

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Greenville County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

CARL STANLEY AIKEN,

APPELLANT

APPELLATE CASE NO 2017-000907

ANDERS BRIEF OF APPELLANT

RECEIVED

NOV 14 2017

SC Court of Appeals

ROBERT M. PACHAK  
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**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred in failing to grant a directed verdict to the charge of obtaining goods under false pretenses when the State failed to present any evidence beyond a reasonable doubt concerning what false pretenses were made?

### **STATEMENT OF THE CASE**

Appellant was convicted of obtaining goods under false pretenses after a jury trial held before the Honorable R. Lawton McIntosh on April 3, 2017, in Greenville County. Appellant was sentenced to ten (10) years suspended upon four (4) years with five (5) years probation thereafter. Restitution of \$14,250 was also ordered. Dorothy Manigault, Esq. was defense counsel. Johnathan Gregory, Esq. and Jena Hendricks, Esq. were the assistant solicitors.

This appeal follows:

## ARGUMENT

The trial court erred in failing to grant a directed verdict to the charge of obtaining goods under false pretenses because the State failed to present any evidence beyond a reasonable doubt concerning what false pretenses were made.

The indictment charging appellant with obtaining goods under false pretenses read as follows:

That CARL STANLEY AIKEN did in Greenville County, between the 1<sup>st</sup> day of December 2012, and the 1<sup>st</sup> day of March 2013, with intent to cheat and defraud the victim, RAYMOND MOORE, to obtain U.S. CURRENCY, valued at more than Ten Thousand dollars, from the victim under the false pretense of having performed "handyman" work. However, the work was never done. This is in violation of §16-13-0240 of South Carolina Code of Laws (1976) as amended.

At trial, Marilee Johnson testified that she was an operations manager for BB&T bank. She oversaw 33 branches in the Upstate. (R. p. 53, lines 11-17). She identified the following checks written by the victim along with their amounts and what they were written for:

MS. HENDRICKS: Yes. This is Exhibit No. 1.

THE COURT: It's check number what?

MS. HENDRICKS: Check No. 7071.

BY MS. HENDRICKS:

Q. And can you tell us what is Exhibit No. 1?

A. This is a check drawn on Mr. Poore's account. It's dated December 1, 2012, in the amount of \$1,250 payable to Carl Aiken.

Q. And can you tell whether the check was cashed or deposited?

A. The check was cashed on January 1, 2012. Right here is our code for cashed check.

Q. Okay. And what date did the check clear Mr. Poore's account?

A. Based on this, it would be 12/1/2012, but I believe that was a Saturday.

Q. Okay. So is there anything else on there that would indicate that it cleared two days later?

A. Not on the check itself. It would be on the bank statement.

Q. All right. And this is Exhibit No. 2, check 7080. Can you tell us what Exhibit No. 2 is?

A. This is also a check drawn on Mr. Poore's account dated December 19, 2012, payable to Carl Aiken in the amount of \$2,250, and it was cashed at a branch on 12/19/2012.

Q. Okay. And can you tell us what Exhibit 3 is? This is Exhibit 3, check 7125. Can you tell us what Exhibit 3 is?

A. This is also a check off of his account dated January 12, 2013, for \$1,250, and it was cashed also on 1/12/2013.

Q. And did you say who the check was made payable to?

A. It was made payable to Carl Aiken.

Q. And can you tell us what the subject line of the check says?

A. It says for "painting."

Q. And this is Exhibit No. 4, check 7129. Can you tell us what Exhibit No. 4 is?

A. This check off of Mr. Poore's account was dated January 18, 2012, for \$1,550 made payable to Carl Aiken, and it too was cashed on 1/18/2013. And the memo line says something "exterior." I can't read it from here.

Q. Okay. And this is State Exhibit No. 5. It's check 7131. Can you tell us what Exhibit No. 5 is, please?

A. Check off Mr. Poore's account dated January 21, 2013, payable to Carl Aiken in the amount of \$950. This cash -- it cleared and was cashed on January 22, 2013.

Q. And can you tell us what that memo line says if you can read it?

A. No. I can't read it.

Q. Okay. And this is Exhibit No. 6, check 7139. Can you tell us what Exhibit No. 6 is?

A. A check off Mr. Poore's account dated January 26, 2013, for \$850, payable to Carl Aiken. It says "installed gutters" on the memo line. And it also was cashed on January 28th it looks like.

Q. Okay. All this is Exhibit No. 7. It's check 7141. Can you tell us what Exhibit No. 7 is?

A. Off -- a check off Mr. Poore's account February 1, 2013, payable to Carl Aiken for \$1,250. And some sort of work is written. I can't read that first word.

Q. Okay.

A. It cleared his account -- or it was cashed at the branch of February 1, 2013.

Q. Okay. And this is State Exhibit 8, check 7144. Can you tell us what Exhibit 8 is?

A. A check off of Mr. Poore's account dated February 4, 2013, payable to Carl Aiken in the amount of \$850. The memo line says "painting and trees." It was cashed at a branch on 2/4/2013.

Q. Okay. And this is State's Exhibit No. 9, check 7296. Can you tell us what Exhibit 9 is?

A. This is a check off of Mr. Poore's account, payable to cash. It was dated February 7th. It was in the amount of \$850, and the memo line here has Carl Aiken's name. This check here was presented to BB&T on February 7, 2013.

Q. And it was cashed?

A. Yes.

Q. We have State's Exhibit 10, check 7299. Can you tell us what that check is?

A. This is also a check off of Mr. Poore's account dated February 14, 2013, payable to Carl Aiken in the amount of \$850. And this is -- looks like it's for a house repair, and it was cashed on February 14, 2013.

