

RECEIVED

Oct 19 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2025-002271

THE STATE,

Respondent,

v.

CHRISTIAN J. NOVELLINO,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

BRIAN H. GIBBS
Assistant Attorney General
S.C. Bar No. 104137

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Phone: 803-734-3727

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

1675-IA York Highway
York, South Carolina 29745

Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
ARGUMENT	8
I. Appellant's argument concerning the trial court denying his motion for a new trial for his breach of trust with fraudulent intent conviction is not preserved for appellate review because he waited to raise this argument until post-trial motions, and it is well settled that an issue may not be raised for the first time in post-trial motions.....	8
A. Standard of Review.....	8
B. Appellant's argument regarding the denial of his new trial motion is not preserved for appellate review.	8
C. To the extent this issue is preserved, our Supreme Court has specifically abolished the rule prohibiting inconsistent verdicts in criminal cases.....	9
II. Appellant failed to place his objection to the trial court's jury charge on the record with sufficient specificity to preserve this issue for appellate review. To the extent this issue is preserved, the trial court did not err in charging the jury on the correct law concerning obtaining goods under false pretenses.....	9
A. Standard of Review.....	9
B. Because Appellant did not articulate on the record the reasons for his objection to the trial court's charge, he failed to raise the issue with sufficient specificity to preserve the issue for appellate review.....	10
C. On the merits, the trial court's charge concerning obtaining goods under false pretenses cannot be construed as a comment on the facts.....	11
CONCLUSION.....	13

TABLE OF AUTHORITIES

Cases

<i>Clark v. Cantrell</i> , 339 S.C. 369, 529 S.E.2d 528 (2000).....	9
<i>S.C. Dep't of Transp. v. First Carolina Corp. of S.C.</i> , 372 S.C. 295, 641 S.E.2d 903 (2007)	8, 9
<i>Smalls v. State</i> , 422 S.C. 174, 810 S.E.2d 836 (2018)	10
<i>State v. Adkins</i> , 353 S.C. 312, 577 S.E.2d 460 (Ct. App. 2003).....	11
<i>State v. Alexander</i> , 303 S.C. 377, 383, 401 S.E.2d 146, 150 (1991)	9
<i>State v. Baccus</i> , 367 S.C. 41, 625 S.E.2d 216 (2006)	8
<i>State v. Brandt</i> , 393 S.C. 526, 713 S.E.2d 591 (2011).....	11
<i>State v. Cheeks</i> , 401 S.C. 322, 737 S.E.2d 480 (2013)	12
<i>State v. Franks</i> , 432 S.C. 58, 849 S.E.2d 580 (Ct. App. 2020)	11
<i>State v. Jeffcoat</i> , 279 S.C. 167, 303 S.E.2d 855 (1983)	11
<i>State v. Jordan</i> , 255 S.C. 86, 177 S.E.2d 464 (1970).....	6
<i>State v. Pagan</i> , 369 S.C. 201, 631 S.E.2d 262 (2006)	8
<i>State v. Prather</i> , 429 S.C. 583, 840 S.E.2d 551 (2020)	9
<i>State v. Simmons</i> , 279 S.C. 165, 303 S.E.2d 857 (1983)	8
<i>State v. Stukes</i> , 416 S.C. 493, 787 S.E.2d 480 (2016).....	9
<i>State v. Taylor</i> , 348 S.C. 152, 558 S.E.2d 917 (Ct. App. 2001)	8
<i>Wilder Corp. v. Wilke</i> , 330 S.C. 71, 497 S.E.2d 731 (1998)	8, 10
<i>York v. Conway Ford, Inc.</i> , 325 S.C. 170, 480 S.E.2d 726 (1997).....	11

Constitutions & Statutes

S.C. Const. art V, § 21	11
S.C. Code Ann. § 16-13-240(1)	11

STATEMENT OF ISSUES ON APPEAL

Appellant's Issue Statements

- I. "Whether the trial court erred in denying Appellant's motion for a new trial on the breach of trust with fraudulent intent charge when there was no evidence that Appellant's initial receipt of the converted money was lawful?" (Int. App. Br. 1).
- II. "Whether the trial court erred by commenting on the facts during its jury charge?" (Int. App. Br. 1).

