The Supreme Court of South Carolina

In the Matter of Jeffrey I. Garfinkel, Petitioner.

ORDER

The records in the office of the Clerk of the Supreme Court show that on May 16, 2005, Petitioner was admitted and enrolled as a member of the Bar of this State.

By way of a letter addressed to the South Carolina Bar, dated December 21, 2006, Petitioner submitted his resignation from the South Carolina Bar. We accept Petitioner's resignation.

Petitioner shall, within fifteen (15) days of the issuance of this order, deliver to the Clerk of the Supreme Court his certificate to practice law in this State.

In addition, Petitioner shall promptly notify, or cause to be notified, by certified mail, return receipt requested, all clients currently being represented in pending matters in this State, of his resignation.

Petitioner shall file an affidavit with the Clerk of the Supreme Court, within fifteen (15) days of the issuance of this order, showing that he has fully complied with the provisions of this order. The resignation of Jeffrey I. Garfinkel shall be effective upon full compliance with this order. His name shall be removed from the roll of attorneys.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

s/ John H. Waller, Jr. J.

s/ E. C. Burnett, III J.

s/ Costa M. Pleicones J.

Columbia, South Carolina

April 10, 2007

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 15

April 16, 2007
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

none

UNPUBLISHED OPINIONS

PETITIONS – UNITED STATES SUPREME COURT

PETITIONS FOR REHEARING

EXTENSION TO FILE PETITION FOR REHEARING

The South Carolina Court of Appeals

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

2007-UP-166-The State v. Deonta Carpenter
(Sumter, Judge Howard P. King)

PETITIONS FOR REHEARING

4198 – Vestry v. Orkin Exterminating	Pending
4200 – Brownlee v. SCDHEC	Pending
4208--State v. Christopher Pride	Pending
4209 – Moore v. Weinberg	Pending
4211 – State v. C. Govan	Pending
4212 – Porter v. Labor Depot	Pending
4213—State v. Daniel Edwards	Pending
4216-SC Dist. Council v. River of Life	Pending
4217-Fickling v. City of Charleston	Pending
4220-Jamison v. Ford Motors	Pending
4221-Bowers v. Thomas	Pending
4222-Rhodes v. Benson Chrysler	Pending
4223-Arcadian Shores v. Cromer	Pending
4225-Marlar v. State	Pending
2006-UP-413 – S. Rhodes v. M. Eadon	Denied 03/22/07
2007-UP-052--State v. S. Frazier	Pending
2007-UP-056 – Tennant v. Beaufort County	Pending
2007-UP-061 – J.H. Seale & Son v. Munn	Pending
2007-UP-062 – Citifinancial v. Kennedy	Pending

2007-UP-064 – Amerson v. Ervin Pending

2007-UP-066 – Computer Products Inc. v. JEM Restaurant Pending

2007-UP-082--Sochko v. Sochko Pending

2007-UP-087 – Featherston v. Staarman Pending

2007-UP-090 – Pappas v. Ollie's Seafood (1) (2) Pending

2007-UP-091 – Sundown Operating v. Intedge Pending

2007-UP-098 – Dickey, J. v. Clarke Nursing (Carolinas) Pending

2007-UP-102--State v. F. Howell Pending

2007-UP-109 – Michael B. v. Melissa M. Pending

2007-UP-110 – Holmes, C. v. Holmes, J. Pending

2007-UP-110 – Holmes, C. v. Holmes, J. (2) Pending

2007-UP-111 – Village West v. International Sales Pending

2007-UP-125-State v. M. Walker Pending

2007-UP-128-BB&T v. Kerns Pending

2007-UP-129-Blanton v. Blanton Pending

2007-UP-130-Altman v. Garner Pending

2007-UP-132-P. King v. M. King Pending

2007-UP-133-Thompson v. Russell Pending

PETITIONS – SOUTH CAROLINA SUPREME COURT

3949 – Liberty Mutual v. S.C. Second Injury Fund Pending

3968 – Abu-Shawareb v. S.C. State University Pending

3983 – State v. D. Young Pending

4014 – State v. D. Wharton	Pending
4022 – Widdicombe v. Tucker-Cales	Pending
4033 – State v. C. Washington	Pending
4036 – State v. Pichardo & Reyes	Denied 04/05/07
4042 – Honorage Nursing v. Florence Conval.	Pending
4043 – Simmons v. Simmons	Pending
4047 – Carolina Water v. Lexington County	Pending
4052 – Smith v. Hastie	Granted 04/05/07
4054 – Cooke v. Palmetto Health	Pending
4060 – State v. Compton	Pending
4061 – Doe v. Howe et al. (2)	Denied 04/05/07
4069 – State v. Patterson	Pending
4071 – State v. K. Covert	Pending
4074 – Schnellmann v. Roettger	Pending
4075 – State v. Douglas	Pending
4082 – State v. Elmore	Denied 04/05/07
4088 – SC Mun. Ins. & Risk Fund v. City of Myrtle Beach	Denied 04/05/07
4089 – S. Taylor v. SCDMV	Pending
4092 – Cedar Cove v. DiPietro	Denied 04/05/07
4093 – State v. J. Rogers	Pending
4095 – Garnett v. WRP Enterprises	Pending
4096 – Auto-Owners v. Hamin	Pending

4100 – Menne v. Keowee Key	Pending
4102 – Cody Discount Inc. v. Merritt	Pending
4104 – Hambrick v. GMAC	Dismissed 04/05/07
4107 – The State v. Russell W. Rice, Jr.	Pending
4109 – Thompson v. SC Steel Erector	Pending
4111 – LandBank Fund VII v. Dickerson	Pending
4112 – Douan v. Charleston County	Pending
4118 – Richardson v. Donald Hawkins Const.	Pending
4119 – Doe v. Roe	Pending
4120 – Hancock v. Mid-South Mgmt.	Pending
4121 – State v. D. Lockamy	Pending
4122 – Grant v. Mount Vernon Mills	Pending
4126 – Wright v. Dickey	Pending
4127 – State v. C. Santiago	Pending
4128 – Shealy v. Doe	Pending
4136 – Ardis v. Sessions	Pending
4139 – Temple v. Tec-Fab	Pending
4140 – Est. of J. Haley v. Brown	Pending
4143 – State v. K. Navy	Pending
4144 – Myatt v. RHBT Financial	Pending
4145 – Windham v. Riddle	Pending

4148 – Metts v. Mims	Pending
4156--State v. D. Rikard	Pending
4157 – Sanders v. Meadwestvaco	Pending
4162 – Reed-Richards v. Clemson	Pending
4163 – F. Walsh v. J. Woods	Pending
4165 – Ex Parte: Johnson (Bank of America)	Pending
4168 – Huggins v. Sherriff J.R. Metts	Pending
4169—State v. W. Snowdon	Pending
4170-Ligon v. Norris	Pending
4172 – State v. Clinton Roberson	Pending
4173 – O'Leary-Payne v. R. R. Hilton Heard	Pending
4175 – Brannon v. Palmetto Bank	Pending
4176 – SC Farm Bureau v. Dawsey	Pending
4178 – Query v. Burgess	Pending
4179 – Wilkinson v. Palmetto State Transp.	Pending
4180 – Holcombe v. Bank of America	Pending
4182 – James v. Blue Cross	Pending
4183 – State v. Craig Duval Davis	Pending
4184 – Annie Jones v. John or Jane Doe	Pending
4186 – Commissioners of Public Works v. SCDHEC	Pending
4187 – Kimmer v. Murata of America	Pending

2005-UP-345 – State v. B. Cantrell	Pending
2005-UP-490 – Widdicombe v. Dupree	Pending
2005-UP-557 – State v. A. Mickle	Denied 04/05/07
2005-UP-580 – Garrett v. Garrett	Pending
2005-UP-590 – Willis v. Grand Strand Sandwich Shop	Pending
2006-UP-002 – Johnson v. Estate of Smith	Pending
2006-UP-013 – State v. H. Poplin	Pending
2006-UP-025 – State v. K. Blackwell	Denied 04/05/07
2006-UP-027 –Constenbader v. Costenbader	Pending
2006-UP-037-State v. Henderson	Pending
2006-UP-038-Baldwin v. Peoples	Pending
2006-UP-043-State v. Hagood	Pending
2006-UP-047-Rowe v. Advance America	Denied 04/05/07
2006-UP-066-Singleton v. Steven Shipping	Pending
2006-UP-071-Seibert v. Brooks	Pending
2006-UP-072-McCrea v. Gheraibeh	Pending
2006-UP-073-Oliver v. AT&T Nassau Metals	Denied 04/05/07
2006-UP-079-Ffrench v. Ffrench	Denied 04/05/07
2006-UP-084-McKee v. Brown	Pending

2006-UP-088-Meehan v. Meehan	Pending
2006-UP-096-Smith v. Bloome	Denied 04/05/07
2006-UP-115-Brunson v. Brunson	Pending
2006-UP-122-Young v. Greene	Pending
2006-UP-128-Heller v. Heller	Pending
2006-UP-130-Unger v. Leviton	Pending
2006-UP-151-Moyers v. SCDLLR	Pending
2006-UP-158-State v. R. Edmonds	Pending
2006-UP-172-State v. L. McKenzie	Pending
2006-UP-180-In the matter of Bennington	Pending
2006-UP-194-State v. E. Johnson	Pending
2006-UP-203-Sammy Garrison Const. v. Russo	Pending
2006-UP-211-Cunningham v. Mixon	Pending
2006-UP-222-State v. T. Lilly	Pending
2006-UP-230-Ex parte Van Osdell (Babb v. Graham)	Pending
2006-UP-237-SCDOT v. McDonald's Corp.	Pending
2006-UP-241-Marin v. Black & Decker	Pending
2006-UP-243-Sun Trust Mortgage v. Gobbi	Pending
2006-UP-245-Gobbi v. People's Federal	Pending
2006-UP-246-Gobbi v. Simerman	Pending
2006-UP-247-State v. Hastings	Pending

2006-UP-256-Fulmer v. Cain	Pending
2006-UP-262-Norton v. Wellman	Pending
2006-UP-279-Williamson v. Bermuda Run	Pending
2006-UP-281-Johnson v. Sonoco Products	Pending
2006-UP-287-Geiger v. Funderburk	Pending
2006-UP-299-Kelley v. Herman	Pending
2006-UP-303-State v. T. Dinkins	Pending
2006-UP-304-Bethards v. Parex	Pending
2006-UP-309-Southard v. Pye	Pending
2006-UP-313-Uzenda v. Pittman	Pending
2006-UP-314-Williams et. al v. Weaver et. al	Pending
2006-UP-315-Thomas Construction v. Rocketship Prop.	Pending
2006-UP-316-State v. Tyrelle Davis	Pending
2006-UP-317-Wells Fargo Home Mortgage v. Thomasena J. Holloway and Albert Holloway	Pending
2006-UP-320-McConnell v. John Burry	Pending
2006-UP-323-Roger Hucks v. County of Union	Pending
2006-UP-329-Washington Mutual v. Hiott	Pending
2006-UP-332-McCullar v. Est. of Campbell	Pending
2006-UP-333-Robinson v. Bon Secours	Pending
2006-UP-359-Pfeil et. al v. Walker et. al	Pending

2006-UP-360-SCDOT v. Buckles	Pending
2006-UP-367-Coon v. Renaissance	Pending
2006-UP-372-State v. Bobby Gibson, Jr.	Pending
2006-UP-374-Tennant v. Georgetown et al.	Pending
2006-UP-377-Curry v. Manigault	Pending
2006-UP-378-Ziegenfus v. Fairfield Electric	Pending
2006-UP-385-York Printing v. Springs Ind.	Pending
2006-UP-390-State v. Scottie Robinson	Pending
2006-UP-393-M. Graves v. W. Graves	Pending
2006-UP-395-S. James v. E. James	Pending
2006-UP-401-SCDSS v. Moore	Pending
2006-UP-412-K&K v. E&C Williams Mechanical	Pending
2006-UP-416-State v. Mayzes and Manley	Pending
2006-UP-417-Mitchell v. Florence Cty School	Pending
2006-UP-420-Ables v. Gladden	Pending
2006-UP-426-J. Byrd v. D. Byrd	Pending
2006-UP-427-Collins v. Griffin	Pending
2007-UP-004-Anvar v. Greenville Hospital Sys.	Pending
2007-UP-010-Jordan v. Kelly Co. et al.	Pending
2007-UP-015-Village West v. Arata	Pending

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

William Smoak Fairey, Jr.,
a/k/a Doak Fairey, Appellant.

Appeal From Horry County
John L. Breeden, Jr., Circuit Court Judge

Opinion No. 4233
Heard March 7, 2007 – Filed April 16, 2007

AFFIRMED

Appellate Defender Eleanor Duffy Cleary, of Columbia and C. Bradley Hutto, of Orangeburg, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, Senior Assistant Attorney General Norman M. Rapoport, all of Columbia;

and Solicitor John Gregory Hembree, of Conway, for Respondent.

HUFF, J.: William Smoak Fairey was tried in absentia and without counsel for the charge of obtaining goods and monies under false pretenses. A jury found Fairey guilty, and the judge sentenced him to eight years in prison, suspended to five years service and four years probation. On motion to vacate sentence and for a new trial, the judge reduced Fairey's sentence to eight years, suspended to four years service and four years of probation with a special condition to make restitution. Fairey appeals arguing: (1) the trial court erred in holding trial in his absence, because he was not given proper notice of his trial or warned of possible trial in absentia; (2) the trial judge erred in denying his motion for a new trial because he was not cautioned against proceeding *pro se* and thereby wrongfully denied the right to counsel; and (3) the trial court erred in refusing to give him access to grand jury documents. We affirm.

