RECEIVED
Feb 02 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
Court of General Sessions
Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2023-001578

John Alexander Webb,.....Appellant,

vs.

The State,.....Respondent.

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL:

1) **Indictments;**

2) **Sentencing sheets;**

3) **Motion for New Trial and/or Judgment in Arrest of Verdicts;**

4) **Transcript April 22 and 23, 2019 all pages;**

5) **Transcript June 18, 2019 all pages;**

6) **Order Granting Motion in Arrest of Judgment;**

7) **Motion to Reconsider; and**

8) **Order Denying Motion to Reconsider.**

The undersigned hereby certifies this designation contains no matter which is irrelevant to this appeal.

Lacey Thompson
Thompson and Hiller Defense Firm
Attorney for the Defendant
604 16th Ave. North
Myrtle Beach, S.C. 29577
Phone: 843-444-6122
lthompson@grandstrandlaw.com

Attorney for Appellant Alexander John Webb

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on JUNE 22, 2017, the Grand Jurors of Horry County present upon their oath:

VIOLATION OF DRUG DISTRIBUTION LAW

CDR: 0561 44-53-0390

That John Alexander Webb did, in Horry County on or about October 27, 2016, knowingly and intentionally prescribe/obtain a quantity of Triazolam being a Schedule IV controlled drug, pharmaceutical preparation, chemical or chemical compound that is restricted in regard to its sale at retail, as defined by Section 39-23-20, et. seq., S. C. Code of Laws, 1976, as amended, by furnishing false or fraudulent material information in, or omitting any material information relating to Alexandria C. from, any application, report, or other document required to be kept or filed under this article, or any record required to be kept by this article in violation of Section 44-53-390, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Derek Strickland S C DHEC - Bureau of Drug Conrol

Derek Strickland

ARREST WARRANT NUMBER

A2610200648
CDR: 0561 44-53-0390
DOA: 3/10/2017

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: JUN 22 2017

DICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017-GS-26- 03144

The State of South Carolina

County of Horry

Joshua D. Holford 17H01830

COURT OF GENERAL SESSIONS

JUNE, 2017 TERM

THE STATE

vs.

John Alexander Webb
W/ M
1749 West Billy Farrow Hwy
Hartsville, SC 29550
DOB: 1976-04-29
SSN: 248654723

ATTORNEY: Francis A. Humphries Jr.

Indictment for

VIOLATION OF DRUG DISTRIBUTION LAW

Jimmy A. Richardson, II, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on JUNE 22, 2017, the Grand Jurors of Horry County present upon their oath:

VIOLATION OF DRUG DISTRIBUTION LAW

CDR: 0561 44-53-0390

That John Alexander Webb did, in Horry County between April 8, 2016 and October 15, 2016, knowingly and intentionally obtain/prescribe a quantity of PHENTERMINE being a Schedule IV controlled drug, pharmaceutical preparation, chemical or chemical compound that is restricted in regard to its sale at retail, as defined by Section 39-23-20, et. seq., S. C. Code of Laws, 1976, as amended, by furnishing false or fraudulent material information in, or omitting any material information relating to Kristy S. from, any application, report, or other document required to be kept or filed under this article, or any record required to be kept by this article, in violation of Section 44-53-390, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Derek Strickland S C DHEC - Bureau of Drug Conrol

Derek Strickland

ARREST WARRANT NUMBER

A2610200649

CDR: 0561 44-53-0390

DOA: 3/10/2017

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: JUN 22 2017

DICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-26- 03145

The State of South Carolina

County of Horry

Joshua D. Holford 17H01830

COURT OF GENERAL SESSIONS

JUNE, 2017 TERM

THE STATE

vs.

John Alexander Webb
W/ M
1749 West Billy Farrow Hwy
Hartsville, SC 29550
DOB: 1976-04-29
SSN: 248654723

ATTORNEY: Francis A. Humphries Jr.

Indictment for

VIOLATION OF DRUG DISTRIBUTION LAW

Jimmy A. Richardson, II, Solicitor

ORIGINAL

297

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on JUNE 22, 2017, the Grand Jurors of Horry County present upon their oath:

VIOLATION OF DRUG DISTRIBUTION LAW

CDR: 0561 44-53-0390

That John Alexander Webb did in Horry County on or about July 7, 2016 knowingly and intentionally obtain/prescribe a quantity of PHENTERMINE being a Schedule IV controlled drug, pharmaceutical preparation, chemical or chemical compound that is restricted in regard to its sale at retail, as defined by Section 39-23-20, et. seq., S. C. Code of Laws, 1976, as amended, by furnishing false or fraudulent material information in, or omitting any material information relating to Renee J. from, any application, report, or other document required to be kept or filed under this article, or any record required to be kept by this article, in violation of Section 44-53-390, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Derek Strickland S C DHEC - Bureau of Drug Conrol

Derek Strickland

REST WARRANT NUMBER

7A2610200646
CDR: 0561 44-53-0390
DOA: 3/10/2017

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
te: JUN 22 2017

RDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017-GS-26- 03146

The State of South Carolina

County of Horry

Joshua D. Holford 17H01830

COURT OF GENERAL SESSIONS

JUNE, 2017 TERM

THE STATE

vs.

John Alexander Webb
W/ M
1749 West Billy Farrow Hwy
Hartsville, SC 29550
DOB: 1976-04-29
SSN: 248654723

ATTORNEY: Francis A. Humphries Jr.

Indictment for

VIOLATION OF DRUG DISTRIBUTION LAW

Jimmy A. Richardson, II, Solicitor

ORIGINAL

299

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)
STATE VS.)
John Alexander Webb)
AKA:)
Race: WHITE Sex: M Age: 42)
DOB: [redacted])
Address:)
City,State,Z)
DL#: SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS2603144
A/W#: 2017A2610200648
Date of Offense: 7/7/2016
S.C. Code § : 44-53-0390
CDR Code #: 0561

FILED
2019 APR 23 P 6:22
CLERK OF COURT
HORRY COUNTY, S.C.

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Obtain Control Subst by Fraud or Dist of Imitation Controlled Subs(Up to 5 years or $10,000)
in violation of § 44-53-0390 of the S.C. Code of Laws, bearing CDR Code # 0561
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: [signature]

FOR Walter, Mary-Ellen — SC103036 (SC Bar#) — Defendant — Humphries Jr., Francis A. Attorney for Defendant — SCB12921 (SC Bar#)

WHEREFORE, the Defendant is commited to the ☐ ~~State Department of Corrections,~~ ☒ **County Detention Center,**
for a determinate term of ~~90~~ 1 YEAR ~~days/months/years~~ or ☐ ~~under the Youthful Offender Act~~ not to exceed _____ years.
~~and/or to pay a fine of $ _____~~; provided that upon the service of SERVICE OF 90 DAYS ~~days/months/years and/or~~ payment
~~of $ _____; plus~~ costs and assessments as applicable*; the balance is suspended with **probation** for one
~~months/years~~ and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐**Deferred** ☐**Def. Waives Hearing** ☐**Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$ 150.00
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		8.25
TOTAL		283.25

PTUP Performance PSE
240 days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp.
May serve W/E begining) 5/3/19
Substance Abuse Counseling ☒
Random Drug/Alcohol testing ☒
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ 25.00 beginning 9-3-19
$ _____ paid to Public Defender Fund
Other: 0

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk: Renee Elvis
Court Reporter: Sallie Beth Tew
Presiding Judge: [signature]
Judge Code: 20003
Sentence Date: 4/23/19

SCCA/217 (04/2018)

STATE OF SOUTH CAROLINA

COUNTY OF Horry
STATE VS.
John Alexander Webb
AKA:
Race: WHITE Sex: M Age: 42
DOB: [redacted]
Address: [redacted]
City,State,Zi[redacted]
DL#: [redacted] SID#:
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS2603145
A/W#: 2017A2610200649
Date of Offense: 10/15/2016
S.C. Code § : 44-53-0390
CDR Code #: 0561

SENTENCE SHEET

2019 APR 23 PM 6:22
FILED
RENEE ELVIS
CLERK OF COURT
HORRY COUNTY, SC

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Obtain Control Subst by Fraud or Dist of Imitation Controlled Subs(Up to 5 years or $10,000)
in violation of § 44-53-0390 of the S.C. Code of Laws, bearing CDR Code # 0561
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

For Walter, Mary-Ellen	SC103036 SC Bar#	Defendant	Humphries Jr., Francis A. Attorney for Defendant	SCB12921 SC Bar#

WHEREFORE, the Defendant is commited to the ☐ ~~State Department of Corrections~~, ☑ County Detention Center, for a determinate term of 40 1 YEAR days/~~months/years~~ or ☐ ~~under the Youthful Offender Act not to exceed~~ ~~years~~ ~~and/or to pay a fine of $~~ _____; ~~provided that upon the service of~~ ~~Presided upon~~ UPON SERVICE OF 40 DAYS days/months/years ~~and/or payment of $~~ _____; ~~plus~~ costs and assessments as applicable*; the balance is suspended with **probation** for One ~~months/years~~ and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$ 150.00
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		8.25
TOTAL		283.25

PTUP Performance of PSE
240 ~~days~~/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp.
May serve W/E begining 5/3/19
Substance Abuse Counseling ☑
Random Drug/Alcohol testing ☑
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ 25.00 beginning 9-3-19
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Renee Elvis
Court Reporter: Sallie Beth Todd

Presiding Judge [signature]
Judge Code: 20603
Sentence Date: 4/23/19

SCCA/217 (04/2018)

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)
STATE VS.)
John Alexander Webb)
AKA:)
Race: WHITE Sex: M Age: 42)
DOB: [redacted])
Address:)
City,State,Zi)
DL#: [redacted] SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS2603146
A/W#: 2017A2610200646
Date of Offense: 10/27/2016
S.C. Code § : 44-53-0390
CDR Code #: 0561

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Obtain Control Subst by Fraud or Dist of Imitation Controlled Subs (Up to 5 years or $10,000)
in violation of § 44-53-0390 of the S.C. Code of Laws, bearing CDR Code # 0561
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. ____ (defendant's initials)
The plea is: ☑ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: FJR Walter, Mary-Ellen — SC103036 SC Bar# — Defendant — Humphries Jr., Francis A. Attorney for Defendant — SCB12921 SC Bar#

WHEREFORE, the Defendant is commited to the ☐ ~~State Department of Corrections,~~ ☑ **County Detention Center,**
for a determinate term of 90 ~~days/months/years~~ or ☐ ~~under the Youthful Offender Act not to exceed~~ ____ ~~years~~
~~and/or to pay a fine of $~~ ____; provided that upon the ~~service of~~ SERVICE OF 90 DAYS ~~days/months/years and/or~~ payment
of $ ____, ~~plus~~ costs and assessments as applicable*; the balance is suspended with **probation** for GNR
~~months/years~~ and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, ~~which are~~ incorporated by reference.
☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: ____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐**Deferred** ☐**Def. Waives Hearing** ☐**Ordered** **PTUP** of PSE
Total: $ ____ plus 20% fee: ____ $ ____
Payment Terms: ____
☐ Set by SCDPPPS ____
Recipient: ____

240 ~~days~~/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. ____
May serve W/E(begining) 5/3/19
Substance Abuse Counseling ☑
Random Drug/Alcohol testing ☑
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ 25.00 beginning 9-3-19
$ ____ paid to Public Defender Fund
Other: ____

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$ 150.00
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		8.25
TOTAL		283.25

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk: Renee Elvis
Court Reporter: Sallie Beth Trew
Presiding Judge: [signature]
Judge Code: 20 C03
Sentence Date: 4/23/19

SCCA/217 (04/2018)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF HORRY	)	INDICTMENT NOS. 2017-GS-26-3144-46
	)	
STATE	)	MOTION FOR NEW TRIAL AND/OR
	)	JUDGMENT IN ARREST OF VERDICT
versus	)	
	)	
JOHN ALEXANDER WEBB	)	
	)	
Defendant	)	
	)	

HORRY COUNTY
2019 APR 26 P 2:22
RENEE R. WARD
CLERK OF COURT
HORRY COUNTY, SC

By leave of the Court and with the consent of the State, the Defendant now moves in writing for a New Trial and/or Judgment in Arrest of Verdict in the above captioned matter.

On April 23, 2019, Defendant was found guilty by a jury of his peers of all charges in the above captioned indictments. As a result, Defendant was sentenced to one (1) year suspended upon the service of ninety (90) days, which may be served on weekends, and one (1) year probation, the conditions of which are that the Defendant perform 240 hours of Public Service, probation to terminate upon completion and the Defendant participate in substance abuse counseling should he be instructed to do so by Probation. Defendant was sentenced consistently on each indictment and those sentences ran concurrently.

At the end of the State's case, Defendant moved for Directed Verdict based on the State's absolute failure to offer any evidence of direct reference to any statute within Article 3 of Title 44 and Chapter 53 of the Code of Laws of South Carolina, 1976, as amended, or any rule issued by the Department of Health and Environmental Control as specifically required by Section 44-53-390 (a)(4) and Section 44-53-340 of the Code of Laws of South Carolina, 1976, amended, the statutes under which the Defendant was charged. The Court denied that motion.

After the Defendant rested his case after offering no evidence, the Defendant renewed his motion for Directed Verdict on the same grounds which was also denied. After the verdicts were returned, but before the sentences were given by the Court, Defendant renewed his motion for Directed Verdict. The Court did not rule on Defendant's motion at that time, but granted Defendant the opportunity to file this motion and any other post trial motions in writing within ten (10) days of the verdicts and sentences.

Defendant moves upon the same grounds stated above for a New Trial and/or Judgment in Arrest of Verdict requesting the Court act as Thirteenth Juror and set aside the verdicts of the jury in this matter and enter verdicts of Not Guilty on all indictments as the terms of the statute under which the Defendant was indicted and tried are strictly construed against the State and in favor of the Defendant. The record at trial is clear the State failed to directly reference in testimony or other evidence any statute contained within the mandated article or any rule issued by the Department of Health and Environmental Control setting out record keeping requirements. Having failed to do so, the State failed in its burden to establish the existence of any evidence meeting these material elements of the offense, even in the light most favorable to the State. The Defendant was entitled to a directed verdict of not guilty on all indictments upon which he was tried. By this motion, the Defendant now respectfully requests the Court set aside the verdicts of the jury and its sentences and enter verdicts of not guilty on all indictments or, in the alternative, grant the Defendant a new trial.