Respondent's Counterstatements

- I. Whether the trial court abused its discretion by denying Appellant's request for a new trial regarding his breach of trust with fraudulent intent conviction given that Appellant raised this argument for the first time in a post-trial motion despite ample opportunity to raise it before or during trial.
- II. Whether the trial court erred in charging the jury on the correct law concerning obtaining goods under false pretenses.

STATEMENT OF THE CASE

In December 2024, a York County grand jury indicted Appellant for breach of trust with fraudulent intent with a value of \$10,000 or more and for obtaining goods under false pretenses. (Indictment Nos. 2024-GS-46-06611 & -07222). On November 3-5, 2025, Appellant proceeded to a jury trial before the Honorable R. Keith Kelly. (I Tr 1; II Tr. 1).

At trial, Johnny Huynh testified that he began looking for a new house in early 2022. (I Tr. 67). He found a property he liked online that was listed as new construction. (I Tr. 67). He contacted the real estate agent for the property, Debra Holloman, who put him in contact with Appellant. (I Tr. 68). Huynh stated that Appellant owned the construction company that was supposedly building the house on the property. (I Tr. 68). Huynh did not speak to anyone else at the company. (I Tr. 68). He went to a different property with Appellant to view Appellant's work. (I Tr. 71). Subsequently, he met Appellant at the lot he viewed online, which he confirmed was one of three empty lots that had been staked out for a structure. (I Tr. 73). Huynh testified that his realtor, Stephen Pierce, was also with him at the empty lot. (I Tr. 74). Huynh confirmed that Appellant showed him around and that Appellant stated that he owned the lots. (I Tr. 74). Huynh testified that there was no confusion over ownership of the lots because Appellant specifically stated that he owned the three lots. (I Tr. 75). Huynh did not sign a contract that day. (I Tr. 76).

Shortly thereafter, Huynh received a text message from Appellant, saying that someone else might be interested in the property. (I Tr. 78). A few days after meeting Appellant at the empty lot, Huynh went to Appellant's office with Stephen Pierce and Appellant's real estate agent. (I Tr. 79-80). Huynh signed a contract with Appellant for construction of a house on the empty lot the following day. (I Tr. 81). Huynh confirmed the price of home construction as listed in the contract was "a little over" two million dollars. (I Tr. 81). Huynh gave Appellant a downpayment

via a check for \$150,000. (I Tr. 82-84). Huynh expected and trusted Appellant to use the money to begin construction on the contracted house. (I Tr. 84). Huynh stated that at no point after giving Appellant the check did Appellant wait on Huynh for anything before moving forward. (I Tr. 84). Huynh confirmed he did not hear from Appellant for weeks afterward. (I Tr. 84). He stated it was "extremely difficult" to get in touch with Appellant after signing the contract and providing the downpayment. (I Tr. 85). After multiple months of trying to contact Appellant, Huynh requested his money back and signed another contract with Appellant, which stated that Appellant would give the money back. (I Tr. 87).

Huynh confirmed that after hiring an attorney, he learned that Appellant did not own the empty lot that he claimed to have owned. (I Tr. 88). Neither Appellant's name nor his construction company's name appeared in the title history for the property. (I Tr. 88-89). Huynh confirmed that if he had known Appellant did not own the lot, he would not have given Appellant the downpayment. (I Tr. 90-91). Huynh stated that his attorney found information that the empty lot sold for over \$300,000 several months after Huynh entered the building contract with Appellant. (I Tr. 91). Huynh stated Appellant never repaid him the downpayment. (I Tr. 93). Huynh testified that text messages he received from Appellant made it sound like Appellant was getting money from other projects to pay back Huynh's downpayment. (I Tr. 94-95).

Huynh confirmed that the terms of the building contract required him to obtain a letter concerning his preapproval for a mortgage, which Huynh did not do. (I Tr. 99-100). He also confirmed that under the terms of the agreement, Appellant could not move forward with building until Huynh produced such a letter. (I Tr. 100). However, Huynh stated Appellant never contacted him concerning the lack of such a letter. (I Tr. 102). Huynh also confirmed that the terms of the

agreement did not permit Appellant to keep the downpayment if Huynh did not provide a preapproval mortgage letter. (I Tr. 103).