FACTS

In June 1997, Fairey contracted with Scott Rudisill, a small business owner, to develop and install a computer system for Rudisill's business and personal records. On July 7, 1997, Fairey approached Rudisill for a $25,000 loan. Fairey told Rudisill that he was offered a job with the White House as a liaison to President Bill Clinton, but he had to overnight $25,000 to secure the position. Fairey explained that the money would be immediately refunded once he began his new position and promised to immediately return the money to Rudisill. Rudisill agreed to loan the money and had Fairey sign a promissory note for $25,000 with interest on unpaid principal, at a rate of ten percent. The note indicated all monies were to be paid on October 7, 1997. Before October 7, Rudisill called Fairey a couple times regarding the money; each time Fairey indicated that he would have no problems repaying the loan. However, Fairey did not repay Rudisill on October 7, and when Rudisill contacted Fairey, he said that he would deposit the money in Rudisill's account but never did.

On January 26, 1998, Fairey was served with an arrest warrant for obtaining goods and monies under false pretenses. Following Fairey's arrest, Fairey signed a bond sheet, wherein under the heading, "Acknowledgment By Defendant," it indicated he understood a trial would proceed in his absence if he failed to appear. On July 23, 1998, notice was sent to Fairey's attorney, Richard Weldon, that the charge against Fairey had been dismissed.

On June 23, 2001, Fairey was indicted by a grand jury for the same charge of obtaining goods and monies under false pretenses. In June 2002, Weldon made a motion to be relieved as counsel for Fairey. Weldon cited substantial disagreement with Fairey regarding trial strategy, Fairey's failure to pay Weldon for his services, and Fairey's desire to proceed *pro se* as reasons for withdrawal. Weldon additionally stated Fairey was given reasonable warning of Weldon's intent to withdraw if Fairey did not pay Weldon for his services. On July 23, 2002, the trial judge granted Weldon's motion to withdraw as counsel. The order stated, "[i]t appears to the court that there is just cause for granting the motion and that Doak Fairey consents to the requested withdrawal as signified by the signature of Doak Fairey on the attached consent form." Also in the order, Fairey was instructed that he needed to keep the court informed as to where papers should be served, had the obligation to retain counsel if he desired, and had the responsibility to prepare for trial.

On August 22, 2002, Fairey informed the solicitor of a change of address:

> Pursuant to the Consent Order regarding "*keeping the court informed as to where notices, pleadings, and other papers may be served,*" I am informing the court of my new address. All notices, pleadings and other papers should be delivered to:

> Doak Fairey
> 31545 Vaca Drive
> Castaic, California 91384
>
> This address change is valid immediately
>
> So that I might adequately prepare for trial, please assure that any and all future correspondence is sent to this address.

On September 8, 2002, after being sent a subpoena to his former Florida address, Fairey informed the court and solicitor, once again, that the California address was the correct address to send all correspondence. This letter stated:

> Today, I received VIA FAX a copy of a subpoena relating to my case. This document was sent to my old address in Sarasota, Florida.
>
> In my previous correspondence (copy attached), I informed you and the court of my address change. I followed the procedure as spelled out in your correspondence of 7/30/02. You have chosen to ignore the Rule, and your own written procedure, and failed to properly send documents to me at my address . . . . Please assure that all correspondence and information for trial is sent to my new address:
>
> Doak Fairey
> 31545 Vaca Drive
> Castaic, CA 91384

On March 10, 2003, Fairey made a motion to quash the indictment. In his motion to quash, Fairey listed his addresses as:

31545 Vaca Drive	5629 Boulder Blvd
Castaic, CA 91384	Sarasota, FL 34233
941-284-5896	(temporary address)

The motion was signed, "Defendant pro se." (emphasis in original). The motion listed as reasons to quash the indictment: (1) the State failed to provide defendant with a preliminary hearing; (2) the State failed to produce documents related to his previously dismissed charge; and (3) the State failed to produce documents relating to the 2001 grand jury indictment.

A hearing on the motion to quash was held on March 24, 2003. Fairey appeared at the hearing without counsel and proceeded to represent himself. Fairey complained that the State possessed documents relating to the case that was originally dismissed in July 1998. Fairey "requested memorialization of the Grand Jury proceedings in this case" and explained that he was "trying to determine . . . exactly what the Grand Jury saw, what they heard" because of the belief that they could not review evidence relating to the previously dismissed case. Fairey based his argument on an expungement statute, S.C. Code § 17-1-40, which requires the expungement of certain documents after a charge is dismissed. In response the State noted that Fairey was directly indicted by the grand jury after the earlier dismissal of the charge, and "[t]here is no evidence that I could produce to him of the Grand Jury proceeding other than a certified copy of an indictment." Further, the State explained that the process of destroying documents provided for in the expungement statute was not an automatic process once a case is dismissed. Rather, a defendant must file a motion to have his record expunged and the court sign an order directing the State to destroy the documents relating to the dismissed case. During the hearing Fairey made a motion to dismiss and afterward filed the motion to dismiss with the court, indicating Fairey as a *pro se* defendant and listing a Florida address.

On March 31, 2003, the judge denied Fairey's motion to quash on the following reasons: (1) Fairey's right to a preliminary hearing was extinguished by virtue of the fact his case had been presented to

the Grand Jury; (2) Fairey's reliance on a expungement statute in regard to the expungement of the 1998 documents was misplaced in this case: (3) failure to comply with discovery was not remedied through the quashing of an indictment; and (4) there was no merit to Fairey's allegation regarding the validity of the Grand Jury proceeding. The judge also reinstated Fairey's previous bond. The order notified Fairey: "[t]he defendant is required to appear at the call of his case by the State and shall keep the Court and the State advised of any changes in his address." The court order was sent to Fairey at the temporary Florida address provided in the motion to quash.

The solicitor's office subpoenaed Fairey to appear in the Conway Judicial Building from July 9 through 23, 2004. The subpoena, dated June 21, 2004, listed Fairey's California address and a Myrtle Beach address. The case was called on July 21, 2004, but Fairey did not appear. At the hearing, the administrative assistant for the solicitor's office testified the subpoena was sent to: (1) the California address because it was the last official address provided by Fairey in his August 22 and September 8 letters; and (2) the Myrtle Beach address because it was the address provided in Fairey's original bond form. After the solicitor presented evidence that Fairey received notice of the date and time of his trial, the court found that the solicitor made an adequate showing Fairey received notice and the trial proceeded in Fairey's absence.

On July 21, 2004, the trial court sentenced Fairey to eight years imprisonment, suspended to five years service and four years probation. Fairey was also fined $128.75 and ordered to pay restitution of $25,000.

Fairey was apprehended in Florida and brought in for sentencing on October 21, 2004. Fairey's counsel moved for a vacation of his conviction and new trial based on the lack of notice and because Fairey was tried without counsel. The judge denied the motion finding Fairey adequately and legally waived his right to counsel and his right to be present at the trial. The judge then reduced Fairey's sentence to eight years, suspended to four years service and four years probation with a

special condition to make restitution to Rudisill in the amount of $25,000. This appeal follows.

LAW/ANALYSIS

I. Notice and Trial in Absentia

Fairey argues that the trial court erred in holding his trial in his absence, where the State failed to show: (1) he received notice of his right to be present; and (2) he was warned the trial would proceed in his absence. We disagree.

Although the Sixth Amendment of the Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived. State v. Bell, 293 S.C. 391, 401, 360 S.E.2d 706, 711 (1987); Ellis v. State, 267 S.C. 257, 260, 227 S.E.2d 304, 305 (1976). Rule 16 of the South Carolina Rules of Criminal Procedure provides:

> [A] person indicted for misdemeanors and/or felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that such person has received notice of his right to be present and that a warning was given that the trial would proceed in his absence upon a failure to attend the court.

Rule 16, SCRCrimP.

However, a waiver of such an important right is permitted only in limited circumstances. Aiken v. Koontz, 368 S.C. 542, 547, 629 S.E.2d 686, 689 (Ct. App. 2006). Therefore, before a defendant may be tried in absentia, the trial court must determine a defendant voluntarily waived his right to be present at trial, making findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned that the trial would proceed in his absence. Id.

A. Notice

"Notice of the term of court for which the trial is set constitutes sufficient notice to enable a criminal defendant to make an effective waiver of his right to be present." Aiken v. Koontz, 368 S.C. 542, 547, 629 S.E.2d 686, 689 (Ct. App. 2006). However, if the record does not reveal that the defendant was afforded notice of his trial, the resulting conviction in absentia cannot stand. State v. Jackson, 290 S.C. 435, 436, 351 S.E.2d 167, 167 (1986).

In the present case, the solicitor subpoenaed Fairey to appear in court from July 9 through July 23, 2004. Notice was sent to Fairey at both the California address he forwarded to the solicitor's office in the August 22 and September 8 letters and the North Myrtle Beach address provided in the reinstated bond. Fairey failed to appear in court when his name was called. The judge heard the solicitor on notice to Fairey and made a determination on the record that: (1) the State made an adequate showing that the defendant was placed on notice of the date and time of his trial; (2) failure of the defendant to appear was willful; and (3) the defendant had "notice that he had a right to be present and that if he wasn't present he would be tried in his absence."

Fairey argues that since the solicitor "inexplicably" did not send notice of his trial to Florida, but rather to California, Fairey did not receive notice of his right to be present. Fairey further bolsters his argument claiming that because the solicitor "had been sending legal mail to [Fairey] in Florida since the March 2003 hearing," the solicitor should have sent notice of his trial to his Florida address. However, the record indicates that Fairey's permanent address for service of notice was his California address, whereas the Florida address was only a "temporary address" used by Fairey during a period in 2003.

On July 23, 2002, when the court granted Fairey's counsel's motion to withdraw, the court warned Fairey that he had "the burden of keeping the court informed as to where notices, pleadings and other papers may be served." At that time it was noted that service of notice would be sent to Fairey at his home address in Sarasota, Florida.

However, in the August 22 letter Fairey informed the solicitor of a change of address, listing his California address. And again, in the September 8 letter Fairey informed the court and solicitor that the California address was the correct address to send all correspondence.

Fairey never sent a letter to the court or solicitor to inform them of a change of address from the California address to the Florida address as he did in his August 22 and September 8 letters. Thus, the last official, permanent address provided to the court and solicitor by Fairey was his California address. Merely because Fairey listed a "temporary address" on his motion to quash and motion to dismiss over a year prior to his trial does not notify the court and solicitor of a change of address so as to direct where all notices, pleadings and other papers may be served. Therefore, notice of Fairey's trial was properly sent to California, and as such, Fairey was placed on notice of his right to be present at his July 2004 trial.

B. Trial in Absentia

Further, Fairey contends he was not warned his trial would proceed in his absence. A bond form that provides notice that a defendant can be tried in absentia may serve as the requisite notice. Aiken v. Koontz, 368 S.C. 542, 548, 629 S.E.2d 686 689-90 (Ct. App. 2006); State v. Goode, 299 S.C. 479, 385 S.E.2d 844 (1989).

In Aiken v. Koontz the defendant was arrested for driving with a suspended license, and when he posted bond the day after his arrest, he was provided an order specifying methods and conditions of release. 368 S.C. at 547-48, 629 S.E.2d at 689. The defendant also signed a form entitled, "Acknowledgement by Defendant," which read "I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence." Id. at 548, 629 S.E.2d at 689. Thus, this court held that Koontz was warned a failure to appear would result in a trial in his absence and that he understood the warning and obligation by signing the "Acknowledgement." Id.

In January 1998, Fairey signed a bond sheet wherein under the heading, "ACKNOWLEDGEMENT BY DEFENDANT," it reads: "I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence." As in Koontz, Fairey's signature on the "Acknowledgement" served as a warning that he would be tried in his absence, and therefore, Fairey understood such warning.

Relying on State v. Goode, Fairey contends because the indictment, for which the bond was signed, was dismissed, it was thereby extinguished and could not serve as notice to appear. In State v. Goode the defendant was arrested for breaking into a motor vehicle and released on bond. 299 S.C. at 480, 385 S.E.2d at 845. He signed a bond form that provided him notice that his trial would proceed in his absence if he failed to appear. Id. He failed to appear and a bench warrant was issued. He was subsequently indicted for both breaking into a motor vehicle and grand larceny and was tried in his absence for both charges. Id. at 481, 385 S.E.2d at 845. The supreme court held that Goode did not have adequate notice that he would be tried for the newly indicted crime, grand larceny, in his absence since the crime was not listed on the bond signed by Goode. Id. at 842-43, 385 S.E.2d at 846. However, because Goode signed the bond form related to the charge of breaking into a vehicle the court held that he had notice he would be tried for that crime in his absence. Id. at 842, 385 S.E.2d at 846.

While Fairey's original indictment was dismissed, he was directly indicted for the same crime on June 26, 2001, and the 1998 bond was reinstated on July 23, 2002 by court order. Therefore, the 1998 bond was in effect and thereby served as notice to Fairey that he would be tried in his absence.

II. Right to Counsel

Fairey also argues the trial judge erred in denying his motion for a new trial because he was denied the right to counsel. We disagree

"The Sixth Amendment guarantees criminal defendants a right to counsel." State v. Gill, 355 S.C. 234, 243, 584 S.E.2d 432, 437 (Ct. App. 2003) (citations omitted). "Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." United States v. Cronic, 466 U.S. 648, 654 (1984). However, this right may be waived. State v. Gill, 355 S.C. at 243, 584 S.E.2d at 437. This court has explained that "a defendant may surrender his right to counsel through (1) waiver by affirmative, verbal request; (2) waiver by conduct; and (3) forfeiture." State v. Thompson, 355 S.C. 255, 262, 584 S.E.2d 131, 134 (Ct. App. 2003).

