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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Greenville County
Honorable John C. Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEAN ALTON HOLCOMB,

APPELLANT

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Dean Alton Holcomb, Appellant.

Appellate Case No. 2016-001927

Appeal From Greenville County
John C. Hayes, III, Circuit Court Judge

Opinion No. 5642
Heard March 14, 2019 – Filed April 17, 2019

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Appellate Defender Kathrine Haggard Hudgins, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Deputy Attorney General Donald J. Zelenka, and Senior Assistant Deputy Attorney General John Benjamin Aplin, all of Columbia; Solicitor Barry Joe Barnette and Assistant Solicitor Russell D. Ghent, both of Spartanburg, for Respondent.

KONDUROS, J.: In this criminal case, Dean Alton Holcomb appeals his convictions for breach of trust and obtaining money by false pretenses, arguing the trial court erred in (1) failing to direct a verdict of acquittal due to the State's failure to prove a written check constitutes a trust relationship; (2) failing to direct

a verdict of acquittal due to the State's failure to prove Holcomb made a fraudulent misrepresentation; and (3) refusing to grant a mistrial based on remarks made by the prosecution. We affirm in part, reverse in part, and remand.

FACTS/PROCEDURAL HISTORY

Robert McGinn, Jr., lived in a house with his family in Greenville County for almost twenty years. A hail storm damaged the home around March or April of 2012. The damage to the house amounted to $7,180.99. McGinn's insurer, State Farm Insurance Company, initially paid $4,295.03. McGinn remained eligible for up to an additional $1,885.96 if the repairs necessitated it.

McGinn entered into a contract with Holcomb, the owner of Carolina Home Renovators, on May 25, 2012, to replace the roof of the house as well as make incidental repairs. McGinn selected a green roof from Green Tree Metals to replace the old one. The contract called for McGinn to initially pay Holcomb $4,295.03 to begin the repairs and $2,885.96 upon completion, for a total cost of $7,180.99. Four days after the contract McGinn and Holcomb signed the contract, McGinn wrote Holcomb a check in the amount of $4,295.03. Two days later, the funds were withdrawn from McGinn's account.

Unbeknownst to McGinn, Holcomb had other clients, Susan Clark and Kenneth Clark (the Clarks), who also contracted with Holcomb to replace their roof. The Clarks suffered a significant delay in their roof being repaired, and it was only completed after constant reminders from Kenneth Clark. On the same day McGinn paid Holcomb, Holcomb finally ordered the roof for the Clarks' home. Holcomb replaced the Clarks' roof in late June 2012.

Holcomb never installed a new roof on McGinn's house. Holcomb completed some minor repairs, including staining the deck and sides of the house and painting the doors and windows. However, McGinn understood the substance of the contract to be for the roof repair. One of Holcomb's employees, Jared Richardson, also understood McGinn hired Holcomb to install a new roof. Holcomb never contacted McGinn to explain why he did not repair the roof.

A grand jury indicted Holcomb for obtaining property or money by false pretenses—greater than $2,000. He was subsequently indicted for breach of trust more than $2,000. At trial, Holcomb moved for directed verdicts on both charges, which the trial court denied. During closing arguments, Holcomb objected to two comments by the solicitor, and the trial court sustained both objections. Holcomb

subsequently moved for a mistrial due to the remarks, and the trial court denied the motions. The jury convicted Holcomb of both counts, and the trial court sentenced him concurrently to five years' imprisonment for each count. This appeal followed.

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). Thus, an appellate court "is bound by the trial court's factual findings unless they are clearly erroneous." *Id.*

LAW/ANALYSIS

I. Trust Relationship

Holcomb argues the trial court erred in refusing to grant a directed verdict for the breach of trust charge because a written check does not constitute a trust relationship. We disagree.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." *State v. Brandt*, 393 S.C. 526, 542, 713 S.E.2d 591, 599 (2011). "When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State." *Id.*

"A person committing a 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 larceny." S.C. Code Ann. § 16-13-230(A) (2015). "Larceny . . . is defined as the felonious taking and carrying away of the goods of another against the owner's will or without his consent." *State v. Mitchell*, 382 S.C. 1, 5, 675 S.E.2d 435, 437 (2009).

"Breach of trust with fraudulent intention, by that especial designation, is . . . peculiar to this jurisdiction." *State v. McCann*, 167 S.C. 393, 400, 166 S.E. 411, 413 (1932). "In other states, the crime, as known to us, is called by different names, such as 'larceny after trust,' 'larceny by a bailee,' 'larceny by false pretenses,' and very commonly as 'embezzlement.'" *Id.* "All the offenses are regarded as

statutory, and one must look to the respective statutes to ascertain a definition of the crime." *Id.*

> A careful reading of the language of [section] 16-13-230 together with the South Carolina decisions reveals that that statute did not establish a new offense with an essential element of lawful possession. Section 16-13-230 merely expanded the definition of common law larceny by eliminating the element of trespassory taking or unlawful possession. Accordingly, after the enactment of the statute it became possible to convict a person of larceny without the necessity of proving unlawful possession. The statute merely eliminated an element, unlawful possession; it did not create a new element of lawful possession.

McPhatter v. Leeke, 442 F. Supp. 1252, 1254 (D.S.C. 1978).

"A trust is an 'arrangement whereby property is transferred with [the] intention that it be administered by trustee for another's benefit.'" *State v. Jackson*, 338 S.C. 565, 570, 527 S.E.2d 367, 370 (Ct. App. 2000) (quoting *Black's Law Dictionary* 1047 (6th ed. 1991)). "Thus, the transferor of the property must intend that the trustee will act for the transferor's benefit instead of on his own behalf." *State v. Parris*, 363 S.C. 477, 482, 611 S.E.2d 501, 503 (2005).

