

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4002443

Timothy E Bookert

SC Department Of Mental Health

PLAINTIFF(S)

SC Treasurers Office

DEFENDANT(S)

RECEIVED

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC; Rule 41(a), SCRPC
 - Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j), SCRPC; Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award.
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 24 February 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Robert E. Kneece Jr.

Miller W. Shealy Jr.

Jared Quante Libet
 David Lee Paavola

Johanna Catalina Valenzuela

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Timothy E. Bookert, Jr.,

Plaintiff,

v.

South Carolina Department of Mental
Health and South Carolina Treasurer's
Office,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No: 2013-CP-40-02443

ORDER

RECEIVED
MAR 29 2016
SC Court of Appeals

JEANETTE M. McBRIDE
CLERK
CP & G.S.
2016 FEB 24 AM 10:18

RICHLAND COUNTY
FILED

This matter is before the Court on Defendant South Carolina Department of Mental Health's, ("DMH") and Defendant South Carolina Treasurer's Office's ("Treasurer's Office") (collectively, Defendants) Motion for Judgment Notwithstanding the Verdict (JNOV) pursuant to Rule 50(b), or, in the alternative, Motion for a New Trial Absolute pursuant to Rule 59, SCRCP. This case came before the Court as a jury trial on November 30, 2015. The jury returned a verdict in favor of Plaintiff in the amount of \$208,700. Defendants filed this motion on December 14, 2015. After considering the law, the briefs filed by the parties, the arguments of counsel, and all matters submitted, Defendants' Motion for Judgment Notwithstanding the Verdict, or, in the alternative, Motion for a New Trial is **DENIED**.

FACTUAL BACKGROUND

This matter arises out of contested possession of a sum of money that was found on DMH property. On April 25, 2011, an employee with DMH, Lindsay Johnson ("Lindsay"), had misplaced his keys, and thus, was searching the DMH property located at 2200 Harden Street ("DMH Facility") in Columbia, South Carolina, in an attempt to locate them. During his search, Johnson found \$208,700 dollars stored in two boxes under a shelf in a storage room. Upon discovering the money, Johnson contacted his supervisor, Thomas Johnson ("Thomas") to inform him of the found money. Thomas contacted DMH security and informed them that a large amount of money had been found. Around the time that DMH security arrived at the DMH Facility, Thomas made contact with Plaintiff Timothy E. Bookert, Jr., ("Plaintiff") and informed Plaintiff that a large amount of money had been located. Plaintiff informed Thomas that he had

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stored the money at the DMH Facility. Thomas then instructed Plaintiff to discuss the matter with DMH security. Plaintiff informed DMH security that he had come into possession of the money about two or three weeks prior to Lindsay finding the money. Plaintiff explained that an acquaintance named Aaron Kennedy ("Kennedy") asked him to hold the money for him while he "went away for a while." Plaintiff originally kept the money at his home for about two weeks. Plaintiff then transferred the money to the DMH Facility thinking it would be a safer place to store the money.

DISCUSSION

I. Judgment Notwithstanding the Verdict

Rule 50(b), SCRCP, provides, in relevant part, that:

[A] party who has moved for a directed verdict may move to have the verdict and any judgment entered in accordance with his motion for a directed verdict[.] . . . If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed[.]

"A motion for JNOV, under Rule 50(b), SCRCP, is a renewal of the directed motion." *Williams Carpet Contractors, Inc., v. Skelly*, 400 S.C. 320, 325, 734 S.E.2d 177, 179-80 (Ct. App. 2012). Accordingly, "[a] motion for [JNOV] is limited to the grounds stated in the motion for directed verdict." *Marsh v. S.C. Dep't of Highways and Public Transp.*, 298 S.C. 420, 423, 380 S.E.2d 867, 869 (Ct. App. 1989). "In ruling on directed verdict or JNOV motions, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions." *Sabb v. South Carolina State University*, 350 S.C. 416, 428, 567 S.E.2d 231, 236 (2002). "The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt." *Steinke v. S.C. Dep't of Labor, Licensing, and Regulation*, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999).

Defendants argue they are entitled to judgment notwithstanding the jury's verdict, pursuant to Rule 50(b), SCRCP, because "even when viewing the evidence in a light most favorable to Plaintiff the only reasonable inference is that [Kennedy] does not exist and therefore, there is no bailment agreement" between Plaintiff and Kennedy. Defs.' Mem. in Supp. of Mot. at 1. Defendants allege that since Plaintiff and Kennedy did not have a bailment agreement, Plaintiff did not have a possessory interest in the money. Accordingly, Defendants

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argue that Defendants' initial and continued possession of the money was not unlawful, and thus, could not constitute conversion. Defendants argue that even if Plaintiff agreed to keep possession of the money for Kennedy, the money itself was obtained through illegal means, and the Court is prohibited from enforcing illegal agreements.