I SO MOVE:

FRANCIS A. HUMPHRIES, JR.
COUNSEL FOR DEFENDANT

1300 Professional Drive, Suite 102
Myrtle Beach, South Carolina 29577
(843) 946-6556
fhumphries@myrtlebeachlawfirm.net
SC Bar No. 012921

Myrtle Beach, South Carolina

April 25, 2019

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF GENERAL SESSIONS**
COUNTY OF HORRY	)	**2017-GS-26-3144, 3145 & 3146**
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
Vs	)	**Transcript of Record**
	)	
JOHN WEBB,	)	**April 22 & 23, 2019**
	)	
Defendant.	)	
	)	

B E F O R E:

The Honorable Alexander S. McCauley
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

George Henry Martin, Esquire
Seth Oskin, Esquire
Attorney for State

Fran Humphries, Esquire
Attorney for Defendant

Sallie Beth Todd
Circuit Court Reporter

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
DEREK STRICKLAND				
By Mr. Martin	34			
SHERIDON SPOON				
By Mr. Martin	112		121	
By Mr. Humphries		118		
VICTOR COLLIER				
By Mr. Martin	123			
By Mr. Humphries		126		
BILLY DAVIS				
By Mr. Martin	127		132	
By Mr. Humphries		131		
CONNIE WILLIAMS				
By Mr. Oskin	138			
LEONARD CUMMINGS				
By Mr. Oskin	144			
By Mr. Humphries		147		
KATE BIRRINGER				
By Mr. Oskin	150		156	
By Mr. Humphries		154		
KARISSA PROCTOR				
By Mr. Oskin	157			
By Mr. Humphries		160		

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
DEREK STRICKLAND				
By Mr. Martin	162		182	
By Mr. Humphries		177		

Certificate of Court Reporter 247

E X H I B I T S

No.	DESCRIPTION	ID	EV	PAGE
CRT 1	Unredacted Audio of Defendant		X	37
CRT 2	Stipulation of Parties		X	81
CRT 3	2nd Stipulation of Parties		X	138
ST 1	Redacted Audio of Defendant		X	134
ST 2	Walgreens Prescription		X	147
ST 3	CVS Prescription		X	153
ST 4	K-Mart Prescription		X	158

THE COURT: Good afternoon, ladies and gentlemen. My name is Alex McCaulay. I am the retired active Judge from the 10th Judicial Circuit in South Carolina which includes Oconee County, which is my residence, and Anderson County. I have been asked this week to serve as the presiding Judge over a term of general sessions court sometimes called criminal court here in Horry County. The purposes is to resolve questions of alleged criminal conduct arising between the State of South Carolina and the defendant in a fashion which will insure that justice under the law is accomplished. The trial of the case begins with the selection of the jury. Both the State and the defendant are entitled to jurors who approach the case with an open mind. The trial jury must be free as humanly possible from any bias, prejudice or sympathy for either side and free from any preconceived ideas on the law or the facts of the case. Therefore, certain questions will be asked of you the jury panel. The questions which will be asked are designed to ensure that each side has a fair and impartial jury. I'd like to note further, if any person should talk with you or attempt to talk with you about any case scheduled for this term of court, it would be your solemn duty to immediately report them to the Court. Now, we will begin with the selection of the trial jury.

Now, is there any member of the jury panel that cannot hear me? If so, would you please raise your right hand?

That's a right interesting question because if you couldn't hear me you wouldn't know to raise your right hand. Now, if there is anybody who cannot understand me or who wants me to speak louder or more distinctive, please do so.

Mr. Solicitor, you may call your first case.

MR. OSKIN: At this time, Your Honor, the State of South Carolina would bring their case to trial in the matter of The State of South Carolina versus John Webb.

THE COURT: Ladies and gentlemen of the jury panel, please give me your attention. We are about to commence the trial of the case entailed the State of South Carolina versus John Alexander Webb charged in the bills of indictment with violation of drug distribution law. Now, the Defendant John Alexander Webb is represented by Mr. Humphries.

Mr. Humphries, if you would please stand and introduce your client.

MR. HUMPHRIES: I will.

This is my client, John Alexander Webb. For the purposes of introduction and jury qualification, he is originally from the Hartsville area. He's lived in the Myrtle Beach area and currently resides in the Boston, Massachusetts area.

THE COURT: Thank you very much.

MR. HUMPHRIES: Thank you, Judge.

THE COURT: The State is represented by Mr. Martin and Mr. Oskin, if you would please stand and represent yourself

and anyone else that might be assisting you in the prosecution of this case.

MR. MARTIN: Yes, sir. I'm George Henry Martin. I'm a solicitor here in the 15th Judicial Circuit.

MR. OSKIN: I'm Seth Oskin, also an assistant solicitor in the 15th Circuit, that's Horry and Georgetown County. With us is the case agent Derek Strickland and Investigator Angela Wallace.

THE COURT: Alright, if you would please stand and look upon the jury. Thank you very much. I ask witnesses or potential witnesses to stand and look upon the jury because these days and times, and in fact I understand that Horry County is particularly growing in number, so we don't know everybody by their names but might recognize their faces. So, whenever you are asked to stand if you would please look upon the jury.

MR. HUMPHRIES: Judge, if I may interject, perhaps it's best I introduce myself as well. I neglected to do that with my client. But just for the purposes of ---

THE COURT: If you would, please, yes.

MR. HUMPHRIES: Thank you.

My name is Fran Humphries. I'm a partner at the law firm of Monckton, Hembree and Humphries. My partners are Billy Monckton and Senator Greg Hembree. We practice primarily personal injury, worker's comp., criminal defense. Just for

qualification, prior to starting in private practice I was the chief deputy solicitor in this jurisdiction and a 24 year State prosecutor. I also serve as counsel for the Sherriff here and the city prosecutor for North Myrtle Beach.

THE COURT: Thank you very much.

MR. HUMPHRIES: Thank you, Your Honor.

THE COURT: Now, the State intends to call several witnesses. These are what we call potential witnesses. They do not have to be called but they may be called. They are not to determine anything other than if you have any knowledge of these particular witnesses. And if the witnesses are in the courtroom if they'd please stand when their names are called and, again, look upon the jury.

Inspector Angela Wallace. Thank you, ma'am.

Inspector Derek Strickland. Thank you, sir.

Sheridon Spoon. I think she -- or he is with the South Carolina Board of Medical Examiners.

MR. OSKIN: That's correct, Your Honor.

THE COURT: Victor Collier. Billy Davis. Connie Williams. I think they are with the Grand Strand Regional Medical Center.

MR. OSKIN: That's right as well, Your Honor.

THE COURT: And Kate Radzevick Birringer.

MR. OSKIN: Yes, sir.

THE COURT: Leonard Cummings and Karissa Proctor. If any

of those are in the courtroom, if they would please stand, who have not already stood, and look upon the jury.

And as I understand it, the defendant will be testifying?

MR. HUMPHRIES: That's correct, Your Honor.

THE COURT: Or may testify.

MR. HUMPHRIES: Correct.

THE COURT: Excuse me. I'm sorry.

MR. HUMPHRIES: No worries. Thank you, sir.

THE COURT: Alright. Is any member of the jury panel related by blood or marriage or a close personal friend or business associate of the defendant, John Alexander Webb? If so, please stand.

Is any member of the jury panel, or a member of their immediate family, excuse me -- is any member of the jury panel a member of the Grand Jury for the County of Horry for the year 2017? If so, please stand. Now, you have to forgive me because I almost slipped up. I'm from Oconee County and it has a lot in common with Horry County even though we're at the opposite ends of the state. Oconee and Horry have the silent H in their name. The only problem is Oconee couldn't afford the silent H so it's still Oconee so please forgive me.

Is any member of the jury panel expressed an opinion about this case or -- well, I just asked you, has any member of the jury panel expressed an opinion about this case?

Has any member of the jury panel heard anything about

this case that might affect their ability to be fair and impartial to both the State and defendant? If so, please stand.

Yes, ma'am. Your name, please?

JUROR 11: Brenda Forrest.

THE COURT: Without asking you what that might be, can you lay aside any outside knowledge or any information received prior to the trial from any source whatsoever and setting aside such knowledge or information render a fair and impartial verdict based solely on the law and the evidence presented and received over the trial of this case?

JUROR 11: I am currently employed at Grand Strand Medical Center.

THE COURT: Alright, would that affect your ability to give both the State and defendant a fair and impartial trial?

JUROR 11: Yes.

THE COURT: Very good. By the way, you may have a seat.

That is exactly the question that we need to have answered. I explain to people that everyone in this courtroom is here for some other reason other than being subpoenaed. None of you asked to serve on a jury so therefore I want to be sure that not only the parties have a fair and impartial jury but I want to be sure that you as jurors if you're called on in the trial of the case that you can be a fair and impartial without in any way being compromised in your thoughts or

opinions by reason of your knowledge of other people or of matters that might be brought up not as a part of the case. So, I thank you very much, ma'am, because that is exactly the answer that I would want. So, if anybody has any reservation at all about serving, please let me know because both parties, the State and defendant, are entitled to a fair and impartial jury. But you're also entitled not to have to be put in an unfair position or to make compromises.

Alright, is any member of the jury panel a close personal friend -- I'm not sure if I asked this -- a close personal friend, business associate or related by blood or marriage now or formally with any of the potential witnesses that might be called in this case? If so, please stand.

Alright, does either the State or the defendant have any additional questions? From the State?

MR. OSKIN: Nothing from the State, Your Honor.

THE COURT: From the defense?

MR. HUMPHRIES: No, sir. Thank you, Your Honor.

THE COURT: Alright, the way we select a jury in general sessions is that the clerk will prepare -- do you have a list?

CLERK: Yes, sir.

THE COURT: And this is done by the computer, so it's done randomly. And what we will do is as each of your names is called if you would come forward and stand in front of the courtroom and look back on the jury. And in this case I think

the case has five strikes.

MR. MARTIN: That is correct, Your Honor.

THE COURT: Defense has five?

MR. HUMPHRIES: Yes, sir, Your Honor.

THE COURT: Do you want an alternate?

MR. HUMPHRIES: I'll waive an alternate, Court's preference, Your Honor.

MR. OSKIN: The State would request one, Your Honor.

THE COURT: Alright, and that would be two and one.

MR. OSKIN: Yes, sir, Your Honor.

THE COURT: Alright. Madam Clerk, if you would please present the jury.

CLERK: Yes, sir.

THE COURT: As your name is called if you'd bring whatever you have with you to the front and look back towards the courtroom. The defense goes first and then the State -- State presents and then the defense goes. Alright. The State will present the juror and the defense either will seat the juror or excuse the juror, that way we will get 12 and then we will also have one alternate. Very good.

CLERK: Juror number 28, Alfred Baver.

What say the State?

MR. OSKIN: Please present this juror.

CLERK: Defense?

MR. HUMPHRIES: Please excuse the juror from the trial of

this case.

CLERK: You're excused from this particular case.

Juror number 255, Cheryl Patitucci.

MR. HUMPHRIES: I'm sorry, the juror number again.

CLERK: Juror number 255.

MR. HUMPHRIES: Thank you.

CLERK: What say the State?

MR. OSKIN: Please present this juror.

CLERK: Defense?

MR. HUMPHRIES: Please seat the juror.

CLERK: Please be seated in the jury box.

Juror number 111, Matthew Featherston.

What say the State?

MR. OSKIN: Please present this juror.

CLERK: Defense?

MR. HUMPHRIES: Please seat the juror.

CLERK: Please be seated in the jury box.

Sixteen, Mark Arnott.

What say the State?

MR. OSKIN: Please excuse this juror.

CLERK: You're excused from this particular case.

Fifty Four, Windy Buffkin.

What say the State?

MR. HUMPHRIES: Please present the juror. I'm sorry, that's what I used to do. I beg your pardon.

MR. OSKIN: The State will present the juror as well.

MR. HUMPHRIES: I will seat the juror.

CLERK: Please be seated in the jury box.

MR. HUMPHRIES: It happens every time.

CLERK: Juror number 316, Jason Taska.

What say the State?

MR. OSKIN: Present this juror, please.

CLERK: Defense?

MR. HUMPHRIES: Seat the juror, please.

CLERK: Please be seated in the jury box.

Forty, Theresa Borgeson.

What say the State?

MR. OSKIN: Please present this juror.

CLERK: Defense?

MR. HUMPHRIES: Please seat the juror.

CLERK: Please be seated in the jury box.

Three twenty seven, Nicole Tropauer.

What say the State?

MR. OSKIN: Please excuse this juror.

CLERK: You're excused from this particular case.

Twenty, Nathan Baker.

What say the State?

MR. OSKIN: Please present this juror.

CLERK: Defense?

MR. HUMPHRIES: Please seat the juror.

CLERK: Please be seated in the jury box.

Fifty, Tammy Brown.

What say the State?

MR. OSKIN: Please present this juror.

CLERK: Defense?

MR. HUMPHRIES: Please seat the juror.

CLERK: Please be seated in the jury box.

Juror number 149, Peter Gorry.

What say the State?

MR. OSKIN: Please present this juror.

CLERK: Defense?

MR. HUMPHRIES: Please seat the juror.

CLERK: Please be seated in the jury box.

Two ninety four, Erik Short.

What say the State?

MR. OSKIN: Please present this juror.

CLERK: Defense?

MR. HUMPHRIES: Please seat the juror.

CLERK: Please be seated in the jury box.

Three thirty seven, Jordan Wardell.

What say the State?

MR. OSKIN: Please present this juror.

CLERK: Defense?

MR. HUMPHRIES: Please seat the juror.

CLERK: Please be seated in the jury box.

Ninety one, Jonathan Deemer.

What say the State?

MR. OSKIN: Please present this juror.

CLERK: Defense?

MR. HUMPHRIES: Please seat the juror.

CLERK: Please be seated in the jury box.

Three hundred eight, Mark Stasen.

MR. MARTIN: Madam Clerk, can you repeat the juror number, please?

CLERK: Sure, 308.

What say the State?

MR. OSKIN: Please present this juror.

CLERK: Defense?

MR. HUMPHRIES: Please seat the juror.

CLERK: Please be seated in the jury box.

Do you want me to move one to the alternate?

THE COURT: Yes, please, two and one.

CLERK: Juror number 222, Lisa McDowell.

What say the State?

MR. OSKIN: Please present this juror.

CLERK: Defense?

MR. HUMPHRIES: Please seat the juror.

CLERK: Please be seated in the jury box.

THE COURT: Alright, is there any reason this jury cannot be sworn for the trial of this case from the State?

MR. OSKIN: No reason, Your Honor.

MR. HUMPHRIES: Nothing from the defense.

THE COURT: Very well. Ladies and gentlemen of the jury that's just been sworn, I'm going to ask you to retire to the jury room at this time and from the first 12 drawn, and that will excuse you Ms. McDowell from voting. Not excuse you from the jury but just the first 12 I want you to elect a foreperson for the jury. In other words, it doesn't have to be unanimous but whoever will be the one that I will look to, that will always sit at the front on the first row on this end. They will be the one that will conduct the deliberations when the time comes for a verdict to be rendered. So with that, if you would please retire to the jury room and elect a foreperson and once you have done that if you will knock on the door and you can come back in and I will receive the decision. Again, do not undertake the discussion of this case among yourselves in any way, please.

(JURY RETIRES TO JURY ROOM AT 12:52PM)

THE COURT: Alright, may I see the solicitor and the defense.

(BENCH CONFERENCE)

THE COURT: Ladies and gentlemen of the jury panel that were not called at the trial of this case, I'm going to excuse you for the balance of the day. However, I'm going to ask you to call back after 6:00 this evening. Your Clerk of Court has

provided a system where you don't have to sit in the courthouse all day, each day but if your service is not needed as a juror then you can just check in. I understand that you've been given telephone numbers for a telephone here in the courthouse. Does everyone have that telephone number? If not, raise your hand and we'll get one for you. It's on the pink slip. Does everybody have the pink slip? Anybody that does not have the pink slip with the telephone number, we'll get you a copy. Call that number after 6:00, in other words, a message will be put on about 6:00. But do not call before and if the line is busy keep trying until you finally get the message. It will be on all night, it's on a recording device. Now, of course if you don't get the message from an answering machine, you'll have to get it from me tomorrow morning at 9:00. So, I think you'd rather get the message -- your chances are better at being accommodated by getting the message from the answering machine. Otherwise, as I say you'll have to report at 9:00 in the morning and get the message from me. With that I'm going to excuse you for the balance of the day. I look forward to working with you. We do have other cases to be tried this week. However, I do want to thank you for your service this week as jurors. As our system of justice would not function without citizen participation, your willingness to be here and to undertake that duty makes it possible. What we have might not be a

perfect system, but it's been the best system that's ever been devised as far as history has shown. I might note that the late Prime Minister Winston Churchill in Great Britain during World War II said, the greatest duty a citizen can perform outside of military service is as a juror to make the system of justice work. I do thank you for accepting and I do appreciate your service as jurors. With that I will excuse you.

Alright, I'll announce the results of the election, juror number 54, Windy C. Buffkin will be the foreperson of the jury.

Alright, anything from the State before we bring the jury back?

MR. OSKIN: Nothing at this time, Your Honor.

THE COURT: From the defense?

MR. HUMPHRIES: No, sir. Thank you.

THE COURT: Alright. Ask the jury to join us, please.

