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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable George M. McFaddin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CELIA WINDHAM,

APPELLANT.

APPELLATE CASE NO. 2023-000283

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the circuit court err in failing to direct a verdict of acquittal in favor of Appellant where the State failed to prove the existence of a trust relationship which is an essential element of breach of trust with fraudulent intent?

STATEMENT OF THE CASE

Appellant was indicted in August of 2019 by a Sumter County grand jury for one count of breach of trust with fraudulent intent, value more than $2,000 but less than $10,000. R. 296-297. The body of the indictment alleged

> That Celia Elizabeth Windham did in Sumter County on or about November 8, 2018, having been entrusted by the owner of Michael McCoy with the care, keeping, and possession of a car valued at more than one [sic] thousand ($2,000) dollars, but less than ten thousand ($10,000) dollars, did feloniously convert and appropriate such property to his/her own uses and purposes, with intent to deprive the owner thereof, in violation of Section 16-13-0230(B)(2), S.C. Code of Laws, 1976, as amended.

R. 296-297.

The State, represented by Tyler Brown, called the case to trial on February 13, 2023, before the Honorable George M. McFaddin, Jr., and a jury. Appellant was represented by Michael Routzong. R. 1. Appellant was convicted as indicted and sentenced to one year of incarceration, suspended upon the payment of a fine of $100. R. 286, ll.4-13; R. 292, ll. 13-15; R. 298-299.

STANDARD OF REVIEW

"The State is required to prove every element of a charged offense to obtain a conviction." State v. Jackson, 338 S.C. 565, 569, 527 S.E.2d 367, 369 (Ct. App. 2000). "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. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." State v. Brandt, 393 S.C. 526, 542, 713 S.E.2d 591, 599 (2011). "However, where the facts of the case, even if proved, do not constitute the alleged criminal conduct, a directed verdict must be granted." State v. Jackson, 338 S.C. 565, 569, 527 S.E.2d 367, 369 (Ct. App. 2000). "When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State." Brandt, 393 S.C. at 542, 713 S.E.2d at 599 (2011).

ARGUMENT

The circuit court erred in failing to direct a verdict of acquittal in favor of Appellant where the State failed to prove the existence of a trust relationship which is an essential element of breach of trust with fraudulent intent.

Relevant Facts

Appellant and Scott McCoy (McCoy) were in a romantic relationship in 2018. The couple lived together[1] for six to seven months during which Appellant asserted McCoy was both verbally and physically abusive[2] towards her. R. 150, ll. 18-25; R. 153, l. 14-R. 154, l. 6. On November 9, 2018, Appellant asked McCoy if she could borrow his car, a 1995 Chevrolet Lumina, so that she could obtain a loan. R. 84, ll. 11-21; R. 151, ll. 1-10. Appellant testified that she was getting the loan so that she could get a hotel room to get out of the relationship with McCoy. At the time she had no other place to live but McCoy's home. R. 153, l. 22-R. 154, l. 1; R. 174, ll. 3-10; R. 176, l. 19-R. 177, l. 2. McCoy testified that he believed Appellant was borrowing his car to cash a check stating, "I think she was just trying to get some money up. That way she had her own money and wouldn't have to depend on me." R. 88, ll. 1-11.

Appellant borrowed McCoy's car the morning of November 9, 2018, and went to Sunset Finance Company in Manning, S.C., to see if she could obtain a loan. She left between 9:00-9:30 in the morning and was finished at the finance company between 3:00-3:30 in the afternoon.

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1 McCoy asserted that Appellant had her own residence but stayed with him from time to time. He also stated the pair had only been dating for a month or two prior to the incident. R. 82, ll. 22-25; R. 84, ll. 6-10.

2 Testimony from defense witness Patricia Hodge established that McCoy had been abusive toward Hodge in a previous relationship which had resulted in McCoy's arrest and prosecution for domestic violence. R. 199, ll. 11-25; R. 204, ll. 1-24. Testimony from defense witness Tracey Lovelady established that she had heard and seen McCoy act in an aggressive and inappropriate manner toward Appellant. R. 211, l. 22-R. 213, l. 23.