Q. Okay. And this is State's Exhibit 11, check 7303. Can you tell us what Exhibit 11 is, please?

A. Check off of Mr. Poore's account dated February 15, 2013, payable to Carl Aiken in the amount of \$950 for home repair. And this check was cashed on February 16, 2013.

Q. Okay. And State's Exhibit No. 12 is check 7305. Can you tell us what Exhibit 12 is?

A. This is a check off of Mr. Poore's account dated February 18, 2013, payable to Carl Aiken for \$650. Looks like it's for "home repair," and it was cashed at a branch on two -- February 19, 2013.

Q. Okay. And this is State's Exhibit No. 13, check 7316. Can you tell us what State's Exhibit 13 is?

A. A check off of Mr. Poore's account dated February 23, 2013, payable to Carl Aiken for \$750. It was cashed on February 23, 2013. And I can't read what that says on the memo line.

Q. Oh, okay. So it was cashed at a branch?

A. It was cashed at a branch, yes.

(R. p. 58 line 9- p. 62, line 21).

Terry Ford testified that she was a cousin of Raymond Poore's. He was not able to be at trial because he had moved into an assisted living home. Prior to that she would come by and look after him and his affairs. She had a durable power of attorney in that regard. (R. p. 69, line 1- p. 74, line 7). She helped balance his bank accounts. She started seeing a lot of checks for large amounts written to appellant. The checks did not match up to what appellant was doing around the house. (R. p. 83, line 10- p. 84, line 22).

Elizabeth Eudy testified that she was Terry Ford's granddaughter. She would go over two-three times a week to help Raymond Poore with things. (R. p. 99, lines 14-15; R. p. 101, lines 10-13). She never saw work being done and she did not see appellant at the house. (R. p. 102, lines 11-23).

Jerry Brown testified that he was in the business of remodeling and building new homes. (R. p. 143, lines 20-22). Terry Ford called him to come look at the Poore house and see if he could tell her what had been done. Mr. Brown could not tell that much had been done to the house. (R. p. 145, line 10- p. 147, line 14).

At the conclusion of the State's case several direct verdict motions were made. The second motion rested in the Confrontation Clause. There was no opportunity to cross-examine

the alleged victim in the case. The witnesses who did testify gave no details of the agreement between appellant and Mr. Poole that they could testify to. The trial court denied that motion. (R. p. 181, line 3- p. 182, line 11). That ruling was in error.

Due process as guaranteed by the Fourteenth Amendment requires “that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense.” Jackson v. Virginia, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787 (1979).

Our Court has held:

[T]he trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. [Emphasis added].

State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924, 926 (1955); State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), cert. denied, 493 U.S. 895, 110 S.Ct. 246 (1989).

In applying this standard, our Court has held that evidence which is “sufficient to raise a strong suspicion of the guilt of the accused” is not sufficient to constitute “any evidence form which the guilt of the accused may be fairly and logically deduced.” State v. Totherow, 263 S.C. 275, 210 S.E.2d 228, 230 (1974). See, also, State v. Turner, 117 S.C. 470, 109 S.E. 119, 120 (1921). The motion for a directed verdict should be granted, therefore, “where evidence merely raises a suspicion of guilt, or is such to permit the jury to merely conjecture or to speculate as to the accused’s guilt.” State v. Brown, 267 S.C. 311, 227 S.E.2d 674, 677 (1976), citing State v. Matarazzo, 262 S.C. 662, 207 S.E.2d 93, cert. denied, 420 U.S. 945 (1974). “If the evidence is

consistent with both innocence and guilt it cannot support a conviction.” United States v. Varoz, 740 F.2d 772, 775 (10<sup>th</sup> Cir. 1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10<sup>th</sup> Cir 1971). Guilt is only to be found when there is a “rationally supportable state of near certitude.” Evans-Smith v. Taylor, 19 F.3d 899, 906 (4<sup>th</sup> Cir 1994).

In this case the State failed to present any testimony between appellant and Mr. Poore over what they agreed to. Without testimony from Mr. Poore, appellant was unable to confront him as a witness.

**CONCLUSION**

Appellant's conviction should be reversed.

*Robert M. Pachak*

Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of November, 2017.

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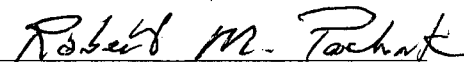
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Carl Stanley Aiken states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge R. Lawton McIntosh, which was held on April 4, 2017, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Carl Stanley Aiken.

Respectfully Submitted,



Robert M. Pachak

Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of November, 2017.

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL  
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SC Court of Appeals

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment
- (2) Trial Transcript dated April 3, 2017

I certify that this designation contains no matter which is irrelevant to this appeal.

November 14, 2017



Robert M. Pachak  
Appellate Defender

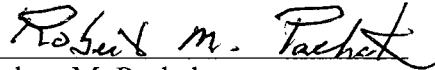
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ATTORNEY FOR APPELLANT

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of my ability this Anders 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."

November 14, 2017.



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CERTIFICATE OF SERVICE

SC Court of Appeals

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Ben Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Carl Stanley Aiken, 218840, at Catawba Pre-Release Center, 1030 Millen Road, Rock Hill, SC 29730, this 14th day of November, 2017.

*Robert M. Pachak*

Robert M. Pachak

Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 14th day of November, 2017.

*Lawin Stevens* (L.S)

Notary Public for South Carolina

My Commission Expires: July 5, 2027.