(JURY ENTERS COURTROOM AT 12:57PM)

THE COURT: Alright, let the record reflect that the jury is in the jury box. It's my understanding that the foreperson will be number 54, Windy C. Buffkin. And, Ms. Buffkin, if you would please always sit in that seat. And, Ms. McDowell, you are the alternate so if you'll always sit in that seat. Otherwise, all of the other seats are not assigned to anyone. Those two seats I need to know who the foreperson is and the

alternate in the event that anything is necessary to communicate to the jury. So, I would ask you when you are excused from the jury room overnight or at any time, in other words, when you need a recess or something like that and when you come back you always sit -- those two individuals will sit in those same seats. Everybody else can sit in any seat that they want. Now, as jurors -- and by the way, the foreperson is the same as any other juror except as I mentioned earlier, you will help in the deliberations and conduct the deliberations and if the jurors have any messages or questions for the Court, if you would do as you did, write it down and give it to the bailiff and the bailiff will return it to me and I'll address it at that time. Now, as jurors you must decide this case based solely on the evidence presented herein within the four walls of this courtroom. This means that during the trial you must not conduct any independent research about this case, and the matter in the case, and individuals involved in the case. In other words, you should not consult dictionaries or reference materials, search the internet, websites, blogs, or use any other electronic tools to obtain information about this case or to help you decide this case. Now, please do not try to find out any information from any source outside the confines of this courtroom. Until you retire to deliberate you may not discuss this case with anyone, even your fellow jurors. In other words, when y'all

go to lunch or something like that and you're sitting together talk about anything else accept this case. After you retire to deliberate you may begin the discussion with your fellow jurors, but you cannot discuss the case with anyone else until you have returned a verdict and the case is at the end. I hope that all of you will -- excuse me, I hope that all of you -- this case is interesting and noteworthy. I know that many of you use cell phones. I am not very good, I have a flip phone that's about as far as I've advanced, Blackberry's and internet and tools and technology. You must not talk to anyone about this case or use these tools to communicate electronically about the case. This includes your family and friends, you may not communicate with anyone about the case on your cell phone through e-mail, Blackberry, Iphone, text messaging or on twitter, through any blog or website, through any internet chatroom or by way of any other special networking websites including Facebook, Myspace, LinkedIn, or YouTube. Now, having said that, I tell the jurors that I'm going to excuse you until tomorrow morning, for the rest of the day. We'll start the trial -- actually I've got to take up some matters with the attorneys in preparation of presenting the case to you. So, I need to do that and I don't want you to have to sit back there in the jury room while I do it. So, I'm going to excuse you. Let's go ahead and decide what time you want to start in the morning.

MR. MARTIN: Well, Judge, I was going to ask this too, we've done this in the past. Do you want to swear the jury in before they leave, or would Your Honor rather just do it in the morning?

THE COURT: I'd rather do it in the morning.

MR. MARTIN: Okay. We'd be ready maybe at 9:00.

MR. HUMPHRIES: As early as you are ready to go, Judge.

THE COURT: 9:00 is fine with me. Well let me ask you, madam foreperson, it's going to be your call on this, you and the jury. This does not have to be a unanimous verdict, just what time would you like to start? I would suggest either 9:00, 9:30 or 10:00. And by the way it's not unanimous.

FOREPERSON: Your Honor, will 10 be acceptable?

THE COURT: Ten will be perfect. Alright, so we'll start at 10:00. Now, having decided that, I will tell you that this is perhaps the most difficult part of the trial; and that is you're going home. The first thing that somebody will ask you is what are you doing. And you're going to say, well I've been drawn on a jury. And then they will say, well what's it about. And you're going to have to tell them, I cannot talk to you about it. And they will say something to the affect, well that is ridiculous. And you'll have to tell them when they ask why not, you will have to tell them because the Judge said so. Now, I'll be here at 9:00 in the morning. If they don't understand I will be glad to explain it to them. Please

understand you and you alone are the only ones that are going to make the determination in this case. And unless the person is in that jury box with you right now and in that jury room down the hall when you make the deliberations, they cannot help you. They have not heard the first witness; they have not seen the first but of evidence. The only thing they can do is interfere with a proper resolution of the case. So, therefore, I am going to instruct you that if anybody should attempt to talk to you after you tell them that they can't just say I'll be in to explain it to them if they need an explanation. You must report them because that would be improper. Now, with that I'm going to excuse you for the balance of the day. Now, the bailiff will show you how to get back to the courtroom and you'll come back tomorrow morning at 10:00 to the jury room that you are using today. Very good. Thank you very much. I look forward to working with you and I'll see you at 10:00 in the morning.

Everyone else remain seated while the jury retires from the courtroom.

(JURY EXCUSED FOR THE DAY AT 1:05PM)

THE COURT: Alright. The reason I don't swear the jury until we start the trial is that's when double jeopardy attaches.

Alright, and I trust that the defendant is out on bond?

MR. HUMPHRIES: He is and had been since the beginning.

THE COURT: Do you have any objection ---

MR. MARTIN: None.

THE COURT: Mr. Webb, you do understand that being on bond that you will continue on bond and if you violate the bond, and the most important violation would be not being present tomorrow morning for the beginning of the trial and throughout the trial. If you are not present the trial will continue in your absence. Do you understand that?

DEFENDANT: Yes, sir, Your Honor.

THE COURT: And whatever the verdict is, you will have to abide by the verdict. If you are found guilty, you will be sentenced in your absence. Do you understand that?

DEFENDANT: I understand, Your Honor.

THE COURT: Any question about it?

DEFENDANT: No, sir.

THE COURT: Very good. We stand in recess until 10:00 in the morning. I'll see the attorneys at 2:00.

MR. HUMPHRIES: At your pleasure, Judge.

THE COURT: Don't give me that. You know where my pleasure lies. Y'all know more about this area. How much time do you need?

MR. MARTIN: I think 2:00 would be fine. We have some food here we can eat.

THE COURT: Mr. Humphries?

MR. HUMPHRIES: We're good at 2:00.

THE COURT: Alright, 2:15. We will see you at 2:15.

(RECESS)

THE COURT: Alright. Back on the case of State versus John Alexander Webb with motions prior to trial. Alright, I recognize the solicitor.

MR. MARTIN: Thank you, Your Honor. Mr. Humphries had a pretty good idea. I'd like to address our first motion prior to the statement. The State's first motion, Your Honor, is a Motion in Limine in regards to one the indictments specifically. That indictment, Your Honor, is 2017-GS-26-03145 for violation of the drug distribution law. And if Your Honor would go to the back page of the indictment, the issue at hand is specifically what we may address during the time period mentioned in the indictment. So, the dates read from April 8th, 2016 until October 15th, 2016 and it states the defendant knowingly and intentionally obtained or prescribed a quantity of Phentermine, Schedule IV drug. Judge, the indictment does not specifically mention other drugs that during this time period Investigator Strickland determined had also been prescribed by the defendant, Mr. Webb. Those specifically are Temazepam, Ambien, and Alprazolam. Judge, we would still ask the Court for the opportunity when questioning Mr. Strickland to address additional scripts that were prescribed. So, even though the defendant is not alleged in the indictment specifically those scripts, the dates do in

fact correspond with when this occurred. Judge, as you know, even though he was never charged with it it's still a bad act and evidence of other prior bad acts is often admitted to show motive or a common scheme or plan. Here that is in fact entirely what is happening. Investigator Strickland through the course of his investigation and checking with different pharmacies and finding what Mr. Webb has not documented, he ran across additional scripts. In order for this to come in three things have to happen, logical relevance. In regards to logical relevance, it is in fact that, it is logical to know that the investigator himself can speak to these other incidents that occurred during the course of his investigation. Whether or not that was specifically included in the arrest warrant or in the indictment itself should not bar him from being able to address that. With regards to the clear and convincing part, this evidence of this bad act, if you want to call it that, is in fact clear and convincing. His testimony will show that. And obviously the biggest issue here, Judge, is this balancing test of weighting whether it's probative or too prejudicial under 403. And we would argue that it should be admissible. It is certainly probative in the fact that it is relevant, it shows the bigger picture that was at hand here during the investigation. Even though a defendant may not be arrested for something specifically or indicted for something specifically should not bar the case

agent from talking about other things that may have occurred that he found out during the course of his investigation.

THE COURT: Alright.

Mr. Humphries.

MR. HUMPHRIES: Well, the indictments purposes, really singular purpose, is notice to the defendant of the crime about which he is to be tried on. It's clear that the only allegation set out in this indictment is that he would have furnished ---

THE COURT: When you say this indictment, you're talking about 45?

MR. HUMPHRIES: I am. Just to be clear, it's 3145, yes, sir; the ending four numbers. It alleges that he furnished false or fraudulent material, information or omitted information, material related to Kristy S. from an application, report, or other document required to be kept, blah, blah, blah, as it relates to a quantity of phentermine during a period of time. That's the notice that's been provided. So, you know, when we're talking about other acts or traditionally in this case, bad acts, typically, you know, the rule first starts out with the rule that it is evidence of a person's character, character trait is not admissible to prove that in a particular case that person acted in accordance with the trait. There are exceptions and in state law those exceptions have to follow or come under one or more

particular categories, motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or lack of accident. We're supposed to get reasonable notice of that evidence. This is not -- and the only exception to that is whether there is good cause. The good cause would be that I suppose the Solicitor's Office failed to note that in the drafting of their indictment. This entire case is based on whether or not this defendant, at the time requested by the inspector, was able to produce records related to his proscribing practice with his, at that time, wife, step-daughter, or the wife's paralegal. That is the conduct about which the State complains. Does the fact that in the course of his relationship, his physician/patient relationship with his wife that he prescribed something in addition to phentermine -- I believe all of the drugs that the solicitor references are all Schedule IV drugs unless I'm mistaken.

MR. MARTIN: Yes.

MR. HUMPHRIES: Okay. That is the allegation in this case, it's a Schedule IV drug. We're not talking about Schedule I and II. We're not talking about the opioid crisis. We're not talking about anything like that and we're also not talking about, just to be fair, abusive prescribing practices. That is over prescribing multiple within a prescription period. None of that is the case. So, you know, the only reason I believe it would be solicited by the State is perhaps

to say that it was not a mistake. In terms of (inaudible) plan, I don't believe that applies. But, let's assume for arguments sake that it shows lack of mistake on my client's part, that he prescribed these things within the physician/patient relationship. It does not add to or make any more relevant the singular issue in this case and that is whether or not my client could produce at the time requested a physician/patient or the patient records related to that particular prescription. So, does it add anything to the case? No, sir, it doesn't. Does it have to add something to the case in order for it to be admitted under this exception? Yes, it does. SO, based on the fact that this is a notice document, my client was not noticed of any other drugs, and number two it does not add anything to the case. It does not show anything that adds to this case or make any of these elements within this charge more or less likely, we would object to the eliciting to any testimony or evidence related to any drug other than that drug that's noticed my defendant in this indictment.

THE COURT: Alright. What do you say?

MR. MARTIN: Your Honor, I'll address first, I guess, the notice portion because I failed to reference that when I first started. The State's position that the defendant is on notice, the dates are included in the indictment. In discovery, within the case report, it was handed over to the

defense each additional script and the dates were given. Additionally, those scripts ---

THE COURT: But they're not included in the indictment.

MR. MARTIN: That is -- that is correct, Your Honor. But the dates themselves are included in the indictment. So, the defendant would be on notice to understand that potentially any other scripts that did not have the proper documentation to follow, could be mentioned at trial when questioning a witness about the totality of the investigation itself.

THE COURT: What do you say, Mr. Humphries?

Oh, Mr. Henry (sic), are you through?

MR. MARTIN: Oh, yes, Your Honor. I apologize.

MR. HUMPHRIES: I'm not one to go on, Judge. I would be repeating myself if I went any further. As to ---

THE COURT: I mean, he's saying that it relevant.

MR. HUMPHRIES: No question we received -- there is reference in the original report from Inspector Strickland. Quite frankly, these things were discussed in the context of my client's statement. No question about that, I've got a copy of that. So, separate and apart from the notice issue, I still rely on the fact that it does not tend to make a material issue in fact more or less probable the fact that it may have occurred on some other occasion. The simple facts is to determine whether or not, at the time of request of production, my client could produce records related to this

prescription. So, to rely on 404(b) exceptions, I believe, is not applicable to this case. And it's not applicable and it should not be admitted.

THE COURT: It's unusual for me to have three separate indictments alleging the same offense with a date set out. IN other words, it would seem like you would want to put everything that happened that you had knowledge of in the indictment rather than just -- tell me why you didn't do it. Maybe that's what I need to know.

MR. MARTIN: Well, out of full disclosure to the Court, and I'm not ---

THE COURT: Well, if you don't want to ---

MR. MARTIN: No, no these indictments were done in June of 2017. We ---

THE COURT: Well, that's a year ---

MR. HUMPHRIES: I'll say it for him. He doesn't want to say that somebody else did that indictments.

THE COURT: Oh, yeah. I'm aware of that. But the thing is, the State is represented here and -- represented in the indictment by whoever drafted it. And if they didn't draft something that's appropriate then what is it the State has to abide with? It's a little bit late to amend an indictment. Are you saying we should amend the indictment?

MR. MARTIN: If that's what's necessary, Your Honor. I mean, this was, I think, a good faith effort mistake.

THE COURT: Good faith to whom?

MR. MARTIN: By the draftee -- or the drafter of the document itself.

THE COURT: Well, I think whoever the draftee was -- or drafter was, was probably acting in good faith. But they only saw -- what was it; one incident that was indicated in each indictment.

MR. MARTIN: Well, it was, I guess, according to the indictment it was more than one incident because it gives a date range. It just only mentions one specific Schedule IV drug by name rather than mentioning all four, I guess, Schedule IV drugs.

THE COURT: Well, how many are there?

MR. MARTIN: There would be three additional ones.

THE COURT: Boy, that'd be interesting wouldn't it. That's kind of piling on. I think that's were we'd get into the problem of prejudicial.

MR. MARTIN: Yes, Your Honor.

THE COURT: It seems like you've got as much as you need in the case. Apparently, particularly, we're trying him on three different cases.

MR. MARTIN: Three different patients, Your Honor. Well, three different persons.

THE COURT: Well, that's what I'm saying.

MR. MARTIN: We were just hoping for some guidelines into

THE COURT: That's what I'm trying to give you. If you think that it's innocuous and not worth any significance other than it gives a more complete picture, then go ahead and amend. I'll let you amend the indictments. But I'm afraid you know it would have an affect if you stated that now these are the charges we brought but there are other things out there.

MR. HUMPHRIES: And just -- I know I'm about to ---

THE COURT: I'm trying to try a case, now what is it.

MR. MARTIN: Your Honor, if it's a notice issue, if we were to amend the indictment then clearly, we will proceed today and not worry about amending the indictment.

THE COURT: I'm trying to think --- and it's a terrible thing to say that the State would suffer prejudice, but what prejudice which you suffer by not being able to amend the indictment at this time? That's my ---

MR. MARTIN: I understand where you're going with that, Your Honor.

THE COURT: In other words, you've got prejudice on both sides and when we usually have that in a criminal matter the prejudice is more concerned not with the State's inability to amend the indictment as much as the prejudice of the defense having to face an amended indictment.

MR. MARTIN: Understandable, Judge.

THE COURT: Alright, so I'm going to deny your motion. By the way, all Motion's in Limine are subject to being reviewed during the course of trial when they become relevant.

MR. MARTIN: Correct. That would be my next -- thank you, Judge.

THE COURT: Alright, anything else?

MR. MARTIN: Not regarding that specific motion, Your Honor.

THE COURT: Alright.

MR. MARTIN: If Your Honor is willing, we will proceed with that Jackson v. Denno Motion.

MR. HUMPHRIES: And, Judge, I'm just going to slide over here so I can watch the TV.

THE COURT: Certainly.

MR. MARTIN: And, Judge, the State will call Investigator Strickland, Derek Strickland.