R. 151, l. 1-R. 152, l.1. When she left the finance company, Appellant checked her phone and discovered numerous missed calls from McCoy. Upon seeing the missed calls, she promptly called McCoy and he threatened to physically harm her when she returned with his car. Appellant estimated that over the course of the day McCoy had left her twenty voicemails threatening to physically harm her when she finally returned with his car. R. 161, l. 18-R. 163, l. 14. After speaking with McCoy and listening to his voicemails, Appellant decided that she would not return the car directly to McCoy. Instead, Appellant left the car at a local Domino's Pizza that same evening and called McCoy to tell him where he could pick up his car. R. 153, l. 2-R. 155, l. 8.

McCoy alleged that the pair was set to go camping for the weekend and that the car was packed with fishing and camping equipment for the trip. He placed the value of the car, and all the items in the car, between $2,500 and $3,000. R. 86, ll. 9-25; R. 98, ll. 6-21. He claimed that Appellant informed him two days after borrowing his car that he could pick it up at a local Domino's Pizza. McCoy stated he went to get his car, but he could not locate it at any Domino's Pizza. R. 94, ll. 1-R. 95, l. 18. He told police that Appellant had said she was scared to return the car to him "for some reason." R. 96, ll. 15-20; R. 103, ll. 6-9; R. 106, ll. 5-22. He maintained that he never threatened Appellant. R. 96, l. 25- R. 97, l. 8; R. 106, ll. 23-25. McCoy stated the car was never found or returned to him. R. 98, ll. 2-5; R. 100, ll. 18-21.

At the close of the State's case, Counsel Routzong made a motion for a directed verdict arguing that the State had not proved that a trust existed. Citing to State v. Parris, 363 S.C. 477, 611 S.E.2d 501 (2005), Counsel Routzong argued that the State must prove a trust relationship between the parties to sustain a charge of breach of trust. He stated that South Carolina defines a trust as "an arrangement whereby property is transferred with the intention that it be

administered by [the] trustee for another's benefit...the transfer of the property must intend that the trustee will act for the transferor's benefit instead of on his own behalf." Counsel Routzong argued that no testimony had been elicited which showed that the car was transferred to Appellant from McCoy for McCoy or another's benefit. He maintained Appellant had borrowed the car for her own purposes, not another's, and that this was the fatal flaw in the State's case. R. 126, l. 1-R. 128, l. 12; R. 130, ll. 4-19; R. 131, l. 10-R. 132, l. 4.

The State, relying on the 1924 civil case Bell v. Clinton Oil Mill, 129 S.C. 242, 124 S.E. 7 (1924), argued that a breach of trust is where "personal property of appreciable value is put into possession of another and therefore becomes a trust and that person conceives the property to convert that property to his own use and does it with the intent to deprive the owner of the use of that property." R. 128, ll. 17-22. The State argued that the lending of the car to Appellant for her own benefit created a trust which she breached by converting the car to her own use by never returning it to McCoy within the intended time. In support of its position the State quoted McPhatter v. Leeke, 442 F. Supp 1252 (1978), stating "although the lending of the car to petitioner created [no] fiduciary obligation, his possession of the car nonetheless created a trust." The State asserted the case against Appellant was the "definition of breach of trust." R. 128, l. 15-R. 129, l. 17; R. 130, l. 20-R. 131, l. 7; R. 132, ll. 6-24.

Counsel Routzong reiterated that Parris, *supra*, was a 2005 case that made clear that if the State could not show that Appellant had the car to benefit McCoy then there was not a trust and thus no breach of trust. R. 130, ll. 4-19. The State argued Parris, *supra*, was distinguishable because in that case the trust was created for the benefit of the trustor not the trustee while in Appellant's case the trust was created for the trustee's (Appellant's) sole benefit. R. 130, l. 20-R. 131, l. 7. Prior to issuing its ruling the court questioned Counsel Routzong as to what charge

he believed would be appropriate in the case and he declined to answer for fear he might do disservice to Appellant. He also stated that the facts of the case may not give rise to a crime at all but possibly a civil case. R. 131, l. 8-R. 133, l. 10.