In this case we confine our analysis to the question of whether Fairey waived this right by his conduct. A defendant may waive his right to counsel through his conduct. Id. at 263, 584 S.E.2d at 135 (citations omitted). Deliberate and dilatory conduct on behalf of a defendant can suffice to waive the right to counsel. State v. Pride, Op. No. 4208 (S.C. Ct. App. Feb. 21, 2007) (Shearouse Adv. Sh. No. 7 at 69); see also State v. Jacobs, 271 S.C. 126, 128, 245 S.E.2d 606, 608 (1978) (holding a waiver of the right to counsel can be inferred from a defendant's actions).

In support of his argument, Fairey relies on our decision in Thompson. However, neither Thompson nor our more recent case of State v. Roberson, 371 S.C. 334, 638 S.E.2d 93 (Ct. App. 2006) requires reversal of Fairey's conviction and sentence. Rather, we are guided by this court's recent decision in State v. Pride. As discussed in Pride, there is a crucial difference between the facts in Pride's and Fairey's cases and those of Thompson and Roberson.

In Pride, the defendant was indicted for possession of crack cocaine with intent to distribute (PWID) and PWID within proximity of a school. On the first day of the term of court for which Pride was originally scheduled to go to trial, a public defender, William All, was appointed to represent Pride. On that same day Pride was also represented by a private attorney, Fletcher Smith. Smith subsequently withdrew as counsel and All was appointed. Pride failed to appear for

two scheduled appointments with All. All sent letters to Pride indicating the date of trial and that he could not adequately represent Pride without speaking to him. Pride scheduled another appointment, which he again failed to appear for and offered no explanation. Eventually when Pride and All met, Pride indicated Smith was again representing him. However, when All contacted Smith's office, the administrative assistant indicated that Smith did not represent Pride. On the morning of the trial Pride did not appear, and Smith's office informed the solicitor that Smith did not represent Pride. The solicitor moved to have Pride tried in absentia, and All was relieved as counsel. The judge specifically found Pride waived his right to counsel by conduct and Pride was then tried and convicted for the drug offenses. When Pride eventually appeared before the judge for sentencing, All appeared at the hearing and indicated he could "perfect an appeal for [Pride] if he wants to raise the issue of whether or not he shouldn't have been tried in his absence." The judge imposed his sentencing.

On appeal, Pride argued the circuit court erred in relieving All as his counsel and proceeding with the trial in his absence, contending that his conduct was insufficient to establish that he waived his right to counsel. This court acknowledged the significance of Thompson and Roberson as it applied to Pride's case but found a "crucial difference" between the facts in his case and those of Thompson and Roberson. The defendants in both Thompson and Roberson were not represented by counsel until the sentencing hearing. This court concluded if it were to find the defendants in Thompson and Roberson waived their right to counsel it would be based solely on their failure to appear for trial. On the other hand, Pride not only failed to appear for trial, but he was afforded a public defender whom he failed to cooperate with prior to his trial. He was also given additional time to prepare for the trial, failed to appear for his scheduled appointments with the public defender and failed to offer any assistance in preparation for his defense. Further, he gave assurances to the public defender, up to the day before his trial, that a private attorney would represent him, yet was aware that this private attorney was relieved as counsel. Based on Pride's actions, this court found that it was not only Pride's failure to appear for trial but also "Pride's deliberate and dilatory conduct [which

were] sufficient to waive his right to counsel." State v. Pride, Op. No. 4208 (S.C. Ct. App. filed Feb. 20, 2007) (Shearouse Adv. Sh. No. 7 at 69).

In this case, just as in Pride, Fairey was originally represented by counsel, and it was because of his own conduct and failure to cooperate with his counsel that he failed to be represented at the time of his trial. Fairey hired private counsel, Weldon, and had ample opportunities to meet with him and discuss the case. At some point in his representation, Fairey had a disagreement with Weldon as to the fundamental representation and trial strategies and failed to pay Weldon for his services even after a "reasonable warning" that Weldon would withdraw. Finally, Fairey desired to represent himself *pro se* and signed a consent form agreeing to relieve Weldon.

From the date the court granted Weldon's motion to be relieved, Fairey was aware of his duties and obligation as a *pro se* litigant and was alternatively instructed to hire counsel. Fairey failed to hire another attorney and proceeded to represent himself. Fairey was aware of his obligations and seemed knowledgeable about the legal system, as he maintained contact with the court and solicitor, made two requests to produce to the solicitor and filed various *pro se* motions. Further, his statements and conduct during proceedings reflected a familiarity with the workings of the legal system and the options legally available to him. The circuit court found:

> [Fairey] had been acting as his attorney for some time, making erudite motions and other things. It's not like we had some ignorant person here that didn't know anything, we had a very intelligent person here acting as his own attorney. And asking that notices be sent to him and not his attorney. To be sent to him. He knew he was acting as his attorney.

Yet, during that period, Fairey also engaged in delay tactics. He moved throughout the country, making service and notice difficult for

the solicitor. In the instances the solicitor was able to track Fairey's whereabouts and serve notice, Fairey made motions to continue, based on the inconvenience of appearing in South Carolina on the noticed dates. The solicitor agreed to Fairey's motions and continuances were granted. When the solicitor sent Fairey a certified copy of his indictment, a consent order for a personal recognizance bond and an acknowledgement for the receipt of the indictment, Fairey failed to sign and return any of the items. Fairey's tactics further delayed the case and required the aforementioned items be addressed at a later hearing in March 2003. Based on Fairey's actions, we find Fairey engaged in deliberate and dilatory conduct sufficient to waive his right to counsel.

III. Grand Jury Documents

Fairey argues the trial court erred by refusing to grant his request for grand jury documents to prepare for his defense. We disagree.

In Fairey's written motion to quash and at the hearing on the motion, Fairey claimed the solicitor failed to comply with his discovery requests for documents memorializing the grand jury proceeding in his case. Fairey contended that documents relating to his previously dismissed case should have been expunged and therefore not reviewed by the grand jury. In his March 31, 2003 order the judge denied Fairey's motion to quash finding that Fairey's reliance on the expungement statute was misplaced and that the failure to comply with discovery requests was not remedied through the quashing of an indictment. Fairey failed to challenge either ruling and therefore they are the law of the case. State v. Sampson, 317 S.C. 423, 427, 454 S.E.2d 721, 723 (Ct. App. 1995) (holding that an unchallenged ruling, right or wrong, is the law of the case); Sims v. Hall, 357 S.C. 288, 293 n. 2, 592 S.E.2d 315, 318 n.2 (Ct. App. 2003) (finding an unappealed ruling becomes the law of the case and precludes further consideration of the issue on appeal).

CONCLUSION

Accordingly, Fairey's conviction and sentence are

AFFIRMED.

BEATTY, and WILLIAMS, JJ. concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Ex Parte:
Eastern Savings Bank, FSB, **Appellants,**

v.

Albert J. Sanders, Jr., **Respondent.**

In Re:
Eastern Savings Bank, FSB, **Plaintiff,**

v.

Roy A. Rouse, a/k/a Roy Rouse;
Jean C. Rouse, a/k/a Jean Rouse;
Neff Rental, Inc.; and Oswald
Wholesale Lumber, Inc., **Defendants.**

Appeal From Lexington County
Clyde N. Davis, Jr., Master-In-Equity

Opinion No. 4234
Heard April 3, 2007 – Filed April 16, 2007

AFFIRMED

Thomas A. Shook and Sean O'Connor, both of North Charleston, for Appellant.

James W. Poag, Jr., of West Columbia, for Respondent.

ANDERSON, J.: Eastern Savings Bank, FSB appeals the master-in-equity's denial of its motion to vacate and set aside a foreclosure sale because of a bidding mistake by Bank's counsel and low sales price that resulted. We affirm.

FACTUAL/PROCEDURAL BACKGROUND

Eastern Savings Bank, FSB ("the Bank") obtained a mortgage from Roy and Jean Rouse in the amount of $490,000.00 on real property and a house located at 117 Maxie Road in Lexington ("the Property"). When the Rouses failed to make their scheduled payments, the Bank elected to accelerate payment of the entire indebtedness, which, including attorney's fees and costs, amounted to $578,303.20. In August 2005, the Bank sought foreclosure of the mortgage and expressly demanded the right to a deficiency judgment, reserving the right to waive the deficiency at the time of sale. The master entered a judgment of foreclosure for the Bank and ordered the Property sold at public auction.

Following advertisement, the Property was set to be auctioned on October 3, 2005, a regularly scheduled sales date. The Bank instructed its counsel to bid up to $550,000.00 for the property. This information was communicated to Bonnie Hook, a paralegal for the Bank's law firm who typically worked with foreclosures. Hook did not personally go to the sale, but instead sent her assistant with instructions to "begin [bidding] at $100,000.00 and to go up to $550,000.00." Following Hook's instructions, the representative bid $100,000.00. There were no other bids made at that time.

Pursuant to section 15-39-720 of the South Carolina Code (2005), bidding was reopened on November 2, 2005, with several individuals placing offers. Albert Sanders had the highest bid ($246,000.00) and paid the requisite five percent deposit to the court. Neither the Bank, its counsel, nor any other representative was present at the second auction. Presumably, they declined to attend because the Bank was barred from making another bid under section 15-39-720, or possibly because they simply had not realized bidding had not closed after the October 2 proceeding.

On November 3, 2005, the Bank inquired with Hook in regard to the bid from Sanders. Hook then contacted the court, whereupon she learned the Property involved a deficiency judgment and immediately recognized she had made a mistake in her earlier bidding instructions to her assistant.

On November 9, 2005, the Bank filed a motion to vacate and set aside the sale to Sanders. The Bank argued the low sales price, along with the misunderstanding and circumstances that caused the Bank to mistakenly bid only $100,000.00, dictated the sale be set aside. Additionally, the Bank asserted the price Sanders paid was so low as to shock the conscience of the court.

The master held a hearing on the matter in January 2006. As stated in the master's order, Hook "candidly admitted that she made a mistake in her bid instructions and that no one else was responsible for the error. She stated that the sale was properly held and that no third party interfered with bidding."

Testimony and other evidence provided values of the Property ranging from $324,940.00 to $900,000.00. The assistant vice-president for the Bank testified that despite Bank authorizing only $550,000.00 as its highest bid, he valued the Property at $700,000.00 for lending purposes. Although the Rouses never received an offer, the home had been marketed for sale prior to foreclosure and was listed for as low as $625,000.00. Renee Bolos, the real estate agent who first represented the Rouses, stated she estimated the Property to be worth $900,000.00. Rusty Johnson, a real estate agent who later attempted to sell the Property, valued it at $750,000.00. After listing the

Property at this price for six months, the amount was reduced to $600,000.00. Nevertheless, Johnson was unable to generate any offers. When the Rouses attempted to sell the Property at private auction with a reserve price of $650,000.00, the highest bid received was $350,000.00. The county tax appraisal for the home was $324,940.00.

The master found the value of the Property to be $550,000.00. Although recognizing the sales price was below market value, he stated that he did not believe it to be so inadequate as to shock the conscience of the court. Further, the master determined it was by mistake on the part of the bidder on the Bank's behalf, not any conduct by the sales officer or other bidder, that caused the winning bid to be less than the actual value of the Property. Accordingly, the master denied the Bank's motion to vacate and set aside the sale. The Bank filed a Rule 59(e), SCRCP, motion to alter or amend the judgment. The master denied this motion.

STANDARD OF REVIEW

"A mortgage foreclosure is an action in equity. Our scope of review of a case heard by a master who enters a final judgment is to determine facts in accordance with our own view of the preponderance of the evidence." Hayne Federal Credit Union v. Bailey, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997) (internal citations omitted). However, the determination of whether a judicial sale should be set aside is a matter left to the sound discretion of the trial court. Investors Sav. Bank v. Phelps, 303 S.C. 15, 17, 397 S.E.2d 780, 781 (Ct. App. 1990) (citing Bonney v. Granger, 300 S.C. 362, 387 S.E.2d 720 (Ct. App. 1990)). The review of a judicial sale is equitable in nature and within the discretion of the trial court. Fed. Nat'l Mortgage Ass'n v. Brooks, 304 S.C. 506, 512, 405 S.E.2d 604, 607 (Ct. App. 1991) (citing Spillers v. Clay, 233 S.C. 99, 102, 103 S.E.2d 759, 760 (1958)).

LAW/ANALYSIS

The Bank contends the master erred in failing to grant its motion to set aside and vacate the sale. We disagree.

Where a mortgagee has sought a deficiency judgment, law requires the foreclosure sale held open for thirty days after the initial sale date. S.C. Code Ann. § 15-39-720 (2005). The South Carolina Code provides:

> In all judicial sales of real estate for the foreclosure of mortgages and sales in execution the bidding shall not be closed upon the day of sale but shall remain open until the thirtieth day after such sale, exclusive of the day of sale. Within such thirty day period any person other than the highest bidder at the sale or any representative thereof in foreclosure and execution suits may enter a higher bid upon complying with the terms of sale by making any necessary deposit as a guaranty of his good faith, and thereafter within such period any person, other than such highest bidder at the sale or any representative thereof, in foreclosure suits may in like manner raise the last highest bid, and the successful purchaser shall be deemed to be the person who submitted the last highest bid within such period and made the necessary deposit or guaranty. But the mortgagee or his representative shall enter such bid as he desires at the time the sale is made, and he and all persons acting in his behalf shall be precluded from entering any other bid in any amount at any other time except the single or last bid made by him or in his behalf at the sale. . . .
>
> The bidding shall be reopened by the officer making the sale on the thirtieth day after the sale,

> exclusive of the day of the sale, at eleven o'clock in the forenoon and the bidding shall be allowed to continue until the property shall be knocked down in the usual custom of auction to the successful highest bidder complying with the terms of sale. . . .

