RECEIVED
Oct 24 2023
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE 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

FINAL BRIEF OF APPELLANT

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

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?

STATEMENT OF THE CASE

A Beaufort County grand jury indicted Appellant on April 18, 2019 for second degree burglary (violent) and safecracking. R. 192. His case was called to trial on May 16, 2022 before the Honorable Carmen Mullen, and a jury. R. 1. Assistant Solicitors Jared Shedd and Samantha Molina represented the state. R. 1. Colin Hamilton represented Appellant. R. 1.

On May 18, 2022, the jury found Appellant guilty as indicted. R. 173, l. 23 – 174, l. 3. He was sentenced to twenty years suspended upon the service of fifteen years imprisonment and five years' probation for safecracking and fifteen years concurrent for second degree burglary. R. 188, l. 25 – 189, l. 14.

This appeal follows.

STATEMENT OF FACTS

During the early morning hours of December 28, 2018, a Black male broke into a structure housing an automated teller machine (ATM) on Lady's Island owned by Navy Federal Credit Union. The standalone structure, which was located in the parking lot of a Dollar Tree store, contained surveillance cameras that were monitored in real time by Navy Federal Credit Union's security department based in Winchester, Virginia. R. 27, ll. 10-25; See State's Exhibit Nos. 8-10 (Photographs). Jeffrey Martin, who worked for the security department, received an alarm shortly before 1:30 a.m. that morning. R. 31, l. 18 – 32, l. 17. Once Martin confirmed there was a break in, he contacted local law enforcement and continued live monitoring the cameras until deputies from the Beaufort County Sheriff's Office arrived. R. 28, ll. 11-15.

Martin watched as the intruder entered the back of the structure housing the ATM and attempted to pry open the machine with a tire iron or crow bar. R. 31, ll. 6-8. When the intruder initially entered the structure, his face was not covered. R. 30, ll. 13-23. However, he later covered his face with a white mask. See State's Exhibit No. 2 (Surveillance Video). Martin gave a description of the individual to the dispatcher and later sent screen shots of the individual from the surveillance footage to law enforcement. R. 28, ll. 19-23; R. 42, ll. 2-10.

When deputies arrived, the intruder was gone. R. 41, l. 22 – 42, l. 1. Consequently, the bloodhound tracking team was asked to respond in an effort to locate the individual. R. 42, ll. 17-25. While enroute about thirty minutes later, Sergeant David Tafoya, then a member of the tracking team, "saw a black male, heavier set, walking along Lady's Island Drive." R. 93, l. 2 – 95, l. 6. Since the man's appearance was consistent with the general description of the intruder, Deputy Kyle Breland drove to the individual's location. R. 82, l. 4 – 83, l. 8. Breland encountered the man, who was later identified as Appellant, and detained him. Breland claimed

Appellant appeared to be the person in the still shots from the surveillance footage, although Appellant was wearing different clothing than the intruder. R. 83, l. 9 – 84, l. 6; R. 88, ll. 3-7.

Deputy Breland continued to detain Appellant in the median of the roadway while a bloodhound tracked. R. 84, ll. 5-13. Sergeant Tafoya, the handler for the dog, claimed the dog tracked from the ATM to where Appellant was detained in the median of Lady's Island Drive. The dog allegedly went "straight up to [Appellant] and put his nose in his crotch." R. 99, l. 16 – 102, l. 3. Appellant was subsequently arrested and charged with second degree burglary and safecracking.

A DNA profile developed from "swabs of the interior of the ATM hood and safe" was 1.34 million times more likely to match the DNA profile of Appellant than a coincidental match to an unrelated individual. R. 114, ll. 1-9; R. 70, l. 23 – 71, l. 3. Additionally, a DNA profile developed from a swab of blood found on the exterior of the door to the structure housing the ATM was 2.46 nonillion times more likely to match Appellant than a coincidental match to an unrelated individual. R. 115, ll. 1-25; R. 70, ll. 20-23.

The jury found Appellant guilty as indicted. R. 173, l. 23 – 174, l. 3.

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. R. 119, 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." R. 121, l. 19 – 122, 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." R. 122, 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." R. 122, 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

not a "building" for purposes of second degree burglary. Accordingly, counsel argued a directed verdict was warranted.

The trial judge rejected Appellant's argument and denied the motion for a directed verdict. R. 126, 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, 625 S.E.2d 216, 220 (2006)). A court is "bound by the trial court's factual findings unless they are clearly erroneous." Id. (quoting Baccus, 367 S.C. at 48, 625 S.E.2d at 220).

Discussion

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).

