

C Gordon v. State
Miss., 1984.

Supreme Court of Mississippi.
Curtis GORDON and John Keith Henry
v.
STATE of Mississippi.
No. 54475.

Oct. 31, 1984.

Defendants were convicted in the Circuit Court, Newton County, John W. Prewitt, Sr., Special Judge, of receiving money by false pretenses, and they appealed. The Supreme Court, Walker, P.J., held that evidence, which failed to indicate that company issuing certain rebate checks was injured or suffered any detriment as result of transactions involving defendants, was insufficient to support the convictions.

Reversed and defendants discharged.

West Headnotes

[1] False Pretenses 170  **1**

170 False Pretenses

170k1 k. Nature of Offense in General. [Most Cited Cases](#)

In order to sustain a conviction for receiving money by false pretenses, there must be a showing that the pretenses were false, that defendant knew them to be false and that the pretenses were the moving cause by which the money was obtained. [Code 1972, § 97-19-39](#).

[2] False Pretenses 170  **49(3)**

170 False Pretenses

170k49 Weight and Sufficiency of Evidence

170k49(3) k. False Token or Pretense or Other Instrument or Means. [Most Cited Cases](#)

Evidence, which failed to show that company which issued rebate checks was injured or suffered any detriment, was insufficient to sustain convictions for receiving money by false pretenses, in regard to seven rebate checks which were prepared under supervision of the issuing company's employee who was district sales manager at time the rebates were made. [Code 1972, § 97-19-39](#).

***739** James E. Smith, Jr., Smith & Smith, Carthage, Percy S. Stanfield, Merrida P. Coxwell, Stanfield, Carmody, Coxwell & Creel, ***740** David E. Holderfield, Jackson, for appellant.

Bill Allain, Atty. Gen. by Anita Mathews Stamps, Sp. Asst. Atty. Gen., Jackson, for appellee.

Before WALKER, P.J., and PRATHER and SULLIVAN, JJ.

WALKER, Presiding Justice, for the Court:

Curtis Gordon and John Keith Henry appeal their convictions of receiving money by false pretenses and judgment of the Circuit Court of Newton County, Mississippi. Gordon was convicted of seven counts of receiving money by false pretenses. Henry was indicted on seven counts but was only convicted of three. The court granted his motion for a directed verdict on the last four counts of the indictment at the conclusion of the State's case. Both Gordon and Henry were fined \$10,000 and sentenced to serve a term of three years confinement for each count, the terms to run concurrently.

This cause came about as a result of seven rebate checks issued by Massey Ferguson, Inc. on tractors which had

been purchased from G & H Equipment. Gordon was the manager of G & H and Henry was an attorney who had an office in the same building as G & H.

Gordon and Henry were convicted pursuant of [Mississippi Code Annotated section 97-19-39](#) which reads:

Every person who, with intent to cheat or defraud another, shall designedly, by color of any false token or writing, or by another false pretense, obtain the signature of any person to any written instrument, or obtain from any person any money, personal property, or valuable thing, upon conviction thereof, shall be punished by imprisonment in the penitentiary not exceeding three years, or in the county jail not exceeding one year, and by fine not exceeding three times the value of the money, property or thing obtained.

[1] In order to sustain a conviction under [section 97-19-39](#) there must be a showing that the pretenses were false, that the appellant knew them to be false and that the pretenses were the moving cause by which the money was obtained. [Neece v. State, 210 So.2d 657 \(Miss.1968\)](#); [Hughes \(and Travis\) v. State, 326 So.2d 469 \(Miss.1976\)](#).

In [Carter v. State, 386 So.2d 1102, 1106 \(Miss.1980\)](#), citing [Bruce v. State, 217 Miss. 368, 374, 64 So.2d 332, 334 \(1953\)](#), this Court said:

Without regard to whatever offense the defendant may have been guilty of, it is well-settled under our decisions and by the textwriters that in order for one to be guilty of obtaining money under false pretenses, he must obtain the property of another by the false pretenses and to the *detriment or injury of the person from whom he obtains the same*. (Emphasis added).

[2] The proof offered by the State in the present case failed to sustain the required element of the offense that Massey Ferguson sustained a detriment or injury. To the contrary, the testimony offered by the appellants showed that the rebate applications were prepared under the supervision of an employee of Massey Ferguson, George Hayes, who was district sales manager at the time the rebates were made. The State failed to present any witness from Massey Ferguson who testified that Massey Ferguson was injured or suffered any detriment as a result of the transactions.

The case should never have been presented to the jury. The motion for a peremptory instruction should have been sustained. Consequently, this cause must be reversed and the appellants discharged.

REVERSED AND APPELLANTS DISCHARGED.

PATTERSON, C.J., and BOWLING, HAWKINS, DAN M. LEE, PRATHER, ROBERTSON and SULLIVAN, JJ., concur.

ROY NOBLE LEE, P.J., not participating.

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