We find the trial court did not err in denying Holcomb's motion for directed verdict. Our supreme court in *Parris* looked at a factual situation comparable as the one in this case. In *Parris*, homebuyers received a loan to purchase a mobile home. 363 S.C. at 480, 611 S.E.2d at 502. They gave the loan checks to the mobile home seller, who then used the checks for his own benefit instead of paying the mobile home supplier on behalf of the homebuyers. *Id.* The supreme court held a trust relationship existed when the homebuyers intended the money from the checks be used for their benefit. *Id.* at 483-84, 611 S.E.2d at 504.

In this case, McGinn intended for the majority of his payment to go toward a new roof. The first check McGinn wrote, in the amount of $4,295.03, had "partial payment, roof" written on the memo line. McGinn testified the substance of the contract was for the roof to be replaced. McGinn expected Holcomb to use his payment to purchase a new roof and install it. McGinn never received a new roof. Accordingly, we find the State presented sufficient evidence taken in the light most

favorable to the State for the trial court to deny a motion for directed verdict. (*See Brandt*, 393 S.C. at 542, 713 S.E.2d at 599 ("When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State.")). Therefore, we affirm the trial court's ruling on this issue.

II. Obtaining Money by False Pretenses

Holcomb argues the trial court erred in refusing to grant him a directed verdict for the obtaining money by false pretenses charge because the State failed to provide any statement proved to be false at the time it was made. We agree.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *Weston*, 376 S.C. at 292, 625 S.E.2d at 648. "A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." *Brandt*, 393 S.C. at 542, 713 S.E.2d at 599. "When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State." *Id.*

"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 obtaining a signature or property by false pretenses.]" S.C. Code Ann. § 16-13-240 (2015). "The supreme court has defined this offense as requiring a fraudulent representation of a *past or existing* fact by one who knows of its falsity, in order to induce the person to whom it is made to part with something valuable." *State v. Dickinson*, 339 S.C. 194, 198, 528 S.E.2d 675, 677 (Ct. App. 2000) (alteration in original). "A promise to do something in the future cannot constitute the basis of a prosecution for obtaining goods under false pretenses." *State v. McCutcheon*, 284 S.C. 524, 525, 327 S.E.2d 372, 372 (Ct. App. 1985).

The trial court erred in denying the motion for directed verdict for the charge of obtaining money by false pretenses. The cases interpreting this statute make clear that a future promise cannot constitute a false representation. Instead, the representation must be false either at the time or prior to it being made. In this case, the representation was that Holcomb would replace McGinn's roof. At the time the representation was made, Holcomb could have used McGinn's payment to replace his roof. Thus, we find the State did not provide sufficient evidence to

show the statement was irrefutably false at the time made. Accordingly, the trial court erred in denying Holcomb's motion for a directed verdict on this charge. Therefore, we reverse the trial court's ruling on this issue.

III. Improper Remarks

Holcomb argues the trial court erred in failing to grant a mistrial based on improper remarks the solicitor made during closing argument. We agree.

The appropriateness of a solicitor's closing argument is a matter left to the trial court's sound discretion. *State v. Copeland*, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). An appellate court will not disturb a trial court's ruling regarding closing argument unless there is an abuse of that discretion. *State v. Penland*, 275 S.C. 537, 539, 273 S.E.2d 765, 766 (1981). "On appeal, an appellate court will review the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial [court]'s instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt." *State v. Rudd*, 355 S.C. 543, 550, 586 S.E.2d 153, 157 (Ct. App. 2003). The test of granting a new trial for alleged improper closing argument is whether the solicitor's comments "so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Darden v. Wainwright*, 477 U.S. 168, 169 (1986). "An appellate court generally will decline to set aside a conviction due to insubstantial errors not affecting the result." *State v. Black*, 400 S.C. 10, 27, 732 S.E.2d 880, 890 (2012). "In applying the harmless error rule, the court must be able to declare the error had little, if any, likelihood of having changed the result of the trial and the court must be able to declare such belief beyond a reasonable doubt." *State v. Watts*, 321 S.C. 158, 165, 467 S.E.2d 272, 277 (Ct. App. 1996).

"A solicitor's closing argument must be carefully tailored so it does not appeal to the personal biases of the jurors." *Rudd*, 355 S.C. at 548, 586 S.E.2d at 156. "Further, the argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it." *Id.* at 549, 586 S.E.2d at 156.

"Our supreme court has repeatedly condemned closing arguments that lessen the jury's sense of responsibility by referencing preliminary determinations of the facts." *Id.* Statements referring to a grand jury indictment "are improper because they inject an arbitrary factor into jury deliberations. The danger is that a juror might be persuaded to rely on the opinion of others instead of exercising his

independent judgment as to the facts . . . ." *Id.* (quoting *State v. Thomas*, 287 S.C. 411, 412-13, 339 S.E.2d 129 (1986)).

During trial, in an in camera hearing, the solicitor proffered testimony that Holcomb talked negatively about McGinn's daughter on YouTube. Specifically, Holcomb called McGinn's daughter a "meth making mama." Holcomb objected to the solicitor's line of questioning, and the court sustained the objection. In his closing argument, the solicitor used the phrase "meth making mama" again in reference to McGinn's daughter. Holcomb objected, and the trial court sustained the objection. At the end of closing arguments, Holcomb moved for a mistrial. Although the comment was improper, because McGinn's daughter was not involved in the case and none of the charges against Holcomb related to illegal substances, we find the solicitor's comment was not so unfair to Holcomb as to offend his due process. *See Darden*, 477 U.S. at 169 ("An appellate court generally will decline to set aside a conviction due to insubstantial errors not affecting the result.").

However, the solicitor also stated during his closing argument "[t]his case was not brought on a warrant. This case was brought on an indictment that goes through a grand jury." Again, Holcomb objected, and the trial court sustained the objection. Holcomb moved for a mistrial on this basis. We find this statement by the solicitor extremely improper and prejudicial to Holcomb because it had the potential to influence the jury by referencing earlier determination made about the merits of the case. Moreover, we do not find the evidence of Holcomb's guilt so overwhelming as to render the solicitor's improper remark harmless. Therefore, we find the trial court erred in failing to grant a mistrial.[1] Accordingly, we reverse and remand for a new trial on the charge breach of trust.

CONCLUSION

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[1] Holcomb also appeals remarks made by the solicitor regarding the solicitor's years of experience and defense counsel's inexperience. However, we find Holcomb's argument is not preserved for appellate review because it was not immediately objected to at trial. *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007) (holding to preserve a question for review, the objection must be timely made, and usually it must be made at the earliest possible opportunity); *Webb v. CSX Transp., Inc.*, 364 S.C. 639, 657, 615 S.E.2d 440, 450 (2005) (finding a contemporaneous objection is required to preserve issues for appellate review).

Based on the foregoing, the trial court did not err in failing to direct a verdict of acquittal on the breach of trust charge due to the State's failure to prove a written check constitutes a trust relationship. However, the trial court did err in failing to direct a verdict of acquittal on the obtaining money by false pretenses charge due to the State's failure to prove Holcomb made a fraudulent misrepresentation. Additionally, the trial court erred in refusing to grant a mistrial based on the solicitor's reference to the grand jury during closing argument. Thus, the trial court is

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

HUFF and THOMAS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Opinion No. 5642 (S.C. Ct. App. filed April 17, 2019)

Appellate Case No. 2016-001927

THE STATE, ...RESPONDENT

v.

DEAN ALTON HOLCOMB, ...APPELLANT.

PETITION FOR REHEARING

On April 17, 2019, this Court issued a published opinion that affirmed in part, reversed in part, and remanded Appellant Dean Alton Holcomb's convictions for breach of trust and obtaining money by false pretenses. *State v. Holcomb*, Op. No. 5642 (S.C. Ct. App. filed April 17, 2019). Respondent (the State) makes no further challenge to the Court's rulings in regard to the propriety of the solicitor's closing argument or the trial court's refusal to grant a directed verdict for the breach of trust charge. It respectfully, however, petitions the Court for rehearing pursuant to Rule 221(a), SCACR, in regard to the Court's conclusion that the circuit court erred

in refusing to grant Appellant a directed verdict for the obtaining money by false pretenses charge.

The State seeks rehearing on the grounds that this Court may have mis-apprehended, overlooked, or failed to properly apply existing precedent and the appropriate standard of review in reaching its conclusion that the State failed to produce evidence of the offense charged because it "failed to provide any statement proved to be false at the time it was made." The trial court, which was properly concerned with the existence or nonexistence of evidence and not its weight, considered the evidence in the light most favorable to the State and determined the State produced sufficient evidence of the offense charged to send the case to the jury. Under the standard of review and giving appropriate consideration to the evidence and all reasonable inferences in the light most favorable to the State, there was ample circumstantial evidence in the record to support the conclusion that Appellant made a representation that was false either at the time or prior to it being made. Consequently, the trial court's determination on this issue should have been affirmed.

For these reasons, the State respectfully requests that this Court grant this petition for rehearing, reconsider and rehear this matter, and issue a modified opinion: (1) affirming the trial court's refusal to grant Appellant a directed verdict for obtaining money by false pretenses; and (2) reversing and remanding for a new trial on BOTH the charge of breach of trust and the charge of obtaining money by false pretenses.

Statement of the Case

Appellant Dean Alton Holcomb (Appellant) was indicted at the June 2015 term of the grand jury of Greenville County for obtaining property or money by false pretenses – greater than $2,000 (Indictment No. 2015-GS-23-4600A). He was subsequently indicted at the August 2016 term for breach of trust – more than $2,000 (Amended Indictment No. 2013-GS-23-5223). Appellant was represented by Matthew W. Shealy, Esquire, of the Seventh Circuit Public Defender's Office. Respondent (the State) was represented by Assistant Solicitors Russell D. Ghent and Bratton S. Todd of the Seventh Circuit Solicitor's Office.[1] On September 6-8, 2016, Appellant proceeded to trial by jury pursuant to which he was found guilty as indicted. He was sentenced by the Honorable John C. Hayes, III, to a concurrent term of five years' imprisonment on each conviction. (R.p.494-501; R.p.429-p.430). He timely filed a notice of intent to appeal his convictions and sentences and the parties submitted briefs addressing the three issue raised by Appellant on appeal. On April 17, 2019, this Court issued a published opinion that affirmed in part, reversed in part, and remanded for a new trial solely on the charge of breach of trust. *State v. Holcomb*, Op. No. 5642 (S.C. Ct. App. filed April 17, 2019). This Petition for rehearing follows.

Argument

In its published opinion, this Court affirmed in part, reversed in part, and remanded for a new trial solely on the charge of breach of trust. *State v. Holcomb*, Op. No. 5642 (S.C. Ct. App. filed April 17, 2019). For the reasons noted above and argued in more detail below, the State respectfully requests that this Court grant this petition for rehearing solely in regard to the

[1] Both Appellant and the State were represented at trial by officials from the Seventh Judicial Circuit rather than the Thirteenth Judicial Circuit, where the charges arose, because officials from the Thirteenth Judicial Circuit disqualified themselves from further participation due to threats made by Appellant.

Court's conclusion that the trial court erred in refusing to grant him a directed verdict for the obtaining money by false pretenses charge. The State specifically requests that this Court grant this petition for rehearing, reconsider and rehear this matter, and issue a modified opinion: (1) affirming the trial court's refusal to grant Appellant a directed verdict for obtaining money by false pretenses; and (2) reversing and remanding for a new trial on BOTH the charge of breach of trust and the charge of obtaining money by false pretenses.

In its published opinion, this Court identified longstanding precedent in South Carolina whereby our supreme court had defined "obtaining signature or property by false pretenses" as requiring a fraudulent representation of a past or existing fact by one who knows its falsity, in order to induce the person to whom it is made to part with something valuable. *See State v. Dickinson*, 339 S.C. 194, 528 S.E.2d 675 (Ct. App. 2000) (referencing the definition from the supreme court). It further noted that a promise to do something in the future cannot constitute the basis of a prosecution for obtaining goods under false pretenses.[2] *State v. McCutcheon*, 284 S.C. 524, 327 S.E.2d 372 (Ct. App. 1985). The Court found: (1) the representation was that Appellant would replace Victim's roof and (2) at the time the representation was made, Appellant could have used Victim's payment to replace his roof. It concluded "the State did not provide sufficient evidence to show the statement *was irrefutably false at the time made*" and therefore the trial court erred in denying Appellant's motion for a directed verdict. (emphasis

[2] Although the State acknowledges the existence and binding nature of this precedent, it notes that the limitation to only past or existing facts rather than encompassing *future promises the actor has no intention of fulfilling* is an artificial distinction that appears nowhere in the relevant statute. An individual, such as Appellant, who is bent on mischief could certainly make a false representation of future performance *knowing of its falsity at the time the representation is made* in order to induce a person to whom it is made to part with something valuable. The criminal nature of the act comes from the intent to cheat and defraud a person of their chattel, money, valuable security, or other property. The fact that the promise is made to do something in the future may make it much more difficult to prove the intent of the actor beyond a reasonable doubt; however, it should not preclude the jury from making that determination where there is ample circumstantial evidence that the actor *never intended to fulfill the future promise.* This act satisfies the plain, unambiguous terms of section 16-13-240 of the South Carolina Code, and the State submits it warrants our supreme court revisiting the propriety of the limitation this Court recognized in *Dickinson* and *McCutcheon.*

added). The State respectfully submits that requiring proof, at the directed verdict stage, the statement was "irrefutably false at the time made" improperly ventures into weighing the evidence rather than viewing it and all reasonable inferences in the light most favorable to the State. Here, the evidence at trial established Appellant had neither the means nor the intent to do what he claimed he would do. This constituted a pretense of authority or present ability to perform that was a fraud. *State v. Love*, 275 S.C. 55, 63, 271 S.E.2d 110, 114 (1980). The jury was perfectly capable of evaluating the evidence and making a determination, beyond a reasonable doubt, as to whether Appellant's representation was irrefutably false at the time is was made. The trial court properly allowed it to do so and its refusal to grant a directed verdict should have been affirmed.

Appellant's prior representations and advertisements concerning his business prior to and at the time he entered into the contract with Victim constituted a false representation that he could do certain things, a pretense of ability and implied representation that constituted a misrepresentation of present facts—a false and fraudulent pretense. This was a present use of a false pretense or representation to obtain the victim's signature to a contract and then to a check, money and chattels with the intent to cheat and defraud the victim. Thus,

Appellant argues the trial court erred in denying his motion for a directed verdict on the charge of obtaining money by false pretenses because, when viewed in the light most favorable to the State, the State failed to prove he made a fraudulent representation of an existing or past fact, which is an element of the offense. He further argues the purported breach of contract, without a false representation, could be the subject of a civil breach of contract action but not a criminal action. (Brief of Appellant, p.9). The State disagrees and submits Appellant's arguments are without merit.

Substantial direct and circumstantial evidence was presented from which the jury could find Appellant guilty of each element of obtaining money or signature by false pretenses, based on the natural and logical inferences to be drawn from the evidence. There was no dispute that Appellant took the victim's money under an agreement to make repairs to his house, most significantly to his roof. There is no question the money was not used for the victim's roof which was never repaired and the State proved the money was used for a roof and payments to employees on another job, a job as to which Appellant was also receiving complaints from a homeowner who had made payments but received no roof. These pieces of evidence constituted strong evidence of Appellant's guilt of obtaining money or signature by false pretenses, because they establish the strong likelihood Appellant never intended to make repairs to Victim's roof. Accordingly, viewing the evidence in a light most favorable to the State and focusing on the existence of evidence rather than its weight, the trial judge correctly denied the directed verdict motion and submitted the case to the jury to allow for proper resolution of any factual disputes created by the evidence and testimony. Appellant's conviction should be affirmed.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury. *Weston*, 367 S.C. at 292-93, 625 S.E.2d at 648; *State v. Cherry*, 361 S.C. 588, 593-94, 606 S.E.2d 475, 477-78 (2004). The appellate court may only reverse the trial judge's denial of a

directed verdict motion if there is no evidence supporting the trial judge's ruling or if the ruling is based on an error of law. *State v. Gaster*, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002); *State v. Dantonio*, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008). Indeed, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." *State v. Nix*, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986).

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. *State v. Curtis*, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004); *State v. Condrey*, 349 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002). Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements of the crime beyond a reasonable doubt. *State v. Robinson*, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing *Jackson v. Virginia*, 443 U.S. 307 (1979)). The task of the trial court is to simply determine "whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016). The reviewing court should affirm if in viewing the evidence in the light most favorable to the State, "the evidence could induce a reasonable juror to find [the defendant] guilty." *See State v. Pearson*, 415 S.C. 463, 474, 783 S.E.2d 802, 808 (2016); *see also State v. Richburg*, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968) ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury.").

Discussion / Analysis

Here, Appellant was indicted for obtaining property/money by false pretenses. During Appellant's trial, the State presented substantial circumstantial evidence establishing Appellant's guilt for each element of obtaining money by false pretenses. This evidence created factual questions regarding Appellant's guilt that could only be properly resolved by the jury. Based on the existence of the evidence in this case along with the logical inferences of guilt to be drawn from that evidence, the trial court properly denied Appellant's directed verdict motion.

Appellant's argument begins with *State v. McCutcheon*, a South Carolina Court of Appeals case that cites *State v. Love*, 275 S.C. 55, 271 S.E. 2d 110, cert. denied, 449 U.S. 901 (1980). Appellant attempts to rely on two of the most adverse precedents to support his argument. However, in the end, the cases support the State's position. The Indictment alleged more than a mere agreement between the parties for future services. It included more than mere language of primarily replacing a roof. The indictment contained allegations that Appellant:

> [D]id in Greenville County on or about May 25, 2012, represent to the victim, Robert McGinn, in Greenville County that Defendant *acting in Greenville County through his business, Carolina Home Renovations*, would repair the roof of the victim's house in Greenville County; *in line therewith, Defendant did accept from the victim a written instrument, check #1040* drawn on the Bank of Traveler's Rest on the victim's account with said bank, said check in the amount of $4,295.00, (said amount being greater than $2,000, but less than $10,000). The repairs to victim's roof were never made by the Defendant or his business, as Defendant had represented.
>
> Defendant made these representations, accepted said payment in line therewith, endorsed and negotiated/cashed said check, all by false pretenses and representations, with the intent to cheat and defraud the victim of the instrument and money obtained by Defendant from the victim.

(Indictment No. 2015-GS-23-4600A). The check was accepted on May 29, 2012 and deposited that same day.

The statute under which Appellant was indicted provides that "[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... or other property , real or personal, with intent to defraud a person of that property is guilty of obtaining money under false pretenses." S.C. Code Ann. § 16-13-240. Professor William McAninch offers a model and support for the State's approach to the indicting and prosecuting on both breach of trust as well as obtaining money by false pretenses. He notes: "This statute demonstrates once more the tendency of this jurisdiction to provide overlap between the three primary property offenses [breach of trust, larceny, obtaining money by false pretenses] in order to preclude a technical avenue of escape from a case of obvious theft." WILLIAM SHEPARD MCANINCH, W. GASTON FAIREY & LESLEY M. COGGIOLA, THE CRIMINAL LAW OF SOUTH CAROLINA 366 (6th ed. 2013). Furthermore, he notes: "While it might be argued that any false promise about future conduct falsely misrepresents the promisor's present state of mind, the traditional rule has been that such a promise will not support a conviction of false pretenses. . . . The modern trend [however] is toward allowing convictions based on promises." *Id.* at 367-68.

However, the circumstances of Appellant's having conducted a "mini" Ponzi fraud to keep his company afloat, to the detriment of the victim, left Appellant at the time of the offense in a *present* violation of the false pretenses statute as well as the law of breach of trust. The Appellant during the course of a continuing fraud obtained the signature of Victim "by false pretense or representation...of a person to a written instrument.... with intent to cheat and defraud that person." S.C. Code Ann. Sec. 16-13-240 (2). Under the statute and case law as they now stand, the charge was properly submitted to the jury and Appellant was properly found guilty.

The State proved overwhelming that on May 29, 2012, Appellant obtained a check for $4,295 from Victim and deposited it in his business account which he controlled. He did this after he had obtained Victim's signature as well as to a contract for his services on May 25. In the course of obtaining and depositing this check he had already made representations about his own ability to perform on their agreement. Appellant had misled Victim and continued doing so knowing and intending that Victim's money would not be applied to repairing Victim's roof. Also in the course of obtaining and depositing the check Appellant obtained at least a claim to an inchoate material man's/chattel lien and mechanic's/chattel lien on Victim's house. (Rp.347, line 24-p.348, line 5). Appellant also obtained at least a present claim of rights to enforce a contract with the victim. Finally, he obtained an immediate and an unlawful means to finance and complete a job in Inman, South Carolina, a job on which he owed money to his employees to complete, and on which he needed to purchase materials.

Victim's testimony was that he signed the contract with Appellant in each other's presence. (R.p.162-p.163). The check was for partial payment. (R.p.160-p.161; p.164, lines 1-20). One of Appellant's employees testified as to an advertising flier that was used to publicize their business in the area. (R.p.282, line 5-p.284, line 15; State's Exhibit 51). Victim looked up Appellant and his company on the Better Business Bureau and found he had a Double-A Rating at that time. (R.p.175, lines 17-25). One of Appellant's employees dated one of Victim's daughters. In short, Appellant held himself and his company out as a reputable, reliable, and competent business entity with whom the victim was somewhat familiar and could rely in entering into an agreement to have repairs performed on his home.

In line with these circumstances, the indictment specifically alleged Appellant falsely represented he could do those things agreed upon in the contract signed on May 25, 2012.

Appellant obtained Victim's signature on two written instruments, one for his money on May 29, 2012 and the other for a right to claim that he had a contract for services with Appellant on May 25, 2012. The proof at trial established Appellant had neither the means nor the intent to do what he claimed he would do. This constituted a pretense of authority or present ability to perform that was a fraud. *State v. Love*, 275 S.C. 55, 63, 271 S.E.2d 110, 114 (1980) ("The essence of appellant's challenge is that there was no allegation or proof of a representation of a past or existing fact, but rather the representations were in the nature of a promise which is not a false pretense. We disagree. Appellant is charged in this case with falsely representing that he could do certain things... There is contained in these promises the implied representation or pretense that he could do the things he promised. This pretense of authority or ability constituted a representation or pretense of fact, (cite omitted); and supports the charge of obtaining goods under false pretenses.").

Appellant's reliance on *State v. McCutcheon*, 284 S.C. 524, 327 S.E. 2d 372 (Ct. App. 1985), is misplaced. *McCutcheon* involved an indictment for two undisputedly postdated checks as a basis for the charge. The Court of Appeals noted that precedent had already addressed and resolved that issue. *McCutcheon,* at p. 372; citing *State v. Winter,* 98 S.C. 294, 82 S.E. 419 (1914). By comparison, here Appellant's prior representations and advertisements concerning his business prior to and at the time he entered into the contract with Victim constituted a false representation that he could do certain things, a pretense of ability and implied representation that constituted a misrepresentation of present facts—a false and fraudulent pretense. This was a present use of a false pretense or representation to obtain the victim's signature to a contract and then to a check, money and chattels with the intent to cheat and defraud the victim. The motion for a directed verdict was properly denied.

In conclusion, viewing all of the evidence presented in a light most favorable to the State as required, and considering only its existence and not its weight, the evidence established Appellant's guilt for obtaining money by false pretense or representation and required the trial judge to submit the case to the jury. Based on the logical and reasonable inferences to be drawn from this evidence, the jury could convict Appellant of each element of obtaining money by false pretenses. Furthermore, the questions as to whether the evidence presented supported an inference of guilt and what weight should be assigned to that evidence rested solely with the jury as the fact-finder. Therefore, the trial judge properly denied Appellant's directed verdict motion on the obtaining money by false pretenses charge and submitted the case to the jurors to allow them to resolve any of the factual disputes raised by the evidence and the inferences to be drawn from it. For all of the reasons argued here and in the Final Brief of Respondent, the trial court's determination should have been affirmed.

Conclusion

WHEREFORE, based on the foregoing argument and the arguments raised in the Final Brief of Respondent, the State respectfully requests that this Court grant this petition for rehearing, reconsider and rehear this matter, and issue a modified opinion: (1) affirming the trial court's refusal to grant Appellant a directed verdict for obtaining money by false pretenses; and (2) reversing and remanding for a new trial on BOTH the charge of breach of trust and the charge of obtaining money by false pretenses.

Respectfully submitted,

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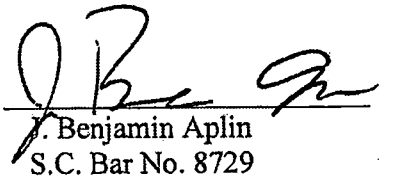
BY: 
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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
April 29, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Opinion No. 5642 (S.C. Ct. App. filed April 17, 2019)

Appellate Case No. 2016-001927

THE STATE, ...RESPONDENT

v.

DEAN ALTON HOLCOMB, ...APPELLANT.

PROOF OF SERVICE

I, Troyeshi Brailey, Legal Coordinator, hereby certify that I have served the within *Petition for Rehearing*, dated April 29, 2019, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to each of his attorneys of record:

Katherine H. Hudgins, Esquire
Appellate Defender
S.C. Commission on Indigent Defense
P.O. Box 11589
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served. This 29th day of April, 2019.

Troyeshi Brailey
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

DEAN ALTON HOLCOMB,

PETITIONER

APPELLATE CASE NO 2016-001927

Appeal from Greenville County

Honorable John C. Hayes, Circuit Court Judge

Opinion No. 5642

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for Dean Alton Holcomb petitions the Court for rehearing solely on the Court's finding that the trial court did not err in refusing to grant a directed verdict of acquittal for the breach of trust charge. Counsel respectfully submits that this Court misapprehended what constitutes a trust relationship in finding that a check, written to a business to begin work pursuant to a contract creates a trust relationship. The check in the present case was not held in trust but rather was given in exchange for work to be done pursuant to a contract. Some of that work was completed. The Court's ruling opens the floodgate to allowing contractual

disputes to be litigated through the criminal justice system by the issuance of an arrest warrant rather than by filing suit in civil court for breach of contract.

This Court correctly found that the trial court erred in refusing to direct a verdict of acquittal for obtaining money by false pretenses because the State failed to prove a fraudulent representation of an existing or past fact. This Court also correctly found that the trial court erred in refusing to grant a mistrial when the solicitor referenced the grand jury in closing argument. The State seeks rehearing solely on this Court's finding that the trial judge erred in refusing to direct a verdict of acquittal for obtaining money by false pretenses. The State does not challenge this Court's ruling on the impropriety of the solicitor's closing argument requiring a new trial. The State asks this Court to issue a modified opinion affirming the trial court's refusal to direct a verdict of acquittal for obtaining money by false pretenses but reversing both the breach of trust and the obtaining money by false pretenses convictions and remanding for a new trial on both charges. Petitioner agrees that the closing argument requires a new trial for both charges but submits that this Court correctly found that the trial judge erred in refusing to direct a verdict of acquittal for obtaining money by false pretenses. The State failed to prove a fraudulent representation of an existing or past fact. The State failed to introduce any financial records from Carolina Home Renovators or Petitioner's personal accounts. The State presented no evidence that Petitioner lacked access to lines of credit. The State failed to prove that Petitioner lacked the means or intent to fulfill the terms of the contract when it was signed by the parties. The State failed to prove the elements of obtaining money by false pretenses.

Both the breach of trust charge and the obtaining money by false pretenses charge involved a contract between Carolina Home Renovators and Robert McGinn to install a Green Tree metal roof on the McGinn home in Travelers Rest, South Carolina and make exterior

repairs – stain deck and paint door - after a hail storm caused damage. (R. p. 448). The contract was signed by McGinn and the Petitioner on May 25, 2012, and called for a payment of $4,295.03 to start the work and an additional payment of $2,885.96 upon completion for a total cost of $7,180.00. Although not specified in the contract, McGinn testified that the new metal roof was going to be green. (R. p. 187, lines 4-8). As provided in the contract, on May 29, 2012, McGinn wrote check #1040 to Carolina Home Renovators in the amount of $4,295.03. (R. p. 449). McGinn testified that the deck was stained and doors painted but the roof was never installed. (R. p. 166, lines 4-10; p. 171, lines 15-18).

The State introduced in evidence an invoice to Carolina Home Renovators from Green Tree Metals in the amount of $3,179.16. (R. p. 462). The invoice listed Hawaiian blue metal roofing to be delivered to an address in Lyman, South Carolina. The invoice was stamped as paid on May 29, 2012, the same day McGinn wrote the check to Carolina Home Renovators. The owner of Green Tree Metals testified that Petitioner paid the invoice with a Visa card. (R. p. 220, lines 1-13). The State failed to introduce any financial records from Carolina Home Renovators or from Petitioner's personal accounts. Susan and Kenneth Clark testified that Petitioner installed a Hawaiian blue metal roof on their home in Lyman, South Carolina in June of 2012. (R. pp. 234-242; 245-247). There were no other invoices billed from Green Tree Metals to Carolina Home Renovators after May 29, 2012. (R. p. 221, lines 9-13).

At the close of the State's case, Petitioner moved for a directed verdict of acquittal on both the breach of trust and the obtaining money by false pretenses charges. (R. pp. 418-426). Petitioner argued in regard to the breach of trust charge, "And, quite frankly, Judge, you can't have – there simply wasn't a trust because there was nothing in the document that says that four thousand, two hundred and eighty-eight dollars ($4, 288.00), I believe, or whatever the figure

was to go solely to this particular job, to purchase this particular metal." (R. p. 346, lines 24 – p. 347, lines 1-5). Petitioner argued that there was no requirement that the money received from McGinn, pursuant to the contract, be placed in a trust account where the proceeds of that account were to be used only for the McGinn job. (R. p. 347, lines 6-15). Petitioner argued that the facts of the present case may form the basis for a civil breach of contract action case but it was not a criminal case. (R. pp. 348 – 349). The judge denied the motion and stated:

> I will sort of – this is not the traditional breach of trust case we see, quite frankly. Usually that is somebody who works for a company and takes the company till and supposed to take it to the bank and instead of taking it to the bank, takes it home. That's what we usually see in breach of trust cases. The clerk at Hardee's doesn't take the night deposit, they take it home instead. So this is not the traditional case as far as one that I've tried, but I do believe that the evidence is sufficient to get it to the jury.

(R. p. 357, lines 8-17). The trial judge erred in refusing to direct a verdict of acquittal on the breach of trust charge when the State failed to prove that Petitioner received money from Mr. McGinn in trust. The State failed to prove the existence of a trust relationship.

In State v. Parris, 363 S.C. 477, 482, 611 S.E.2d 501, 503 (2005), the South Carolina Supreme Court wrote:

> In State v. Shirer, 20 S.C. 392, 408 (1884), the Court stated, "the object of our [breach of trust] act was simply to enlarge the field of larceny, removing what before might have been a defense for those who received property in trust and afterwards fraudulently appropriated it. The question under our act is, whether the party received the property in trust, which he afterwards violated...." Therefore, the State must prove the existence of a trust relationship to sustain a charge of breach of trust with fraudulent intent. See 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.

The trial judge erred in refusing to grant a directed verdict of acquittal for the breach of trust charge because the State failed to prove the existence of a trust relationship.

The indictment in the present case alleges:

> That in Greenville County on or about May 25, 2012, the Defendant, Dean Alton Holcomb, did enter into a contract to replace the damaged roof at the home of the victim Robert McGinn, with some additional repairs that included staining a deck and siding and painting the door of said home at ** Beaver Dam Road in Travelers Rest. The contract called for an initial payment by the victim of $4,295.03 and a final payment of $2,885.96 upon completion.
>
> The victim on May 29, 2012 paid $4,295.03 to Defendant Dean Alton Holcomb for the partial payment of the repairs. The Defendant did not ever repair the roof as agreed upon and instead misappropriated the monies paid to him by the victim, in whole or in substantial part for other uses in his business and otherwise acted with unlawful and fraudulent intent in dealings with the victim, Robert McGinn, all of this constituting the crime of breach of trust with fraudulent intent in excess of $2,000 but less than $10,000 in violation of Section §16-13-0230(A),(B)(2) of the South Carolina Code of Laws (1976, as amended).

(Indictment #2013-GS-23-5223, R. p. 495). The indictment fails to allege a trust relationship. Accepting payment, pursuant to the contract in this case, for work to be done does not establish a trust relationship.

In the present case the State failed to prove that Petitioner received money in trust. McGinn paid Petitioner to install a roof and make exterior repairs pursuant to a contract. Petitioner received the money as a payment, not in trust. Once Petitioner received the payment from McGinn, there was nothing to prevent him from using it for his own benefit. There is nothing in the contract or otherwise in the record to establish that the particular funds McGinn paid were to be used exclusively for the McGinn job. There was no breakdown in the contract between materials and labor. Petitioner started work pursuant to the contract but failed to complete the work as outlined in the contract. The case presents the classic example of a case that should be decided in civil court as a civil breach of contract action rather than a criminal breach of trust.

The present case is distinguished from Parris where the South Carolina Supreme Court found there was sufficient evidence to present the jury with the issue of whether a trust

relationship existed between the buyers of a mobile home and a mobile home dealer. The mobile home dealer did not have clear title to the purchased mobile home. Instead, the bank who financed the mobile home dealership, First National Bank (FNB), held a lien on the mobile home. The buyers obtained their own financing from Bank of American and two checks were issued made jointly payable to both the buyer and the mobile home dealer. The buyer endorsed both checks and gave them to the dealer. The portion of the amount required to pay off the lien to FNB and provide clear title was held in trust by the dealer. That portion of the buyers' financing was to be used specifically for their benefit to pay off the lien held by FNB. The dealer took the buyers' money in trust and had a duty to pay the lien held by FNB in order to deliver the mobile home to the buyers with a clear title. Instead, the dealer took both checks, including both the amount to cover the FNB lien and any additional amount, and used it for his own benefit. In contrast in the present case, Petitioner accepted payment to begin work pursuant to a contract, not money in trust. Petitioner had no duty to hold the money in trust and was free to use the money for his own benefit.

