

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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CERTIORARI TO THE COURT OF APPEALS S.C. SUPREME COURT
Appeal from Greenville County
Court of General Sessions
Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2019-001030~~15~~

THE STATE,RESPONDENT

v.

DEAN ALTON HOLCOMB, PETITIONER.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE

The Court of Appeals properly affirmed the trial judge's denial of Petitioner's motion for a directed verdict where the State presented direct and substantial circumstantial evidence from which the jury could fairly and logically find Petitioner guilty of breach of trust.

STATEMENT OF THE CASE

Dean Alton Holcomb (Petitioner) 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). He 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. On September 6–8, 2016, Petitioner 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).

Petitioner timely filed a notice of intent to appeal his convictions and sentences and the direct appeal perfected. On April 17, 2019, the South Carolina Court of Appeals affirmed in part, reversed in part, and remanded for a new trial. State v. Holcomb, 426 S.C. 557, 827 S.E.2d 367 (S.C. Ct. App. 2019) (App.p.1–p.8). Notably, the Court of Appeals found that the trial judge did not err in refusing to direct a verdict of acquittal for Petitioner’s breach of trust charge. Both the State and Petitioner filed petitions for rehearing, but the Court of Appeals denied both petitions on May 23, 2019. (App.p.9–App.p.33). This petition for writ of certiorari follows.

STATEMENT OF FACTS
Procedural History

There were two pre-trial hearings in this case, one before a judge from the Seventh Judicial Circuit (June 4, 2015, Transcript) and a second one before a judge from the Sixteenth Judicial Circuit (July 29, 2016, Transcript). These required trial counsel to file motions, prepare to argue those motions, and then travel to other counties when General Sessions court was scheduled and the matters were worked into other locally scheduled dockets. Jurisdiction was properly declared as being in those counties by the respective attending judge. Among cross-motions heard, Petitioner made a motion for a more definite statement. (R.p.32). Although such a motion is not specifically provided for under the South Carolina Rules of Criminal Procedure, the assistant solicitor agreed to do so prior to trial.

In compliance with this agreement, the State amended the charge of breach of trust with fraudulent intent, Code of Laws of South Carolina Section 16-13-230(A) (Supp. 2012), and thereby provided more specifics of that charge. There were no further objections as to the specifics of the Breach of Trust Charge. (R.p.494–p.495).

The State also submitted an indictment to the grand jury for obtaining property/money by false pretense alleging the elements of the contract as understood by the victim, and that “Defendant made these representations, accepted 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.” (R.p.497–p.498). See S.C. Code Ann. § 16-13-240 (2) (Supp. 2012).

In addition, the State amended the previously returned indictment for threatening a court official so as to provide specificity to the charge for threatening the assistant solicitor originally assigned to the case, with reference to the specific Code section, S.C. Code Ann. §16-9-

340(A)(1). It also amended the previously returned indictment, based upon the threatening actions against the sheriff's investigator, to specifically allege obstruction and attempted obstruction of justice with reference to the specific Code section, S.C. Code Ann. § 16-9-340 (A)(2). See also *State v. Lyles-Gray*, 328 S.C. 458, 492 S.E. 2d 802 (Ct. App. 1997).

Finally, the State added a separate indictment for the threat against the assistant solicitor for intimidation against her "because of political opinions or the exercise of political rights and privileges guaranteed to every citizen by the Constitution and laws of the United States or by the Constitution and laws of this State." S.C. Code Ann. § 16-17-560. These amended and additional indictments were all vehicles by which the Solicitor provided the specifics of the assortment of charged offenses, as requested by defense counsel. (R.p.32–p.33). There were no further complaints by defense counsel as to specificity in the charges or any allegations against the Petitioner. Over the objection of the State, the threat cases were tried separately.