A. Bailment

"A bailment is created by the delivery of personal property by one person to another in trust for a specific purpose, pursuant to an express or implied contract to fulfill that trust." *Hadfield v. Gilchrist*, 343 S.C. 88, 95, 538 S.E.2d 268, 272 (Ct. App. 2000). "A bailor is a person who delivers the personal property to another to be held in bailment." 8A Am. Jur. 2d Bailments § 2 (2015). A bailee is one to whom personal property is delivered under a bailment contract. *Id.* "[A]fter the purpose has been fulfilled . . . the chattel shall be redelivered to the bailor, or otherwise dealt with according to his directions." *Home Indem. Co. v. Harleysville Mut. Ins. Co.*, 252 S.C. 452, 460, 166 S.E.2d 819, 824 (1969).

Defendants argue that when reviewing the evidence in the light most favorable to Plaintiff, the only reasonable inference is that Plaintiff did not have a bailment agreement with Kennedy because Kennedy, in fact, does not exist. Defendants argue that the only evidence evidencing a bailment agreement between Plaintiff and Kennedy consisted of Plaintiff's own testimony. Defendants, moreover, contend that since three defense witnesses testified that they could not locate any person matching Kennedy's description on various person search systems, no reasonable juror could have found that a contract existed between Plaintiff and Kennedy. The Court disagrees.

In viewing the evidence presented at trial in the light most favorable to Plaintiff, it is clear that Plaintiff presented evidence that he entered into a bailment agreement with Kennedy. Plaintiff testified that he had had known Kennedy for about 10 years and that they met at a local race track. Plaintiff and Kennedy sometimes would go to a local bar and/or restaurant following the races. Plaintiff testified that he was at home about two or three weeks prior to the money being found at the DMH Facility when Kennedy called him and asked him to hold the money. Plaintiff stated that he would. After receiving the phone call, Kennedy pulled up to Plaintiff's house in a blue pickup truck. No one except for Plaintiff was at Plaintiff's home at the time Kennedy dropped off the money. Kennedy informed Plaintiff that "he would be going away for a while" and left a one foot by one foot box with Plaintiff. Kennedy informed Plaintiff that

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\$210,000 was in the box. Kennedy gave Plaintiff \$500 and informed Plaintiff that he would give him more money when he returned. Plaintiff testified that he has not seen Kennedy since receiving the money. Plaintiff assumed that Kennedy was going to prison. After Plaintiff took the money upstairs, he opened it just enough to see that cash was inside and closed it back.

Viewing the evidence in the light most favorable to Plaintiff, the issue of whether Kennedy actually existed and similarly whether Plaintiff was in a bailment relationship with Kennedy was a factual issue to be determined by the jury. The jury heard all of Plaintiff's testimony and Defendants argued thoroughly and passionately that Kennedy did not actually exist. It was for the jury to determine the credibility of the witnesses. See *Murphy v. Tyndall*, 384 S.C. 50, 56, 681 S.E.2d 28, 31 (Ct. App. 2009). The jury apparently believed Plaintiff's testimony and thus, rejected Defendants' arguments. There is no basis to order a new trial or direct a verdict for Defendant on this issue.

B. Conversion

"Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights." *Crane v. Citicorp Nat'l Servs., Inc.*, 313 S.C. 70, 73, 437 S.E.2d 50, 52 (1993). "Conversion is a wrongful act that emanates by either a wrongful taking or wrongful detention." *Moore v. Weinberg*, 373 S.C. 209, 227, 644 S.E.2d 740, 749 (Ct. App. 2007). "A plaintiff claiming conversion may prevail based upon a showing of unauthorized detention of property, after demand." *Mackela v. Bentley*, 365 S.C. 44, 48, 614 S.E.2d 648, 650 (Ct. App. 2005). "[T]he plaintiff must prove either title to or a right to possession of the personal property at the time of the conversion." *Causey v. Blanton*, 281 S.C. 163, 165, 314 S.E.2d 346, 348 (Ct. App. 1984).

Defendants argue that Plaintiff failed to prove Defendants unlawfully retained possession of the money. Specifically, Defendants contend the money was not being used by the Defendants but instead was being retained on behalf of the money's true owner in an account entitled "Unclaimed Property Funds." Defendants, moreover, argue that they were not unlawfully holding the money since Kennedy had not asked for it back.