S.C. Code Ann. § 15-39-720 (2005). Thus, "[t]he mortgagee must enter his bid at the time the sale is made and is precluded from entering any other bid after his last bid at the initial sale. This effectively forces the mortgagee to enter his highest and best bid at the initial sale." 27 S.C. Juris. Manner of Sale § 128 (1996) (internal citation omitted).

"A judicial sale should not be set aside except for cogent reasons. The purpose of the law and of the proceedings in which a sale has been decreed is that it shall be final." Spillers v. Clay, 233 S.C. 99, 104, 103 S.E.2d 759, 761-62 (1958). "As has been said time and again in cases involving the setting aside of judicial sales, it is the policy of the Courts to uphold such sales when regularly made, and when it can be done without violating principle or doing injustice . . . ." Henry v. Blakely, 216 S.C. 13, 18, 56 S.E.2d 581, 583 (1949). Our courts zealously insure judicial sales be openly and freely conducted and nothing be allowed to chill the bidding. Howell v. Gibson, 208 S.C. 19, 31, 37 S.E.2d 271, 276 (1946).

"[T]he rule is well settled that inadequacy of price, unless so gross as to shock the conscience of the court, or accompanied by other circumstances warranting the interference of the court, will not justify the setting aside of a judicial sale." Spillers, 233 S.C. 99, 104, 103 S.E.2d 759, 761 (citing Brownlee v. Miller, 208 S.C. 252, 37 S.E.2d 658 (1946)). "[M]ere inadequacy of price, unaccompanied by other circumstances which would invoke the exercise of the Court's discretion is not sufficient, unless, perhaps, it is so great as to raise a presumption of fraud or to shock the conscience of the Court." Henry, 216 S.C. at 18, 56 S.E.2d at 583. "Where unfair means have not been employed to prevent competition at a judicial sale, mere inadequacy of price is no ground for setting [the sale] aside." Ex parte Cooley, 69 S.C. 143, 154-55, 48 S.E. 92, 95 (1904). Thus, a judicial sale can be set aside for two reasons: (1) if the inadequacy of the price is so gross as to

shock the conscience of the court; or (2) if the price is inadequate and this inadequacy is accompanied by other circumstances that warrant the interference of the court.

I. Circumstances Impeaching the Fairness of the Transaction

When an inadequacy of price exists and is the result of action by the officer selling the property or successful bidder, and that action could not have been reasonably anticipated by the party for whose benefit the property was being sold, the court should provide relief by setting aside the sale. See Henry, 216 S.C. at 19, 56 S.E.2d at 583. "[T]he circumstances impeaching the fairness of the transaction should relate to the conduct of the officer making the sale . . . or to the conduct of the purchaser participating in the attempt to stifle competition or affected with notice thereof . . . ." Appeal of Paslay, 230 S.C. 55, 61, 94 S.E.2d 57, 59-60 (1956) (quoting Ex parte Cooley, 69 S.C. 143, 155, 48 S.E. 92, 96 (1904)). If neither the officer making the sale nor the purchaser contributed to the mistake of a party intending to bid higher, and the sale was fair and regularly conducted, simply because a party intended to bid higher, but neglected to do so, or was prevented by a mistake, is not a sufficient ground for setting aside a judicial sale. Id. at 154, 48 S.E. at 95; see also Howell, 208 S.C. at 33, 37 S.E.2d at 276 (declining to set aside the sale where a plan to bid did not succeed, but its failure was due to no fault of the master, auctioneer, the winning bidder or any other person connected with the sale, but was due to the negligence or fault of the party complaining).

In Appeal of Paslay, 230 S.C. 55, 94 S.E.2d at 57 (1956), the appellant alleged he had been prepared to bid at least $1,000.00 for property that sold for $450.00. The appellant instructed his lawyer to bid as such; however, the attorney was prevented from attending the sale as a result of the mechanical failure of his automobile. Noting counsel's explanation for his absence did not involve the actions of the selling officer, the South Carolina Supreme Court found the circumstances did not warrant vitiating the sale. Id. at 58, 94 S.E.2d at 58.

In Spillers, where the officer conducting the sale deviated from the usual sales procedure, the Supreme Court found the claim of misapprehension and excusable mistake on the part of counsel was in relation to the conduct of the sale and accordingly affirmed the setting aside of the sale. 233 S.C. 99, 105, 103 S.E.2d 759, 762 (1958). Distinguishing the facts of Spillers and Paslay, the court enunciated:

> Distinction between that case and this is readily apparent. There no factor was present for which the selling officer had any responsibility; here the claim of misapprehension and excusable mistake on the part of counsel was in relation to the conduct of the sale.
>
> . . .
>
> In the case at bar Judge McGowan concluded from all of the evidence that the auctioneer had probably been overhasty in knocking the property down to Mr. Spillers, and that under all the circumstances Mr. Clay's misapprehension of the final bid was excusable. These conclusions, together with his further finding that the property is worth much more than the price at which it was knocked down, that the parties to the cause were ready to bid a much higher figure, and that to permit completion of the sale at the price bid by Mr. Spillers would result in injustice to the partitioners, are not without support in the evidence.

Id. at 105, 103 S.E.2d 762.

In the case sub judice, neither the officer presiding over the sale, Sanders, nor any other buyer made a mistake or perpetrated a fraud. The Bank demanded the deficiency judgment and therefore knew, or should have known, the sale would follow the deficiency procedure. Hook, whose actions are imputable to the Bank, testified the mistake was solely her own. Assuming, arguendo, the selling price to Sanders was inadequate (but not so

great as to shock the conscience), there are simply no factors attributable to the selling officer or successful bidder or other circumstances warranting the sale be set aside. Accordingly, the master correctly found the judicial sale should not be vitiated.

II. Inadequacy of Price as to Shock the Conscience

The Bank argues the master incorrectly determined the value of the Property and therefore erred in finding the final bid was not so inadequate as to shock the conscience of the court because. We disagree.

Although the master found the Property to be worth $550,000.00, the Bank urged the master to set the value of the Property at $750,000.00. We find no error in the master's valuation. When offered at private auction, the property did not receive a bid remotely close to its $650,000.00 reserve price. Real estate agent Johnson tried for over half a year to sell the property at $750,000.00 and was still unable to sell the property when the Rouses dropped the listing price to $600,000.00. Even the Bank's own witnesses agree there were copious factors negatively affecting the Property's curb appeal and value. Testimony revealed the house is not in a particularly attractive location but is on a busy thoroughfare with commercial property next door and a trailer across the street, has no yard, remains unfinished, and is over-sized for the area it is located. Chris Johnson, an assistant vice-president at the Bank asseverated, "I said bid up to $550,00.00 based on what I consider the value to be at the time and on subsequent events, the fact that it hadn't yet sold and the list price was down to $600,000.00, so given that situation, I thought if a third party bid that [on] sale, that was a number that we were willing to let the property go." The evidence luculently supports the master's finding that the Property value be set at $550,000.00.

Even assuming the master should have determined the value of the Property to be $750,000.00, Sanders still paid a third of the value. While this

may have been inadequate, it is not so grossly inadequate as to shock the conscience of the court.

South Carolina has not established a bright line rule for what percentage the sale value must be with respect to the actual value in order to shock the conscience of the court. However, a search of South Carolina jurisprudence reveals only when judicial sales are for less than ten percent of a property's actual value, have our courts consistently held the discrepancy to shock conscience of the court. In Investors Sav. Bank v. Phelps, 303 S.C. 15, 19, 397 S.E.2d 780, 782 (Ct. App. 1990), this court affirmed the master's decision to set aside a sale where the bid of $510.00 was slightly more than one percent of the original amount of the loan and mortgage. We found that even if the property was worth only a fourth of the amount loaned on it four and a half years earlier, the bid was still only four percent of the value. Id. The court noted New York courts consistently hold foreclosure sale bids of less than ten percent of the value are unconscionably low. Id. (citing Polish Nat'l Alliance of Brooklyn, U.S.A. v. White Eagle Hall Co., 470 N.Y.S.2d 642, 649 (N.Y. App. Div. 1983) ("[F]oreclosure sales at prices below 10% of value have consistently been held unconscionably low in this State . . . .")). In Poole v. Jefferson Standard Life Ins. Co., 174 S.C. 150, 158, 177 S.E. 24, 28 (1934), the South Carolina Supreme Court set aside a foreclosure sale based, in part, on the fact that the high bid was $500.00 for property worth more than $5,000.00.

By comparison, in Peoples Fed. Sav. & Loan Ass'n v. Graham, 291 S.C. 178, 352 S.E.2d 511 (Ct. App. 1987), this court found the sale price of $48,100.00 for property subsequently appraised at $73,000.00, was not so inadequate as to shock the conscience of the court and affirmed the trial court's decision not to set aside the sale. The court stated, "Although the sale price in the instant case was less than the value of the property, it was not so grossly inadequate as to shock . . . ." Id. at 182, 352 S.E.2d at 513.

In the present case, the Property would have to be worth more than $2,460,000.00 for the sale price to be less than ten percent of the actual value. None of the Bank's experts set its worth at more than $900,000.00. Taking the value the Bank asserts the master should have placed on the Property,

$750,000.00, the sale price was approximately a third of the actual value. Accordingly, the inadequacy of the price was not so gross as to shock the court's conscience.

CONCLUSION

We hold the master did not err in determining the sale should not be set aside. The sale price was less than the value of the Property because of a mistake by the Bank's counsel, not as a result of conduct by an official conducting the sale or another bidding party. The master correctly determined the inadequacy of the sale was not so gross as to shock the conscience of the court. Therefore, the order of the master is

AFFIRMED.

KITTREDGE and SHORT, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Collins Holding Corp., Respondent/Appellant,

v.

Richard Defibaugh, individually, and Robert Defibaugh, individually and d/b/a Lucky D's, Appellants/Respondents.

Appeal From Richland County
Alison Renee Lee, Circuit Court Judge

Opinion No. 4235
Heard March 6, 2007 – Filed April 16, 2007

REVERSED

A. Christopher Potts, of Charleston, for Appellants-Respondents.

Eric Steven Bland, of Columbia, and Scott Michael Mongillo, of Summerville, for Respondent-Appellant.

STILWELL, J.: In this cross-appeal, Richard and Robert Defibaugh, individually, and d/b/a Lucky D's (collectively the Defibaughs), appeal the

trial court's decision finding the Defibaughs violated the South Carolina Unfair Trade Practices Act (UTPA). Collins Holding Corp. appeals the trial court's refusal to treble the damages it was awarded. We reverse the finding of a UTPA violation.

FACTS

Collins is in the business of placing pool tables, foosball machines, jukeboxes, pinball games, and other games in bars, restaurants, and convenience stores across several states including South Carolina. Collins divided the profits of the games with the business in which the machine was placed.

Richard and Robert Defibaugh are brothers who were employed by Collins as collectors to gather the revenue from machines within certain regions. Both signed employment contracts with Collins that included covenants not to compete. In 2001, Collins fired Richard after eighteen years employment. Following an unsuccessful job search, Richard began leasing pull-tab horoscope machines to different businesses, including some with which Collins also did business. Robert was employed by Collins for three years before he resigned in 2002 following Collins' reduction of his hours. After an unsuccessful attempt at starting a wallpaper business, Robert went to work with Richard.

The Defibaughs expanded their business to include leasing jukeboxes, pool tables, and video games. When the Defibaughs wanted to place their machines in a location, they would inquire if the location already had a contract with Collins. If the business informed them it had an exclusive contract with Collins, they would not place their machines there. Despite the Defibaughs' questioning, some of the businesses where their machines were placed did in fact have exclusive contracts with Collins.

On August 13, 2002, Collins filed a complaint against the Defibaughs alleging: (1) breach of employment contracts; (2) breach of Collins' location contracts; (3) tortious interference with Collins' location contracts; (4) violation of the UTPA; (5) breach of fiduciary duty; and (6) breach of the

covenant of good faith and fair dealing. Collins also requested permanent injunctive relief.

Collins dismissed its causes of action for breach of location contracts, breach of fiduciary duty, and breach of the covenant of good faith and fair dealing, and at the conclusion of Collins' case the trial court dismissed both the breach of employment contract cause of action pertaining to Richard and the request for a permanent injunction. The trial court issued an order entering judgment for the Defibaughs on all of the remaining causes of action.

Collins filed a Rule 59(e), SCRCP, motion for reconsideration on the basis that the trial court failed to address Collins' assertion that the Defibaughs' machines were deceptive and harmful to the general public and thus violated the UTPA. The trial court issued an amended order finding the Defibaughs' machines utilized a technique known as "reflexive payout," meaning the owner of the machine can control how much the machine pays back to players over the lifetime of the machine. The machine, unbeknownst to the player, makes adjustments to the game's outcome to stay within the payback percentage. The machine simply discards the winning symbol or icon that would have exceeded the allowable payout percentage and selects a symbol that will keep the payout within the predetermined percentage. This is referred to as "morphing."

The trial court found Collins met its burden of demonstrating the machines were misleading and deceptive due to their utilization of reflexive payout. Further, the trial court found because the use of the machines was continuous, ongoing, and capable of repetition, Collins demonstrated an adverse effect on the public. The trial court found Collins suffered ascertainable damages consisting of Collins' lost profits during the time period both parties' machines were at the same locations.

The lost profits were determined by taking the weekly average of Collins' income earned before the Defibaughs' games were placed at the location and subtracting the weekly average for the income earned when the Defibaughs' games were at the same locations. Some weeks, Collins' games

actually earned more money than they had before the Defibaughs' games were placed there. Those weeks were not factored into the lost profits calculation. The damages amounted to $107,461.00. The trial court determined the violation was not willful, because Collins failed to demonstrate that the Defibaughs knew that changing the payout percentage would affect the outcome of the games. Therefore, the trial court declined to treble Collins' damages. Both parties appeal.

STANDARD OF REVIEW

On appeal of an action at law tried without a jury, the findings of fact of the trial court will not be disturbed unless found to be without evidence which reasonably supports the trial court's findings. Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). The trial court's findings are equivalent to a jury's findings in a law action. Chapman v. Allstate Ins. Co., 263 S.C. 565, 567, 211 S.E.2d 876, 877 (1975). This court must determine whether any evidence reasonably supports the factual findings of the trial court. Townes Assocs., Ltd., 266 S.C. at 86, 221 S.E.2d at 776. Additionally, the appellate court can correct errors of law. Okatie River, L.L.C. v. Se. Site Prep, L.L.C. 353 S.C. 327, 334, 577 S.E.2d 468, 472 (Ct. App. 2003).

LAW/ANALYSIS

The Defibaughs argue the trial court erred in finding Collins suffered damages under the UTPA. We agree.

The UTPA declares unlawful the employment of "unfair or deceptive acts or practices in the conduct of any trade or commerce . . . ." S.C. Code Ann. § 39-5-20(a) (1976). Section 39-5-140(a) creates a private right of action in favor of "[a]ny person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by § 39-5-20 . . . ." Additionally, under Section 39-5-140(a), a plaintiff can recover treble damages where "the use or employment of the unfair or deceptive . . . act or practice was a willful or knowing violation of § 39-5-

20." Noack Enters., Inc. v. Country Corner Interiors of Hilton Head Island, Inc., 290 S.C. 475, 477, 351 S.E.2d 347, 348-49 (Ct. App. 1986).

"Recoverable damages include compensation for all injury to plaintiff's property or business which is the natural and probable consequence of defendant's wrong." Global Prot. Corp. v. Halbersberg, 332 S.C. 149, 159, 503 S.E.2d 483, 488 (Ct. App. 1998). "Actual damages under the UTPA include special or consequential damages that are a natural and proximate result of deceptive conduct." Id. (citing Taylor v. Medenica, 324 S.C. 200, 479 S.E.2d 35 (1996)).

While Collins may have demonstrated some lost profits arising from the Defibaughs' placement of their machines at the same locations as where Collins' machines were placed, Collins did not show that the utilization of reflexive payout on those machines was the cause of any lost revenue. Collins' director of operations, Jefferson Gibbons, testified that the primary reason the Defibaughs' machines hurt Collins' business was because the Defibaughs' machines were easy to play. Gibbons also testified that the Defibaughs' machines were faster and involved no thinking or skill. The UTPA only creates causes of action in those suffering a loss as a result of a deceptive act. See S.C. Code Ann. § 39-5-140(a) (emphasis added). While "morphing" may have affected the players of the games, that feature is not what caused Collins' machines to earn less money than before the Defibaughs' machines were placed at the same locations. Accordingly, the trial court erred in finding for Collins on the UTPA cause of action.[1]

Based on all of the foregoing, the decision of the trial court is

REVERSED.

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[1] Therefore, we need not consider the Defibaughs' remaining issues including whether or not "morphing" is deceptive, or Collins' argument that its damages should be trebled. Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

HEARN, C.J., and GOOLSBY, J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Kathe Dropkin, Appellant,

v.

Beachwalk Villas Condominium Association, Inc., Respondent.

Appeal From Beaufort County
Alexander S. Macaulay, Circuit Court Judge

Opinion No. 4236
Heard March 6, 2007 – Filed April 16, 2007

AFFIRMED

David H. Berry, of Hilton Head Island, for Appellant.

Erin DuBose Dean, of Beaufort, for Respondent.

STILWELL, J.: Kathe Dropkin filed this negligence action against Beachwalk Villas Condominium Association, Inc. Dropkin appeals the trial court's denial of her motion for a directed verdict on the issue of negligence per se and her motion for a new trial. We affirm.

FACTS

In April 1998, Dropkin vacationed with her family at a Beachwalk condominium on Hilton Head Island, South Carolina. As Dropkin left the condominium one night to go to dinner, she slipped and fell down the staircase. Dropkin suffered serious injuries to her hip and incurred $60,000 in medical expenses. Dropkin commenced this action for negligence against Beachwalk.

Beachwalk was constructed in approximately 1980. Prior to trial, the parties stipulated the 1979 Standard Building Code applied at the time of construction. The 1979 Standard Building Code required the staircase to include a handrail located between thirty and thirty-four inches above the stair tread. The parties do not dispute that the handrail failed to meet the code.[1]

At trial, Dropkin moved for a directed verdict on the issue of negligence per se because the staircase was not code compliant. Dropkin did not move for a directed verdict on the issue of proximate cause. The trial court denied the motion finding the code violation merely evidence of Beachwalk's violation of its duty of care. The court submitted the case to the jury.

The verdict form asked, in pertinent part: "Do you find that the Defendant, Beachwalk Villas Condominium Association, Inc., was negligent and that this negligence proximately caused the Plaintiff's injuries?" Dropkin did not object to the verdict form. The jury rendered a verdict in favor of Beachwalk. Dropkin moved for a new trial, arguing the trial court erred in failing to direct a verdict based on negligence per se, or, in the

[1] It is difficult from the record to discern whether a handrail even existed. The staircase was flanked by a tall, solid-surface wall with a flat top on one side and a tall, wooden barrier with a wide, cupped top on the other side. As each was located approximately forty-three inches above the stair tread, neither was at the appropriate height to comply with the code.

alternative, by failing to charge negligence per se to the jury. The trial court denied the motion.

STANDARD OF REVIEW

When ruling on directed verdict or JNOV motions, the trial court must view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party. Sabb v. S.C. State Univ., 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002). The decision whether to grant a new trial is left to the sound discretion of the trial court and generally will not be disturbed on appeal. Rush v. Blanchard, 310 S.C. 375, 380, 426 S.E.2d 802, 805 (1993).

LAW/ANALYSIS

Dropkin contends the trial court erred in refusing to direct a verdict as to her allegation of negligence per se, and erred in failing to grant her post-trial motions, because Beachwalk was negligent as a matter of law.[2] We find no reversible error.

In order to recover for negligence per se in this case, Dropkin must prove an alleged duty, breach thereof, and the causal connection between Beachwalk's negligence and her injury before she is entitled to damages. "The finding of a statutory violation [in an action alleging negligence per se], however, does not end the inquiry. The causation of the injury must also be evaluated." Whitlaw v. Kroger Co., 306 S.C. 51, 54, 410 S.E.2d 251, 253 (1991). In Rowe v. Frick, the plaintiff, a young boy injured while crossing a highway, alleged the defendant violated the applicable statute and injured him. 250 S.C. 499, 504-05, 159 S.E.2d 47, 50 (1968). Our supreme court found the issue of whether such an alleged breach proximately caused plaintiff's injury a question for the jury. Id. at 505, 159 S.E.2d at 51.

[2] Dropkin's theory of negligence per se was not presented to the jury in the form of a jury instruction. Following the jury charge, Dropkin made no objection to the omission of an instruction on negligence per se.

Although Dropkin requested a directed verdict on the theory of negligence per se, a verdict form combining this issue with the issue of proximate cause was submitted to the jury without objection. The verdict the jury rendered could have been based on the lack of proximate cause. Furthermore, although Dropkin argues there is no evidence supporting a defense verdict on the issue of proximate cause, the record contains evidence from which the jury could conclude the handrail violation was not the proximate cause of Dropkin's injuries. Dropkin's own expert witness, Bryan Durig, testified as follows:

> Counsel for Beachwalk: Now we all agree here today that the railings . . . are in violation of the standard 1979 Standard Building Code based on the improper height; correct?
>
> Mr. Durig: Yes. I mean, in my opinion they are, yes.
>
> Counsel for Beachwalk: But that doesn't necessarily mean . . . [the] code violation was the proximate . . . cause of Mrs. Dropkin's fall; correct?
>
> Mr. Durig: No, not – not the initiating event of the fall, no. The handrails are there to provide you [sic] once you have a mis-step. So uh my comments earlier about the roundness of the stairs and the fact that they were wet and don't have any traction, that's what initiated this event where she slipped and mis-stepped and lost her balance, and the handrails are designed to provide you some assistance in the case that you have that event, and in this case, they didn't provide them, so she continued to fall down.
>
> So it's not the initiating event. It's a contributing factor, because they weren't there to properly help her regain her balance.

Beachwalk's expert witness, Allen Campbell, testified as follows:

> Counsel for Beachwalk: All right. And were you able to come up um with – with an opinion, based on a reasonable degree of engineering certainty, uh with regard to the construction of the stairway relative to Mrs. Dropkin's accident?
>
> Mr. Campbell: Yes.
>
> Counsel for Beachwalk: And what – what opinion was that?
>
> Mr. Campbell: Based on my review of the stairs, my assessment and reviewing her testimony, based on her own description of – of how she fell, it certainly is my opinion that she slipped on the stairs as she was descending, and the handrail is not an issue. She slipped on the treads, on more than one occasion.

Because there is evidence to support the verdict on the issue of proximate cause, and the jury returned a general verdict as to the issues of negligence and proximate cause, we must uphold the verdict. Where a case is submitted to the jury on two or more issues and a general verdict is returned, the verdict will be upheld if it is supported by at least one issue. Anderson v. West, 270 S.C. 184, 188, 241 S.E.2d 551, 553 (1978).

Our supreme court has discussed this rule in detail:

> 'Under the "two issue" rule, when the jury returns a general verdict involving two or more issues and its verdict is supported as to at least one issue, the verdict will not be reversed on appeal.' Todd v. South Carolina Farm Bureau Mut. Ins. Co., 287 S.C. 190, 193, 336 S.E.2d 472, 473-74 (1985). The "two issue" rule may be applied by appellate courts in a few situations. In one situation, when a jury's

> general verdict is supportable by more than one cause of action submitted to it, the [appellate] court will affirm unless the appellant appeals all causes of action. See Sierra v. Skelton, 307 S.C. 217, 414 S.E.2d 169 (Ct. App. 1991) (trial court's decision affirmed where jury returned a general verdict, and appellant only raised abuse of process issue, but failed to raise defamation issue). Under a second application of the "two issue" rule, the appellate court will find it unnecessary to address all the grounds appealed where one requires affirmance. See Smoak v. Liebherr-America, Inc., 281 S.C. 420, 315 S.E.2d 116 (1984) (where case was presented to jury on negligence and breach of warranty causes of action, appellate court need not address breach of warranty exceptions if it finds that verdict was supported by the evidence under the theory of negligence).
>
> These two applications of the "two issue" rule are illustrated in the following example: A case is submitted to the jury on the issues of defamation and invasion of privacy. The jury returns a general verdict for the plaintiff. The defendant appeals, arguing that the trial court erred by failing to direct a verdict on the defamation issue. Under one application of the "two issue" rule, an appellate court would affirm because defendant has failed to appeal the invasion of privacy issue as well. Assuming, however, that the defendant has appealed both issues, the appellate court would affirm on the basis of a second application of the "two issue" rule, if either of the two issues supported affirmance.

Anderson v. S.C. Dep't of Highways & Pub. Transp., 322 S.C. 417, 419-20, 472 S.E.2d 253, 254-55 (1996) (footnote omitted).

In this case, the issue of proximate cause supports affirmance. Accordingly, the trial court did not err in failing to direct a verdict and acted within its discretion in denying Dropkin's motion for a new trial. The order on appeal is

AFFIRMED.

HEARN, C.J., and GOOLSBY, J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

State of South Carolina, Respondent,

v.

Rebecca Lee-Grigg, Appellant.

Appeal from Greenwood County
Wyatt T. Saunders, Jr., Circuit Court Judge

Opinion No. 4237
Heard April 3, 2007 – Filed April 16, 2007

REVERSED

C. Rauch Wise, of Greenwood, and James W. Bannister of Greenville, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, Special Assistant Attorney General Amie L. Clifford, all of Columbia; and Solicitor Jerry

W. Peace, of Greenwood, for Respondent.

ANDERSON, J.: Appellant Rebecca Lee-Grigg ("Lee-Grigg") challenges her conviction for forgery, contending the trial court erred in denying her (1) motion for a directed verdict; (2) request to charge the jury on a good faith defense; and (3) request to instruct the jury on use of evidence of good character. We reverse.

FACTUAL/PROCEDURAL BACKGROUND

Lee-Grigg worked as the director of MEGS House, a shelter for abused women serving McCormick, Edgefield, Greenwood, and Saluda counties. In that capacity, she arranged for the relocation of an endangered victim to another state. Lee-Grigg planned to accompany the victim to assist with the transition. Initially Lee-Grigg sought financial assistance for relocation expenses from the South Carolina Victim's Assistance Network ("SCVAN"). SCVAN generally provides financial assistance to cover only a victim's expenses and reimburses mileage at less than the state reimbursement rate. Lee-Grigg found SCVAN's coverage inadequate. Subsequently, she contacted Police Chief Brooks ("Chief") of the City of Greenwood ("City") to ask for help. The City furnished a vehicle and a driver to transport the victim. Lee-Grigg accompanied the driver and the victim to facilitate the relocation on October 10-11, 2003. The City paid for fuel and lodging for the driver and victim only; Lee-Grigg's costs were not covered. Lee-Grigg testified the Chief told her she could apply for reimbursement of the expenses the City paid in relocating the victim. Lee-Grigg emphasized the Chief assured her he would not apply for reimbursement of the City's costs.

Following the trip, Lee-Grigg submitted documents to SCVAN requesting reimbursement for the City's relocation expenditures. However, she represented those expenditures as her own. Included among the materials Lee-Grigg supplied was a "Travel Support Document" with the following attestation signed by Lee-Grigg:

> I hereby certify or affirm that the above expenses were actually incurred by me as necessary traveling expenses in the

> performance of my official duties; any meals or lodging included in a conference or convention registration fee have been deducted from this travel claim, conforms with the requirements of local and grant laws, rules and regulations.

Lee-Grigg requested mileage reimbursement in the amount of $189.23 and attached copies of fuel receipts she obtained from the City's driver to support that request. The signature of the driver and the Chief's initials that appeared on the original fuel receipts were absent from the copies Lee-Grigg submitted to SCVAN. Lee-Grigg averred she concealed the driver's signature and the Chief's initials in order to obscure any trail that might lead to discovery of the victim's new location. Lee-Grigg additionally enclosed:

- a receipt for fuel costs incurred on October 8, 2003 involving transportation of the victim from Charleston to Greenwood
- copies of meal receipts that obviously included meals other than the victim's
- a copy of a Holiday Inn receipt for $88.76, paid in full by the City's driver.

Shortly thereafter, the City's driver contacted SCVAN to inquire about obtaining reimbursement for the same relocation costs. SCVAN identified the potential duplication of reimbursement requests. A SLED investigation ensued leading to Lee-Grigg's indictment and conviction for forgery. Lee-Grigg was sentenced to two years of imprisonment, suspended to one year of probation.

ISSUES

> (1) Did the trial court err in denying Lee-Grigg's motion for a directed verdict when the document in question was a genuine document with a genuine signature, and the State failed to prove the document in question was falsely made, forged or counterfeited?
>
> (2) Did the trial court err in failing to instruct the jury on the

defense of good faith?

(3) Did the trial court err in failing to charge the jury on the use of evidence of good character when Lee-Grigg presented testimony of her good character and reputation in the community?

STANDARD OF REVIEW

In criminal cases, an appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006); State v. Douglas, 367 S.C. 498, 506, 626 S.E.2d 59, 63 (Ct. App. 2006) cert. pending; State v. Wood, 362 S.C. 520, 525, 608 S.E.2d 435, 438 (Ct. App. 2004). Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id.; State v. Landis, 362 S.C. 97, 101, 606 S.E.2d 503, 504 (Ct. App. 2004). On appeal, we are limited to determining whether the trial court abused its discretion. State v. Walker, 363 S.C. 643, 653, 623 S.E.2d 122, 127 (Ct. App. 2005). The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed absent a prejudicial abuse of discretion. State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982); State v. Patterson, 367 S.C. 219, 230, 625 S.E.2d 239, 245 (Ct. App. 2006) cert. pending.

LAW/ANALYSIS

I. Directed Verdict

Lee-Grigg contends the trial court erred in denying her motion for a directed verdict because the State failed to prove all of the statutory elements for the charge of forgery. Specifically, Lee-Grigg alleges the document in question was not falsely made, forged, or counterfeited as required by statute because the document was a genuine document that contained a genuine signature. 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); State v. Stanley, 365 S.C. 24, 41-42, 615 S.E.2d 455, 464 (Ct. App. 2005); State v. Padgett, 354 S.C. 268, 271, 580 S.E.2d 159, 161 (Ct. App. 2003). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004) (citing State v. McKnight, 352 S.C. 635, 642, 576 S.E.2d 168, 171 (2003)); State v. Crawford, 362 S.C. 627, 633, 608 S.E.2d 886, 889 (Ct. App. 2005); Padgett, 354 S.C. at 271, 580 S.E.2d at 161. When reviewing a denial of a directed verdict, an appellate court views evidence and all reasonable inferences in the light most favorable to the State. Weston, 367 S.C. at 292, 625 S.E.2d at 648; State v. Zeigler, 364 S.C. 94, 101, 610 S.E.2d 859, 863 (Ct. App. 2005) cert. denied; State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find the case was properly submitted to the jury. Weston, 367 S.C. at 292-93, 625 S.E.2d at 648; Cherry, 361 S.C. at 593, 606 S.E.2d at 478; McKnight, 352 S.C. at 642, 576 S.E.2d at 172; State v. Condrey, 349 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002); see also State v. Horton, 359 S.C. 555, 563, 598 S.E.2d 279, 284 (Ct. App. 2004) (noting judge should deny motion for directed verdict if there is any direct or substantial circumstantial evidence that reasonably tends to prove the defendant's guilt, or from which guilt may be fairly and logically deduced). The appellate court may reverse the trial court's denial of a motion for a directed verdict only if there is no evidence to support the court's ruling. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002).

The trial court should grant a directed verdict when the evidence merely raises a suspicion that the defendant is guilty. State v. Arnold, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004). "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." Cherry, 361 S.C. at 594, 606 S.E.2d at 478. However, a trial court is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis. Cherry, 361 S.C. at 594, 606 S.E.2d at 478.

Section 16-13-10 of the South Carolina Code of Laws (2003) provides, in pertinent part:

> (A) It is unlawful for a person to
>
> (1) falsely make, forge, or counterfeit; cause or procure to be falsely made, forged, or counterfeited; or wilfully act or assist in the false making, forging, or counterfeiting of any writing or instrument of writing;
>
> (2) utter or publish as true any false, forged, or counterfeited writing or instrument of writing;
>
> . . . or . . .
>
> (4) willingly act or assist in any of the premises, with an intention to defraud any person.

Forgery consists of the fraudulent making or altering of a writing by one intending to defraud, prejudice, or damage another person. Black's Law Dictionary 650 (6th ed. 1990). It has been defined as a false making of an instrument, on its face purporting to be good and valid, with a design to defraud, prejudice, or damage another. See State v. Walton, 107 S.C. 353, 356, 93 S.E. 5, 6 (1917); State v. Floyd, 36 S.C.L. 58 (5 Strob. 58) (S.C. App. L. 1850).

In order to constitute forgery by uttering or publishing a forged instrument or writing the instrument must be uttered or published as true or genuine, known by the party uttering or publishing it that it is false, forged, or counterfeited, and intended to prejudice, damage or defraud another person. See S.C. Code Ann. § 16-13-10(A) (2003); State v. Pace, 337 S.C. 407, 417, 523 S.E.2d 466, 471 (Ct. App. 1999) (citing State v. Wescott, 316 S.C. 473, 450 S.E.2d 598 (Ct. App. 1994)); State v. Singletary, 187 S.C. 19, 196 S.E. 527 (1938); State v. Murray, 72 S.C. 508, 52 S.E. 189 (1905).

The crime of forgery involves: (1) a false making or material alteration of some written instrument; (2) that is the apparent foundation of some legal liability; and (3) that is uttered or published with the intent to defraud or

prejudice another. Walton, 107 S.C. at 356, 93 S.E. at 6 (defining the offense of forgery as"[t]he material altering, with intent to defraud, of any writing, which, if genuine, might apparently be the foundation of a legal liability."); see also William Shepard McAninch & W. Gaston Fairey, The Criminal Law of South Carolina 421 (4th ed. 2002).

A. False Making or Material Alteration of a Written Instrument

A material alteration of an instrument makes it speak a language different in legal effect from the language it originally spoke, or generates some change in the rights, interests, or obligations of the parties to the writing. McAninch at 422. The alteration may be accomplished by additions to or subtractions from the instrument, such as erasures or deletions of words, numbers, or symbols that change the instrument's effect. See State v. Wescott, 316 S.C. 473, 477-78, 450 S.E.2d 598, 601 (Ct. App. 1994). "As a general rule, forgery cannot be committed by the genuine making of an instrument for the purpose of defrauding; however, the making of a false instrument is as much a forgery as is the false making of an instrument." Id. at 477-78, 450 S.E.2d at 601 (affirming forgery conviction for passing a legitimate check, drawn on a legitimate account with an authorized signature because the account was opened with intent to defraud). "Forgery is the alteration of a deed or writing, in a material part, to the prejudice of another, as well as where the whole deed or writing is forged." State v. Floyd, 36 S.C.L. 58 (5 Strob. 58) (S.C. App. L. 1850) (proclaiming "[t]he alteration of a receipt for money, by erasing the word "part," and inserting, in lieu of it, the words "full up to date," constitutes the offence of forgery. . . .").

> [T]he mischief is just as fully and conveniently perpetrated by one of various alterations, as it could be by fabricating the whole instrument. A note or a receipt is either genuine, or it is not. If it be falsely and fraudulently altered in a particular making, it speaks a different language, calculated to produce a different result in its operation, to the prejudice of some one who is designed to be defrauded or injured thereby.

Id.

"Only those alterations which change, or initially create, the legal meaning of the document will suffice." McAninch at 422 ("Alteration of an immaterial part of the document does not affect its genuineness.").

B. Legal Efficacy of the Instrument

To constitute forgery, it is essential that the falsely made or altered instrument possess some apparent legal efficacy; otherwise it would have no tendency to defraud. State v. Webster, 88 S.C. 56, 58, 70 S.E.2d 422, 423 (1911). As long as a forged instrument is the apparent foundation of legal liability, "the instrument need not be complete in all its particulars to amount to forgery." McAninch at 422 (citing State v. Bullock, 54 S.C. 300, 32 S.E. 424 (1898).

Any writing that may defraud or prejudice another, or that, if genuine, would have legal effect or operate as the foundation of another man's liability may be the subject of forgery. It is sufficient if the forged instrument, believed to be genuine, might have operated to the prejudice of another. See Webster, 88 S.C. at 58, 70 S.E.2d at 423.

C. Intent to Defraud

"Intent to defraud means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property." Black's Law Dictionary, 423 (6th ed. 1990).

"A defendant may not be convicted of a criminal offense unless the State proves beyond a reasonable doubt that he acted with the criminal intent, or mental state, required for a particular offense." State v. Fennell, 340 S.C. 266, 271, 531 S.E.2d 512, 515 (2000). Intent to defraud is an essential element of the crime of forgery. State v. Lyle, 125 S.C. 406, 118 S.E. 803, 809 (1923). One possesses the intent required for a forgery conviction if he "willingly act[s] or assist[s] in any of the [proscribed] premises, with an

intention to defraud any person." S.C. Code Ann. § 16-13-10 (2003); see State v. Zimmerman, 79 S.C. 289, 60 S.E. 680 (1908) (ruling that an indictment for forgery need not charge that the forgery was complete in all its parts; the essence of the crime is the intent to defraud, and the indictment cannot be defeated merely because all the steps necessary to perfect the fraud are not set out therein) (emphasis added).

To constitute the crime of forgery, it is not necessary that anyone should have been actually injured or defrauded by the false writing or alteration; the mere possibility of injury will suffice. Webster, 88 S.C. at 58, 70 S.E.2d at 423. It is sufficient if the false instrument was made with intent to defraud and has the potential to prejudice the rights of another accepting it as true. See William Shepard McAninch & W. Gaston Fairey, The Criminal Law of South Carolina 420 (4th ed. 2002) ("It is not essential that the scheme succeed, that anyone actually be defrauded or injured in any way. The creation of the false document or the attempt to pass a false document, if accompanied by the requisite intent, will suffice." (quoting State v. Jones, 1 McMul. 236 (1841))). The intent to defraud need not be targeted at any particular person. A possibility or probability that some person will be defrauded is sufficient. Id.

Moreover, the intent need not include the expectation of personal advantage to the accused. Brown v. Bailey, 215 S.C. 175, 54 S.E.2d 769, 773 (1949) (articulating that, in proving forgery, it is not necessary to show the defendant profited or intended to profit by the forgery). The intention to prejudice or to assist in prejudicing some other person is all that is required. Id.

Intent is a question of fact and is ordinarily for jury determination. State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 607 (1971). Because intent is seldom susceptible to proof by direct evidence, the circumstances surrounding the making or uttering of the forged instrument are relevant for establishing the requisite intent. State v. Cherry, 348 S.C. 281, 288, 559 S.E.2d 297, 300 (Ct. App. 2001) aff'd 361 S.C. 588, 606 S.E.2d 475 (2004) (quoting Tuckness, 257 S.C. at 299, 185 S.E.2d at 607). "[I]ntent may be shown by acts and conduct from which a jury may naturally and reasonably

infer intent." State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 n. 4 (1996); see State v. Lyle, 125 S.C. 406, 118 S.E. 803, 809 (1923); State v. Murray, 72 S.C. 508, 52 S.E. 189, 191 (1905) ("The intent is only matter of circumstance, which naturally follows and springs out of the facts."); accord Terrell v. State, 601 S.E.2d 500 (Ga. Ct. App. 2004) (determining criminal intent may be found by the jury upon consideration of words, conduct, demeanor, motive, and all other circumstances connected with the prosecuted act); In re Washington, 691 N.E.2d 285 (Ohio 1998) (finding the intent of an accused person dwells in his mind; not being ascertainable by exercise of any or all of the senses, it can never be proved by direct testimony of third person, and it need not be; it must be gathered from surrounding facts and circumstances under proper instructions from court); State v. Lowery, 667 S.W.2d 52 (Tenn. 1984) (recognizing a jury may infer a criminal defendant's intent from the surrounding facts and circumstances).