State's Proof of Guilt as to Both Charges

In the case now before this Court, Petitioner was indicted for and convicted of two charges, breach of trust with fraudulent intent and obtaining money under false pretenses. The charges involved Carolina Home Renovators, a business owned and operated by Petitioner that was in the process of going "belly up." Robert McGinn [Victim] was the last customer in Petitioner's financial game of musical chairs with payments from customers for home repairs after a major hail storm. The proof was more than sufficient to go to the jury as to both charges, it was overwhelming.

Petitioner moved for a directed verdict on both charges at the end of the State's case. He argued the State had failed to make a thorough showing of proof at trial that was sufficient to go to the jury. In reviewing the denial of a directed verdict, a court must view the evidence in a light

most favorable to the State and on review that determination is limited to considering the existence or non-existence of evidence, not its weight. *State v. Harry*, 420 S.C. 290, 803 S.E.2d 272, 276 (2017) (citing *State v. Bennett*, 415 S.C. 232, 235, 781 S.E. 2d 352, 353 (2016)).

Contrary to Petitioner's assertion, the proof and evidence submitted was overwhelming and factually supported denial of the motion for a directed verdict, and a jury verdict of guilt as to both charges. The true strategy of defense at trial centered not on the sufficiency of the evidence, but on efforts at jury nullification, as demonstrated in Petitioner's improper arguments this to the jury in opening and closing arguments. *See United States v. Muse*, 83 F.2nd 672, 677–78 (4th Cir. 1996)(“Although a jury is entitled to acquit on any ground, a defendant is not entitled to inform the jury that it can acquit him on grounds other than the facts in evidence, i.e., a jury has the power of nullification but defense counsel is not entitled to urge the jury to exercise this power (footnote omitted).”).

Trial

At trial, the State first called Jason Martin, a claims representative for State Farm Insurance Company, employed in their homeowners division. He identified documents from his appraisal of the claim filed by Victim after a hail storm damaged his Greenville County home in March or April of 2012. He testified the total amount of damage sustained was seven thousand, one hundred eighty dollars and ninety-nine cents (\$7,180.99), which included exterior damage to the house, damage to the roof, and necessary repairs. The replacement cost for damage to the roof alone was four thousand, two hundred ninety-five dollars and three cents (\$4,295.03). (Tr.p.77, lines 6–18). State Farm initially paid Victim four thousand, two hundred ninety-five dollars and three cents (\$4,295.03). Victim remained *eligible for* up to another one thousand, eight hundred eighty-five dollars and ninety-six cents (\$1,885.96) in *additional replacement*

costs after the roof work was completed. (R.p.145–p.154). Replacement and repair costs for the mailbox, to stain and finish the siding, the handrail, deck, and beams, to paint the door and repair gutters and window screens was estimated at seven hundred fifty-six dollars and fifty-five cents (\$756.55). (R.p.151). Documents of the insurance claim were offered into evidence and entered without objection. (R.p.146; p.436–p.447).

Next, Victim took the stand. Victim testified he had lived in his home for “pretty close to twenty years” with his wife, step-daughter and grandchildren. (R.p.158). His wife suffered from severe health issues, and at the time of contracting with Petitioner as well as during the period of non-performance of the repairs, Victim suffered from illness as well. (R.p.158–p.160). Victim testified that in the spring of 2012 his house was hit by a hail storm. As a result, he reported a claim to his insurer, State Farm. (R.p.160). The insurance company adjusted the claim and wrote him a check for repairs. Victim then entered into a contract with Petitioner and his company to replace his roof, along with incidental repairs for other damage to the house. (R.p.161–p.162; p. 448). Victim testified his understanding, as reflected in the insurance claim, was that he was contracting with Petitioner to repair the damage to the house, and that the estimate as well as the contract for repairs were primarily for the roof replacement and materials provided via Green Tree Metals, a business located in Hartwell, Georgia, with offices in South Carolina. (R.p.148–p.151; p.161–p.171; p. 436–p.450). The agreement called for payment by Victim to Petitioner and his company in the amount of four thousand, two hundred ninety-five dollars and three cents (\$4,295.03) to begin work, and two thousand, eight hundred eighty-five dollars and ninety-six cents (\$2, 885.96) upon completion, for a total cost of seven thousand one hundred eighty dollars and ninety-nine cents (\$7,180.99). (R.p.162). The contract was signed by Petitioner on May 25, 2012, in Victim’s presence at the same time Victim signed it. On May 29, 2012, Victim wrote