Stephen Pierce, Huynh's realtor, testified that Huynh reached out to him about a property being built that he wanted to see. (I Tr. 106). Pierce confirmed Huynh reached out to Appellant and Appellant's construction company. (I Tr. 106-07). Pierce accompanied Huynh to the empty lots. (I Tr. 108). Pierce confirmed that Appellant claimed ownership of the lot during the meeting at the lot. (I Tr. 111). Subsequently, Pierce went with Huynh to Appellant's office to discuss the building contract. (I Tr. 113). During that meeting, Appellant and Huynh discussed pricing, timeline, and options. (I Tr. 113-14). Pierce could not testify to when the building contract was signed. (I Tr. 113-14). He did not check the ownership of the property because the lot was staked out when he visited it with Huynh. (I Tr. 114). According to Pierce, because the lot had been staked out, it appeared that a building process had already begun, which would have been abnormal if Appellant did not already own the lot. (I Tr. 114). Pierce did not see the building contract and was not present when Huynh gave Appellant the downpayment check. (I Tr. 114-15).

Several other witnesses testified as to their home building experiences with Appellant, which all resulted in unsatisfactory results. (I Tr. 118-51; II Tr. 7-54).

Cyndra Swinson, a forensic accountant with the Federal Bureau of Investigation and an expert in forensic accounting, testified that she was involved in investigating Appellant and his company. (II Tr. 61). She reviewed his business bank records. (II Tr. 61). According to Swinson, within seven days of Appellant depositing Huynh's downpayment, Appellant spent the entire amount. (II Tr. 69-70). Appellant's business bank records indicate that no transactions were related to Huynh's desired property, though some transactions did not have descriptions. (II Tr. 70). Swinson stated that regardless of which accounting method she used, the business bank records

showed Appellant spent the entirety of Huynh's downpayment in, at most, two weeks. (II Tr. 79). She reiterated that nothing in the records indicated that Appellant spent a single cent on Huynh's project. (II Tr. 79). According to Swinson, Appellant's bank records showed fraud rather than bad business practices because his actions exhibited a "continual pattern" of Appellant getting customer money into his account before using those funds to repay customers whose accounts were in default and demanding repayment. (II Tr. 94-95). She testified Appellant had a continuous pattern of not doing what he told customers he would do after receiving their money. (II Tr. 95). Swinson described Appellant's actions as "robbing Peter to pay Paul." (II Tr. 96). Swinson noted that Appellant's actions were repeated and consistent throughout the four-and-a-half-year period of bank records she reviewed. (II Tr. 96).

Swinson testified that Appellant made an offer to buy the empty lot from its recorded owner shortly after Appellant met with Huynh and Pierce at the lot; however, the owner did not accept the offer. (II Tr. 140). Appellant made a subsequent offer that the owner accepted, but Appellant failed to pay the due diligence fee as required by the contract with the owner so the contract was terminated by the owner for Appellant's failure to pay the fee. (II Tr. 143-44).

After the State rested, Appellant moved for directed verdict. (II Tr. 148). Regarding the charge for breach of trust with fraudulent intent, Appellant argued that the elements of that crime must include trust, a breach of that trust, and the breach must be fraudulent. (II Tr. 148). He contended that the State proved civil liability instead of criminal culpability. (II Tr. 148). Appellant asserted that the State presented no evidence of fraud or conversion. (II Tr. 148). According to Appellant the State merely showed income coming into his business bank accounts and expenditures going out. (II Tr. 149). Appellant asserted that the only payments to himself were reimbursements and his salary. (II Tr. 149-50). He argued that he could not be charged with

a crime for intermingling client money in corporate bank accounts and then not giving the money back for whatever reason. (II Tr. 151).

The State argued that our Supreme Court in *State v. Jordan*¹ specifically ruled against the argument Appellant made. (II Tr. 151-53). The State contended that the rule was not that a defendant must have converted the money for personal use but rather a defendant was using the money for purposes other than what it was entrusted to be used for, including covering costs for another project. (II Tr. 153). The trial court denied directed verdict for the breach of trust with fraudulent intent charge. (II Tr. 153).

Regarding the charge for obtaining property under false pretenses, Appellant argued that at the time the money and promises were exchanged, a falsity had to exist. (II Tr. 154). He asserted that the State did not show such a falsity existed because he had the ability to and intended to fulfill the contract when the money and promises were exchanged. (II Tr. 154). The State argued that a false pretense had to be either a past existing fact or a then existing fact. (II Tr. 155). The State pointed out that the false pretense here was Appellant holding out that he owned the empty lot. (II Tr. 155). The trial court denied directed verdict for the obtaining property under false pretenses charge. (II Tr. 155).