Just walk right around there to the witness stand and she will swear you in.

INVESTIGATOR STRICKLAND, HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: Thank you, please be seated. If you will state your full name and spell your last name.

INV. STRICKLAND: My name is Derek Strickland. S-T-R-I-C-K-L-A-N-D.

THE COURT: You may proceed.

MR. MARTIN: Thank you, Your Honor.

DIRECT EXAMINATION OF INVESTIGATOR STRICKLAND BY MR. MARTIN:

Q: Investigator Strickland, where do you work?

A: I work for the Department of Health and Environmental Control in Bureau of Drug Control.

Q: How long have you been there?

A: I've been with DHEC for four and a half years.

Q: What are your current duties with DHEC?

A: We -- in the Bureau of Drug Control we investigate criminal actions regarding controlled substances as well as preform regulatory inspections on registrants.

Q: And as an investigator with DHEC, were you involved in the investigation and the arrest of the Defendant John Webb in March 2017?

A: I was.

Q: Briefly, during your involvement in this case, at any point did you speak or interview the defendant -- did you speak with or interview the defendant?

A: I did.

Q: When would that have occurred?

A: It occurred February ---

Q: I see you've got some notes there.

A: Yes, sir.

Q: You can look at your case report.

A: Thank you. February 14th, 2017 at his attorney, Fran

Humphries office.

Q: You mentioned it was at his attorney's office. So, who all was present during that interview?

A: Myself, Mr. Humphries and Mr. Webb.

Q: Was the defendant in custody at that time?

A: He was not.

Q: Are you familiar with what's called the Miranda Warnings?

A: I am.

Q: And what are those?

A: Miranda Warnings are a person's right to remain silent and to have defense or counsel while being questioned.

Q: Did you advise the defendant of those rights at that time?

A: At that time, I did not. I offered to read Miranda but his attorney waived.

Q: Outside of that meeting, at any point did you administer the Miranda Rights to the defendant?

A: I did later that day.

Q: And where was that?

A: That took place at Hartsville at his current home.

Q: How do you administer Miranda? Do you use a form? Do you read it off of card?

A: I do. I read it off of a form. We have a standardized Miranda waiver or Miranda form that's by DHEC.

Q: And at that time did you go over the form with the defendant?

A: I did.
Q: And did he do anything to the form showing that he understood his rights?
A: He did. He signed understanding his rights, as well as I witnessed it for him.
Q: Did he give any statement at that time?
A: No statement.
Q: So, getting back to the interview at Mr. Humphries office; did the defendant appear to be under the influence of anything?
A: He did not.
Q: And did he appear to understand everything that was said?
A: He did.
Q: And would you have proceeded with the interview if you felt like any of that was an issue?
A: I would not.
Q: Was this interview with Mr. Webb audio or video recorded?
A: It was audio recorded.
Q: After recording the interview did you upload the interview in any way?
A: I did. I uploaded it to my work laptop.
Q: And through that process or after that did you alter or edit the video in any way?
A: I did not.
Q: I'm going to show you -- I'm going to walk around the TV

awkwardly here -- I'm going to show you what's been marked for identifications purposes as State's Exhibit 1. Do you recognize that?

A: It's a CD. It says John Webb Interview, with my initials.

Q: Those are, in fact, your initials?

A: They are. Yes, sir.

Q: Have you previously listened to this recording?

A: I have.

Q: And while doing that, after listening, would you say that the recording is a fair and accurate representation of what happened that day?

A: It is.

MR. MARTIN: Your Honor, at this time we'd ask the recording be entered into evidence and also played for the Court.

THE COURT: Very well. Have you had the court reporter mark it?

MR. MARTIN: Yes, Your Honor. She marked it as State's One.

(STATE'S EXHIBIT NUMBER ONE IS ADMITTED INTO EVIDENCE.)

THE COURT: Very good.

MR. HUMPHRIES: And, Your Honor, just to be clear, my client takes -- does not take the position that it was either violative or Miranda nor was it coerced. It was voluntary in

every way. So, we're not taking the position that it should be excluded on those grounds.

MR. MARTIN: Court's indulgence. We're waiting ---

THE COURT: And this is Plaintiff's, I mean, State's number ---

MR. MARTIN: One, Your Honor, for Court's Exhibit.

MR. HUMPHRIES: And I guess I need to be clear for the record, I'm not consenting to its admission in the form it is in now. I've just stated that we agree that the statement overall was voluntarily given.

MR. MARTIN: May I proceed, Your Honor.

THE COURT: Certainly. Now, where am I watching?

MR. MARTIN: That is the time mark right there, Your Honor.

THE COURT: I can't quite see it, that's my problem.

MR. HUMPHRIES: I can't see it either.

MR. MARTIN: Judge, we can get an extension cord and wheel it closer to it.

THE COURT: Well, I mean, I just can't see it. If I could maybe hold up my finger or something like that to indicate that I'd like to know where that is, you know, where we are on the ---

MR. MARTIN: Yes, Your Honor. The time is at the bottom.

THE COURT: I see it, but I can't read it.

MR. MARTIN: Okay. Well, what we're going to do is get

an extension cord and we're just going to wheel it up here if that's okay with Your Honor.

THE COURT: I would just as soon you indicate the points where you want to start and stop.

MR. MARTIN: That's fine.

THE COURT: And read out the numbers at that point.

MR. MARTIN: Yes, Your Honor.

MR. HUMPHRIES: Okay, because I've already got the parameters, which I sent to the Solicitor's Office. And I'm not sure where we are in terms of that's okay we'll do that and this part is not okay we object to that.

MR. OSKIN: It was the State's position to play the statement in its entirety, Your Honor, and then argue the redactions afterwards.

THE COURT: Alright, well I can do that.

MR. MARTIN: Due to the Rule of Completeness, Your Honor.

THE COURT: Whoa. Cabrera opinion.

MR. OSKIN: Certainly, within your discretion.

THE COURT: State versus Cabrera opinion.

MR. MARTIN: Yes, sir.

THE COURT: You're familiar with it?

MR. MARTIN: Judge, I remember that vaguely from law school.

THE COURT: Oh you do?

MR. MARTIN: We had a debate. But I did not read it or

anything.

THE COURT: It was my opinion.

MR. MARTIN: I figured that was coming.

THE COURT: It was my opinion several years ago. When did you finish law school?

MR. MARTIN: I graduated in 2014.

THE COURT: Oh, it was before then. In other words, I'm familiar with it.

MR. OSKIN: Yes, sir. We appreciate it.

THE COURT: Alright. Thank you.

(WHEREBY AUDIO IS PLAYED)

THE COURT: Wait a minute. What is this?

MR. HUMPHRIES: This is before the statement.

MR. MARTIN: Judge, this is ---

THE COURT: I can't hear that well either, but I'm just trying to get a feel for what the flow of the conversation is.

MR. MARTIN: At approximately the 3:27 mark, that is when the interview ---

THE COURT: What are we talking about here?

MR. MARTIN: This is just small talk about the weather.

THE COURT: Alright. So, this is small talk.

MR. HUMPHRIES: Yes, sir.

THE COURT: Alright, so ahead. When you get ready for the ---

MR. MARTIN: And I can adjust the volume over here.

THE COURT: See if she can do a little more acute.

MR. MARTIN: She's got the extension cord if you want us to wheel it closer or do you want me to just keep playing?

THE COURT: I want to hear what's on there, and I don't know if that would help. I mean, right now I'm having a problem discerning the conversation.

MR. MARTIN: She has a remote if Your Honor would like to adjust the volume.

THE COURT: Okay, thank you. I'm sorry.

(WHEREBY AUDIO IS PLAYED)

THE COURT: Gentlemen, let's go off the record for a second.

(Conference off record)

MR. MARTIN: Your Honor, where I've paused it at the 3:27 mark is where we're consenting to beginning the interview.

THE COURT: Alright.

MR. MARTIN: We were under the impression that we needed to at least play the entire video, not video, audio.

THE COURT: Audio, right.

MR. MARTIN: But we are in agreement with Mr. Humphries to start it at 3:27.

MR. HUMPHRIES: Actually, I said 5:25.

THE COURT: Alright, so we're going to hear 3:27.

MR. MARTIN: We would like it to start there.

THE COURT: Well, that's what I'm saying. You're not

going to suggest to hear something that's not relevant.

MR. MARTIN: Right.

(WHEREBY AUDIO IS PLAYED)

THE COURT: Now, as I understand that is you speaking to your client.

MR. HUMPHRIES: That's me start to finish. My client has not opened his mouth yet.

THE COURT: Alright. And you were talking about the suits?

MR. HUMPHRIES: No, I wasn't talking about the suits. No, no. But from the 3:25 to the 5:25, which they want to start at 3:25. I want to start at 5:25. Within that two minute period I am the one almost exclusively who's doing the talking. I also reference the LLR investigation, which is not relevant to this. So, I would object to -- that's not my client's statement. So, I would object to that portion of the statement being played because it's not a statement of my client and it makes a reference to an LLR investigation, which is not relevant.

THE COURT: LL -- review of prescription practices ---

MR. HUMPHRIES: Yes, sir, and that's not relevant.

THE COURT: You were sort of bolstering it.

MR. HUMPHRIES: Well, what I'm telling you is this is how he got to where he is.

THE COURT: I don't want -- the thing is I understand why

they might want to do it, and correct me if I'm wrong, and that is to show that his statements were given freely and voluntarily in the sense that he had been advised by his attorney on the record, or the record of the preliminary statement, that he had confidence in ---

MR. HUMPHRIES: Yes, sir.

THE COURT: Okay.

MR. MARTIN: That's essentially it, Your Honor, the voluntariness of the statement, waiving Miranda. This isn't attorney/client privileged information, it's said in front of a third party which is Investigator Strickland. I think something key, an important picture for the jury is in fact to understand that this was a statement given freely and voluntarily even though Miranda was never read because it was waived.

THE COURT: And that's what covers those two minutes?

MR. MARTIN: Yes, Your Honor.

THE COURT: Alright.

MR. HUMPHRIES: We can stipulate on the record that it was freely and voluntarily given.

THE COURT: Alright.

MR. MARTIN: Your Honor, we would rather the jury hear it directly.

THE COURT: Well, the only thing is with a stipulation I will instruct the jury that as it was a stipulation that is an

agreement by the State and the defendant. That was is proposed and stated in the stipulation is correct. I do have a problem, it's almost like eavesdropping. You know, I realize this is similar to a deposition but listening to the attorney advising his client to tell the truth when there is no reason not to, which is ultimately what you are trying to be sure that the jury understands.

MR. MARTIN: Yes, Your Honor.

THE COURT: I mean, it's cumulative if you've got a stipulation to something. If you've got a stipulation that says it's freely and voluntarily -- that's the thing that jury is supposed to determine, or me first.

MR. MARTIN: And essentially since it's for the jury to determine after Your Honor, I don't know, it just seems like it would be better to come directly from the interview. It lays the foundation for the entire investigation, the entire statement itself. But I won't continue to beat a dead horse, Your Honor.

THE COURT: Well, it's not a dead horse. I'm trying to breathe some life into something. They're going to have enough to contend with.

MR. MARTIN: Yes, Your Honor.

THE COURT: And, of course, I always instruct them my decision is based on if I find it freely and voluntarily in order to submit it to them it has to be beyond a reasonable

doubt. That's the Court's bar, but they only need to find it by the greater weight.

MR. MARTIN: We understand, Your Honor.

THE COURT: Well, at this point, I think, I don't find it necessary and I would find it cumulative.

MR. MARTIN: So, at this point, I guess, we'll agree to stipulate and start as of now -- start the video at the 5:25 mark. Is that my understanding?

THE COURT: Alright, so you want to draw the stipulation ---

MR. OSKIN: Yes, sir, I'd be glad to.

MR. HUMPHRIES: Yes, sir.

THE COURT: Alright, very good. Thank you.

MR. MARTIN: Continue Your Honor?

THE COURT: Please.

MR. MARTIN: Thank you.

(WHEREBY AUDIO IS PLAYED)

MR. HUMPHRIES: We're approaching the point that I propose we stop. There's a period of two minutes and then we resume to essentially what is the end.

MR. MARTIN: This next portion according to my notes is --

THE COURT: Let's see, when did we stop?

MR. HUMPHRIES: It's 27:30 is where I've got it stopped.

MR. MARTIN: It's sounds like at 27 might be more

accurate.

MR. HUMPHRIES: Yes, because I think it's silent after that.

THE COURT: Alright, what is it now?

MR. HUMPHRIES: We stopped at 27.

MR. MARTIN: We stopped at 27:30.

MR. HUMPHRIES: There's been a good 20 some seconds of silence. So we don't have to ---

THE COURT: I just want to know where we have ---

MR. MARTIN: 27:01 it looks like.

MR. HUMPHRIES: Yeah, 27:01. That's where I propose we stop.

THE COURT: Okay. So, what we have is a stipulation that from 5:25 to 27:01 will be stipulated?

MR. HUMPHRIES: Are you good with the 27:01?

MR. MARTIN: I believe the only portion --- if you're wanting to end it at the 29:37, I'm okay with that. That's just where Mr. Humphries tries to call the family court attorney's phone and his number is put out there too, which I'm sure he doesn't want that.

MR. HUMPHRIES: Everybody's got my number.

MR. MARTIN: So, we're okay with that, Judge.

MR. HUMPHRIES: And then we just pick back up at 29:40; is that right?

MR. MARTIN: My notes say 29:37.

THE COURT: I thought you said 27:01.

MR. HUMPHRIES: That's where we stopped.

THE COURT: You stopped.

MR. MARTIN: Right.

THE COURT: So there is nothing from 27:01 to 29 ---

MR. MARTIN: 37.

THE COURT: 37 that you find ---

MR. HUMPHRIES: Right. That's me calling his family court lawyer and basically getting told to pound sand.

THE COURT: Alright, y'all have been very cooperative. But I don't see why we need something in there that's not necessary.

MR. HUMPHRIES: I agree.

MR. MARTIN: And we're in agreement with him on that one, Judge.

THE COURT: Then let's do it. We're going to stipulate to be heard that portion between -- I hope somebodies making a note of this.

MR. HUMPHRIES: I am.

THE COURT: 5:25 to 27:01.

MR. HUMPHRIES: Correct. And then we start back at 29:37.

MR. MARTIN: That's what my notes indicate as well, Your Honor.

THE COURT: Alright.

MR. MARTIN: Would you like me to fast forward to that point or continue to play?

THE COURT: If you're agreeing ---

MR. MARTIN: Court's indulgence and I'll fast forward.

THE COURT: Very good. Alright. Now, let's see. Mr. Martin (sic), maybe you can help me while he's doing that. I'm, for the first time, looking at the actual statute that has been an issue here. And am I correct, it's section 44-53-390(a) ---

MR. MARTIN: Yes, Your Honor ---

THE COURT: Just a second.

MR. MARTIN: I'm sorry.

THE COURT: (a)(4).

MR. MARTIN: Yes.

THE COURT: Alright, 44-53-390(a)(4). Alright, parenthesis a, parenthesis 4. And is that all?

MR. HUMPHRIES: And then obviously it refers to anything under this article that requires ---

THE COURT: Here is says regulations.

MR. HUMPHRIES: Yes, sir, which takes us back to 44-53-340; is that correct? Do you agree with that?

MR. MARTIN: Yes.

THE COURT: Alright.

MR. MARTIN: As well 44-53-360.

THE COURT: Alright, what I'll ask y'all to do in your

request for charges is to give me the relevant statutory provisions. Alright, you've got 44-53 ---

MR. HUMPHRIES: Your Honor, I'm good with 340.

THE COURT: 44-53-340.

MR. HUMPHRIES: Yes, sir. I would object to ---

THE COURT: 340 hasn't gotten ---

MR. HUMPHRIES: All of 340, just to be fair, Judge, is -- there are no parts of 340. 340 essentially is entitled records and inventories of registrants and it is a single paragraph.