In ruling on the directed verdict motion the trial court stated,

> Mr. Routzong, I respectfully deny your motion to do that. I've got -- it's an interesting situation we've got here. Ms. Killen and I worked earnestly at lunch to find a good case on point; and although South Carolina is one of the oldest states in the union, there's a derth [sic] of law out there sometimes when you need it.
>
> First of all, I'll read from the Court's charge on breach of trust..."The defendant is charged with breach of trust with fraudulent intent. The State must prove beyond a reasonable doubt that personal property was put in the defendant's possession as a trust." It was. "A trust is a holding of property subject to a duty of using it or applying it his personal use according to direction given by the person who put the property in trust." Now the argument would be, Mr. Routzong has pretty much made this clear that there was no benefit or direction for the giver of the property, but there was testimony that she -- he gave it to her to go cash a check, and they were going camping that weekend. And he figured she was going to cash some money[,] so she'd have some money for herself during their weekend together. So[,] I think -- and I'll borrow Miss Killen's phrase here, that there was at least constructive-type trust situation here or set a motion or one that was applied.
>
> "The State must prove beyond a reasonable doubt a breach of trust. There must be a use of the property by the defendant for some purpose other than for which it was first put in trust." Well, she didn't bring it back; that was the trust part. Finally, "The State must prove beyond a reasonable doubt that defendant had a fraudulent intent in breaching the trust. The State must prove the property was converted by the defendant with the fraudulent intention of using it as his or her own or of the permanent depriving the owner of the use of the possession of the property." Well, it certainly appears to have been permanent depriving him of the use of that property. So, mindful that I might be reversed, I make that ruling and also add to it from Miss Killen's research, the Holcomb case talks about at the bottom of one of the pages: "A careful reading of the language of 16-3-230, together with South Carolina decisions reveals that that statute did...not establish a new offense with an essential element of lawful possession. The statute merely expanded the definition of common law larceny by eliminating the element of trespassing taking of/or unlawful possession."
>
> "Accordingly, after the enactment of the statute, it became possible to convict a person by both larceny without the necessity of proving unlawful possession. The statute merely eliminated the element unlawful possession. It did

> not create a new element of lawful possession." And as I look at McFatter [sic], it talks about South Carolina states have cited to the federal opinion and it mentioned in that case McFatter [sic] something about it was alright for a person to take the car by himself since he was getting -- going to return it in 15, 20 minutes and did not, from a new car dealership. So[,] I don't grant the directed verdict motion. It appears we're plowing in land here that has never really been addressed precisely by South Carolina courts about a car.

R. 141, l. 14-R. 144, l. 11.

At the close of the defendant's case Counsel Routzong renewed his motion for a directed verdict and requested further clarification of the court's ruling. The court stated

> I thought I addressed that, but it may not have been precise. And mainly what I relied on is the charge that I will give this jury about this. Number one, I find there's enough evidence on all of these elements as they're set forth in the charge to get it to a jury so that they can then weigh the facts as they see it. There was -- there was personal property in the car put in the defendant's possession. It was a -- an act of trust by the victim. And then the element is – a trust is a holding or [sic] property subject to a duty of using it or applying it according to directions given by the person who put the property in trust. I find, or my reasoning is, that the victim did put the property in trust when he loaned her the car or told her she could use it to go cash her check or get a loan. She did that.
>
> Now, the State must also prove beyond a reasonable doubt a breach of the trust. And here it says there must be use of the property by the defendant for some purpose other than that for which it was put into trust. It was put into trust to go get a loan. And then coming to the question of, well, she didn't bring it back, that to me is an indication of some other purpose beyond why it was put into trust. And then proving a fraudulent intent and breaching a trust, the State must prove the property was converted by the defendant with the fraudulent intention of using it as her own property or permanently depriving the owner of the use or possession of the property. And I find that the fact that the car allegedly was not returned -- well, we know it wasn't -- would provide enough evidence for it to go to the jury there. That's my ruling.