and gave check #1040 to Petitioner in the amount of four thousand two hundred ninety-five dollars and three cents. (\$4,295.03). The check was drawn on Victim's personal checking account at the Bank of Travelers Rest. (R.p.162-p.193; p.205-p.210).

Victim made clear the money was being given to Petitioner as a first payment to put the roof on his house and to make the other less significant external repairs. (R.p.171). Victim selected Green as the color for his metal roof. He was not aware Kenneth and Susan Clark from the town of Lyman in Greenville County had previously ordered a Green Tree Metal roof from Petitioner, and were then becoming persistent in seeking the benefit of their bargain as well. (R.p.248). The Clarks had chosen Hawaiian Blue as the color for their roof. (R.p.235). Victim made clear what color roof he was choosing when he gave Petitioner his check. It was Green, not Hawaiian Blue. Victim did not entrust money to Petitioner for work on anyone's home but his own, and he did not know the Clarks, nor did he intend for his money to be used to put a roof on their home. (R.p.172). Within two days of the payment to Petitioner, the check made to Carolina Home Renovators had cleared Victim's account. It was endorsed by Petitioner and Petitioner then paid Green Tree Metals for a Hawaiian Blue roof. The blue roof was then put on the home of the Clarks. (R.p.210-p.217; p.458-p.464).

Petitioner never put a new roof on Victim's house. (R.p.164-p.165). Petitioner ignored Victim's efforts to contact Petitioner about his roof and failed to have his crew do anything more than preliminary work to stain the sides and deck of the house or paint the doors and windows, (R.p.165-p.166). Victim was also a contractor. (R.p.165, lines 17-25). He understood the essential term of the contract with Petitioner was to install a new roof. (R.p.165, lines 23-24). Victim testified the amount of work actually done on his house could not have been more than four hundred dollars' worth of work. (R.p.170-p.171).

On cross-examination, Victim acknowledged he knew Petitioner was bonded and licensed by the State of South Carolina, and that his license is on file with the State. He also acknowledged he is familiar with the bonding process and its importance, that he looked up Petitioner on the Better Business Bureau and found him Double-A rated at the time, that one of Petitioner's employees had been dating one of Victim's stepdaughters, and that it was that employee who gave Victim the initial estimate for repairs. (R.p.173–p.177). Cross-examination of Victim further established the job was in fact predominantly about replacing the roof. (R.p.178–p.184).

In short, the cross-examination of Victim cut two ways. It showed Petitioner had the appearance of an upstanding successful businessman, as Petitioner had claimed was the case. On the other hand, it established Victim had actually researched Petitioner and his business and had a basis for believing he was dealing in good faith with someone who held himself out to potential vendees for his services and clients as a reputable businessman. Victim had reason to believe Petitioner was in charge of and directing a solvent and reliable company upon which purchasers of his services could rely. However, the State showed this was untrue both at the time of the time the contract was signed and when the first payment was made to Petitioner.

One of the two men who actually performed the work on Victim's house was Jared Richardson, Petitioner's employee, who was dating one of Victim's stepdaughters. (R.p.184–p.185). Richardson testified he worked for Petitioner, lived with Victim's step-daughter, and brought Victim's job to Petitioner after conducting an estimate. (R.p.262–p.265). Richardson was employed as a roofer and was not authorized to handle the money, the checking account, or write checks for Carolina Home Renovators. (R.p.263, lines 14–22). He briefly considered doing the job himself because he knew the supplier, but did not because he worked for Petitioner.

