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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 ~~Paretta v. California, 492 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. Caudy~~
~~Lara M. Caudy~~
~~Appellate Defender~~

ATTORNEY FOR APPELLANT

~~this 19th day of April, 2023.~~

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.

Currentness

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

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.

George Holmes

"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

Defendant's possession, following entry 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

Use of a hammer to remove a safe (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. Shelnut v. State (S.C. 1965) 247 S.C. 41, 145 S.E.2d 420.

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

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

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 George Holmes

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
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

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

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 Sect: 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 George Holmes
 on 12/28/2018

Jonathan M Hewitt
 Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Beaufort County General Sessions
 PO Box 1128
 102 Ribaut Road, Rm. 208
 Beaufort, SC 29901-1128

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

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

Mark Francis Fitzgibbons
 Signature of Issuing Judge
 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

ORIGINAL

ORIGINAL

ORIGINAL

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

Certified - A True Copy

Jerri Ann Rosejeau
 Beaufort County, SC - Jennifer Rosejeau

2018A0710200399

STATE OF SOUTH CAROLINA

County/ Municipality of

Beaufort

THE STATE against

18S324616

George Holmes

ss:

Saint Helena Island, SC 29920-5411

M Race: B Height: 5 7 Weight: 240 DL #: SC

Agency ORI #: SC0070000

Issuing Agency: Beaufort County Sheriffs Office

Issuing Officer: Jonathan M Hewitt - S00393

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

Case Code: 0080

Ordinance Sec: 16-11-0312

Warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

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

(L.S.)

Signature of Judge

RETURN

Copy of this arrest warrant was delivered to defendant George Holmes

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

STATE OF SOUTH CAROLINA County/ Municipality of

Beaufort

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

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:

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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

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

AFFIDAVIT

DEFENDANT COPY

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

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. 102, 106

With kindest regards I'm
Thanks
 George Holmes
 George Holmes

George Holmes #289114
Lee C I / E-7-N-85
990 Wisacky Hwy
Bishopville SC 29010

ims

RECEIVED
OCT 27 2023
S.C. SUPREME COURT

RECEIVED
OCT 27 2023
SC Court of Appeals

The Supreme Court of South Carolina
Brenda F. Shealy, Chief Deputy Clerk
Post Office Box 11330
COLUMBIA, SOUTH CAROLINA 29211

LEGAL MAIL ONLY