During its jury charge for obtaining property under false pretenses, the trial court stated: "A seller's failure to disclose his lack of legal title can constitute a false pretense." (II Tr. 234). After the jury charge, Appellant objected to this charge but did not state his reasons for doing so. (II Tr. 239). Instead, Appellant referred to a chambers conference that is not included in the record. (II Tr. 239).

The jury found appellant guilty as indicted. (II Tr. 241-42).

¹ 255 S.C. 86, 177 S.E.2d 464 (1970).

After the jury's verdict, Appellant made a new trial motion in which he argued for the first time that his two charges were incongruent with each other. (II Tr. 247). He asserted that if a defendant obtained money by false pretenses, then that defendant would not be in lawful possession of the money, which he contended was a requirement for breach of trust with fraudulent intent. (II Tr. 247). The State simply stated that a defendant could be convicted of both charges. (II Tr. 247). The trial court denied Appellant's new trial motion. (II Tr. 247).

For each charge, the trial court sentenced Appellant to ten years' imprisonment with the sentences to run consecutively. (II Tr. 256).

This appeal followed.

ARGUMENT

- I. Appellant's argument concerning the trial court denying his motion for a new trial for his breach of trust with fraudulent intent conviction is not preserved for appellate review because he waited to raise this argument until post-trial motions, and it is well settled that an issue may not be raised for the first time in post-trial motions.**

A. Standard of Review

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "It is well settled that the grant or refusal of a new trial is within the sound discretion of the trial judge." *State v. Taylor*, 348 S.C. 152, 159, 558 S.E.2d 917, 920 (Ct. App. 2001). "The granting or refusal of a motion for a new trial is within the discretion of the trial judge and will not be disturbed absent a clear abuse of discretion." *State v. Simmons*, 279 S.C. 165, 166, 303 S.E.2d 857, 858 (1983). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

B. Appellant's argument regarding the denial of his new trial motion is not preserved for appellate review.

Here, Appellant did not raise any argument on the record concerning the lawful possession of Huynh's downpayment until after the jury returned its verdict. (II Tr. 247). As he raised this issue for the first time in his post-trial motion for a new trial (instead of in a directed verdict motion or some other pretrial or trial motion), this issue is not preserved for appellate review. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review."); *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) ("It is well settled that an issue may not be raised for the first time in a post-trial motion.").

While this argument was indeed raised to and ruled upon by the trial court in a post-trial motion for a new trial, its posture as a *post-trial* motion precludes appellate consideration. *See State v. Prather*, 429 S.C. 583, 605, 840 S.E.2d 551, 562 (2020) (holding issues concerning alleged prosecutorial misconduct and due process violations raised for the first time in a post-trial motion for a new trial were not preserved for appellate review because the defendant did not raise those arguments during trial despite ample opportunity to do so). Here, Appellant had numerous opportunities to raise this argument before and during trial. He failed to do so. That failure to timely raise this argument before or during trial means this issue is not preserved for appellate review.

C. To the extent this issue is preserved, our Supreme Court has specifically abolished the rule prohibiting inconsistent verdicts in criminal cases.

Appellant's argument is essentially that the trial court should have granted him a new trial because his two convictions were inconsistent with each other. (Int. App. Br. 9-13). However, our Supreme Court has specifically abolished the rule prohibiting inconsistent verdicts in criminal cases. *See State v. Alexander*, 303 S.C. 377, 383, 401 S.E.2d 146, 150 (1991) ("Further, because the rule has seldom, if ever, been applied to grant relief, and because the rule has been severely criticized and rejected by most courts, we now follow our sister state of Georgia and abolish the rule prohibiting inconsistent verdicts in this state."). Therefore, this issue is entirely without merit, and this Court should affirm Appellant's convictions and sentences.

II. Appellant failed to place his objection to the trial court's jury charge on the record with sufficient specificity to preserve this issue for appellate review. To the extent this issue is preserved, the trial court did not err in charging the jury on the correct law concerning obtaining goods under false pretenses.

A. Standard of Review

"An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion." *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528,

539 (2000). "When reviewing a jury charge for error, an appellate court considers the charge as a whole; the charge must be prejudicial to the appellant to warrant a new trial." *State v. Stukes*, 416 S.C. 493, 498, 787 S.E.2d 480, 482 (2016).