(R.p.265, lines 4–16). He also testified regarding the contract and that the check from the victim was a partial payment on the roof and as to the supplier. (R.p.265–p.266).

Richardson went over the terms of the engagement agreement as Victim had outlined in his testimony. (R.265–266). He reluctantly affirmed problems were developing regarding timely payment to the workers at the time Petitioner contracted with the victim. (R.p.266, lines 15–23). Outside the jury’s presence the witness admitted that even with prior law enforcement experience, (R.p.264, lines 10–17), he was afraid of Petitioner. (R.p.286, lines 2–17).

The State introduced copies of two checks Richardson testified were payments to him from Petitioner. (R.p.489–490). They were written to Richardson in Petitioner’s handwriting. (R.p.268). One of the checks, was check #2414, dated June 8, 2012, from Carolina Home Renovators for \$330.00 and signed by the Petitioner, and specified the check was “For Clark”. (R.p.267–p.268; p.489). The other check, was check #2410, dated June 1, 2012, from Carolina Home Renovators for \$400 and signed by Petitioner. (R.p.490). Petitioner gave Richardson this four hundred dollar (\$400.00) check. Richardson’s endorsement was on the back of each check.

Richardson also recalled installing a Hawaiian Blue roof on another project in June and July of 2012 and identified pictures of the house upon which he installed the blue roof. He testified, again reluctantly but clearly enough to concede, the people at that residence had some problems about “a little delay” with the project getting started. (R.p.269, lines 11–24). He was unresponsive when asked if he knew “whether or not the people who lived there had been pressing [Ppetitioner] for their money.” (R.p.270, lines 11–24).

Richardson recalled that Will Byrd was the other employee working on the projects. (R.p.270–p.271). Richardson testified that Byrd also received checks from Petitioner. (R.p.491–492). These were entered without objection. Check #2411 was made out to Will Byrd and dated

June 1, 2012 for \$490.00 without an explanation of payment in the “memo” line. (R.p.272, lines 1–17; p.491). Check #2413 was made out to Will Byrd and dated June 8, 2012, for the “Clark and Saffy repair.” (R.p.272, lines 18–25; p.492). These payments for \$500 and \$490 were made during early June, 2012. The State proved these checks were made to Petitioner’s employees to complete work using funds from Victim, although Victim never intended or approved such use.

Next, Investigator John T. “Tim” Martin of the Greenville County Sheriff’s Office, who was the original investigating officer on the case, testified on behalf of the State. The testimony of the original investigating officer was considerably abridged due to his having been replaced by Lt. Jeff Kindley of SLED in his investigation of the case, after threats were made against both Martin and Assistant Solicitor Sylvia Harrison by Petitioner. (R.p.54–p.76). Martin explained a long standing practice of that office whereby private citizens can come in and meet with officers designated for a shift to handle “walk-ins” and receive assistance in determining whether or not they have probable cause for an arrest warrant. (R.p.289). He testified he met with Victim’s step-daughter when she came in and was aware of her prior history of drugs. (R.p.290). He told her he needed to speak with her step-father, Victim. That he needed pictures, contract(s), and insurance information. Martin recalled the report he took was dated January 31, 2013 and the incident date was May 25, 2012. (R.p.291). Martin then identified from his file two pictures of the house and its condition on May 8, 2013, partially stained, with no new roof. (R.p.293). Photographs taken by another officer with the Greenville County Sheriff’s Office, in June, 2015 and prior to trial, depicted the victim’s house still without a new roof and still with only partial staining and painting. (R.p.189–p.204; State’s Exhibits 8, 9, 10, 11, & 20).

Brian Johnson, the owner of Green Tree Metals, then testified for the State. Through Johnson, the State introduced Exhibits 33, 34, and 35. (R.p.210–p.211). Exhibits 34 and 35 were

duplicates of an invoice from the same company. The address of the purchaser of the merchandise from his company matched the address of Petitioner and his company. (R.p.214; p.459–p.464). State’s Exhibit Number 34 was an invoice for Hawaiian blue roofing to be delivered to the Clark’s house in Lyman, South Carolina. (R.p.215; p.459–p.461). Johnson testified the roofing was paid for by a Visa Card, but did not recall whether it was a debit or a credit card. (R.p.220, lines 7–20). He also testified the amount of the invoice for that roofing was \$3,203.21, and was dated May 29, 2012. (R.p.212, lines 7–12). Johnson further testified that, at the State’s request, he printed a summary of the business he had conducted with Petitioner and Carolina Home Renovators, running from December 9, 2011 through May 29, 2012, the last entry being for the invoice on the same day as the victim had written check #1040 to Carolina Home Renovators in the amount of \$4,295.03. (R.p.210–p.217).

John Booth of South Carolina Farm Bureau testified Susan and Kenneth Clark were policy holders and that an adjuster for his company estimated total repairs to their home to have been \$6,589.70 after suffering hail damage from a storm in April, 2012. The initial check to them was for \$4,878.73 after the Clark’s filed a claim. (R.p.226–p.229). Booth was a district field claims supervisor who reviewed work from adjusters and also handled claims and deals with contractors and/or policy holders. He testified that a contractor in a homeowner’s claim is generally familiar with the concept of a deductible and how it is subtracted from a payable claim. (R.p.230–p.231). He testified the claim involved payment for a roof replacement at the Clark’s home. (R.p.231).

Mrs. Clark testified regarding the hail storm damage to the roof of the home she shared with her husband in 2012. (R.p.234, lines 1–19). The roof chosen was a metal Hawaiian Blue roof. (R.p.235, lines 4–25). She testified a delay in installation was explained by a claim the roof

had been delivered in the wrong color. (R.p.236, lines 9–20). The State introduced checks the Clarks paid to Petitioner as Exhibits 37 through 40. (R.p.237–p.241). A check stub for a payment from Founders Bank and copies of three checks were offered and admitted into evidence. (R.p.238–p.241). The check stub for a check written by her and paid by Founders was offered and introduced into evidence. (R.p.237–p.239; p.485). Similarly, check #2029, for partial payment for the roofing, \$500, signed and deposited by Petitioner, was admitted. (R.p.239–p.241; p.486). Check #2008, dated April 24, 2012, for \$4,874.73, and endorsed by Petitioner, and Check #2035, dated July 9, 2017, for \$705.34, and endorsed by Petitioner, were also admitted. (R.p.240; p.487–p.488). Mrs. Clark deferred to her husband’s recollection on when the roof was finished, “April, May, June. I think it’s June. Wasn’t it finished in June... My Husband’s the one that does this.” (R.p.242, lines 4–9). Mrs. Clark testified her husband is totally blind. She testified they became concerned about the roof not being replaced. (R.p.240–p.242).

Mr. Clark testified he recognized the voice of the prosecutor as someone he had spoken to before. (R.p.245, lines 1–18). He recalled discussing the replacement of his roof with someone who identified himself as Dean Holcomb. He recounted their conversation on his porch after the “bad hail storm to come through in April of 2012” and the agreement they reached for replacement of the roof. He recalled his payments for the replacement, “the last was around first of July, and that was the year of 2012.” He thought his last payment was around the first of July, 2012 and the roof was finally repaired “sometime in June because the insurance company had to come out and make a final inspection.” (R.p.246–p.248). He testified:

The agreement was that he was to take what the insurance company paid. And he gave me a coupon and I wrote a check for—it was forty-eight hundred dollars before he ever started anything. And you have those checks... the deposit, the thousand dollars. He said that’s what I owed now. And I reminded him of the coupon. And if you’ll look at the checks again, it was five hundred dollars plus

the five hundred dollar coupon... And I kept the coupon until time to make the deductible payment. And I gave him the coupon and the deductible payment.