In State v. Jackson, 338 S.C. 565, 569, 527 S.E.2d 367, 369 (Ct. App. 2000) this Court wrote:

> The State is required to prove every element of a charged offense to obtain a conviction. State v. Attardo, 263 S.C. 546, 211 S.E.2d 868 (1975); State v. Barksdale, 311 S.C. 210, 428 S.E.2d 498 (Ct.App.1993). In reviewing the denial of a motion for directed verdict, the appellate court must view the evidence in the light most favorable to the State. State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998). However, where the facts of the case, even if proved, do not constitute the alleged criminal conduct, a directed verdict must be granted. See State v. Lee, 294 S.C. 461, 365 S.E.2d 734 (1988).

In Jackson the defendant traded his 1990 Mazda toward the purchase of a 1993 Nissan. The dealership, by mistake, sent the payoff check for the Mazda to the defendant rather than the Mazda lien holder. The defendant was able to cash the check and when informed of the mistake

refused to return the money. Jackson was convicted a breach of trust. This Court reversed finding that Jackson received the money by mistake not in trust. While Petitioner in the present case did not receive the money by mistake, he did not receive the money in trust. Petitioner received the money as payment. As in Jackson, the facts of the present case do not constitute breach of trust because the State failed to prove a trust relationship. As in Jackson, because the State failed to prove an essential element of the crime charged, the existence of a trust, the conviction must be reversed and the case remanded for the entry of a judgment of acquittal.

In finding that the trial court did not err in refusing to direct a verdict of acquittal for the breach of trust charge this Court wrote:

> A trust is an 'arrangement whereby property is transferred with [the] intention that it be administered by trustee for another's benefit.'" State v. Jackson, 338 S.C. 565, 570, 527 S.E.2d 367, 370 (Ct. App. 2000) (quoting *Black's Law Dictionary* 1047 (6th ed. 1991)). "Thus, the transferor of the property must intend that the trustee will act for the transferor's benefit instead of on his own behalf." State v. Parris, 363 S.C. 477, 482, 611 S.E.2d 501, 503 (2005).

This Court noted that Parris was factually comparable to the present case and then wrote:

> In this case, McGinn intended for the majority of his payment to go toward a new roof. The first check McGinn wrote, in the amount of $4,295.03, had "partial payment, roof" written on the memo line. McGinn testified the substance of the contract was for the roof to be replaced. McGinn expected Holcomb to use his payment to purchase a new roof and install it. McGinn never received a new roof. Accordingly, we find the State presented sufficient evidence taken in the light most favorable to the State for the trial court to deny a motion for directed verdict. See Brandt, 393 S.C. at 542, 713 S.E.2d at 599 ("When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State."). Therefore, we affirm the trial court's ruling on this issue.

Respectfully, the Parris case is not factually comparable. In Parris a portion of the buyers' money was to be held in trust by the mobile home dealer to pay off the lien the bank held on the mobile home. The dealer breached that trust when he failed to pay the lien held by the bank. The dealer did not have clear title to the mobile home he was selling. Specific funds were to be used to

pay off the lien and gain clear title. The buyers transferred the money to the dealer with the understanding that the dealer would pay the bank lien. The buyers intended the dealer to act on their benefit by paying off the lien instead of acting on his own behalf.

Unlike the dealer in Parris who did not have clear title to sell the mobile home outright, Petitioner was free to enter into the contract with McGinn in exchange for the funds contained in the check. Petitioner was free to use those funds as he saw fit for the business. Petitioner did not hold the check in trust and the contract did not specify that the money was to be used solely for the purchase of material and labor for the McGinn job. The fact that McGinn expected Petitioner to use his payment to purchase a new roof and install it does not create the trust relationship required for breach of trust. The check in the present case was not transferred to Petitioner for McGinn's sole benefit. Pursuant to the contract, the check was transferred and an agreement reached which was to the mutual benefit of both parties to the contract. The fact that McGinn did not receive the benefit of his bargain is not a breach of trust but a breach of contract. The State failed to prove the existence of a trust relationship. Counsel respectfully submits that this Court misapprehended what constitutes a trust relationship in finding that a check, written to a business to begin work pursuant to a contract creates a trust relationship.

Based on the above argument, Petitioner respectfully seeks rehearing. This Court correctly found that solicitor's closing argument requires a new trial and that finding is not challenged on rehearing by Petitioner or the State. This Court correctly found that the trial judge erred in refusing to direct a verdict of acquittal for obtaining money by false pretenses. Respectfully, this Court should also find that the trial judge erred in refusing to direct a verdict of acquittal for breach of trust when the State failed to prove a trust relationship.

Respectfully Submitted,

Susan B. Hackett for

KATHRINE H. HUDGINS
Appellate Defender

This 2nd day of May, 2019.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable John C. Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEAN ALTON HOLCOMB,

PETITIONER

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Dean Alton Holcomb, #369696, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 2nd day of May, 2019.

Susan K. Hackett for
Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE
ME this 2nd day of May, 2019.

(L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.

The South Carolina Court of Appeals

The State, Respondent,

v.

Dean Alton Holcomb, Appellant.

Appellate Case No. 2016-001927

ORDER

Both the State and Dean Alton Holcomb have filed petitions for rehearing. After careful consideration of both petitions for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, both petitions for rehearing are denied.

Thomas E. Young J.

Paula H. Thomas J.

A. Kelle J.

Columbia, South Carolina

cc:
Dean Alton Holcomb, 369696
Russell D. Ghent, Esquire
John Benjamin Aplin, Esquire
Alan McCrory Wilson, Esquire

FILED
May 23, 2019

Kathrine Haggard Hudgins, Esquire
Barry Joe Barnette, Esquire
Donald J. Zelenka, Esquire