"The defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) (citing State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001)). "However, if there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." Id. (citing State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000)) (emphasis in original). "On appeal from the denial of a directed verdict, this Court must view the evidence in the light most favorable to the State." Id. (citing State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001)). "When ruling on a motion for a directed verdict, the trial court is concerned with the

existence or nonexistence of evidence, not its weight." State v. Shands, 424 S.C. 106, 135, 817 S.E.2d 524, 539 (Ct. App. 2018) (citing State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009)).

"The cardinal rule of statutory construction is to ascertain and effectuate the intention of the legislature." State v. Thomas, 372 S.C. 466, 468, 642 S.E.2d 724, 725 (2007) (citing Howell v. U.S. Fidelity and Guar. Ins. Co., 370 S.C. 505, 636 S.E.2d 626 (2006)). "However, statutes must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one given effect, if reasonable." Id. (citing Higgins v. State, 307 S.C. 446, 415 S.E.2d 799 (1992)); see also 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). "Penal statutes are to be construed strictly against the State and in favor of the defendant." Id. at 468-69, 642 S.E.2d at 725 (citing State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002)); see also State v. Johnson, 396 S.C. 182, 188, 720 S.E.2d 516, 519 (Ct. App. 2011).

Appellant was indicted for second degree burglary pursuant to § 16-11-312(B)(3), which states in relevant part: "A person is guilty of burglary in the second degree if the person enters a *building* without consent and with intent to commit a crime therein, and . . . (3) The entering or remaining occurs in the nighttime." (emphasis added). Accordingly, the state had to prove the standalone structure housing the ATM constituted a "building" pursuant to the statute. South Carolina Code Ann. § 16-11-310 defines "building" for purposes of Sections 16-11-311 through 16-11-313 as "any structure, vehicle, watercraft, or aircraft: (a) Where any person lodges or lives; or (b) Where people assemble for purposes of business, government, education, religion, entertainment, public transportation, or public use or where goods are stored."

However, § 16-11-380(F)[1], which is within the same title, chapter, and article, specifically excludes a standalone enclosure housing an ATM from the definition of a building. It states in relevant part, "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." (emphasis added). Because sections of the "same general statutory scheme must be construed together," the standalone enclosure housing the ATM in this case does not constitute a "building" for purposes of second degree burglary. The language of § 16-11-380(F) is unambiguous and makes evident that the legislature intended to exclude such enclosures from the definition of a "building." Additionally, the more specific language found in § 16-11-380(F) controls. See Denman v. City of Columbia, 387 S.C. 131, 138, 691 S.E.2d 465, 468-69 (2010) ("where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.") (citing Spectre, LLC v. S.C. Dept. of Health and Envtl. Control, 386 S.C. 357, 688 S.E.2d 844, 851 (2010)).

Respectfully, this Court should direct a verdict of acquittal for second degree burglary since there was no evidence presented that Appellant entered a "building" for purposes of § 16-11-312(B)(3).

[1] S.C. Code Ann. § 16-11-380 is titled, "Entering bank, depository or building and loan association with intent to steal; theft or solicitation of person using automated teller machine."

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.

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." R. 123, 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. R. 123, l. 25 – 124, l. 5. He concluded that an "ATM cannot be construed as . . . a safe" for purposes of safecracking. R. 124, 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. R. 126, l. 16 – 127, 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." R. 127, 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,

625 S.E.2d 216, 220 (2006)). A court is "bound by the trial court's factual findings unless they are clearly erroneous." Id. (quoting Baccus, 367 S.C. at 48, 625 S.E.2d at 220).

Discussion

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.

"It is a fundamental concept of criminal law that the State must prove beyond a reasonable doubt all the elements of the offense charged against the defendant." State v. Cain, 419 S.C. 24, 30, 795 S.E.2d 846, 849 (2017) (quoting State v. Brown, 360 S.C. 581, 590, 602 S.E.2d 392, 397 (2004)) (internal quotation marks omitted). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find that the case was properly submitted to the jury." State v. McGowan, 347 S.C. 618, 622, 557 S.E.2d 657, 659 (2001) (citing State v. Rowell, 326 S.C. 313, 315, 487 S.E.2d 185, 196 (1997)).

"On appeal from the denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the State." State v. Bennett, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016) (quoting State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)) (internal quotation marks omitted). "The Court's review is limited to considering the existence or nonexistence of evidence, not its weight." Id. at 235-36, 781 S.E.2d at 353 (citing State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478–79 (2004)).