(R.p.247, line 16–p.248, line 10). Mr. Clark testified the work was not done promptly, there was a significant delay, he started to become worried about it and he repeatedly attempted to follow up with Appellant until the work was finally done. (R.p.248, lines 11–25).

Captain Myron Shelor of the Gaston County Police Department in North Carolina testified that to his knowledge, Appellant and Ms. Claudia Whitt had maintained a residence at least from April 29, 2013 in Bessemer City, North Carolina. He and Lieutenant Jeff Kindley of SLED executed a search warrant at that residence on August 12, 2014. Neither Appellant nor Ms. Whitt were there, but a computer, related devices and certain documents were seized. (R.p.314–p.318).

During a proffer outside the jury's presence, Lt. Kindley was shown checks seized from the search, checks pertaining to the victim, Mr. Clark, Mr. Byrd, and Mr. Richardson. (R.p.319–p.328). At the end of the proffer the Court went over those checks and ruled them admissible, "Check 2410 from Carolina Home to Jared Richardson, in. Check 2413, same company to Will Byrd, in. 2414, same company to Richardson, in."

Kindley testified: "Wells Fargo bank statement, May 24—May something, 2012, which has—it's two pages, it appears, and has quite a bit of writing on it regarding McGinn and Jared, invoice, Carolina Homes, can't read the number, but it's the one that has the coupons and money notation on it, check 2414, again to Jared, check number 2413 to Will Byrd, statement of Dean Alton Holcomb, and on that same sheet of paper check 2411, same company to Mr. Byrd, another Wells Fargo statement on the same sheet of paper, a check 2410 to Mr. Richardson." (R.p.328, lines 10–23). A portion of the documents were marked collectively and identified by

Lt. Kindley as those seized from the residence in Bessemer City, North Carolina. (R.p.328, line 25–p.337, line 17; State’s Exhibit 54).

Among the documents comprising this Exhibit 54 was check #2410, dated June 1, 2012, signed by Appellant. At the bottom, in the memorandum line it read “McGinn.” The check was made out to Jared Richardson. The copy of the original check introduced through Richardson as State’s Exhibit 48, but the copy of the one seized at Appellant’s home in North Carolina and introduced through Lt. Kindley, State’s Exhibit 54, had a material difference. The copy introduced as part of State’s Exhibit 54 “has McGinn written in the memorandum line.” (R.p.330, lines 7–23). On the other hand, another copy of the “same” check, introduced earlier through the former employee, witness and payee Mr. Richardson had been admitted and published to the jury as State’s Exhibit 48, without objection. (R.p.268). That check had nothing in the blank as to what it was “for”. (R.p.329–p.332). Together these documents showed Appellant had been in the process of his continuing fraud of Victim at the residence searched in 2014, attempting even then to manufacture evidence to cover up the facts of what had actually been the true circumstances regarding the documents.

Next, the State introduced a “voluntary statement” or affidavit purportedly from William Byrd, a fellow employee of Appellant and his company, in the possession of Appellant and apparently generated by Appellant for Mr. Byrd’s signature. (R.p.334; State’s Exhibit 54). With this document was a copy of check #2411, previously introduced as State’s Exhibit 49, made out to Will Byrd dated June 1, 2012, for \$490.00 and without any explanation of payment in the “memo” line. (R.p.272, lines 1–17; p.334, line 21; p.491). Again, there is a material difference in the copies of the checks. The check discovered in the search again has “McGinn” on it after the fact of the actual check having been written, deposited, and processed by the bank. (R.p.334,

line 21–p.335, line 6; State’s Exhibit 54). Finally, the State offered a copy of a bank statement with handwriting and notes on it that the jury by now could recognize as that of the Appellant. (R.p.335, line 13–p.337, line 14).