Again viewing the evidence in the light most favorable to Plaintiff, Plaintiff repeatedly maintained that he was holding the money for Kennedy, and thus, represented himself as a bailee since the money was found. On April 25, 2011, the day the money was found, Plaintiff

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represented that he had brought the money to the DMH Facility to both his supervisor, Thomas, and to SLED agents while they were obtaining and compiling Plaintiff's formal statement. Plaintiff, moreover, through counsel, made repeated requests for the return of the money from Defendants. Defendants, however, refused to provide the money to Plaintiff or Plaintiff's counsel. During trial, one of Defendants' witnesses testified that Defendants possessed an obligation pursuant to the Uniform Unclaimed Property Act, codified at S.C. Code Ann. §§ 27-18-10 to 27-18-400, to hold the property on behalf of the true owner, confirm the true owner's identity, and return the property to the owner. The jury, however, even when considering Defendants' arguments, through its verdict found that Plaintiff *claimed* the money and thus, had a right to possess the property. Defendants retained possession of the property despite Plaintiff's claim of his right to possess it and refused to return the property to Plaintiff after demand. Accordingly, the jury found that Defendants' continued possession and failure to return the money to Plaintiff was wrongful.

C. Court's Enforcement of the Contract

Defendants also argue that the Court should grant judgment notwithstanding the verdict in favor of Defendants because the only reasonable inference from the evidence is that Plaintiff's possession of the money violates statutory law and/or public policy.¹ "An illegal contract is unenforceable." *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 866-67 (Ct. App. 2002). "The general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution." *Berkebile v. Outen*, 311 S.C. 50, 53 n.2, 426 S.E.2d 760, 762 n.2 (1993). Accordingly, in any action brought "in which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it, nor will they enforce any alleged rights springing from such action." *McMullen v. Hoffman*, 174 U.S. 639, 654, 19 S. Ct. 839, 845 (1899).

Defendants argue that the overwhelming evidence showed that Plaintiff's possession of the money resulted from illegal drug activity. During trial, Agent Jason Greenan ("Greenan") of

¹ Defendants argued that Plaintiff's retention of the money violated S.C. Code Ann. §§ 12-54-44(B)(6)(c) (1976) (relating to failure to pay taxes); Section 44-53-475 (relating to money obtained through illegal transactions); and Section 16-13-180 (relating to possession of stolen goods). Defendants also argued that Plaintiff's retention of the money violated 26 U.S.C. § 6867(a) (relating to failure to pay taxes), and 18 U.S.C. § 1956(a)(3) (relating to failure to pay taxes).

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the Federal Bureau of Investigation (FBI), on behalf of the Defendants, testified that the FBI was investigating Plaintiff and that Plaintiff was familiar with a Devin Sistrunk ("Sistrunk"), a close friend of Plaintiff's who had gone to prison on drug charges. Defendants, thus, suggested that Plaintiff gained possession of this money through illegal drug activity. Defendants, moreover, argued that Plaintiff's retention of this money without reporting it and paying taxes on it violated several state and federal laws. Defendants, however, failed to produce any witnesses with firsthand knowledge to establish a connection between Plaintiff's possession of the money and any alleged illegal transactions. Defendants, moreover, admitted that although Plaintiff allegedly violated both state and federal law, Plaintiff never has been indicted. Accordingly, Defendants' allegation that Plaintiff obtained this money through illegal transactions with Sistrunk was merely speculative and it would have been improper for the Court to, *sua sponte*, rule that the underlying bailment agreement between Plaintiff and Kennedy evolved from illegal transactions.

Additionally, the jury was presented with all the evidence and weighed the credibility of the witnesses and of the testimony presented. The jury rejected Defendants' arguments that Plaintiff obtained this money through illegal means and specifically from illegal dealings with Sistrunk. Plaintiff admitted that he knew Sistrunk but that he did not receive this money from him. The Court has not been presented with any evidence to disrupt the jury's findings, and accordingly, it declines to do so.

II. New Trial Absolute

"A trial court's authority to grant a new trial is rooted in Rule 59, SCRPC." *Peay v. Ross*, 292 S.C. 535, 537, 357 S.E.2d 482, 483 (Ct. App. 1987). Rule 59(a) provides, in part, that "[a] new trial may be granted to all or any of the parties and on all or part of the issues . . . in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State[.]"

Defendants argue that the Court should grant a new trial absolute based on one or more of the following grounds: (a) the thirteenth juror doctrine; (b) the improper exclusion of testimony from law enforcement officers and the improper admission of hearsay evidence from Plaintiff; (c) prejudicial statements made by Plaintiff during closing argument; and (d) the exclusion of state and federal statutes from the jury charges.