"The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature." Bryant v. State, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009) (quoting Mid-State

Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996)) (internal quotation marks omitted). "As such, a court must abide by the plain meaning of the words of a statute." State v. Jacobs, 393 S.C. 584, 587, 713 S.E.2d 621, 622 (2011) (citing Hodge v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). Also, penal statutes must be strictly construed against the state and in favor of the defendant. Hair v. State, 305 S.C. 77, 79, 406 S.E.2d 332, 334 (1991) (citing State v. Cutler, 274 S.C. 376, 378, 264 S.E.2d 420, 420-421 (1980)); State v. Muldrow, 348 S.C. 264, 268, 559 S.E.2d 847, 849 (2002).

Section 16-11-390, which codifies the offense of safecracking, states in relevant part, "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." (emphasis added). An automated teller machine is not a safe as intended by our legislature for purposes of safecracking. According to the Merriam-Webster online dictionary, an ATM is "a computerized electronic machine that performs basic banking functions (such as handling check deposits or issuing cash withdrawals). ATM, Merriam-Webster Dictionary Online, https://www.merriam-webster.com/dictionary/atm#h1 (last visited April 18, 2023). An ATM is not a container or "secure box" used for safekeeping money or valuables. It is an electronic machine used by banking institutions, in this case, Navy Federal Credit Union, to conduct transactions on behalf of its customers, including dispensing cash or depositing checks, without a live teller.

Respectfully, this Court should direct a verdict of acquittal for safecracking since there was no evidence presented that the automated teller machine Appellant allegedly attempted to pry open was a "safe" as intended by the legislature for purposes of § 16-11-390.

3.

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. R. 53, ll. 20-23. The judge immediately responded, "He [Appellant] would have to represent himself. Not happening." R. 54, 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. R. 54, ll. 7-13. When permitted to speak, Appellant expressed dissatisfaction with his attorney because counsel failed to impeach Deputy Jonathan Hewitt with a prior inconsistent statement Hewitt had made during Appellant's preliminary hearing. R. 54, l. 15 – 55, 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. R. 55, ll. 3-20. Defense counsel confirmed Appellant was "upset" that counsel did not ask Hewitt "if he lied under oath at Mr. Holmes' preliminary hearing." R. 56, 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." R. 56, ll. 11-22. The judge told Appellant that he could later call Stephens as a witness. R. 56, ll. 23-25.

However, Appellant was "not satisfied." He asserted, "It's not looking right at all." R. 57, 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 look 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.

R. 57, l. 12 – 58, l. 8 (emphasis added).

The jury then entered the courtroom and testimony resumed. R. 58, 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)).

"A defendant's right to waive the assistance of counsel is not unlimited." Fuller, 337 S.C. at 241, 523 S.E.2d at 170. "The request to proceed *pro se* must be clearly asserted by the defendant prior to trial." Id. (citing State v. Reed, 332 S.C. 35, 503 S.E.2d 747 (1998)). "If the request to proceed *pro se* is made after trial has begun, the grant or denial of the right to proceed *pro se* rests within the sound discretion of the trial judge." Id. (citing United States v. Singleton, 107 F.3d 1091 (4th Cir. 1979) and United States v. Lawrence, 605 F.2d 1321 (4th Cir. 1979)).

In State v. Fuller, 337 S.C. 236, 523 S.E.2d 168 (1999), the defendant moved pretrial to relieve counsel and proceed *pro se*. Our Supreme Court reversed Fuller's conviction for murder after finding "the trial court failed to conduct an adequate hearing to fully assess the purpose behind the defendant's request or to determine what effect granting the request would have had on the proceedings." Id. at 242, 523 S.E.2d at 171. Fuller moved on the morning of his first day of trial to relieve his attorney. After the trial court denied the motion, Fuller told the court he would rather represent himself than be represented by his current counsel. The court summarily denied the motion asserting, "I'm not going to let you do that. Now Mr. Allen [counsel] is going to be representing you in this case." Id. at 240, 523 S.E.2d at 170. In reversing Fuller's conviction, the Supreme Court emphasized that Fuller's "request to proceed *pro se* was made in an atmosphere of his escalating dissatisfaction with his attorney," which suggested Fuller's "purpose in making the request was not to delay or stall the proceedings, but rather to address his growing concerns about his attorney." Id. at 242, 523 S.E.2d at 171.

In this case, the trial judge did not follow the requirements set forth in Faretta since she failed to determine whether Appellant made a "knowing and intelligent waiver of his right to counsel." See Reed, 332 S.C. at 41, 503 S.Ed.2d at 750. Furthermore, the judge also failed to inform Appellant of the dangers and disadvantages of self-representation. Instead, the judge

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 began. 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.

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. Caudy
Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of October, 2023.

RECEIVED
Oct 24 2023
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE 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 Final Brief of Appellant in the above referenced case has been served upon Mark Farthing, Esquire, at the primary email address listed in the Attorney Information System (AIS), this 24th day of October, 2023.

s/ Lara M. Caudy
Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT