

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STANLEY ANTHONY DIMITROFF, II

APPELLANT

APPELLATE CASE NO. 2018-000501

ANDERS BRIEF OF APPELLANT

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MAR 22 2019

SC Court of Appeals

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**STATEMENT OF ISSUE ON APPEAL**

Did the trial judge err by refusing to direct a verdict for breach of trust with fraudulent intent when the state failed to present any direct or substantial circumstantial evidence of a trust relationship to support submission of the offense to the jury?

## STATEMENT OF THE CASE

An Oconee County grand jury indicted Appellant on May 4, 2015 for breach of trust with fraudulent intent. R. 337-338. His case was called to trial on March 12, 2018 before the Honorable R. Scott Sprouse, and a jury. R. 1. Assistant Solicitor Brian Livingston represented the state, and Frank Jackson represented Appellant. R. 1. On March 14, 2018, the jury found Appellant guilty as indicted. R. 296, l. 24 – 297, l. 9. He was sentenced to ten years suspended upon the service of two years and five years probation. R. 311, ll. 15-19. Appellant was also ordered to pay \$27,066.91 in restitution. R. 311, l. 20.

This appeal follows.

### STANDARD OF REVIEW

“A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. In reviewing a motion for directed verdict, the trial judge is concerned with the existence of the evidence, not with its weight. On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury.” State v. Parris, 363 S.C. 477, 481, 611 S.E.2d 501, 502-503 (2005) (citing State v. Curtis, 356 S.C. 622, 591 S.E.2d 600 (2004)).

## STATEMENT OF FACTS

Around 2006, James Rogers and his wife, Bernita, founded Life Changing Ministry in Seneca, South Carolina. James became the senior pastor. R. 69, l. 6 – 70, l. 9. James' brother, Donny Rogers, was the associate pastor. R. 107, l. 22 – 108, l. 6. The church was supported by donations made by its congregation. It created a building fund account where funds were placed that were to be put towards purchasing land in which to construct a worship building. R. 70, l. 22 – 71, l. 13. In 2010, after saving enough money to purchase property, Life Changing Ministry obtained a construction loan from Blue Ridge Bank to construct a new church at 936 South Depot Street. R. 69, ll. 11-12; R. 71, l. 14 – 72, l. 6; R. 108, ll. 13-19.

Appellant joined Life Changing Ministry around this time. Donny Rogers worked with Appellant at Cryovac Sealed Air and invited Appellant and his family to become a part of their church. R. 72, ll. 10-20; R. 109, ll. 6-13. The members of Life Changing Ministry quickly “built a great bond” with Appellant and his family. Appellant's role at the church evolved and grew over the two year period he was a member. He became the site coordinator and oversaw the construction of the new church building. Appellant worked with the various contractors involved in the project and coordinated with the material suppliers, such as Yoder's Building Supply. R. 72, l. 21 – 74, l. 15; R. 110, ll. 1-25.

On Sunday mornings, Appellant would present requisition forms to the administrative team, which was in charge of the church's finances. For example, if the church owed Yoder's a certain amount of money for supplies, Appellant would present the receipt and requisition form, and the administrative team would write a check to Yoder's in the amount specified. Appellant would then be responsible for giving the check to Yoder's. R. 87, ll. 13-23; R. 112, ll. 5-18; R. 115, ll. 1-14.

For practical reasons, as part of his role as site coordinator, Appellant was also made a “signatory” on church accounts. The church had a policy where all checks were required to have two signatures. Because other signers, such as Donny Rogers, had busy work schedules, it was often difficult to obtain the required two signatures. James Rogers, as pastor, and Appellant, as site coordinator, were always available to sign checks. R. 73, l. 7 – 74, l. 7. Despite being permitted to sign checks, Appellant did not have the authority to write checks. R. 90, ll. 11-22. He had no financial authority at Life Changing Ministry. R. 112, ll. 5-10.

Appellant, and other church members, such as James Rogers, would often loan the church money and later be reimbursed. For example, Appellant purchased steel for the construction project and paid several individuals or employees who worked on the project. R. 97, l. 18 – 103, l. 3.

In August or September 2011, James Rogers became aware that Appellant may have been “misappropriating funds.” R. 74, ll. 16-25; See R. 202, ll. 2-13. The members of the church began looking into their finances and discovered numerous altered checks. James explained, “We saw were we would write the check out to Yoder’s and he [Appellant] would mark through Yoder’s and put his name, Dimitroff, there and put it in his bank and they would cash it.” R. 76, ll. 20-25. In total, the church discovered nine checks that were originally made out to Yoder’s, totaling \$23,769.91, and altered to reflect Appellant as the payee. See R. 314-324. There was an additional check made out to Blacks Electric for \$1,400 and one made out to Carolina Stone for \$1,897 that were also altered to reflect Appellant as the payee. See R. 322-323. The state alleged Appellant deposited these checks into his own account at SunTrust. R. 213, l. 18 – 214, l. 18. Consequently, the vendors who the church thought had been paid had never been paid and the church still had outstanding balances. R. 117, ll. 7-17.

During the investigation, it was also discovered that supplies charged to Life Changing Ministry's account at Yoder's were delivered to two residential addresses not associated with the church. See R. 329-335. The homeowners at these addresses had hired Appellant to complete repair work at their homes, such as a leaky roof. R. 77, ll. 8-25; R. 211, ll. 3-22. The charges totaled \$3,496.94. See R. 329-335.

Appellant admitted to changing the payee on the identified checks, but maintained he had the authority to do so as site coordinator in an effort to ensure all accounts and parties were properly paid. R. 208, l. 18 – 210, l. 5. Appellant further explained that he had loaned Life Changing Ministry \$5,500 dollars for iron and metal for the construction project and, with James Rogers' permission, changed the payee on the checks in an effort to be reimbursed for the money he had loaned the church. R. 218, l. 4 – 219, l. 20.

## ARGUMENT

The trial judge erred by refusing to direct a verdict for breach of trust with fraudulent intent when the state failed to present any direct or substantial circumstantial evidence of a trust relationship to support submission of the offense to the jury.

### *How the Issue was Presented Below*

At the conclusion of the state's presentation of evidence, Appellant moved for a directed verdict. Citing to State v. Parris, 363 S.C. 477, 481, 611 S.E.2d 501, 503 (2005) and State v. Jackson, 338 S.C. 565, 569, 527 S.E.2d 367, 369 (Ct. App. 2000), Appellant argued the state failed to present any evidence of a trust relationship, a required element of breach of trust with fraudulent intent. R. 262, ll. 18-25. Relying on the majority opinion in Parris, defense counsel emphasized that there must be a *legal* trust relationship, not "a layperson's definition of trust." R. 263, ll. 3-23. Counsel asserted that the evidence offered established Appellant had no financial authority at Life Changing Ministry and was never entrusted with any money or property to be used for the church's benefit. R. 262, l. 25 – 263, l. 23; R. 266, ll. 8-23.

In response, the state argued Appellant was provided checks by the church made out to Yoder's and Carolina Stone, that the checks were clearly meant to be used for the church's benefit, and that Appellant converted those checks for his own benefit by altering the checks and depositing them into his own bank account. R. 265, l. 13 – 266, l. 5.

The trial judge ultimately denied the motion for a directed verdict. After citing the correct standard, the judge found there was sufficient evidence in the record to submit the case to the jury. He maintained Appellant's arguments were "factual jury questions." R. 266, l. 24 – 267, l. 10.

### *Discussion*

S.C. Code Ann. § 16-13-230(A) states, “A person committing breach of trust with a fraudulent intention or a person who hires or counsels another person to commit a breach of trust with a fraudulent intention is guilty of a larceny.” “The elements of breach of trust with fraudulent intent are not set forth in S.C. Code Ann. § 16-13-230.” State v. Parris, 363 S.C. 477, 481, 611 S.E.2d 501, 503 (2005). “However, the crime has been defined through the development of case law.” State v. Jackson, 338 S.C. 565, 569, 527 S.E.2d 367, 369 (Ct. App. 2000). A breach of trust with fraudulent intent “is larceny after trust, which includes all of the elements of larceny or in common parlance, stealing, except the unlawful taking in the beginning.” State v. Owings, 205 S.C. 314, 316, 31 S.E.2d 906, 907 (1944) (quoting State v. Scott, 330 S.C. 125, 130, 497 S.E.2d 735, 738 (Ct.App.1998)). “The primary difference between larceny and breach of trust is that in ‘common-law larceny, possession of the property stolen is obtained *unlawfully*, while in breach of trust, the possession is obtained *lawfully*.” Scott, 330 S.C. at 130, 497 S.E.2d at 738 (quoting State v. McCann, 167 S.C. 393, 398, 166 S.E. 411, 413 (1932)) (emphasis in original).

In State v. Shirer, 20 S.C. 392, 408 (1884), our Supreme Court stated, “[T]he 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. . .” See Parris, 363 S.C. at 482, 611 S.E.2d at 503. “Therefore, the State must prove the existence of a trust relationship to sustain a charge of breach of trust with fraudulent intent.” Parris, 363 S.C. at 482, 611 S.E.2d at 503 (citing State v. LeMaster, 231 S.C.

321, 98 S.E.2d 756 (1957)). “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.’” Jackson, 338 S.C. at 570, 527 S.E.2d at 370 (quoting Black’s Law Dictionary 1047 (6th ed.1991)); See Parris, 363 S.C. at 482, 611 S.E.2d at 503. “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). “For example, a man whose daughter-in-law gave him a check for the purpose of paying medical bills may be convicted of breach of trust with fraudulent intent where he used part of the proceeds to pay his own grocery bill.” Jackson, 338 S.C. at 570, 527 S.E.2d at 370 (citing State v. McCann, 167 S.C. 393, 166 S.E. 411 (1932)).

In State v. Parris, 363 S.C. 477, 479, 611 S.E.2d 501, 502 (2005), Parris was the owner of Parris Home Sales, which sold mobile homes in Gaffney. The mobile homes Parris sold to third parties were financed by a \$750,00 floor plan line of credit from First National Bank (FNB). Id. First National Bank held title to the mobile homes until the person who purchased each mobile home obtained financing and FNB’s lien was paid off. Id. In February 1999, in order to finance the purchase of a mobile home, Parris Home Sales executed a note to FNB for \$37,405. Id.

In November 1999, Jerry and Sherry Martin signed a purchase agreement to buy the mobile home for \$40,340. Id. The contract provided that title to the mobile home would remain in Seller until the purchase price was paid in full and that “*thereupon, title to the within described unit passes to the buyer as of the date of . . . full cash payment . . . even though the actual physical delivery may not be made until a later date.*” Id. at 479-480, 611 S.E.2d at 502 (emphasis in original).

The Martins obtained financing for their mobile home from Bank of America. Id. at 480, 611 S.E.2d at 502. After the loan was closed, Bank of America issued two checks totally \$40,340 which were jointly payable to Jerry Martin and Parris Home Sales. Id. Martin endorsed the checks and gave them to Parris. Id. After endorsing the checks, Parris took them and opened a checking account at American Federal Bank. Thereafter, he wrote checks to himself and others, but not FNB, totally nearly \$40,000. Id.

In December 1999, the president of FNB informed the Martins that its lien on the home had never been paid and that the bank could repossess it. Id. He advised them to retain a lawyer and go to the police. Id. Parris was substantially charged with breach of trust with fraudulent intent. FNB accelerated the underlying note and seized and later sold Parris Home Sales' assets. Id. A jury convicted Parris and he appealed arguing he should have been granted a directed verdict because the state failed to prove a trust relationship. Id.

Our Supreme Court held there was sufficient evidence of a trust relationship to submit the case to the jury. Id. at 483-484, 611 S.E.2d at 504. The Court relied on the testimony from Jerry Martin that when he gave Parris the \$40,340 check, he expected his bank would get a clear title and the testimony from Sherry Martin that, as far as she knew, her mobile home had been paid for with the checks from Bank of America. Id. at 483, 611 S.E.2d at 504. The Court emphasized that the Martins entrusted their checks to Parris with the intent they be used for their benefit, rather than Parris' own benefit. Id. Consequently, the Court concluded the trial judge properly denied the motion for a directed verdict. Id. at 482-484, 611 S.E.2d at 503-504.

In State v. Jackson, 338 S.C. 565, 527 S.E.2d 367 (Ct. App. 2000), this Court held the trial judge erred by failing to direct a verdict for breach of trust. In October 1996, Jackson contracted with O.C. Welch Ford to trade in his 1990 Mazda toward the purchase of a 1993

Nissan Quest. Id. at 567, 527 S.E.2d at 368. Pursuant to the contract Welch agreed to handle the \$7,000 payoff on the Mazda lienholder, Transouth. Id. When Welch received the money from the Nissan lienholder, however, it mistakenly sent a check for \$7,000 to Jackson, instead of Transouth. Id. When Welch informed Jackson of the mistake, he promised to look for the check and return it if he received it. Id. at 568, 527 S.E.2d at 369. In the meantime, Welch sent a duplicate check to Transouth for \$7,000 to obtain clear title and enable it to sell the traded-in vehicle. Id. In November 1996, Welch's president contacted Jackson via telephone and asked him to return the check. Id. Jackson responded that he had already cashed the check and spent the money, and that he "wasn't gonna be sending any money to [Welch]." Id.