CERTIORARI

Petitioner argues this Court should grant certiorari, but fails to articulate any “special and important” reasons for the Court to do so. Rule 242(b), SCACR states that a writ of certiorari is not a “matter of right,” but should be granted only where special and important reasons merit this Court’s review. In the instant case, Petitioner fails to articulate any “special and important reasons” for this Court to exercise its discretion to grant review of the decision of the Court of Appeals. Indeed, the Court of Appeals’ decision was a straightforward exercise of reviewing and affirming the trial court’s application of established precedent, logic, and practical consideration of the particular facts and circumstances of Petitioner’s case. Thus, the State respectfully requests that Petitioner’s petition for a writ of certiorari be denied and dismissed.

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). In reviewing a trial judge’s jury instructions, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. *State v. Simmons*, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). An appellate court will not reverse a trial judge’s decision regarding a jury charge absent an abuse of discretion. *State v. Santiago*, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006).

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.”).

ARGUMENT

The Court of Appeals properly affirmed the trial judge’s denial of Petitioner’s motion for a directed verdict where the State presented direct and substantial circumstantial evidence from which the jury could fairly and logically find Petitioner guilty of breach of trust.

Petitioner argues the trial court erred in denying his motion for a directed verdict on the charge of breach of trust because the State failed to prove he received money from Victim in trust and failed to prove the existence of a trust relationship. He argues 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.” Petitioner asserts he accepted Victim’s money as “payment” and not “money in trust” and that as a result he “was free to use the money for his own benefit.” (PWC, p.9–p.10). The State disagrees and submits Petitioner’s argument is entirely without merit.

Substantial direct and circumstantial evidence was presented from which the jury could find Petitioner guilty of each element of breach of trust with fraudulent intent, based on the natural and logical inferences to be drawn from the evidence. 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. Petitioner’s conviction for breach of trust should be affirmed.

Discussion / Analysis

Here, Petitioner was indicted for breach of trust. During Petitioner's trial, the State presented substantial direct and circumstantial evidence establishing Petitioner's guilt for each element of breach of trust. This included testimony from Victim that he trusted Petitioner would use the money to Victim's benefit and put a new Green metal roof on his house. This evidence created factual questions regarding Petitioner'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 Petitioner's directed verdict motion.

The charge of breach of trust by fraudulent intent is a statutory means of addressing openings in the common law of larceny in which the possession of property has not been obtained by trespass but rather by other means. The statute reads that "[a] person committing a breach of trust with a fraudulent intention or a person who hires or counsels another to commit a breach of trust with fraudulent intention *is guilty of larceny*. S.C. Code Ann. § 16-13-230(A) (emphasis added). The elements are not laid out in the statute. Larceny is the felonious taking and carrying away of the goods of another against the owner's will or without the owner's consent. *State v. Mitchell*, 382 S.C. 1, 5, 675 S.E.2d 435, 437 (2009); *State v. Condrey*, 349 S.C. at 191, 562 S.E.2d at 323.

In his discussion of the statute and its history, Professor McAninch notes that one of the earliest cases construing the statute, *State v. Shirer*, 20 S.C. 392, 408 (1883), was "a classic case of breach of trust, or embezzlement as it is generally known in other jurisdictions." MCANINCH, *supra* at 358. In this discussion, reference is made in particular to *State v. McCann*, 167 S.C. 393, 166 S.E. 411 (1932), an often cited case involving the statute and a conviction for breach of trust. Professor McAninch quotes our Supreme Court's observation in *McCann* that:

The effect of the decisions from which we have quoted is clearly a holding that breach of trust with fraudulent intention, in this State, is nothing more or less than larceny. It might well be termed 'statutory larceny,' as distinguished from larceny at common law. The main distinction between the two crimes is this: In common law larceny, possession of the property is obtained *unlawfully*, while in breach of trust, the possession is obtained *lawfully*."

Id. It should be noted that the matter of when a fraudulent intent actually develops with respect to the possession of the property is not as specific as might appear from the quoted provision.