"[A] person who causes a particular result is said to act purposefully if 'he consciously desires that result, whatever the likelihood of that result happening from his conduct.' " State v. Jeffries, 316 S.C. 13, 19, 446 S.E.2d 427, 431 n.7-8 (1994) (quoting United States v. Bailey, 444 U.S. 394, 405, 100 S. Ct. 624, 632, 62 L.Ed.2d 575, 587 (1980)). Concomitantly, a person "is said to act knowingly if he is aware the 'result is practically certain to follow from his conduct, whatever his desire may be as to that result.' " Id.

In the instant case, the State presented undisputed evidence that Lee-Grigg applied to SCVAN to obtain reimbursement for expenses she admittedly did not incur. By her signature Lee-Grigg attested that the application document was a true representation of her costs. In support of her request for reimbursement Lee-Grigg attached the City's fuel receipts that she later confirmed she had altered. The document, viewed in its entirety, would unquestionably produce an operative result different from the result it would have produced unaltered. If Lee-Grigg had successfully obtained reimbursement from SCVAN, the City might have been precluded from recovering its relocation expenses. Alternatively, SCVAN may have inadvertently disbursed funds twice for the same relocation expenses. SCVAN's accidental complicity in Lee-Grigg's undertaking may have threatened its future funding. According to her own testimony, Lee-Grigg knew she had not incurred the relocation expenses; she knew the

document misrepresented, concealed, or otherwise communicated false information.

Though denying any knowledge of wrongdoing, Lee-Grigg nevertheless tendered an instrument that did not genuinely represent the facts as they occurred.

Evidence supported the State's allegation that Lee-Grigg's conduct met the statutory definition of forgery: the willful false making of an instrument, uttered as true and deemed to be genuine, with the intent that it might operate to the prejudice of another. Viewed in a light most favorable to the State, Lee-Grigg's guilt may be reasonably, fairly, and logically deduced from the evidence. The case was properly submitted to the jury.

II. Jury Charges

Generally, a trial court is required to charge only the current and correct law of South Carolina. State v. Rayfield, 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006); Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472-73 (2004); State v. Zeigler, 364 S.C. 94, 106, 610 S.E.2d 859, 865 (Ct. App. 2005); State v. Brown, 362 S.C. 258, 261-62, 607 S.E. 2d 93, 95 (Ct. App. 2004). A jury charge is correct if it contains the correct definition of the law when read as a whole. Rayfield, 369 S.C. at 119, 631 S.E.2d at 251; Sheppard, 357 S.C. at 665, 594 S.E.2d at 473; State v. Patterson, 367 S.C. 219, 231, 625 S.E.2d 239, 245 (Ct. App. 2006) cert. pending; State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003).

The law to be charged to the jury is determined by the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001); State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000); State v. Brown, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004); State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002); State v. Harrison, 343 S.C. 165, 172, 539 S.E.2d 71, 74 (Ct. App. 2000) (citing State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). A trial court has a duty to give a requested instruction that is supported by the evidence and correctly states the law applicable to the issues. State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996); see also State v. Austin, 299

S.C. 456, 458, 385 S.E.2d 830, 831 (1989) (acknowledging that a defendant is generally entitled to a requested jury instruction if it is a correct statement of the law on an issue raised by the indictment); State v. West, 138 S.C. 421, 136 S.E. 736, 737 (1927) (finding the court has a duty to charge jury as to law applicable to facts brought out in testimony).

A trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence. State v. White, 361 S.C. 407, 412, 605 S.E.2d 540, 542 (2004); State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); Harrison, 343 S.C. at 172, 539 S.E.2d at 74. On review of a jury charge, an appellate court considers the charge as a whole in view of the evidence and issues presented at trial. Welch v. Epstein, 342 S.C. 279, 311, 536 S.E.2d 408, 425 (Ct. App. 2000). A confusing charge alone is insufficient to warrant reversal. State v. Kerr, 330 S.C. 132, 144-45, 498 S.E.2d 212, 218 (Ct. App. 1998) (citing State v. Jefferies, 316 S.C. 13, 22, 446 S.E.2d 427, 432 (1994)); see also State v. Peay, 321 S.C. 405, 410, 468 S.E.2d 669, 672 (Ct. App. 1996) (concluding that the trial court commits reversible error when it fails to give requested charge on issue raised by indictment and evidence presented).

A. Good Faith Defense

Lee-Grigg asserts the trial court erred in failing to charge the jury as follows: "[i]f one in good faith or ignorance of the effect of his act, without intent to defraud, makes or alters an instrument, he is not guilty of forgery." We disagree.

Our time-tested precedent establishes:

> [i]t may well be that a person may, most innocently and with perfect good faith, make representations which prove to be false in fact, in which case there would be an absence of any criminal intent; but if the representations are not only false, but known to be so by the person who makes them, then the intent to deceive would necessarily be inferred.

State v. Haines, 23 S.C. 170 (1885).

Lee-Grigg implores this court to consider that she relied on the Chief's assurance he would not seek reimbursement and, therefore, acted in good faith without fraudulent intent. Our case law dictates a different conclusion. It is no defense to the charge of forgery that the defendant considered herself justly entitled to what she would obtain by means of forgery. State v. Webster, 88 S.C. 56, 58, 70 S.E.2d 422, 423 (1911). Likewise, it is no defense that the act was done under the instructions or orders of another. State v. Blurton, 352 S.C. 203, 573 S.E.2d 802 (2002) (emphasizing that the "orders of another" jury charge is a correct proposition of law). Furthermore, it is no defense if it was done in partnership or cooperation with another person. Brown v. Bailey, 215 S.C. 175, 54 S.E.2d 769 (1949) (stating that, both under the forgery statute and the common law, a person may commit forgery by being present and knowingly aiding and abetting another in the perpetration of the crime).

Advancing the position articulated in Mathews v. United States, Lee-Grigg urges that "[a]s a general proposition a defendant is entitled to an instruction as to any recognized defense for which there exists evidence sufficient for a reasonable jury to find in his favor." 485 U.S. 58, 63 (1988). However, we are not aware of any South Carolina authority acknowledging a good faith defense to the crime of forgery. Luculently, if one operates with criminal intent, one does not operate in good faith. Fraudulent intent is the essence of the crime of forgery. Consequently, a comprehensive jury instruction on what constitutes fraudulent intent obviates a good faith charge.

In the instant case, the trial court delivered the following jury instruction on the mental state required for the crime of forgery:

> The State must prove beyond a reasonable doubt that the defendant willfully and knowingly acted in falsely making, forging, counterfeiting, altering, changing, defacing or erasing or causing to be falsely made, forged, counterfeited, altered, changed, defaced or erased any record, writing or other written instrument with an intent to defraud any person or organization.

A fraudulent intent is the essence of the crime of forgery. It is not necessary, however, to make out the crime of forgery, that any person or any organization be actually defrauded or sustained any loss because of the forgery. The terms willfully and knowingly in connection with the word act, such as the State must prove that the defendant willfully and knowingly acted, those terms used in that area mean a wrongful act which is done by a person who knows the difference between right and wrong and that the act is wrong and who in spite of such knowledge proceeds to do the wrongful act.

An intent to defraud is an intent to deceive another person or organization for the purpose of monetary gain or induce the other party to part with property or money and accomplish that purpose by some false statement, false pretense, wrongful concealment or suppression of truth or by any other artifice or act which is intended to deceive.

The making of a false instrument is as much of a forgery as is the false making of an instrument. The false making of an instrument is forgery, and the making of a false instrument is forgery. In order for an accused person to be convicted of the crime of forgery the State must prove three essential elements beyond a reasonable doubt.

That the instrument was uttered or published, uttered means to distribute it, published means disseminate it or give it to another, as true and genuine.

Second, it must be known by the person who uttered or published the instrument that it was false, forged or counterfeited.

And third, that it must be uttered or published with an intention to prejudice, damage or defraud another person or organization.

> It is not necessary that the State show injury or loss to make out the offense of forgery or that the defendant profited or intended to profit by the deception. The intent of the accused may be shown by acts and conducts of the accused and by other circumstances from which you may naturally and reasonably infer intent.
>
> Now, criminal intent is a necessary element of each crime that must be proved by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. There is no way to prove criminal intent to any mathematical certainty. There is no way that medical science can dissect a person's brain and determine what he or she had in mind at the time in question.
>
> So, the law says that criminal intent may be inferred from the circumstances shown to have been in existence or have existed at the time in question. This is how the jury makes a determination of whether or not the element of intent as required was present. Criminal intent is a state of mind which operates jointly with an act in the commission of a crime. Criminal intent is a mental state, a conscious wrongdoing. So, it is up to you the jury to determine what the defendant intended to do, based upon the circumstances shown to have existed.
>
> The State must prove criminal intent beyond a reasonable doubt just as the State must prove every element of the crime beyond a reasonable doubt, as was already explained to you. . . . While the State may prove motive, it is unnecessary that the State prove motive but the State must prove criminal intent.

(Emphasis added).

The jury requested that the trial court clarify the definition of criminal intent, and the trial court reiterated the major portions of the original charge. Both the original and subsequent instructions elaborated on the willful and

knowing commission of the wrongful act, emphasizing that the act must be a "conscious wrongdoing"—the passage of an instrument as "true and genuine" and known by the passer to misrepresent, conceal, or otherwise communicate false information. The trial court explained the terms willfully and knowingly described actions of a person who knew right from wrong, yet proceeded to do a wrongful act in spite of that knowledge.

Reading the trial court's instruction as a whole, we verify that it accurately charged the correct law of South Carolina by thoroughly defining and describing the mental state for the crime of forgery. We discern no error in the trial court refusing to issue a good faith defense instruction.

B. Character Evidence

Lee-Grigg maintains the trial court erred in denying her request for a jury instruction on the use of evidence of her good character. We agree the jury should have been charged on evidence of Lee-Grigg's good character.

Rule 404(a)(1), SCRE, allows evidence of a pertinent character trait to be offered by the defendant or offered by the State to rebut the defendant's character trait evidence. State v. Braxton, 343 S.C. 629, 635 n.1, 541 S.E.2d 833, 836 n.1 (2001). Accordingly, our supreme court has held the good reputation of the accused, if proved, may be taken into consideration by the jury in determining whether or not he or she committed the crime charged. State v. Harrison, 343 S.C. 165, 171-72, 539 S.E.2d 71, 74 (Ct. App. 2000) (citing State v. Hill, 129 S.C. 166, 170, 123 S.E. 817, 818 (1924) ("Evidence of the defendant's good reputation for peace and good order is strongly persuasive of his good character in that respect, and is offered for the very purpose stated by the circuit judge, to show the improbability that the defendant would have committed or did commit the crime charged.")); State v. Lyles, 210 S.C. 87, 41 S.E.2d 625 (1947).

> Generally, where requested and there is evidence of good character, a defendant is entitled to an instruction to the effect that evidence of good character and good reputation may in and of itself create a doubt as to guilt and should be considered by the

jury, along with all the other evidence, in determining the guilt or innocence of the defendant.

State v. Green, 278 S.C. 239, 240, 294 S.E.2d 335, 335 (1982).

In the case sub judice, Lee-Grigg requested the following jury instruction: "Good character of a defendant, when it is established to the satisfaction of the jury, should be considered by them just as they would consider evidence of any other fact." The trial court declined to issue the charge, finding it to be in the nature of argument. The record, on the other hand, contains testimony regarding Lee-Grigg's good character and reputation in the community. One witness averred "she's a good woman, that I know about, yes." A second witness, a former shelter board member, testified:

Q: Based on your involvement with Becky Lee-Grigg do you have an opinion as to her character in the community?

A: Yes, I do.

Q: What is that opinion?

A: I think without question she is the most straightforward person of integrity and honesty that I have ever seen.

Q: Do you have an opinion as to her reputation for truth and veracity?

A: Yes, I do.

Q: Knowing that reputation, would you believe her under oath?

. . .

A: I would not believe that she would be capable of doing anything that would be wrong. I just think Becky is such a

straight arrow, and I used to jokingly say to her, "You're the most predictable person I have ever seen, you will do right, regardless."

Q: So you would believe her under oath?

A: Yes.

Q: Any question about that?

A: Not at all.

Lee-Grigg presented evidence of her good character and, accordingly, requested a charge on that evidence. The trial court erred in denying her request.

C. Harmless Error

The determination that the trial court erred in failing to instruct the jury on evidence of Lee-Grigg's good character does not end the inquiry. The refusal to charge the jury with her requested instruction is subject to harmless error analysis.

At the outset, we identify the trial court's error as procedural as opposed to structural. In Arizona v. Fulminante, 429 U.S. 279, 310 (1991), the United State Supreme Court explained certain "structural defects in the constitution of the trial mechanism" result in deprivations that affect the entire framework within which the trial is conducted, from beginning to end. These "structural" defects compromise the reliability with which a criminal trial functions as a vehicle for determining guilt or innocence and are not subject to harmless error analysis. Id. (citing Rose v. Clark, 478 U.S. 570, 577-78 (1986). The Fulminante court identified the following examples of structural defects not subject to harmless error analysis: the total deprivation of the right to counsel at trial, Gideon v. Wainwright, 372 U.S. 335 (1963); the lack of an impartial judge, Tumey v. Ohio, 273 U.S. 510 (1927); the unlawful exclusion of members of the defendant's race from a grand jury,

Vasquez v. Hillery, 474 U.S. 254 (1986); the right to self-representation at trial, McKaskle v. Wiggins, 465 U.S. 168 (1984); and the right to public trial, Waller v. Georgia, 467 U.S. 39 (1984). Id.