Welch filed a complaint with the police and Jackson was charged with breach of trust with fraudulent intent. Id. A jury convicted Jackson and he appealed arguing he should have been granted a directed verdict because the state failed to prove a trust relationship. Id. This Court agreed. In so holding, the Court emphasized that it was undisputed the \$7,000 check Welch issued to Jackson was a "very big mistake." Id. at 571, 527 S.E.2d at 370. Because the check was mistakenly issued to Jackson, the Court concluded that he was never entrusted with funds under an obligation to use them for the benefit of the dealership. Id. Consequently, there was "no trust to breach." Id.

In this case, there was no evidence presented of a *legal* trust relationship between Appellant and Life Changing Ministry. Appellant was not entrusted with any money or property. The testimony established members of the church gave Appellant checks written out to Yoder's or other vendors and he was supposed to submit the checks to the respective vendors. Essentially, Appellant acted as the middleman between the church and the vendors. However,

again, the church never entrusted Appellant any money or property and no money was transferred to him with the intent that it be used for the church's benefit.

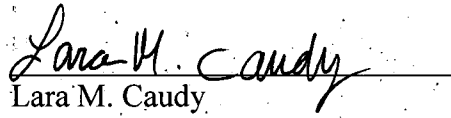
This case is easily distinguishable from Parris. In Parris, Parris Home Sales, which was owned by Parris, *was made the payee* on two checks from Bank of America where the Martins obtained their financing to purchase the mobile home. The Martins gave the checks to Parris, who endorsed and deposited the checks, to pay for the mobile home with the intent that such payment would convey good title. Parris, 363 S.C. at 480, 611 S.E.2d at 502. Here, Appellant was not the payee of the checks and Life Changing Ministry never transferred the funds to Appellant in order for him to pay the respective suppliers. Rather, the suppliers were the payees on the checks and Appellant was merely the middleman who was supposed to deliver the checks to Yoder's, Carolina Stone, and Blacks Electric. This did not create a legal trust relationship between Appellant and Life Changing Ministry. Because the state failed to present any evidence of a trust relationship, which is an essential element of breach of trust with fraudulent intent, the trial judge erred by denying Appellant's motion for a directed verdict.

Appellant respectfully requests this Court reverse his conviction and sentence and remand for a new trial.

**CONCLUSION**

Based on the foregoing argument, Appellant respectfully requests this Court direct a verdict of acquittal in his favor.

Respectfully Submitted,

  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of March, 2019.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

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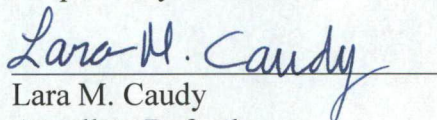
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Stanley Anthony Dimitroff, II states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.
2. She has reviewed the record of Appellant's trial, which was held on March 12-15, 2018 before the Honorable R. Scott Sprouse, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Stanley Anthony Dimitroff, II.

Respectfully Submitted,

  
Lara M. Caudy

Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of March, 2019.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Oconee County  
Honorable R. Scott Sprouse, Circuit Court Judge

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THE STATE,

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STANLEY ANTHONY DIMITROFF. II

APPELLANT

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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

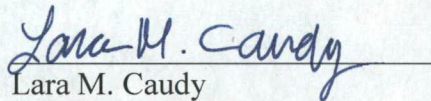
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Appellant proposes the following be included in the Record on Appeal:

- (1) Complete Trial Transcripts Dated March 12, 2018, March 14, 2018, and March 15, 2018;
- (2) State's Exhibit Nos. 4-14 (Copies of Checks);
- (3) State's Exhibit Nos. 15-18 (Requisition Forms);
- (4) State's Exhibit Nos. 43-45 (Yoder's Invoices);
- (5) State's Exhibit No. 47 (Screenshot of Facebook Post);
- (6) True-Billed Indictment;
- (7) Sentence Sheet.

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

March 22, 2019

  
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Appellate Defender

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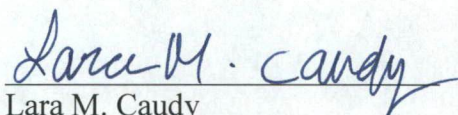
MAR 22 2019

**SC Court of Appeals**

**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."

March 22, 2019.



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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
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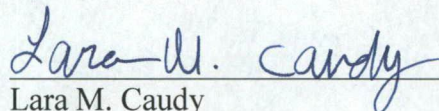
V.

STANLEY ANTHONY DIMITROFF, II

APPELLANT

CERTIFICATE OF SERVICE

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. Benjamin 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 Stanley Anthony Dimitroff II, 375719, at Evans Correctional Institution, 610 Highway 9 West, Bennettsville, SC 29512, this 22nd day of March, 2019.



Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 22nd day of March, 2019.

 (L.S)

Notary Public for South Carolina

My Commission Expires: September 27, 2028.

**RECEIVED**

MAR 22 2019

SC Court of App.