THE COURT: Okay. And next.

MR. MARTIN: Next, I think he might contest proper time, but the next we would address would be 44-53-360(h).

THE COURT: 360(h).

MR. HUMPHRIES: Yes, sir. And essentially what that statue says is that a prescription must be for a legitimate medical purpose and there have been no allegations ---

THE COURT: I'm not arguing this right now.

MR. HUMPHRIES: Yes, sir.

THE COURT: What I'm doing is asking for your help rather than going through the entire title 44.

MR. HUMPHRIES: Yes, sir. That's it, they say 360, I say no to 360.

THE COURT: Well, we'll deal with that when the time comes.

MR. MARTIN: And then 40-47-113.

MR. HUMPHRIES: And I will object to this one because it's not contained within that article, which is what this statute ---

THE COURT: What you need to do is give me -- just print out what you rely on or will rely on and then we'll argue that. We don't need to argue anything ---

MR. MARTIN: Judge, this is the case law the State is relying on.

THE COURT: Sure.

MR. MARTIN: I know Mr. Humphries has some objection to certain parts of it but we can hash that out at the appropriate time.

THE COURT: You say it's case law?

MR. MARTIN: Judge, I misspoke, statutory law.

THE COURT: Alright, well just get me the statute. In fact, I wouldn't be offended by just making copies of your relevant exceptions from West Law or whatever.

MR. MARTIN: Yes, Your Honor.

THE COURT: In other words, just give me the statute then and it would help me if you can, and you have here, just to highlight the portions that you're really interest in.

MR. MARTIN: And while that's not citing West Law, that's exactly what we did right there. We just copied and pasted.

THE COURT: West Law is not a site. West Law is a way

under our system that we get into our code of laws.

MR. MARTIN: Yes, sir.

THE COURT: In other words, I know there are statutes that say that every courtroom is supposed to have a copy of these statute of laws of South Carolina. But we sort of amend that and say we'll we've got access that's dependable like West Law. I remember when they were green and red. But you know what I'm talking about. Let's not complicate things, I can do that myself.

Alright, now where are we?

MR. HUMPHRIES: So, I think from just -- I think that we are now clear, we all agree on a final stopping point; is that right?

MR. MARTIN: Yes.

THE COURT: 29:37 to 39:20.

MR. HUMPHRIES: Don't we agree to that?

MR. MARTIN: Yes.

MR. HUMPHRIES: So, really unless you want to hear it.

THE COURT: If there's something to be gained, otherwise I want to leave something for y'all to do with the jury. If you stipulate to it, I'm not going to overrule your stipulation.

MR. MARTIN: What we'll do is we'll just keep this CD as a Court's Exhibit for the record, the video in its entirety. We'll go ahead and stipulate to what Mr. Humphries has put on

the record. And we'll make the appropriate redactions to play tomorrow for the jury.

THE COURT: Oh, you mean take it from the --- the redactions would be --- it would be Court's Exhibit 1A? In other words, the redacted version.

MR. HUMPHRIES: Well, actually the redacted version would be there State's 1.

THE COURT: Oh okay. Alright.

MR. MARTIN: Correct.

THE COURT: So, what we have is the complete with everything in it as the Court's Exhibit.

MR. MARTIN: Yes.

THE COURT: And then you're going to put in your stipulation.

MR. MARTIN: Yes.

THE COURT: I mean, not your stipulation, your exhibit.

MR. MARTIN: For the record, it sounds like we are starting at 5:25, going all the way to 27:01, stopping and starting back at 29:37 and going all the way to 39:20 an stopping.

MR. HUMPHRIES: Yes, that's what I've got.

THE COURT: Alright. Now, I'm not sure I've tried cases with everyone; what I do with oral and video exhibits, I send the exhibits back but I don't send back the capacity to play them.

MR. OSKIN: The Solicitor's Office provides a computer that has no internet access, Your Honor, should the jury want to hear that statement again.

THE COURT: Alright, you've got one right here?

MR. OSKIN: We have one ready and accessible.

THE COURT: No, I'm not talking about ready and accessible. What I want is the court reporter to show what they're listening to.

MR. OSKIN: Yes, sir.

THE COURT: What was her name in Watergate? She hit the delete button for 16 minutes. So, that's why. I mean, I know you have equipment that can do that but I just don't want to tempt anybody.

MR. OSKIN: Certainly understood.

THE COURT: What we do is -- and I do the same thing for a question. I bring them out, I read the question to you, so that they hear the answer the answer to the question and that's in the record so it's not what somebody told them.

MR. OSKIN: Yes, sir. Absolutely understood.

MR. MARTIN: And, Your Honor, as a housekeeping matter, the sticker says State's Exhibit 1. So we can either change it to Court's Exhibit 1; or when we get to trial we can just do State's Exhibit 2.

THE COURT: Well, the thing is I thought the Court's Exhibit is the entire ---

MR. HUMPHRIES: That's what it should be.

THE COURT: But your stipulated one is going to be -- or you can say the stipulated one.

MR. MARTIN: I just ask at this time that we amend this to a Court's Exhibit 1.

THE COURT: Granted. Give it to the reporter.

(STATE'S EXHIBIT NUMBER ONE AMENDED TO COURT'S EXHIBIT NUMBER ONE.)

THE COURT: Alright, now where are we?

MR. MARTIN: At this time if we're good I can remove the disk.

MR. HUMPHRIES: And I have a motion.

THE COURT: Well, let's go ahead and do that. You're not going back to the ---

MR. MARTIN: Just one follow up question for him for the record and then we will be done.

BY MR. MARTIN:

Q: Mr. Strickland, or Investigator Strickland, is that a fair and accurate representation of what happened?

A: It is.

THE COURT: Okay. Very good. I had forgotten about you.

MR. HUMPHRIES: I don't have any questions at this time.

THE COURT: It's a good time to take a little break if we're going to have something else.

MR. HUMPHRIES: I've got one motion but I'd be glad to

take a break.

THE COURT: Yeah, let's take a break. We'll stand at ease until y'all are ready to start back.

(RECESS)

THE COURT: Back on the record.

MR. MARTIN: One additional thing that I believe we've stipulated to, Your Honor, for redacting from that interview and I failed to mention it prior to the break; at one point late in the interview the defendant mentions doing some work for the FBI regarding insurance fraud. We would ask to err on the side of caution and have that taken out as well. Mr. Humphries, I believe, is in agreement to that. And we're going to get together at the conclusion of this and agree upon the time period to redact.

MR. HUMPHRIES: It's essentially a minute and 40 seconds and we will get the exact -- I mean, I've got the general ---

THE COURT: Is it in ---

MR. HUMPHRIES: It's the part we didn't listen to, that's why I didn't. And I had a note of it and I just ---

THE COURT: Well, it's not anything we didn't listen ---

MR. HUMPHRIES: Remember that was that portion that we said we don't have to go through that because we're agreeing.

THE COURT: Oh, okay. Alright. I understand.

MR. HUMPHRIES: I have a note about it.

MR. MARTIN: And I did too, and I even had it highlighted

and still skipped over it.

MR. HUMPHRIES: So, we will get together and do that and we'll put it on the record.

THE COURT: Sounds good.

MR. HUMPHRIES: So, we're good on that.

THE COURT: Okay. But do get me some charges. I mean, I'll be honest with you, after 40 something years this is the first case I've had with this issue.

MR. HUMPHRIES: I understand. We are in the same vote.

Your Honor, I'm going to move in limine to exclude certain evidence related -- under the general category of bad acts. Let me give you a little general background. This as it was -- and let me say this, as it relates to -- there was at least one, and maybe two, LLR or board action references in the statement. I will tell Your Honor, I believe absent, you know, talking about what the groundwork for those things, I think it is admissible for the State to at least say why the investigator took this particular action. I'm not fussing about that. What I am fussing about is this -- or not fussing, we're just talking here; he was indicted under the violation of these drug distribution laws specifically related to his prescribing practices, or record keeping related to his prescribing practices. Now, he has currently a pending board case which was initiated not because of his record keeping related to his prescribing practices. Okay. He also was a

party to a divorce, which quite frankly for a period of time was very contentious. And from that some very salacious allegations were made by his wife and others associated with them. I will tell the Court, that divorce ended up under the terms of a one-year separation. There were no findings regarding any kind of grounds. And he was -- he had been previously charged in this jurisdiction with an unrelated criminal offense, which has since been dismissed. So, we're talking about three things, we're talking about a board related action in relation to his license which was initiated prior to the development of these charges. A divorce action, which the fact that there was a divorce action does bear somewhat on this case because as you heard in the statement he was separated and could not obtain certain records form the marital home. But -- so he's got those two things and then he's got this charge, this criminal charge which was dismissed. My motion is that, while there already is reference to a board action regarding his license, that the grounds for that board action, which is unrelated to this, not be mentioned. So, the grounds for the initial board action against his license, which actually had to do with the criminal charge, okay; that that not be mentioned, that there be no evidence related to that. That the allegations within the divorce, which again was settled on a one-year separation without a finding regarding a grounds, that those allegations

not be mentioned. And that there be no reference to the charge that has since been dismissed by the State. Okay. I actually haven't talked a great deal about what their position is. I don't have any idea about what they intend to try and put up in regards to those three things but my position is number one, it does not meet the definition of relevant evidence because it does not make more likely the existence of any of the material elements within this indictment. Okay. And if it's not material then it is not admissible under 402. And also, that there is no exception under 404(b) to get that kind of information in because it absolutely has no bearing on whether or not he is able to produce records related to his prescribing practice.

THE COURT: Who is going to take that?

MR. OSKIN: I'll handle this one. Seth Oskin for the State, Your Honor. The State is in agreement with Attorney Humphries with regards to motion listed as number 4, that being the prior crime that was processed through our office and later dismissed. You were made aware of a basic synopsis of those facts earlier and why the State is no longer moving forward on that case. That does coincide with the State's Board action, Your Honor, as Mr. Humphries said. Basically, I believe, as it was heard by the Court, Investigator Strickland began his investigation of this defendant for a reason, I believe that would be the only reference of the board action

with regards to testimony being played in front of the jury.

THE COURT: So, you are saying that you do not object to ---

MR. OSKIN: We don't object to that, Your Honor, and quite honestly don't intend to use that.

THE COURT: Alright. Well, I'm going to add this motion for what the defendant was previously charged and indicted for in an unrelated criminal offense that has been dismissed, I'm going to grant that motion.

MR. OSKIN: Yes, sir. And I believe that directly applies to number two as well, the pending board motion with the State Regulation Board. However, the State Board of Medical Examiners will have testimony here throughout the trial to elaborate on the process to the licensing itself. Nothing with regards to ---

THE COURT: Relating only to these charges. Well, generally the regulation but nothing about any other ---

MR. OSKIN: Precisely, Your Honor, no pending action outside of the case in front of you.

THE COURT: Right, we're just talking about the process.

MR. OSKIN: The only issue the State has is with number three, Your Honor. As you heard in the past statement by the defendant, essentially Your Honor, in a nutshell since we're being so transparent and wide open communication wise, the State doesn't want the defendant to blame it on his wife for

losing it in the divorce and then not being able to bring in more evidence about that.

THE COURT: Well, I think if I'm not mistaken the number three was already in the stipulation.

MR. HUMPHRIES: There is no question. And what I'm not saying is that there can be no reference to the divorce. What I am saying is that in the context of that divorce litigation there were very graphic and salacious allegations regarding improper sexual activity.

THE COURT: Well, of course that's not relevant.

MR. HUMPHRIES: Right, and that's the only thing I want to -- but a reference to a divorce, it's there. We're going to have to ---

THE COURT: Well, I've heard the divorce and that's the reason in the statement of not being able to produce the necessary -- I mean, I overrule your motion as to number three, the defendant was recently a party in a divorce action with his ex-wife.

MR. OSKIN: I understand what Mr. Humphries is saying, basically keeping out any insinuations or talking about any sexual whether it's related to a prior ---

THE COURT: I think it probably was.

MR. HUMPHRIES: Alright, so we're good on that?

THE COURT: In other words, three is the only one that's ---

MR. OSKIN: Right, and just for clarification, Your Honor, the State may address that within the context of the statement given by the defendant.

THE COURT: Exactly.

MR. OSKIN: Okay.

THE COURT: Now, that you see is what lawyers -- I want y'all to have something to do. If I agree to decide this case entirely on the facts and then you don't have any argument. But I want you to be able to argue the facts. So, you'll have something when you get up in front of the jury.

MR. OSKIN: We appreciate that.

THE COURT: Well, you're welcome.

MR. HUMPHRIES: Alright, so the only other issue that I want to address generally today is this, in the statute under which he's been indicted it essentially says, let me get back to it, under 44-53-390, under the code section that he has been indicted it makes reference to the terms of what is required of a practitioner or a physician in regard to script writing. It indicates that these requirements have been set out in this article, that is the article related -- the article in which this statute has been drafted. And also makes reference to 340 which talks about department rules, which traditionally they are the DHEC regs or regulations. What this statute in fairness does not reference in any way is the standard or generally accepted practice of physicians but

for those things which are talked about in DHEC regs. So, specifically what I'm saying is this, He's been indicted under 44-53-390(a)(4) that he furnished ---

THE COURT: Or omit any material information.

MR. HUMPHRIES: Right, or omit material information, blah, blah, blah, blah -- required to be kept or filed under this article or any record required to be kept by this article. So, we're talking about this particular article, okay. So, my objection -- I've been placed on notice that they have, for instance, they have a document that basically is an orientation for participants in that resident program at Grand Strand Regional Medical Center, which talks about any number of topics about, you know, going from any conceivable thing over the course of two days. That based on this statute, this statute does not rely on this prior training. This statute does not rely on anything that a supervising physician might have told him. This statute relies on nothing more than those requirements in this article and relevant DHEC regulations, that's it. I liken it to this; if they intend -- and that is if the State intends to call for instance doctors to testify about these are the standards regarding record keeping that we think a resident should have engaged in. If they want to present documents that are not DHEC regulations or a statute under this article saying this is what we think a resident should do regarding record keeping, that is not --

that does not assist the trier of fact in determining whether or not this defendant is guilty of this statute. I liken it to this; in a murder case we don't call a Sunday school teacher in to the testify when he was in church I told him killing was bad. Okay. You just have to -- the law speaks for itself you are presumed to understand and know the law. In this statute there is no reference to general practice. There is no reference to what he learned at his orientation. There's no reference to what most doctors do. There's no reference to that. It's a requirement of records to be kept as a result of ---

THE COURT: You mean there is no standard of care?

MR. HUMPHRIES: No, there is a standard of care. You're exactly right but this is not a civil malpractice case where the standard of care is relevant to the trier of fact. In this case it's not relevant to the trier of fact. What's relevant to the trier of fact, is whether or not under this article and under relevant DHEC regulations there exists some instruction regarding record keeping and he violated that record keeping requirement under this article and under the DHEC regs. That's the only thing that this statute craves reference to, not standard. So, what I want to avoid is any number of doctors or health care professionals who say this is the way he's supposed to do it.

THE COURT: Everybody ---

MR. HUMPHRIES: In my opinion, if you do that then essentially, they are acting as an expert on the ultimate issue which I think is inappropriate in this case. So -- and I can't tell you of a certainty -- I'll tell you for instance some of the witnesses about which I'm concerned. Let me pull those out so I can get their names correct. I am concerned about Sheridon Spoon who's identified as being with the South Carolina Board of Medical Examiners. Now, there is already reference to a board investigation, a pending action, so that's in there. I've got no issue with that. If he is going to testify as to the existence of a DHEC regulation, which he may or may not be qualified to do, but if that's the only thing ---

THE COURT: If it's a DHEC regulation just publish the regulation.

MR. HUMPHRIES: That's right. But if he is going to testify beyond that to say this is the standard then I would object to his testimony in that regard.

THE COURT: Alright.

MR. HUMPHRIES: And as to -- and I'm not sure what Connie Williams does.