Later in the same discussion Professor McAninch notes that someone forming the intent fully to deprive after gaining possession "will be seen to have at best a conditional intent to return the property There are certainly sound public policy reasons for equating a conditional intent to return property with an intent to permanently deprive." MCANINCH, *supra* at 361. In *McPhatter v. Leeke*, 442 F.Supp. 1252, 1255 (D.S.C.) (1978), a federal district court noted that a review of South Carolina cases under the statute:

"reveals that [the] statute did not establish a new offense with an essential element of lawful possession. [It] merely expanded the definition of common law larceny by eliminating the element 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.*"

Leeke, 442 F. Supp. at 1254 (emphasis added).

The evidence established that the Victim gave his check to Petitioner with his understanding that the money used would pay for the purchase of a Green roof to be put on his home. The Victim did not know of the Clarks who lived miles away in Inman on the opposite end of Greenville County from Travelers Rest where the victim lived. He testified that he did not know the Clarks, did not intend to pay for the Clark's Hawaiian Blue metal roof, purchased from the same roofing supply company that was represented to Victim in his contract, Green

Tree Metal, immediately on the heels of depositing the Victim's money in the account of Petitioner's business. (R.p.160–p.166; p.186–p.188). Photographs taken of the victim's home showed it was not a mansion but a small and very plain wooden house, and that on June 25, 2015, photographs showed that there was still no Green metal roof on it, as had been paid to obtain those materials and begin work, by check to Petitioner. (R.p.191–p.197).

Brian Johnson, owner of Green Tree Metals, testified that he had done business with Petitioner's company and had brought a summary of that business he had generated. The summary showed that the Petitioner had done business with his company from December 9 2011 until a last entry and order on May 29, 2012. (R.p.210–p.213). Again, this was the day the Victim made his payment to Petitioner's company via check #1040 for four thousand, two hundred and ninety-five dollars and three cents (\$4, 295.03), partial payment for repairs to his house for hail damage that was to include a new roof. (R.p.161–p.165; p.449–p.450).

The check had cleared Victim's bank account on May 30 2012. (R.p.209). The order placed by Petitioner through his company with Green Tree Metal in his last transaction was for a Hawaiian Blue roof, shipped to 69 Lee Street in Lyman, South Carolina. (R.p.214–p.217). The Clarks lived at that address. Victim never received his roof and his efforts to contact Petitioner went unsatisfied. The proof at trial established beyond a reasonable doubt that Victim believed and understood that he was giving his check to Petitioner for his own home repairs, entrusted it to him for that purpose, and the Petitioner's actions demonstrated he accepted the money knowing Victim's understanding of the agreement and fraudulently used the money thereafter for his own purposes.

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

Petitioner's guilt for breach of trust 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 Petitioner of each element of breach of trust. 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 Petitioner's directed verdict motion 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. Petitioner's conviction for breach of trust should be affirmed.

CONCLUSION

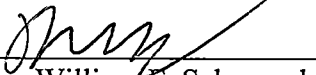
Based on the foregoing reasons, Respondent submits this Court should deny the petition for a writ of certiorari and let stand the decision of the Court of Appeals affirming the trial court. If the Court grants the petition for a writ of certiorari, Respondent would request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

July 19, 2019

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUL 19 2019

S.C. SUPREME COURT

CERTIORARI TO THE COURT OF APPEALS
Appeal from Greenville County
Court of General Sessions
Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2019-001030-15

THE STATE,RESPONDENT

v.

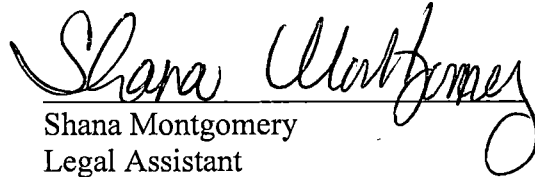
DEAN ALTON HOLCOMB, PETITIONER.

PROOF OF SERVICE

I, Shana Montgomery, certify that I have served the within Return to Petition for a Writ of Certiorari on Petitioner by sending two copies of the same to:

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served.
This 19th day of July, 2019.



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