R. 224, l. 1-R. 225, l. 10.

Discussion

"In State v. Shirer, 20 S.C. 392, 408 (1884), our Supreme Court stated, 'the object of our [breach of trust] act was simply to enlarge the field of larceny, removing what before might have been a defense for those who **received property in trust and afterwards fraudulently**

appropriated it. The question under our act is, whether the party received the property in trust, which he afterwards violated....'" State v. Parris, 363 S.C. 477, 482, 611 S.E.2d 501, 503 (2005) (emphasis added). Therefore, the State **must prove the existence of a trust relationship** to sustain a charge of breach of trust with fraudulent intent. Id. *citing* State v. LeMaster, 231 S.C. 321, 98 S.E.2d 756 (1957) (emphasis added). "Failure to prove the existence of a trust relationship will result in a directed verdict of acquittal for the defendant." Id. A trust is an "arrangement whereby **property is transferred with intention that it be administered by trustee for another's benefit.**" Id. *citing* State v. Jackson, 338 S.C. 565, 527 S.E.2d 367 (Ct.App.2000), *citing* Black's Law Dictionary 1047 (6th Ed.1991). Thus, the **transferor** of the property **must intend that the trustee will act for the transferor's benefit instead of on his own behalf.** Id., See State v. McCann, 167 S.C. 393, 166 S.E. 411 (1932).

The State did not prove the existence of a trust relationship in the matter *sub judice*. The testimony was explicit that Appellant asked to borrow the car for the single purpose of obtaining a loan so that she would have her own money. Appellant stated she needed the money to escape the abusive relationship with McCoy. McCoy stated she needed the money so Appellant would not have to rely on him. At no point was any testimony offered that McCoy gave Appellant the car with the direction to act in his benefit or the benefit of another or that McCoy directed Appellant to take the car to get money to benefit him.

Notably, the State's own arguments during the directed verdict motions support finding that no trust relationship was ever created. The solicitor argued repeatedly that the loaning of the car to Appellant created a trust for Appellant's sole benefit. However, for a trust to be valid, the trustee must not be acting in their own interest or on their own behalf. The loaning of the car to Appellant in no way benefited McCoy and McCoy did not direct Appellant to use the car for a

specific purpose but allowed her to use the car for her own personal needs. Under the jurisprudence of this State, which makes it plain that a trust is created for the benefit of the transferor or another, but not for the sole benefit of the trustee, a trust was not created in Appellant's case. See State v. Jackson, 338 S.C. 565, 527 S.E.2d 367 (Ct.App.2000); State v. Parris, 363 S.C. 477, 611 S.E.2d 501 (2005).

The circuit court's denial of the directed verdict motion was based on errors of fact and law. The court found that a trust relationship was created because McCoy gave Appellant the car and "there was testimony that she -- he gave [the car] to her to go cash a check, and they were going camping that weekend. And he figured she was going to cash some money[,] so she'd have some money for herself during their weekend together. So[,] I think -- and I'll borrow Miss Killen's phrase here, that there was at least constructive-type trust situation here or set a motion or one that was applied." R. 142, ll. 1-16. However, the testimony was never that Appellant was using the money for the alleged weekend camping trip.

The question asked by the State was "was this a normal occurrence or was this in anticipation of the upcoming camping trip? Tell me about that check." McCoy responded "Yeah. I think she was just trying to get some money up. That way she had her own money and wouldn't have to depend on me." R. 88, ll. 5-11. McCoy never averred that the money Appellant was getting was expressly for the camping trip or for his use. In fact, he suggested the opposite, that the money was for Appellant's own use so she could be more independent from him. Appellant also stated the money was for her own use, specifically to be able to rent a hotel room so she could move out from McCoy's home. There was not a factual basis to support the finding of a trust relationship.