DEFENDANT: Director of Pharmacy.

MR. HUMPHRIES: That's the Director of Pharmacy.

DEFENDANT: Yes, sir.

MR. HUMPHRIES: If these are record keepers I have no

issue with them ---

THE COURT: She's not going to testify to what's required, she's going to testify as to what's available.

MR. OSKIN: And the records kept at Grand Strand, Your Honor. If would be from the patient or the lack thereof as the State will be ---

MR. HUMPHRIES: Okay. Okay, I get it. That's probably a lot about nothing because he said that these people about which he's been indicted were outside his practice so they wouldn't have been at Grand Strand. But I really don't care about that. I ain't gone fuss with them about that. But that doesn't bear logical relevance to the indicted people -- or the people about which he's been indicted. Okay. Victor Collier, I believe at some point was the supervising physician over the residency program; is that right?

DEFENDANT: That's correct.

MR. HUMPHRIES: And then Billy Davis ---

MR. MARTIN: Billy Davis was in charge of records keeping at the clinic where the defendant was practicing.

MR. HUMPHRIES: Okay, and again that would be my same argument. We're not talking about patients he saw at the clinic and so the records -- there would be no requirement, in fact, it would be inappropriate to maintain records at the clinic of people that he prescribed for outside of the clinic. So, you know, Victor Collier, I believe, as a practical

matter, I believe Victor Collier came on after he left the program. So, as to what relevance there is to his testifying about anything that directly relates to my client, I'm not sure. Unless he says this is sort of the orientation we put residents through. Again, that goes back to my first argument which is it really don't matter what orientation they put their residents through unless there is a specific reference to a DHEC reg, this is what you've got to do, and we know that he was told about it. And even then it tenuous because whether he's told about it or not, he's charged with knowing that because it's the law just like any other criminal case. So, those are my concerns about -- and the last ones that are categorizes as civilians, they are -- I think they are the pharmacists.

DEFENDANT: That's correct.

MR. HUMPHRIES: And we aren't fussing about that. He's never denied doing the scripts. I understand they want to put them up to get the records in. I've told them I would stipulate to that, but I understand they want to put the witnesses with that. I've got no problem with that. So, I've got no problem ---

THE COURT: What documents are they putting in?

MR. HUMPHRIES: They're going to put -- as I understand it, they're going to put in written documents related to record keeping of the scripts that were called in or delivered

to them by my client.

THE COURT: In other words, there were some records.

MR. HUMPHRIES: By the pharmacist, yes exactly. You're getting a little ahead of me because that is going to be part of my argument. But, yes, I don't have any problem with the pharmacist. But, as to Sheridon Spoon testifying about some standard that otherwise is not a part of a DHEC reg or Doctor Collier or Doctor Davis or quite frankly Doctor Williams, I submit that they are not relevant to whether or not my client violated this statute if they are talking about this is the orientation program from the residencies. There exist no records within this clinic indicating that he did these things because it's already clear he did them outside. That was clear in his statement. And Inspector Strickland can testify about those things. So, I feel like I've talked around it. Do you understand my argument or have I just talked so much --

THE COURT: I just want to hear their response, reply.

MR. MARTIN: And, Judge, to be brief, or attempt to be, this entire argument or debate is not as singularly focused as Mr. Humphries would like for us to believe. There are a lot of moving parts, a lot of different things that have to be addressed. First, the defendant was practicing or supposed to be practicing within the scope of his residency. Well, that makes the Board of Examiners testimony as far as what happens

within a residency and what you are supposed to do within a residency incredibly relevant. Additionally ---

THE COURT: Will they be able to testify to something in ----

MR. MARTIN: What it will do is it will go towards knowledge and intent, Your Honor.

THE COURT: Well, I mean, it's not violative of the language unless it's required to be kept or filed under this article or a record required to be kept by this article.

MR. MARTIN: Well, once again it goes towards the part of ---

THE COURT: Well, in other words, if he didn't have an inspection sticker on his car, that wouldn't be a violation. I mean, I'm being facetious, of course.

MR. MARTIN: Oh, yes, sir. But if you look at just a very ---

THE COURT: Why would they put it in the statute?

MR. MARTIN: I'm sorry, Your Honor.

THE COURT: Why did they limit it to the criminal violation to something that's under this article?

MR. MARTIN: I mean, Judge, it's an article. If you look at ---

THE COURT: The article is a statute.

MR. MARTIN: Right. But if you look at the first part it says, it is unlawful for a person knowingly or intentionally.

This -- all of this other stuff that Mr. Humphries has brought up goes to showing how the defendant had knowledge of what he was in fact supposed to do.

THE COURT: The statute charges very simply, it's unlawful to do anything knowingly or intentionally required by this article and one of them is furnish false or fraudulent material or admit any material information from any application or board or other document required to be kept or filed under this article.

MR. MARTIN: Right. And the residency ---

THE COURT: Or any record required to be kept by the ---

MR. MARTIN: The residency program, for example ---

THE COURT: Is it required?

MR. MARTIN: --- requires for doctors to document that information ---

THE COURT: But that's not -- that's the board, that not this statute.

MR. MARTIN: But everything that's within that program, the defendant should have been following.

THE COURT: You mean if they say you've got to give -- the board says that you have to give your assistant two days vacation in order to keep good working relationships and it's not in this article then that's going to be an intentional violation of the board's records or the board's requirements.

MR. MARTIN: And I'm not sure if I understand ---

THE COURT: I am just asking what -- where does anything that he's been accused of have requirement in this particular article?

MR. MARTIN: Well ---

THE COURT: Apparently, you've got something there so maybe that will answer it.

MR. MARTIN: Yeah. I mean, Your Honor, it goes to not just that one section, but the entire article in and of itself. And that is what ---

THE COURT: Where in the article has he done something ---

MR. MARTIN: 44-53-340, records and inventories of registrants. Persons registered to manufacture, distribute or dispense controlled substances under this article shall keep records and maintain in conformance with the record keeping and inventory requirements of Federal law and with any additional rules the department issues. And that is all based off of department standards. What this is -- this testimony that Mr. Humphries is alluding to is all based off of these department standards, which is in this article.

THE COURT: Where are they? I have to go back and look.

MR. MARTIN: 44-53-340. It was in the document that I handed up to Your Honor. It was just a copy from West Law.

THE COURT: Okay, thank you. Alright, just a second. I've got it, yeah.

What do you say about that, Mr. Humphries?

MR. HUMPHRIES: Well, here's what I say about that.

THE COURT: That is in this article.

MR. HUMPHRIES: Yes, sir. And as we know the statute is strictly construed against the State in terms of the terms and its means. And what it says is -- it doesn't talk anything about department standards, right. Let's be real clear about that. It says rules passed by the department, which everybody knows are the regulations. So, to try and broaden ---

THE COURT: Is says that that's what will be done under article section 44-53-340. This article says with any additional rules the department issues.

MR. HUMPHRIES: That's right, which are the DHEC regs, not some esotery standard. The things that the department issues in terms of rules are their regulations. There exist no other rules besides their regulations.

THE COURT: Well, no there seems to be compliance with Federal law.

MR. HUMPHRIES: Right.

THE COURT: Records-keeping of inventory requirements of Federal law.

MR. HUMPHRIES: And just to be fair, the DEA's don't require patient records to prescribe meds, just to be fair.

THE COURT: Why did y'all wait until 4:30?

MR. MARTIN: Well, I'm not going to argue Federal law but

THE COURT: Well, what you're arguing is if there is a crime charged here.

MR. MARTIN: Say that again, Your Honor.

THE COURT: You are arguing if there is in fact a crime charged, because if it's not under this article what's required that he didn't do then it creates a little ---

MR. MARTIN: But it, in fact, is under the ---

THE COURT: Well, that's what I want to know. Where is it?

MR. MARTIN: Well, in addition to the 44-53-340, look at 40-47-113. It details specifically about how a physician ---

THE COURT: 44-47 ---

MR. HUMPHRIES: No, sir. It's 40.

THE COURT: 40-47-113, I see. I see. Okay.

MR. HUMPHRIES: Which, by the way, ain't this article.

THE COURT: Well, I don't know.

MR. MARTIN: Well, it is, Your Honor, because if you look at 44-53-360, it says must be issued for a legitimate medical purpose. Well, legitimate medical purpose is defined in 40-47-113 and that section deals specifically with a physician/patient relationship and then someone who ---

THE COURT: I think that that is probably controlling there, because obviously ---

MR. MARTIN: But you have to be able to talk about that

in order to define the key issue here, legitimate medical purpose. And you do that by ---

THE COURT: And that's not a standard of care, that's a requirement.

MR. MARTIN: And really it would be both, Judge. But, yes, you're right it is a requirement.

MR. HUMPHRIES: And so we're not fussing about what's in this -- just to clear I'm not fussing about that. I'm fussing about somebody coming in and testifying this is sort of the way doctors are supposed to do it. Or this is the way we've always done it. As long as they can point to an article or to a reference within this article or a legitimate DHEC regulation, a rule that they have issued, which is their regulation, then it is immaterial as to whether or not he has reached that particular standard. So, I think it's really dangerous for us to talk about standards versus rules.

THE COURT: Except when the statute does rely on what the standard is.

MR. HUMPHRIES: No question. No question. I'm not fussing with you about that at all, Judge. I agree with you on that.

MR. MARTIN: And, Judge ---

THE COURT: Yes, sir.

MR. MARTIN: Something that may help, I'm not going to try to muddy up the waters too much and I apologize if I do.

Mr. Humphries even mentioned the part about an expert --- the doctor up on the stand -- not an expert. We're not trying to offer them as an expert. It's no different that layperson testimony, testifying to their training and experience in the field in which they work.

THE COURT: But we're talking about a criminal case, not a civil case.

MR. MARTIN: We certainly are, Judge, but the rules within the residency program that are -- that follows this article would be relevant to be addressed in the trial. And moreover, whether it is -- he mentioned Sheridon Spoon and Doctor Victor Collier, they can testify to what those rules may have been or what the defendant should have done with following the rules of the program. This is not, once again, it's not a singular focused argument. There are a lot of different moving parts, and these moving parts do in fact assist the trier of fact as he said in figuring out what the defendant was supposed to do and what he was not supposed to do. And it goes directly to showing his knowledge and his intent to what he did. And it's a violation of not only the program rules, but some of it through the law as well. And once again these regs and practices are based on statutory law. Additionally, Your Honor, if you go to the definition section in this article of what is physician, it does refer to a standard there. That in and of itself is something else

that could be addressed by a physician on the stand or someone who is in charge of the licensing portion when they are discussing what a limited license is of a practicing practitioner or board physician.

THE COURT: Now, how does that fit it here?

MR. HUMPHRIES: Right. I think we need to keep in mind what he's charged with. I think we need to keep in mind what he's actually charged with.

THE COURT: He's charged with not having or maintaining patient records.

MR. HUMPHRIES: That's right. That's right.

THE COURT: And what I'm asking though, is how does that last provision apply? The one that you just gave me about what a physician is.

MR. MARTIN: The language reads ---

MR. HUMPHRIES: Can you tell me what statute it's from?

MR. MARTIN: It's section 36 under the definition portion.

MR. HUMPHRIES: Which is what statute?

MR. MARTIN: Article 3, 44-53-110 definitions.

MR. HUMPHRIES: Thank you.

MR. MARTIN: Where it talks about practitioner, controlled substances, etcetera. It says practitioner means and then it goes through a list. They are otherwise permitted to distribute, dispense, conduct research with respect to, or

administer a controlled substance in the course of professional practice or research in the State. It's directly applying to 44-53-390 because this isn't just a person, this is a practitioner who is going to describe to the jury and paint a picture of what knowingly or intentionally means. So, you have -- it's not just a person off the street. It if, in fact, another practitioner which is putting into contexts these regulations, these rules. It's putting it into context for a jury from a practical standpoint what a physician is allowed to do, what they're not allowed to do; and within their program what they're supposed to do, what they're not supposed to do.

THE COURT: Alright, Mr. Humphries, you are up on your feet.

MR. HUMPHRIES: I'm sorry. It's a habit, Judge.

THE COURT: That's in North Carolina.

MR. HUMPHRIES: I'm sorry.

THE COURT: North Carolina you do that. You sit down here. If you want to talk you stand up.

MR. HUMPHRIES: I understand. Yes, sir.

THE COURT: Do you have anything to say?

MR. HUMPHRIES: Yes, sir. I do.

THE COURT: Okay, then. Stand up.

MR. HUMPHRIES: We're still left with the issue that the statute is strictly construed against the State. It

references the article. It references DHEC regs, not a program that he may have been -- that he participated in. That's my only issue, Judge. If these witnesses get up and say pursuant to this statute, we require our registrants -- or our residents to do these things. Pursuant to DHEC regulation 601 whatever, we require, I've got no problem with that. My issue is if there is testimony outside concerning the standards that are not specifically based on a statute within that article or a DHEC reg then that evidence, number one is not relevant because this statute doesn't hold my client accountable for that. And if it's not relevant, it is not admissible. And I'll sit down.

THE COURT: Yes, sir.

MR. MARTIN: I was just going to address the relevancy part, Your Honor. It is in fact relevant and I keep going back to it, but it is to let the jury know the contexts in which a person with a limited license should or should not be prescribing medication. It is relevant. While certain portions in itself may not be criminal, it's still relevant. You can't just bar the witness specifically from mentioning how, under his current license he was allowed to practice, how under his current license he was allowed to prescribe, within his current program what he was allowed to do and how he was allowed to do it. It is relevant. It paints this entire picture. It puts everything into context. It shows his

knowledge and intent to what he was trying to do or what he did. And again, it's not expert testimony. It is layperson testimony in just saying this is what you're required to do as someone with a limited license. You can either do it this way or not, but that's the program rules. And that's all we're trying to do.

THE COURT: Yes, sir.

MR. HUMPHRIES: Then they should have charged him with that.

THE COURT: Pardon?

MR. HUMPHRIES: They should have charged him with that about his prescribing privileges as a result of his limited license. They should have charged him with that, they didn't. They charged him under this statute and so essentially, they are offering testimony about a crime or an alleged crime for which he is not indicted, which then goes back to 404 and 404(b).

THE COURT: Alright. The Code of Law in South Carolina in 1976 Amended, Title 44, Health, Chapter 53, Poisons, Drugs and Other Controlled Substances, Article 3, Narcotics and Controlled Substances.

How about somebody explain to me, and I'm not going to do it tonight at this time, I want it explained to me. What time is the jury coming in? At 10?

MR. HUMPHRIES: Yes, sir. At 10.

THE COURT: Y'all going to work me, I'm going to work y'all. So, by 9:00 I want you to explain to me Section 44-53-1640, Authority to establish and maintain prescription monitoring programs; electronic submission of information by dispensers; exemptions. The main problem with it, its effective date is May 19, 2017 and it has all of those things that apparently -- and this would be under Article 3.

MR. MARTIN: Judge, was that 44-53-16 ---

THE COURT: It looks like it's a new statute.

MR. MARTIN: 44-53-1640?

THE COURT: 1640. 44-53-1640. And I don't know what dispensers mean. But the thing that concerns me is I think both of you have raised rather relevant issues. But I'm just not sure that -- exactly what it means. Apparently, they realize that there has been a problem and then of course it's talking about dispensers and I haven't looked to see what the definition of a dispenser is. I would imagine it is a pharmacist rather than ---

MR. HUMPHRIES: Yes, sir.

THE COURT: --- a physician. But again, I think that it's that type of thing. And I just discovered it with my little review here. So, if it doesn't have any relevance then we won't have to worry about it. We just have to contend with it with what it was. But if it is relevant being under the article it provides something more specific than what is in

the article at this time or in 2016.

Alright, with that, I really would like to see you at 9 with charges and a summation of this argument on whether or not, or how far you can go in providing for testimony as to a violation of Section 44-53-390(a)(4). That is the one; isn't it?

