

10-27-2023

The South Carolina Court of Appeals **RECEIVED**

The State v. George Holmes, Appellate
Case No. 2022-00090 Court of Appeals
OCT 31 2023

TO: V. Claire Allen
Chief Deputy Clerk

I'd like to know what's the next before I go home
if God is willing. May You Please help me in this matter?

Thanks
God Bless
You!!

With Kindest Regards I'am George Holmes
George Holmes

LEGAL MAIL ONLY

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS3

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/ Para M. Candy~~
~~Para M. Candy~~
~~Appellate Defender~~

ATTORNEY FOR APPELLANT

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

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

ARREST WARRANT
2018A0710200400
 STATE OF SOUTH CAROLINA
 County/ Municipality of
 Beaufort

STATE OF SOUTH CAROLINA)
 County/ Municipality of)
 Beaufort)
AFFIDAVIT ORIGINAL Form Approved by S.C. Attorney General April 21, 2003 SOCA 111
 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

THE STATE 183124618
 against
George Holmes
 Address:
Saint Helena Island, SC 29920-5411
 Phone: SSN: [REDACTED]
 Sex: M Race: B Height: 5 7 Weight: 240
 DL State: SC DL #: [REDACTED]
 DOB: [REDACTED] Agency ORI #: SC0070000
 Prosecuting Agency: Beaufort County Sheriff's Office
 Prosecuting Officer: Jonathan M Hewitt - S00393
 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, willfully 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.

Offense Code: 0141
 Code/Ordinance Sec: 16-11-0390
 This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of Beaufort. The accused is to be arrested and brought before me to be dealt with according to the law.

Signature of Affiant: [Signature]
 STATE OF SOUTH CAROLINA)
 County/ Municipality of)
 Beaufort)
 Affiant's Address: 2001 Duke St
Beaufort, SC 29902-
 Affiant's Telephone: [REDACTED]

Signature of Judge: _____
 Date: _____

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

RETURN
 A copy of this arrest warrant was delivered to defendant [Signature] on 12/28/2018
[Signature]
 [Signature of Constable/Law Enforcement Officer]

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] (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: Magistrate Municipal Circuit

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 ORIGINAL

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

Certified - A True Copy
[Signature]
 Jerri Ann Rosebeau - Clerk of Court
 Beaufort County, SC - Jennifer Petroff

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
Thanks
 George Holmes
 George Holmes

the clinical interview, counsel is instructed to immediately contact the examining agency to advise of the issuance of this order and forthcoming service upon the agency:

Evaluation Order Service Information

Department of Mental Health

Forensic Evaluation Service Paralegal
S. C. Department of Mental Health
CBHS Forensic Center
7901 Farrow Road
Columbia, S.C. 29203-3220
(803) 935-5540 (Phone)
(803) 935-5544 (Fax)
Email: FES-PARALEGAL@SCDMH.ORG

Department of Disabilities and Special Needs

Office of Clinical Services
Department of Disabilities and Special Needs
Post Office Box 4706
Columbia, S.C. 29240
(803) 898-9694 (Phone)
(803) 898-9660 (Fax)
Email: OBSForensics@ddsn.sc.gov

AND IT IS SO ORDERED.

Presiding Circuit Judge

Carmen T. Mullen
Printed Name of Presiding Circuit Judge

Beaufort, South Carolina

Dated: 8/23/19

Dustin Whetsel, Esquire
14th Circuit Solicitor's Office
Prosecutor
Post Office Box 1880
Address
Bluffton, South Carolina 29910
City, State, Zip
843-405-9382
Telephone
dwhetsel@scsolicitor14.org
Email

Courtney Gibbes, Esquire
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Telephone
cgibbes@bcgov.net
Email

12-5-22

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

ORDER MOTION
TO BE RELEASED

Warrant No.(s): 2018A0710200399, 2018A0710200400
Indictment No.(s) 2019G50700039, 2019G50700040

ORDER

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

Arrest Warrant No. 2018A0710200399, 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

South Carolina Department Of
Corrections
4444 Broad River Rd
Columbia, SC, 29210

HOLMES, GEORGE
0442 BB
0005 A --
---, --, ---
MRN: 289114
Sex: M
DOB: 02/12/1984

Order Date: 05/20/2022
Order #: PRO244074

Ordering: McDaniel, Courtney Performing #: SCDCLab Location: Kirkland R&E
Tests Ordered : 4TH GENERATION HIV (LHIV), HCV Antibody RFX To Quant PCR (LHCVRVL), QuantiFERON TB Gold Plus (L TB+)

QuantiFERON-TB Gold Plus (Collection Date: 05/23/2022 07:53, Status: Final)

<u>Component</u>	<u>Result</u>	<u>Units</u>	<u>Flag</u>	<u>Range</u>	<u>Comment</u>
QuantiFERON Criteria	Comment				The QuantiFERON-TB Gold Plus result is determined by subtracting the Nil value from either TB antigen (Ag) tube. The mitogen tube serves as a control for the test.
QuantiFERON Mitogen Value	>10.00	IU/mL			
QuantiFERON Nil Value	0.00	IU/mL			
QuantiFERON TB1 Ag Value	0.00	IU/mL			
QuantiFERON TB2 Ag Value	0.00	IU/mL			

QuantiFERON-TB Gold Plus (Collection Date: 05/23/2022 07:53, Status: Final)

<u>Component</u>	<u>Result</u>	<u>Units</u>	<u>Flag</u>	<u>Range</u>	<u>Comment</u>
QuantiFERON Incubation	Incubation performed.				
QuantiFERON-TB Gold Plus	Negative		Negative		Chemiluminescence immunoassay methodology

Interpretation: (Collection Date: 05/23/2022 07:53, Status: Final)

<u>Component</u>	<u>Result</u>	<u>Units</u>	<u>Flag</u>	<u>Range</u>	<u>Comment</u>
Interpretation:	Comment				Negative Not infected with HCV, unless recent infection is suspected or other evidence exists to indicate HCV infection.

HCV AB with Reflex Viral Load (Collection Date: 05/23/2022 07:53, Status: Final)

<u>Component</u>	<u>Result</u>	<u>Units</u>	<u>Flag</u>	<u>Range</u>	<u>Comment</u>
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Patient: HOLMES, GEORGE, DOB: 2/12/1984

HCV Ab <0.1 s/co ratio 0.0-0.9

4TH GENERATION HIV (Collection Date: 05/23/2022 07:53, Status: Final)

<u>Component</u>	<u>Result</u>	<u>Units</u>	<u>Flag</u>	<u>Range</u>	<u>Comment</u>
HIV SCREEN 4TH GENERATION WRFX	Non Reactive		Non Reactive		HIV Negative HIV-1/HIV-2 antibodies and HIV-1 p24 antigen were NOT detected. There is no laboratory evidence of HIV infection.

Patient: HOLMES, GEORGE , DOB: 2/12/1984

George Holmes # 289114
Lee CI/F-7-N-85
990 Wisacky Hwy
Bishopville SC 29010

JMS

RECEIVED

OCT 31 2023

SC Court of Appeals

The South Carolina Court of Appeals
V. Claire Allen, Chief Deputy Clerk
Post office Box 11029
Columbia, South Carolina 29211

LEGAL MAIL ONLY