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A. Thirteenth Juror Doctrine

"The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when [s]he finds that the evidence does not justify the verdict." *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). "[I]t entitles the trial judge to sit, in essence, as the thirteenth juror . . . [and] grant a new trial based solely 'upon the facts.'" *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002) (quoting *Folkens*, 300 S.C. at 254, 387 S.E.2d at 267). "[The] trial judge has the discretionary power to grant a new trial absolute or [n]isi in a law case upon his disapproval of the verdict on factual grounds, and in this role he has be recognized and designated as the thirteenth juror." *S.C. State Highway Dep't v. Townsend*, 265 S.C. 253, 258, 217 S.E.2d 778, 781 (1975).

Defendants argue that the Court should act as the thirteenth juror and grant a new trial because the evidence adduced in this case does not justify the jury's verdict for Plaintiff on his cause of action for conversion. Specifically, Defendants contend that Plaintiff must have the right to possess the money found on DMH property. According to Defendants, Plaintiff's sole claim to his right to possess the money derived from his alleged bailment agreement with Kennedy. Since Kennedy does not exist, however, according to Defendants, Plaintiff does not have a right to possess the money. Defendants' arguments were well presented to the jury. The jury, however, rejected them. The Court has not been presented with sufficient evidence to convince it to overturn the jury's findings, and thus, it declines to do so.

B. Improper Exclusion/Admission of Testimony

Defendants argue that the Court erred in limiting certain testimony of Defendants' witnesses and in admitting certain testimony from Plaintiff. During trial, Defendants sought to admit certain evidence from Greenan of the FBI and from Lieutenant Max Dorsey ("Dorsey") of the South Carolina Law Enforcement Division (SLED). Defendants argue that the Court improperly prohibited Greenan from testifying as to his "personal knowledge" of how he knew Plaintiff before the money was found on DMH property. During trial, Defendants sought to have Greenan testify that he personally had investigated Plaintiff for drug crimes and explain what steps he had taken in his investigation. Defendants argue this testimony was directly relevant to Defendants' affirmative defense of illegality and its exclusion was prejudicial.

The trial occurred about four and a half years after the money originally was discovered on the DMH Facility and Plaintiff has never been formally charged or arrested. The Court

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allowed Greenan to testify that he knew of Plaintiff because of an earlier investigation. Greenan's testimony was limited about otherwise unsubstantiated allegations of Plaintiff committing various crimes for which he was never charged or convicted. Greenan only had knowledge about alleged crimes committed by Plaintiff through statements made by government informants/witnesses who the Defendants failed to call at trial. Such statements are hearsay and inadmissible at trial.

Defendants also argue that the Court erred in limiting testimony from Dorsey of SLED. Dorsey was prohibited from testifying that he ceased an earlier investigation of Plaintiff because Dorsey understood from Greenan that the FBI was already pursuing Plaintiff as a suspect in drug-related crimes. Defendants argue that the Court's exclusion of this evidence was improper as it would have been relevant to Defendants' affirmative defense of illegality. Dorsey's proposed testimony would have been additional testimony to attack Plaintiff's character without providing corroborating evidence that Plaintiff actually was involved in illegal drug crimes. Defendants sought to introduce evidence of "bad acts" committed by Plaintiff without the corroborating witnesses necessary to establish Plaintiff's illegal conduct. The admission of such evidence would have been potentially unfair to Plaintiff.

Defendants also argue that the Court improperly admitted testimony from Plaintiff concerning Kennedy informing Plaintiff that the amount of the money was \$210,000. Defendants contend that since Plaintiff had no personal knowledge of the amount of the money, testimony about statements he made to investigators concerning the amount of the money in the boxes was hearsay and the investigators' testimony at trial about what Plaintiff told them was hearsay within hearsay. Defendants, moreover, argue that the amount of the money was not an essential term of the bailment contract. Defendants, thus, argue that testimony regarding the amount would not possess independent legal significance excepting it from hearsay.

During trial, Plaintiff provided testimony evidencing that he entered into a bailment relationship with Kennedy. Defendants argue that Plaintiff should not have been allowed to testify as to the amount of the money subject to the bailment because Plaintiff did not have personal knowledge. However, the out of court statements are admissible because they "constitute the incidents of a bailment." 31A C.J.S. Evidence § 462 (2015). The verbal acts doctrine allows for the admission into evidence of declarations that "are so connected with [a]

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person's acts as to derive a degree of credibility from that connection, independent of the declaration." 31A C.J.S. Evidence § 503 (2015).