Constrastively, a trial error occurring in the presentation of the case to the jury may "be quantitatively assessed in the context of other evidence presented in order to determine whether its admission was harmless beyond a reasonable doubt." Fulminante, 429 U.S. at 307-08. Generally, "the Court has applied harmless-error analysis to a wide range of errors and has recognized that most constitutional errors can be harmless." Id. at 306-07 (citing e.g., Clemons v. Mississippi, 494 U.S. 738 (1990) (unconstitutionally overbroad jury instructions at the sentencing stage of a capital case); Satterwhite v. Texas, 486 U.S. 249 (1988) (admission of evidence at the sentencing stage of a capital case in violation of the Sixth Amendment Counsel Clause); Carella v. California, 491 U.S. 263 (1989) (jury instruction containing an erroneous conclusive presumption); Pope v. Illinois, 481 U.S. 497 (1987) (jury instruction misstating an element of the offense); Rose v. Clark, 478 U.S. 570 (1986) (jury instruction containing an erroneous rebuttable presumption); Crane v. Kentucky, 476 U.S. 683 (1986) (erroneous exclusion of defendant's testimony regarding the circumstances of his confession); Delaware v. Van Arsdall, 475 U.S. 673 (1986) (restriction on a defendant's right to cross-examine a witness for bias in violation of the Sixth Amendment Confrontation Clause); Rushen v. Spain, 464 U.S. 114 (1983) (denial of a defendant's right to be present at trial); United States v. Hasting, 461 U.S. 499 (1983) (improper comment on defendant's silence at trial, in violation of the Fifth Amendment Self-Incrimination Clause); Hopper v. Evans, 456 U.S. 605 (1982) (statute improperly forbidding trial court's giving a jury instruction on a lesser included offense in a capital case in violation of the Due Process Clause); Kentucky v. Whorton, 441 U.S. 786 (1979) (failure to instruct the jury on the presumption of innocence); Moore v. Illinois, 434 U.S. 220 (1977) (admission of identification evidence in violation of the Sixth Amendment Counsel Clause); Brown v. United States, 411 U.S. 223 (1973) (admission of the out-of-court statement of a nontestifying codefendant in violation of the Sixth Amendment Counsel Clause); Milton v. Wainwright, 407 U.S. 371 (1972) (confession obtained in violation of Massiah v. United States, 377 U.S. 201 (1964)); Chambers v. Maroney, 399

U.S. 42 (1970) (admission of evidence obtained in violation of the Fourth Amendment); Coleman v. Alabama, 399 U.S. 1 (1970) (denial of counsel at a preliminary hearing in violation of the Sixth Amendment Confrontation Clause)).

> In applying harmless-error analysis to these many different constitutional violations, the Court has been faithful to the belief that the harmless-error doctrine is essential to preserve the 'principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence, and promotes public respect for the criminal process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error.' "

Id. at 308 (quoting Delaware v. Van Arsdall, 475 U.S. 673, 681 (1986)).

South Carolina courts acknowledge the appropriateness of harmless error analysis in cases where procedural errors rather than defects in the trial mechanism itself affect a defendant's constitutional rights. See State v. Burkhart, 371 S.C. 482, ___, 640 S.E.2d 450, 454 n.3 (2007) (Pleicones, J. concurring in a separate opinion (citing Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992))); State v. Mouzon, 326 S.C. 199, 485 S.E.2d 918 (1997); State v. Jefferies, 316 S.C. 13, 21, 446 S.E.2d 427, 431-32 (1994); Taylor v. State, 312 S.C. 179, 181, 439 S.E.2d 820, 821 (1993); Arnold , 309 S.C. at 172, 420 S.E.2d at 842.

"Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained." State v. Pagan, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006) (citing Arnold, 309 S.C.at 172, 420 S.E.2d at 842 (1992)); State v. Mizzell, 349 S.C. 326, 333, 563 S.E.2d 315, 318-19 (2002); State v. Sherard, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991) ("Error in a criminal prosecution is harmless when it could not reasonably have affected the result of the trial."). "An error is not reversible unless it is material and

prejudicial to the substantial rights of the appellant." Visual Graphics Leasing Corp., Inc. v Lucia, 311 S.C. 484, 489, 429 S.E.2d 839, 841 (Ct. App. 1993).

No definite rule of law governs finding an error harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. State v. Gillian, 360 S.C. 433, 454-55, 602 S.E.2d 62, 73 (Ct. App. 2004) (citing State v. Reeves, 301 S.C. 191, 391 S.E.2d 241 (1990)); State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985); State v. Curry, 370 S.C. 674, 636 S.E.2d 649 (Ct. App. 2006); State v. Pagan, 357 S.C. 132, 591 S.E.2d 646 (Ct. App. 2004) aff'd as modified 369 S.C. 201, 631 S.E.2d 262 (2006). Whether an error is harmless depends on the particular facts of each case, including:

> the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course the overall strength of the prosecution's case.

Mizzell, 349 S.C. at 333, 563 S.E.2d at 318-19 (quoting Van Arsdall, 475 U.S. at 684).

For the error to be harmless, we must determine "beyond a reasonable doubt the error complained of did not contribute to the verdict obtained." Taylor, 312 S.C. at 181, 439 S.E.2d at 821 (citing Arnold, 309 S.C. at 165, 420 S.E.2d at 839); Jeffries, 316 S.C. at 22, 446 S.E.2d at 432; State v. Buckner, 341 S.C. 241, 247, 534 S.E.2d 15, 18 (Ct. App. 2000) (citing State v. Andrews, 324 S.C. 516, 479 S.E.2d 808 (Ct. App. 1996)). "[A]n insubstantial error not affecting the result of the trial is harmless where 'guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.' " Pagan, 369 S.C. at 212, 631 S.E.2d at 267 (quoting State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989)); State v. Adams, 354 S.C. 361, 381, 580 S.E.2d 785, 795 (Ct. App. 2003); see also State v. Primus, 349 S.C. 576, 564 S.E.2d 103 (2002) (holding assistant

solicitor's improper comment, during closing argument was harmless error, where evidence of guilt was overwhelming) overruled on other grounds; State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995) (noting this court will not set aside conviction for insubstantial errors not affecting result when guilt is conclusively proven by competent evidence, such that no other rational conclusion could be reached).

To warrant reversal based on the trial court's failure to give a requested jury instruction, the failure must be both erroneous and prejudicial. State v. Taylor, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003); State v. Patterson, 367 S.C. 219, 232, 625 S.E.2d 245, 239 (Ct. App. 2006) cert pending; State v. Harrison, 343 S.C. 165, 172, 539 S.E.2d 71, 74 (Ct. App. 2000) (citing State v. Hughey, 339 S.C. 439, 450, 529 S.E.2d 721, 727 (2000)). Prejudice to the appellant's case is a prerequisite to reversal of a verdict due to an erroneous jury charge. State v. Williams, 367 S.C. 192, 195-96, 624 S.E.2d 443, 445 (Ct. App. 2005); State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003); Brown v. Pearson, 326 S.C. 409, 417, 483 S.E.2d 477, 481 (Ct. App. 1997) (holding "[a]n error not shown to be prejudicial does not constitute grounds for reversal"). Failure to give requested jury instructions is not prejudicial error when the instructions given afford the proper test for determining the issues. State v. Burkhart, 350 S.C. 252, 263, 565 S.E.2d 298, 304 (2002) (citation omitted).

Arnold v. State provides a reviewing court with the accepted framework for analyzing a defective jury instruction for harmless error. 309 S.C. at 166, 420 S.E.2d at 838.

> To say that an error did not contribute to the verdict is, rather, to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record. . . .
>
> Before reaching such a judgment, a court must take two quite distinct steps. First, it must ask what evidence the jury actually considered in reaching its verdict ... [Secondly, the Court] must weigh the probative force of the evidence as against the probative force of the presumption standing alone.

Following Arnold, the court applied this bifurcated analysis in Taylor v. State and reversed the defendant's conviction for possession with intent to distribute crack cocaine and marijuana. 312 S.C. at 183, 439 S.E.2d at 822. The court determined the jury heard sufficient evidence on possession, but no direct evidence on intent to distribute. Instead, the State relied on statutory inferences of the defendant's intent. Id. at 182, 439 S.E.2d at 821. In light of the trial court's jury instructions, those inferences became presumptions that the defendant was required to rebut. Id. "While there was sufficient evidence from which the jury could have inferred the Petitioner's intent to distribute the cocaine and marijuana, we cannot say beyond a reasonable doubt the jury did not base its verdict on the erroneous jury charge. Id.

In State v. Jeffries, our supreme court considered an inadequate and confusing jury charge on an element of the crime of kidnapping. 316 S.C. at 22, 446 S.E.2d at 432. Accordingly, the court weighed the facts the jury actually heard against the trial court's confusing jury charge to determine what effect, if any, it had on the verdict. Id. Concluding the jury's confusion centered on a defense that had no support in view of the facts, the supreme court decided, beyond a reasonable doubt, that the jury verdict did not rest on the inadequate charge. Id. at 23, 446 S.E. 2d at 433.

Addressing the trial court's failure to instruct on good character evidence, our supreme court held the error was harmless when the whole record conclusively established the defendant's guilt. State v. Green, 278 S.C. 239, 240, 294 S.E.2d 335, 335 (1982). Concomitantly, in State v. Harrison, the Court of Appeals found the trial court's failure to issue a good character charge was not harmless error because the State did not present overwhelming evidence of the defendant's guilt. 343 S.C. at 175, 539 S.E.2d at 76. The State charged and tried Harrison for simple possession of cocaine. Harrison admitted he attempted to purchase cocaine but denied he ever possessed the substance. Id. Harrison submitted evidence of his community involvement with adolescents and testimony about the assistance he provided to two single mothers. Id. at 170, 539 S.E.2d at 73. The State's main evidence consisted of the arresting officer's testimony that he saw Harrison drop the drugs. Id. at 174, 539 S.E.2d at 75. Harrison requested an

instruction regarding the evidence of his good character, which the trial court denied. Id. at 173, 539 S.E.2d at 75. While deliberating, the jury repeatedly questioned the trial court, indicating it struggled significantly with the decision of Harrison's guilt. Id. We ruled the trial court's denial was reversible error:

> A different verdict might have been reached if the jury had been instructed that evidence of good character and good reputation may in and of itself create a doubt as to guilt and should be considered by the jury, along with all the other evidence, in determining the guilt or innocence of the defendant. The State did not present overwhelming evidence of Harrison's possession of cocaine, and did not try him for attempting to possess cocaine. Thus, the refusal to charge the requested instruction regarding evidence of good character and reputation was not harmless, but was reversible error.

Id. at 175, 539 S.E.2d at 76.

In the present case, the jury had before it evidence that Lee-Grigg signed a reimbursement request claiming she had incurred the relocation expenses. The State presented testimony that the City actually paid the costs of relocating the victim. Lee-Grigg professed she attempted to collect the funds because she believed the Chief had authorized her reimbursement. Furthermore, she asserted the Chief did not plan to claim reimbursement for the City's costs. Lee-Grigg averred she concealed the driver's signature and the Chief's initials on the City's fuel receipts to protect the victim's new location. At least two witnesses testified as to Lee-Grigg's good character and reputation in the community.

After deliberating an hour, the jury asked for clarification on the definition of criminal intent. The trial court recharged criminal intent. Subsequently, the jury notified the trial court it was deadlocked, with "six for

guilty, four not guilty, and two undecided." The trial court then issued an Allen charge.[1] Within an hour the jury returned a verdict of guilty.

Weighing the evidence the jury had before it against the failure of the trial court to issue the good character charge, we cannot conclude the trial court's error was harmless. The linchpin of Lee-Grigg's defense was her claim she lacked the criminal intent necessary to constitute the crime of forgery. She repeatedly testified the Chief authorized her claim for reimbursement and assured her the City would not attempt to recoup its costs. The Chief's testimony neither confirmed, nor denied Lee-Grigg's assertion. Because she relied on the Chief's authorization, Lee-Grigg contends she did not have the requisite intent to defraud.

Indubitably, the jury struggled with this case (to the point an Allen charge was given), and it seems fair to conclude the struggle centered around whether the State proved the critical element of criminal intent. In our view, the element of intent is inextricably connected to defendant's character. We cannot say, beyond a reasonable doubt, that the good character charge would not have made a difference in the outcome.

CONCLUSION

We hold the State provided direct and substantial circumstantial evidence to support the trial court's denial of Lee-Grigg's motion for directed verdict. We adhere to our established precedent that good faith is not a defense to forgery. We rule that Lee-Grigg was entitled to a jury instruction on good character and the trial court's failure to issue that instruction was reversible error.

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[1] An Allen charge is "an instruction advising deadlocked jurors to have deference to each other's views, that they should listen, with a disposition to be convinced, to each other's argument; deriving its name from the case of Allen v. United States, 164 U.S. 492 (1896)." Black's Law Dictionary, 74 (6th ed. 1990).

Accordingly, the trial court's ruling on the request to charge evidence of good character is

REVERSED.

KITTREDGE and SHORT, JJ., concur.