B. Because Appellant did not articulate on the record the reasons for his objection to the trial court's charge, he failed to raise the issue with sufficient specificity to preserve the issue for appellate review.

To be properly preserved for appellate review, an "issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 302, 641 S.E.2d 903, 907 (2007) (quoting Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002))).

Here, after the jury charge, Appellant stated:

As I said in our conference in chambers[,] I believe your original charge was less confusing and less wordy and didn't include the specific language from the case [the] solicitor brought up in our charge conference yesterday under the lack of ownership which is a false pretense, which I am objecting to as being in the jury charge.

(II Tr. 239). Appellant raised an argument to the trial court, apparently during a chambers charge conference that was not on the record, during which the trial court apparently ruled on some argument Appellant made as indicated by the trial court including the language Appellant did not want included in the jury charge. (II Tr. 239).

However, the record contains no indication of why Appellant made this objection or what his argument was, other than he simply objected to it. (II Tr. 239). The contents of the chambers charge conference were not placed on the record. Appellant's argument concerning "the lack of ownership which is a false pretense" could concern any number of potential arguments that Appellant could have made in chambers, including the one he is now making on appeal. However, the record does not show what Appellant actually argued; therefore, the argument before this Court

is impermissibly raised for the first time on appeal. *See Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review.").

Because Appellant failed to place his objection to the jury charge on the record with sufficient specificity to allow this Court to review the parties' arguments and the trial court's determination, this issue is not preserved for appellate review as the argument on appeal is not contained in the record on appeal. *See generally Smalls v. State*, 422 S.C. 174, 182 n.3, 810 S.E.2d 836, 840 n.3 (2018) ("When a conference takes place off the record, it is trial counsel's duty to put the substance of the discussion and the trial court's ruling on the record."); *State v. Franks*, 432 S.C. 58, 79, 849 S.E.2d 580, 591 (Ct. App. 2020) ("An objection made during an off-the-record conference which is not made part of the record does not preserve the question for review." (quoting *York v. Conway Ford, Inc.*, 325 S.C. 170, 173, 480 S.E.2d 726, 728 (1997))).

C. On the merits, the trial court's charge concerning obtaining goods under false pretenses cannot be construed as a comment on the facts.

"Judges shall not charge juries in respect to matters of fact, but shall declare the law." S.C. Const. art V, § 21. Our Supreme Court has determined that "a seller's failure to disclose his lack of legal title can constitute false pretenses" for the purposes of obtaining goods by false pretenses. *State v. Jeffcoat*, 279 S.C. 167, 169, 303 S.E.2d 855, 856 (1983).

Here, the trial court included in its charge for obtaining goods by false pretenses the exact language utilized by our Supreme Court in *Jeffcoat*. (II Tr. 234). Therefore, it was not a comment on the facts by the trial court, but rather a proper instruction on the law. *See See State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) ("A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." (quoting *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003))). The trial court's charge included

the statutory definition of obtaining property by false pretenses followed by the *Jeffcoat* sentence that a false pretense can include failure to disclose lack of legal title. See S.C. Code Ann. § 16-13-240(1) ("A person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty of a . . . felony . . .").

The trial court's instruction did not emphasize any particular facts to the jury or serve as commentary on its view of them; instead, the instruction clarified what could constitute a false pretense. The trial court said that failure to disclose lack of legal title *can* constitute a false pretense. The court did not instruct the jury that a false pretense existed if the State proved beyond a reasonable doubt that Appellant failed to disclose lack of legal title. If anything, the trial court's instruction reminded the jury of its "prerogative both to draw inferences and to weigh evidence." *State v. Cheeks*, 401 S.C. 322, 328-29, 737 S.E.2d 480, 484 (2013).

Therefore, to the extent this issue is preserved, the trial court's jury instruction did not constitute an impermissible comment on the facts.

[conclusion and signature block on following page]

CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's convictions for breach of trust with fraudulent intent and obtaining goods under false pretenses, as well as his associated sentences.

ALAN WILSON
Attorney General

BRIAN H. GIBBS
Assistant Attorney General

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

By: 
Brian H. Gibbs
S.C. Bar No. 104137

Attorneys for Respondent

October 19, 2026
Columbia, South Carolina