Further, the concept of a constructive trust would not arise in a criminal setting. A constructive trust "arises entirely by operation of law without reference to any actual or supposed intentions of creating a trust." Smith v. S.C. Ret. Sys., 336 S.C. 505, 529, 520 S.E.2d 339, 352 (Ct. App. 1999) *citing* McNair v. Rainsford, 330 S.C. 332, 356, 499 S.E.2d 488, 501 (Ct.App.1998); SSI Medical Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990). It is "[a]n **equitable remedy** by which a court recognizes that a claimant has a better right to certain property than the person who has legal title to it." TRUST, constructive trust, Black's Law Dictionary (11th ed. 2019) (emphasis added). "An action to declare a constructive trust **is one in equity**." Hendrix v. Hendrix, 299 S.C. 233, 235, 383 S.E.2d 468, 469 (Ct. App. 1989) (emphasis added). An equitable remedy is "a remedy, usually a nonmonetary one such as an injunction or specific performance, obtained when available legal remedies, usually monetary damages, cannot adequately redress the injury. Historically, an equitable remedy was available only from a court of equity." REMEDY, equitable remedy, Black's Law Dictionary (11th ed. 2019). A constructive trust is merely a legal fiction that is used as a remedy to prevent unjust enrichment in a civil setting. As there is no intention by the parties to create a trust in a constructive trust scenario, and no actual trust is created, there could be no criminal intent to breach the trust. Thus, a finding of a "constructive type trust" would not be sufficient to support sending the charge of breach of trust with fraudulent intent to the jury.

After the close of the defense case the circuit court clarified its ruling and again misinterpreted what a trust relationship is in this State. The court stated that McCoy's personal property was in the car put in Appellant's possession in "an act of trust by the victim." He reasoned McCoy put property in trust when he loaned Appellant the car to accomplish her own financial business. The court then ruled that Appellant breached the trust by using the car for a

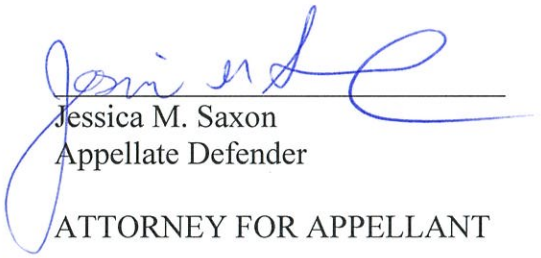
purpose other than getting the loan – specifically, not returning the car to McCoy. This ruling was flawed.

As has been stated, the settled law is that trust is an "arrangement whereby **property is transferred with intention that it be administered by trustee for another's benefit.**" Id. *citing* State v. Jackson, 338 S.C. 565, 527 S.E.2d 367 (Ct.App.2000), *citing* Black's Law Dictionary 1047 (6th Ed.1991). Thus, the **transferor** of the property **must intend that the trustee will act for the transferor's benefit instead of on his own behalf.** Id., See State v. McCann, 167 S.C. 393, 166 S.E. 411 (1932). The court's reasoning that McCoy loaned his car in "an act of trust," and therefore a trust relationship was created, does not comport with the legal definition of a trust but with the more common meaning of the word. Further, the court ruled that the car was placed into the trust for Appellant to go get a loan, which is what she did, despite the fact that the law requires a trustee to act for the benefit and at the direction of the transferor. These rulings were contrary to the settled law of this State.

The evidence in this case failed to establish the existence of a trust relationship between Appellant and McCoy. Nothing in the record indicated that McCoy placed a special trust or confidence in Appellant such that she had a legal or fiduciary duty to act in his interest. By contrast, the testimony repeatedly confirmed that McCoy loaned Appellant his car so that she could act in her own interest – specifically to tend to personal financial business. The intent of McCoy was to lend his car to Appellant so that she could act for her own benefit, not for his benefit or the benefit of another. The circuit court's ruling was predicated on an improper interpretation of both the law and the facts of the case. The State failed to meet its burden of proving the existence of a trust relationship and the circuit court should have directed a verdict in favor of Appellant.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests that this Court find the circuit court erred in denying the motion for a directed verdict and reverse Appellant's conviction and sentence for breach of trust with fraudulent intent.



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of August, 2024.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 7, 2024.

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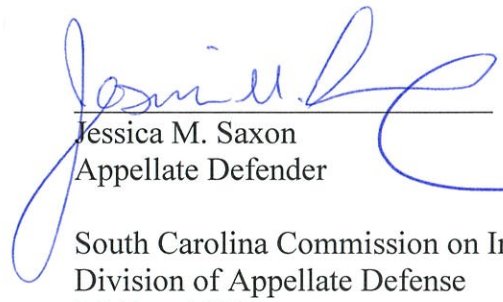
APPELLATE CASE NO. 2023-000283

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 and in the above-referenced case has been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 7th day of August, 2024.



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