner explain how he expected to pay such counsel. There is perhaps an implication in the record that in not raising the plea that, since 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 crackinger 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. 102106

With kindest regards I'm  
George Holmes  
Thanks  
George Holmes



**South Carolina Court Administration**  
South Carolina Supreme Court  
Columbia, South Carolina

1220 SENATE STREET, SUITE 200  
COLUMBIA, SOUTH CAROLINA 29201

November 4, 2022

George Holmes #289114  
Ridgeland Correctional Institution  
PO Box 2039  
Ridgeland, SC 29936

Dear Mr. Holmes:

This letter is in response to case documents sent to this office and received November 4, 2022.

Your correspondence did not contain enough information for this office to make a determination on your request to Court Administration. Please be more specific in your request.

Sincerely,  
Court Services Section

/MF

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 <sup>Thanks,</sup> ~~George~~ Holmes

George Holmes #28114  
Lee CI/F-7-85  
990 Wisack Hwy  
Bishopville, SC 29010

COLUMBIA SC 29010

22 AUG 2023PM



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0000378725 AUG 22, 2023

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AUG 25 2023

SC Court of Appeals

The Supreme Court of South Carolina  
Patricia A. Howard, Clerk of Court  
Post office Box 11330  
Columbia, South Carolina 29211

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AUG 24 2023

S.C. SUPREME COURT

29211-133030



SEP 04 2023