MR. HUMPHRIES: Yes, sir. 390.

THE COURT: 390(a)(4).

MR. HUMPHRIES: Yes, sir. That's correct.

THE COURT: Alright. In other words, the appropriate statute that you are proceeding under.

MR. HUMPHRIES: Yes, sir.

THE COURT: Alright.

MR. HUMPHRIES: Thank you, Judge.

THE COURT: See you in the morning. We stand adjourned.

(RECESS)

THE COURT: Alright, we are back on the case of State versus Webb. I asked the attorneys to prepare charges for the case when it goes to the jury. Also, to be prepared to continue, I guess, the discussion on the motions yesterday. Is there anything before we start from the attorneys? From the State?

MR. MARTIN: No, Your Honor.

MR. HUMPHRIES: No, sir.

THE COURT: Alright. Who wants to -- we finished the

audio and as I understand ---

MR. HUMPHRIES: The stipulation, Judge?

THE COURT: Right.

MR. HUMPHRIES: We brought you back the original.

THE COURT: Well, I'm just saying -- here we go, I've got it. Ms. Clerk, we need to have this marked as Court's Exhibit 1.

MR. HUMPHRIES: Actually, I think that's two now.

THE COURT: Oh, we've got the audio itself.

MR. MARTIN: Yes, Your Honor.

THE COURT: So, it would be Court's Exhibit two.

(COURT'S EXHIBIT NUMBER TWO IS ADMITTED INTO EVIDENCE.)

THE COURT: I tell you what, you say you have a copy of it? What I was going to suggest just for the record is to read it into the record, if you would, somebody.

MR. MARTIN: The statement of John Alexander Webb, Your Honor, this document is brought the parties, myself and Mr. Oskin and Mr. Fran Humphries; and we do stipulate to the following. The statement of John Alexander Webb provided on February 14th, 2017 to Inspector Derek Strickland in the direct presence of his counsel, Francis Humphries, was given freely and voluntarily, without threat or coercion or hope of reward. Further, the statement of John Alexander Webb to Inspector Derek Strickland was fully in compliance with the defendant's

rights pursuant to Miranda. The statement therefore should be considered voluntary beyond a reasonable doubt. And, Your Honor, myself, George Henry Martin, as well as Seth Oskin and Fran Humphries have signed the document.

THE COURT: Very good, and it's been marked as Court Exhibit Number Two. Let me ask you now, do you have any other Jackson v. Denno?

MR. MARTIN: Your Honor, one thing we didn't put on the record that we talked about yesterday. There will be one additional redaction that both parties agree to and consented to involving the defendant's statement about doing work for two years for the FBI. We have made those redactions and I can put the number -- the timeline on the record.

THE COURT: Well, let's do that.

MR. MARTIN: We are redacting, by agreement we are redacting minute mark 34:24 to 34:33 and again redacting minute mark 35:40 through 36:02.

THE COURT: Give me those again, I'm sorry, I didn't understand you.

MR. MARTIN: Judge, that would be the defendant's statements regarding ---

THE COURT: No, just the ---

MR. HUMPHRIES: Minute marks.

MR. MARTIN: Oh, sorry. 34:24 to 34:33.

THE COURT: Alright.

MR. MARTIN: And second is 35:40 to 36:02.

THE COURT: Alright, very well.

MR. HUMPHRIES: And that is by agreement.

THE COURT: Agreement. I understand.

Alright, anything else?

MR. MARTIN: Not at this time, Your Honor.

THE COURT: Alright. Now I think we did end up on the audio, did we not? Do we have anything else?

MR. HUMPHRIES: There is nothing, the only that remains, as I understand it, was the Court's request that we come back this morning to address two things. One, the applicability of Section 44-53-640 (sic) and to summarize the arguments on the Defendant's Motion in Limine to exclude certain testimony. I think that both the State and the defense are in agreement that the section 44-53-1640 is inapplicable to the facts of our case.

THE COURT: Well, then don't -- if both the State and the defense agree to that, that pretty much decides it.

MR. HUMPHRIES: And as to the summary of the arguments, I was the last one up, so it probably goes back to them.

THE COURT: Let me ask, do you agree with that, Solicitor?

MR. MARTIN: Judge, we agree in that the facts in this particular case may not warrant discussion of that ---

THE COURT: Please, what I'm trying to do is not only

prepare a record, but to protect a record. And if it's not raised by the counsel, then it's not a part of the record and it's not an issue in the trial. I only brought it up with y'all's invitation to do a little research on my own I found it and I was just curious about it. And if you say the State says it's not applicable and the defense says it's not applicable, it's not applicable to the trial.

MR. MARTIN: Your Honor ---

THE COURT: It's not an issue.

MR. MARTIN: Correct. We believe that the route you're implying is applicable, but this particular code section is not.

THE COURT: The one we were talking about is the one that we discussed in chambers that you had a copy of.

MR. HUMPHRIES: That's right. 44-53-1640, and as to that, I understand the State not wanting to narrow down the parameters, but as to this specific statute, 1640, I believe that we agree that it is inapplicable to the facts of this case.

THE COURT: Alright, very good. Well, that's up to you. When I say you, I'm talking about both the State and the defense. If you want something to be in the record, you're going to have to put it in.

MR. HUMPHRIES: Yes, sir. No question.

THE COURT: My days of trying cases are over.

MR. HUMPHRIES: Well, I thought the same thing.

THE COURT: Okay. Alright.

MR. MARTIN: And I will say, Your Honor, the only relevancy of 1640 is the fact that testimony may come out from the witness stand that pharmacists, for example, this statute deals with people who dispense drugs and my understanding is that is a pharmacist or a practitioner who is physically administering ---

THE COURT: Well, unless I hear a motion that is to strike any such testimony, then I don't have to consider it.

MR. MARTIN: Thank you, Your Honor.

THE COURT: If I'm mistaken, is that not correct?

MR. MARTIN: Well, I just want to make a motion that we still be allowed to address ---

THE COURT: You can address anything you want. I just wanted to address what was brought up yesterday afternoon. And y'all have disposed of that, resolved it. Let's move on.

MR. MARTIN: Yes, Judge, but we do want to elicit testimony perhaps from the pharmacist about their requirement to maintain records and that is authorized ---

THE COURT: Well, that will be fine. You can elicit any testimony you want, unless Mr. Humphries objects or moves to strike, that's not my case. But, if he does I'm going to have to rule on it at that time.

MR. MARTIN: Well, at this point, Judge, we would make a

motion that we be allowed to address with a pharmacist on the witness stand or a practitioner on the witness stand the fact that there is a database that exist and that ---

THE COURT: But it didn't exist at the time.

MR. MARTIN: Well, Judge, the statute itself did exist at the time.

THE COURT: I thought that the portion that we were looking at, the dispensary of electronic said it would not be affective until 2017. You are complicating things. As I say, I'm going to let the lawyers, meaning you and Mr. Humphries try the case. Now, if either one of you don't object, you do what you want.

MR. MARTIN: I understand, Your Honor. My understanding is that article ---

THE COURT: I've ruled.

MR. MARTIN: Thank you, Judge.

THE COURT: Make your -- proper. If you want to do it at that time you might, but that'd be the only time that would be appropriate. Alright, you may proceed. Let's see what's next.

MR. MARTIN: Your Honor, my understanding is we're now going to be back on the record, Mr. Humphries is going to be renewing, I believe, his motion where he wants certain testimony that may not be included specifically in the article itself. He moved in a Motion in Limine to strike any of that

testimony. And I believe we're coming back here today to address the statutory -- the statute itself as a whole.

THE COURT: Y'all can do whatever you want to.

MR. HUMPHRIES: I think it's sort of tag they're it. I've finished my argument and at your instruction I prepared a written -- well, you didn't say written, but I prepared a written summary of our argument on that issue. I've got some information I want you to consider.

THE COURT: Alright, now who's going to take that?

MR. MARTIN: Your Honor, I'll address that with the Court.

THE COURT: Okay.

MR. MARTIN: Judge, I think one key concept that we missed yesterday is we're dealing here with one key statutory scheme. That scheme is in and of itself the regulation of practitioners and what they can and cannot prescribe and how they are supposed to do it. And anytime you deal with a regulatory scheme, rarely can you look at just one small portion of a statute. You have to take it in context, and you do that by looking at other relevant sections. And I have a case here that I'll hand up to Your Honor. May I approach?

THE COURT: Certainly. This deals with the imperative material, the concept of it.

MR. MARTIN: Yes, Your Honor. On page 5 of the Court Opinion, it deals with the fact that the Court should consider

when it's looking at a statute it should read in conjunction with the purpose of the whole statute and the entire policy of the law. And you do that by looking at those who construe the statute and their intent. So, you look at what the legislatures intent when construing this. And you can't just do that by looking at one section, or one article, or one act as Mr. Humphries tried to argue, or argued yesterday. You look at the statute -- you're looking at the statute broadly and the intent broadly. And you do that by bringing in other parts, other definitions that let you know. In order to prescribe, a practitioner's got to do that within the bounds of his license, right? I think we can all agree that a practitioner has to prescribe within the bounds of his license. Well, what if his license is a limited license, which is what we have here. Well, there has to be certain regulations in place that lay out how a practitioner is to prescribe within the bounds of his license. And if he's doing it outside of the bounds of his license, then he's doing it illegally and unlawfully.

THE COURT: Well, is he charged with doing that?

MR. MARTIN: Yes, Your Honor.

THE COURT: I thought the indictment was failure to maintain document.

MR. MARTIN: It is, Judge. But it all goes to this central theme of how one is supposed to document and what is

the excepted standard practice in that field for how to do it. And we get there -- if we start at 44-53-280 it says, the department may promulgate regulations and the control of the manufacture, distribution, and dispensing of controlled substances. And it requires someone with a valid license of that profession or that occupation to be one who can distribute, prescribe or administer a substance. But we have to go outside of just that particular article to understand what is required. And it does, this article does give authority to the administering agencies, which would be DHEC, which would be the Board of Licensing, it allows them to create regulations to be put in place to monitor and create a form of rules for practitioners to follow when they do this. So that area of this area of this article does in fact segue us to the relevancy of a witness on the witness stand saying this is why those limited license are put into a residency program and this is why this program exist to have certain rules in place, checks and balances, for someone to be able to issue a prescription. That is the whole crux and relevancy argument of why that information should be allowed to be addressed from the witness stand. I can think of very few areas of the law, Your Honor, when we are dealing specifically with statutes where we can just take one small section and not use other sections, other areas, other articles to help define and grasp our head around this. And jurors are not doctors,

jurors are not pharmacists, at least not in this particular case at hand. And they are going to have no more understanding quite frankly of how a doctor operates than me or you. So who better to take the witness stand and to put all of this into context than a practitioner himself who is in charge of the residency program where the defendant had a limited license to practice. Or an individual who is chairman of the Board of Licensing who can discuss the purpose of these regulations being in place and what is required of someone with a limited license to prescribe. And because of that and the totality of everything and the scheme itself the legislature had in mind, their intent when they wrote this, that is exactly why it is relevant, Your Honor.

THE COURT: Mr. Humphries.

MR. HUMPHRIES: Alright, so we can discuss this over and over again, so I'm not going to rehash in great extent what we already have talked about. The truth of the matter is he's indicted under a particular code section 44-53-390, which craves reference of 44-53-340. But it does say in plain language that the record keeping requirements -- it references the record keeping requirements of that article, which is article 3. That is the plain language of the statute without question. So that's what he has to have violated in order to be guilty of this statute, not some other standard of care. Now, it does reference DHEC regulations, I'm good with that.

There's no bounds on the DHEC regulations. It could be 601, it could be 101, it doesn't matter. It references DHEC regs. But as to a statute related to record keeping it references this article, which is article 3. That is the plain language of the statute. So, when we start talking about in particular 40-47-113, which was referenced yesterday, it's not contained in article 3, no question about that. It's not a rule issued by DHEC; it was issued by the legislature. And it's not a criminal statute at all. It talks essentially about professionalism, and ethics within the industry. But it is not a criminal statute. So, my position is as it was yesterday, I have no problem with any professional taking the stand and testifying this is what you have to do because this statute within article 3 says you have to do it as it relates to record keeping; or a DHEC reg says you have to do it. But anything beyond that is not a standard that my client is held to under this statute. Now, is he held to certain standards in regards to his licensing? Absolutely. Is there a board action against him today as a result of perhaps falling short as it relates to those standards? Absolutely. But that's not for this courtroom, which is why I move in limine to exclude any testimony regarding his board action and the grounds of his board action. Another tribunal will decide those issues. But in this case, in this courtroom , we have one statute, which is 390, which has parameters which the legislature in

clear language limited. So, when we talk about legislative intent, they didn't have to do that. They could have written that statute in any way they wished. We have to presume, and it is a construction of law that if they say something, they mean it. And if it's clear an unambiguous, that's what they meant. So, we talk about the legislative intent, it appears clear to me based on the language of the statute that they intended to limit the parameters of this statute to other statutes contained within this article, which is article 3, and relevant DHEC regulations, rules issued by the department. And beyond that he's not held to that standard in this courtroom as relates to the charges on the indictment. So, any testimony related to that, about him falling short or he should have done this or he should have done that, if it's not contained within this article or a DHEC reg that's applicable to the facts of this case -- that essentially is creating something that -- when we talk about confusion to the jury, he's charged with this statute but if there's testimony about how he fell short of certain standards that are not contained within this article and are not subject of an applicable DHEC reg -- that is a burden, number one that he has not been placed on notice for; and number two he's not held to it by law. We didn't choose the charge, we're here to answer to the charge. If there's any ambiguity at all, it is a rule of construction that any interpretation of that, the benefit goes

to the best interest of my client and not to the State, because they drafted it, they passed it.

MR. MARTIN: Your Honor, if I may.

THE COURT: Please.

MR. MARTIN: I think this all goes -- everything that we're trying to mention here all goes to prove whether or not he intentionally or knowingly or both, omitted material information as required to be kept. So, what is material information that is required to be kept? Well, within the section itself it talks about a legitimate medical purpose. Well, how do we know what a legitimate medical purpose is? The article says as plain as day, and I think Mr. Humphries has even agreed to this, that certain requirements and additional rules may be applied by the department. So we would go there for an explanation of what is this material information.

THE COURT: Again, he is specifically charged in three incidences of not providing documentation; is that not correct?

MR. MARTIN: That is correct.

THE COURT: Is there any question about that that documentation was supposedly to be required? In other words, it's not any -- well, it is -- he says that he had the documentation, but he didn't provide it. Is that not correct? So, the whole question is providing the documentation. In

other words, he said he had it or he should have had the documentation. It doesn't matter if he did or not, he just didn't provide it as apparently the statute -- the indictment reads.

MR. MARTIN: Well, Your Honor, he is required to maintain ---

THE COURT: I said that. What I don't want to get into is a whole procedure where you pointed out very appropriately that the amendment, the 2017 amendment dealt with a dispenser. In other words, I don't want to get into what a dispenser is supposed to do as compared to what positions of his status should do. I guess, why not just go ahead and say -- I haven't heard any object to it, that he was supposed to -- in fact, I think the defense said that he did ---

MR. HUMPHRIES: There is no objection to that, Your Honor.

THE COURT: So, why no just keep it simple. No need to complicate it.

MR. MARTIN: Well, Judge, it goes to his motive for not keeping records because he's practicing outside of the scope for which his license allows. So, why would he keep records, documentation of something he's not supposed to be doing.

THE COURT: Well, he's not charged with keeping-records, he's charged with not -- omitting the records that he was supposed to have.

MR. MARTIN: And not keeping them and maintaining them, Your Honor. And how else do we go to proving the fact that he has not kept these. I mean, maybe he did make the documents, but he didn't keep and maintain them because if he did he would have documentation showing ---

THE COURT: Well, of course. I'm sorry that sometimes other things interfere with the keeping, and I think that's what the defense is.