The evidence regarding the amount of the money as explained by Kennedy was admissible because it was a basis for forming the contract and was not being admitted solely to prove that, in fact, there was \$210,000 dollars in the bags/box provided to Plaintiff. The agreement between Plaintiff and Kennedy was that Plaintiff would hold money (\$210,000) for Kennedy until Kennedy returned. This was the bailment contract, and the amount of the money held formed a crucial part of that contract. Accordingly, the amount being held in bailment possessed independent legal significance and therefore, testimony regarding the amount was not hearsay.

C. Plaintiff's Prejudicial Statements in Closing Argument

Defendants argue that the Court should grant a new trial because the Plaintiff expressed, in his closing argument, that if the jury were to rule in favor of Defendants, Defendants would be high-fiving each other in the lobby congratulating each other after having "pulled one over" on the jury. Such assertion, according to Defendants, denied Defendants a "fair trial" because the jury must have made its decision based upon passion and prejudice rather than reason. Defendants failed to contemporaneously object to Plaintiff's statement during his closing argument. Defendants, thus, have waived their right to contest this in their post-trial motion. *See, e.g., Scott v. Porter*, 340 S.C. 158, 166-67, 530 S.E.2d 389, 393 (Ct. App. 2000) ("The proper course is to immediately object to an improper argument. . . . Ordinarily, if an appellant fails to object the first time a statement is made, [it] waives the right to raise the issue on appeal.").

Furthermore, assuming, *arguendo*, that Plaintiff's counsel made improper statements in his closing argument, any such argument was cured by the Court's charges to the jury that its verdict could not be based upon sympathy or prejudice. *See, e.g., Merritt v. Great Atlantic & Pacific Tea Co.*, 179 S.C. 474, 476-77, 184 S.E. 145, 146 (1936) (where the South Carolina Supreme Court ruled that the trial court's failure to reprimand Plaintiff's counsel for improper statements during closing argument was not reversible error where the trial court charged the jury not to render a verdict on account of bias, prejudice, or sympathy).

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D. Exclusion of Certain Statutes in Jury Charges

Defendants argue that the Court should grant a new trial because it erred in excluding jury charges on certain state and federal tax statutes and the state statute prohibiting receiving stolen goods. *See* n.1, *supra*. Defendants argue that the Court was obligated to charge these statutes because there was sufficient evidence to create an inference such that the jury could have concluded Plaintiff violated the statutes. Specifically, Defendants contend that since Plaintiff admitted that he never paid taxes on the subject money while in possession of it, and did not confirm with Kennedy concerning whether he paid taxes on the money, he violated both federal and state tax law. If the jury were charged with these statutes, according to Defendants, it could have concluded Plaintiff violated the statutes and thus, could have found in Defendants' favor on Plaintiff's conversion claim. In other words, Defendants allege that if the jury found that Plaintiff's possession of the money was illegal, Defendants' possession and retention of the money would not have been wrongful.

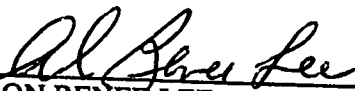
The Court did not charge these statutes to the jury because it determined that Defendants failed to produce evidence sufficient to show that Plaintiff violated the statutes. Concerning the tax statutes, Plaintiff possessed the money only about a month before Defendants took possession of it. Defendants expressly claimed that the money did not belong to Plaintiff and kept possession of the money for over four years. The State cannot now tenably claim that Plaintiff should have paid taxes on the money while it was in Defendants' possession. Moreover, concerning the stolen goods statute, Defendants did not produce evidence to show that Plaintiff stole the money or was in receipt of stolen money. Since Defendants failed to produce evidence to show that Plaintiff violated the respective statutes, it would have been unfairly prejudicial to Plaintiff for the Court to charge the statutes. The trial court possesses great discretion concerning what to charge the jury. *See, e.g., Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) ("An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion."). Defendants failed to produce evidence sufficient to show that Plaintiff violated the respective statutes, and thus, the Court, in its discretion, did not charge the jury with the respective statutes.

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ORDER

For the reasons stated above, it is therefore **ORDERED** that Defendants' Motion for Judgment Notwithstanding the Verdict or, in the alternative, Motion for a New Trial Absolute is **DENIED**.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
February 22, 2016



Johanna Catalina Valenzuela
PO Box 11549
Columbia, SC 29211-1549

S.C. Attorney General's Office
Consumer Protection and Antitrust

FEB 29 2016

Received by: TB
Reviewed by/Date: _____
Referred to/Date: Valenzuela
Notes: _____