MR. MARTIN: No doubt, but if he ---

THE COURT: What I'm saying -- alright, let's say for a fact he did document, so there was something that you were intitled -- I mean, the State was intitled to have, which were the documents, but there was a fire. There's no documents, would you charge him under this statute?

MR. MARTIN: Yes, Your Honor, because he failed to maintain those records. The law ---

THE COURT: He failed and there was a fire that destroyed the records? I'm just -- I mean, hypothetically, I think we're getting too far field and then we're going to have to get into everything else.

MR. MARTIN: May I ---

THE COURT: Please, please. But just understand that I'm still looking for something that's charged.

MR. MARTIN: Your Honor, the issue here is if he was practicing as his license allowed, that would not be an issue

because it's an electronic records that are kept at ---

THE COURT: I think the electronic records came in in 2017.

MR. MARTIN: No, Judge. What I'm ---

THE COURT: Alright, you know more than I do. That's fine. I just read what was in the statute.

MR. MARTIN: I apologize. I wasn't trying to sound.

THE COURT: Well, it is. You're forgetting -- let's just -- I'm not going to be charging what the procedures are and the regulations are. I'm going to be charging what the section that he is indicted for.

MR. MARTIN: I didn't realize ---

THE COURT: You can argue whatever you want to, that he was required to do something because somebody else did it or that's the interpretation of what should be done and all of that, unless somebody objects and then I'm going to have to rule, and I'll rule on it at that time in the context of the matter. But to try to anticipate everything in the world that -- take what is a fairly simple indictment, he was supposed to have documentation and he didn't.

MR. MARTIN: I agree completely.

THE COURT: He hasn't denied that he did document it.

MR. MARTIN: I didn't realize that we were arguing jury charges. I thought we were arguing ---

THE COURT: What am I supposed to do? Listen, I'm

depending on you gentlemen to give me your proposed charges. I saw this case yesterday. I trust y'all have dealt with it a little time longer.

MR. MARTIN: I know we were arguing jury charges. This was a two-part argument. I thought we had moved on to ---

THE COURT: Well, I'm telling you now give me the charge and I'll charge what you want me to. If it's relevant. But now if you give me a charge on what the standard of care is, forget it.

MR. MARTIN: Agree totally, I agree totally.

THE COURT: Alright. Okay. Thank you.

MR. MARTIN: Yes, sir.

THE COURT: Alright now, any questions.

MR. MARTIN: My understanding ---

THE COURT: Have you done your charges?

MR. MARTIN: Yes, they are done, Judge.

THE COURT: Well, may I see them since we're getting ready to go to the jury -- I mean, not go to the jury but we're going to have testimony and all.

MR. MARTIN: I apologize. I thought this was something we would hand up later in the trial.

THE COURT: Actually, my policy is that before you even go to court you have your jury charges because that's what you're trying your case about. If you don't have it when you go into court then we get to the situation we're in now where

we're discussing things that might not be relevant.

MR. MARTIN: Yes, sir.

THE COURT: So, you have -- have you got any charges?

MR. HUMPHRIES: I gave you mine, Judge.

THE COURT: Alright. The reason I ask -- well, we've still got a little time. The jury is not supposed to be here.

MR. HUMPHRIES: I gave you a copy of -- would you like -- in fairness, I don't have any problem with the State's charge on the same issue that they've just provided you.

THE COURT: If there's no objection then of course I'll charge it.

MR. MARTIN: And one thing with the jury instructions, Your Honor -- never mind, Your Honor. I apologize.

THE COURT: Now, we will have the charge conference at the end but in order to get to that point I'd like to know where we're going. This is not going to limit your charges. You can propose any charges you want but I would like to consider them before I repeat them to the jury.

MR. MARTIN: We're on the same page, Judge. That was on me. I wasn't quite following at first but I'm in agreement with what you're saying.

THE COURT: Very good. Alright. Anything else? I'm not sure where we are now. I don't know about the jury being confused but I am. Alright, the jury is supposed to be here at 10, so let's take a short break until we're sure we have

them all.

(RECESS)

THE COURT: I understand the jury is ready. Is there anything from the State before we bring the jury back?

MR. MARTIN: No, Your Honor.

THE COURT: From defense?

MR. HUMPHRIES: No, sir.

THE COURT: The jury has not been sworn?

CLERK: No, Your Honor.

THE COURT: I ask the jury to join us, please.

(JURY ENTERS COURTROOM AT 10:28AM)

THE COURT: Let the record reflect that the jury and alternate are in the jury box. Mr. Clerk, if you would please swear the jury.

CLERK: Please stand and raise your right hand. Do you solemnly swear or affirm that you will well and truly try the issues joined in this case and a true verdict rendered according to the law and evidence so help you God?

JURY PANEL: I do.

THE COURT: Very well. You may take a seat.

Madam forelady, ladies and gentlemen of the jury, I am sure that each of you now fully appreciates that this Court of General Sessions for Horry County exist for the purpose of resolving questions of alleged criminal conduct arising between the State of South Carolina and the defendant. It is

a guaranteed right of every citizen that a charge of criminal conduct be presented in open court according to the same rules and procedure. The State not only has an equal right, but the duty to present a charge of criminal conduct in open court according to the same rules of procedure. Each of the parties therefore, both the State and the defendant then have an equal right to the opportunity of this judicial proceeding and to have you as the jury selected and now sworn for the trial of this case. One of the most important aspects of your duty as the jury lies essentially in the oath that you have now taken to well and truly try and determine the facts of this case. That oath in a very essential way says that you are the sole judges of the facts of this case. Obviously, any case tried in court will involve a question of what happened, or how something came to happen, or whom, if anyone, did anything in that particular occurrence or circumstance. From this point forward no one concerned with this trial has the right to decide any question of fact in the trial except you, the jury. The facts then are for your resolution, and your decision and yours alone. And after you hear all of the evidence in the case then it will be your duty by your mutual and joint discussion to determine the facts of this case by deciding the weight and the believability of each part of the evidence and by applying the law of the case thereto. Now, the trial Judge is the judge of the law in the case. It is also my

responsibility among other things to preside over this trial. To rule on the admissibility of evidence offered during the progress of the trial and to state to you the jury the law as applicable to the case. The Constitution for the State of South Carolina mandates that I as the trial Judge cannot directly or indirectly comment about the facts in this case. The process of a verdict then is simply that you the jury first determine the true state of facts and then apply to the state of facts that principal of law applicable and with that process determine and report to this Court your final verdict in the case. The Court will more fully and completely state to you the principals of law applicable to the issues in this case before the case is submitted to you for your decision. However, there are certain principals of law applicable to the framework of every case in General Sessions Court. Now, very basically I will outline several of those basic principles to you for your guidance. The defendant has entered a plea of not guilty to the charges contained in the indictments. The indictments in a case are not evidence and it is simply the written instrument that contains the charge or charges against the defendant. It serves as the formal document by which this case is processed into court. The plea of not guilty places upon the State the burden of proof in this case. As to what is mean by the term burden of proof, the defendant is always presumed in law innocent of all charges contained in the

indictment. The burden of proof requires the State to prove guilt beyond a reasonable doubt and therefore consistent with that burden the defendant or the accused party shall be presumed innocent. And that presumption of innocence is sufficient to compel a verdict of not guilty or a verdict of acquittal unless you the jury conclude that the State has satisfied its obligation to prove the defendant guilty beyond a reasonable doubt. Now, the term reasonable doubt means the kind of doubt that would cause a reasonable person to hesitate to act. This case will be opened by the solicitor, after which the same opportunity will be afforded the defendant to make an opening statement. All of the evidence has been received by the Court. Counsel for the State and counsel for the defendant will state to the jury their respective positions, after which the Court will fully state the applicable law in the case. Obviously, all parts of the case are important. You do not know which witness in a case will be -- will most impress you, whether the first witness or the last witness. In reaching your final conclusions you will need the guidance of the judgment of the other jurors. You will need the guidance of the principles of law that will be stated to you by the Court. For all of these reasons then, if we have any recess periods when you retire to your jury room or during any overnight or meal recess, the Court instructs you that you must not undertake and discuss this case among

yourselves until the case is finally given to you for your deliberation. Nor are you to discuss the case with anyone or permit anyone to discuss this case with you. If they should try to do that, as I said yesterday, report them to me and I will be glad to take the appropriate action. The verdict in this case must be a unanimous verdict of all 12 jurors. There are a few other additional comments I need to make before we begin. First, as I mentioned earlier, although I am the only person who can tell you what the law is, you and you alone are the only ones that can determine the facts. I do not have the right to indicate how I may feel about the evidence presented and throughout this trial my intention will be to act impartially towards each party. From time to time and attorney may object to something or testimony in evidence which the other side is seeking to present. As in sports, business, or any other structured activity there are certain rules that both sides must obey in presenting evidence. These rules have a definite purpose, to ensure that the information you receive is the most trustworthy and reliable evidence available. An objection is a procedural use for an attorney to call a possible violation of the rules to the Court’s attention. For this reason, you should not hold an attorneys objection against his client, nor should you conclude form my ruling of the objection that I favor one side or the other. Finally, I would ask that you pay the closest attention

possible to the evidence presented to you. I will ask that you do not take notes for if the notetaker makes an error those notes might be -- can be more detrimental than helpful during the deliberations. The time-tested system is for each of you to listen carefully, and I'm sure you will do that. Now, having said that, you will notice that I do take notes. The reason I suggest, as I mentioned earlier, a moment ago, that jurors are not to take notes, your purpose is to concentrate on what's happening in this courtroom; the testimony, the demeanor of the witness, the evidence being presented. When we take notes, it's my experience, we have a tendency to concentrate on the note to be sure of what we think we heard, not exactly what might have been said, or even spelling or something of that nature. When I say we are writing down notes as to what we think we heard, we did not hear everything, or maybe we think we heard something that was not said then that makes that note entirely -- can be and sometimes entirely incorrect. And I use the word not, if the word not was in the testimony and we didn't hear it and just hear the statement without the word not, then of course that changes the testimony all together. Now, having said all of that, I do take notes. Please understand that we have different purposes in this courtroom. You and you alone are the only ones that can decide the facts in this case. I am not as concerned about the facts. I am only concerned about

what is done and said in the courtroom, so I'm just jotting down what occurs, not the significance of it. That is for your determination, yours alone. So, I would suggest that you do not take notes and when you get to the point that you are deciding this case in your jury deliberations, use the same method you do to reach your ultimate verdict, and that is I think I heard he or she say something and then depend on the balance of the jury to determine, well that is what was said or maybe not or was it said another way. In other words, use the collective judgment of each member of the jury to determine what the testimony in evidence was. And with that, we will begin the trial of the case.

I recognize the solicitor. You may proceed.

MR. OSKIN: May it please the Court, Your Honor?

THE COURT: Yes, sir.

MR. OSKIN: Ladies and gentlemen, rules are rules. Rules are typically rules for a reason. Rules in the State of South Carolina are called statutes. Statutes are made by the legislature; they are made by the legislature based off of public policy, what's good for the citizens for our state. Rules of our state, statutes of our State apply to all citizens of our state and certain statutes apply to people depending on what they do in their daily lives, all of us. None of can commit murder, none of us can carry a weapon unlawfully. Depending on your profession or attempt to be

employed in that capacity, there's statutes that apply as well and that's the matter that's before you today. From the time period of April 2016 to October 2016 the defendant in this matter, John Webb, was in residency at Grand Strand Regional Medical Center. During his time there he was able to practice medicine within a limited scope, a limited license. Based off of that scope and ability to practice he was able to prescribe medications. But he was only allowed to prescribe to patients within that scope, not outside that scope. And he also had to keep record of those prescriptions and be able to produce those when asked by relative authorities. He wasn't able to do any of those things. Now, specifically here, the defendant prescribed to family members at the time and a co-worker of one of those family members. Why is that important? That's important because it's outside of the scope of what he was allowed to do in his license. Because he failed to do what he was supposed to, he failed to produce the records that he was supposed to, he was charged with a crime. He was charged with a crime of violation -- charged in violating the distribution of the drug law, in fact he was indicted for it. That's what you heard His Honor talk about yesterday, notice to the defendant when the case was called, when we made jury selection. Specifically, he prescribed Phentermine and Triazolam. Those are Schedule IV controlled substances. And as His Honor said, he's plead not guilty and we're on trial

before you today. As an assistant solicitor in this county, Horry County, State of South Carolina, it's my burden to prove his guilt beyond a reasonable doubt. Reasonable doubt is proof that will leave you firmly convinced of the defendant's guilt. Solicitor Martin and myself take this burden very seriously. It's the highest burden in the law, but it's not an unsurmountable burden. It's not an unsurpassable burden. It's proof that simply leaves you firmly convinced. And at the conclusion of this trial we are confident that the evidence submitted to you will make that decision very easy, the defendant did in fact fail to keep those records appropriately, and he certainly didn't produce them when required. I'm not just going to get up here and tell you that and hope you believe me. I'm going to give you a little road map as to what I expect the testimony to show you. You're going to hear from the Board of Medical Examiners for the State of South Carolina. After that, you're going to hear from Grand Strand Regional Medical Center employees, physicians there who further talk about that scope which this defendant was allowed to prescribe within. You're going to hear from Investigator Derek Strickland. As a matter of fact, you're going to hear the statement that he had with the defendant when he confronted the defendant with his violation of the law. Now, I want you to pay close attention to that statement when you hear it. You're on the jury, you were

picked for a reason. Listen to that statement. You'll hear the defendant say, I have it; I did it; I promise I did it; I have it; I did it; something must have happened; I can go find it. He didn't find it. And to reemphasize the testimony you are going to hear from the Grand Strand employees, that scope that he was allowed to prescribe within was kept electronically. Simply put, ladies and gentlemen, if he had kept records like he was supposed to he wouldn't have lost them, something wouldn't have happened to them. I submit to you that he didn't properly keep the records and I believe the evidence will support that. Had he done so, Grand Strand employees, supervisors would have been able to produce that. It wouldn't matter if it was a house fire, anything. At the conclusion of this trial, as I said, Solicitor Martin will stand in front of you and he'll ask that you find the defendant guilty of violation that distribution of the drug law. Apply the evidence and the facts to the law that His Honor gives to you. Ladies and gentlemen, if you do that the decision will be very simple, you will find him guilty because he is guilty.

THE COURT: Mr. Humphries.

MR. HUMPHRIES: May it please the Court? Good morning. I've previously introduced myself. I'm Fran Humphries. I represent John Webb, medical doctor. So, what I've got here, and you may or may not have these, or the original of these in

your jury room at the time of deliberation, they're indictments. They are charge indictments that essentially tell my client what he's been charged with and what the State has to prove beyond a reasonable doubt that he did or didn't do. So, let's talk about the things that both the State and my client agree. We agree that he wrote prescriptions for, at the time, his wife, his stepdaughter, and his wife's co-worker. They are the subject of these indictments, wife, stepdaughter, co-worker of his wife. We agree that those drugs are Schedule IV drugs, a diet pill and a mild sleeping aid. So, the things that we're not talking about, in fairness, are opioids, strong narcotics, we're not talking about those. This indictment, or these indictments, and they're all exactly the same with the exception of the drug and the patient, requires that the government prove number one that he fraudulently made these prescriptions. When you do an indictment as a prosecutor it sort of sets out the charges or the material elements of each offense, again in this case they're all the same. In order to be guilty of this statute he had to furnish false or fraudulent material as it relates to the prescripts. In fairness, I don't think we're talking about that. I think that they would agree that they're not talking about that. Or he would have had to omitted material information relating to the prescriptions for these patients. There is no question but that he wrote these prescriptions.

You will hear his statement, I'm tell you right now he wrote the prescriptions, no question. The issue is at the time that Inspector Strickland requested he produce those records, that is the patient records related to the scripts, was he able to do it. In this case he was not. You'll hear his statement. That will become very clear to you as to why he was not able to at that time. But that's what we're talking about just to be really clear. We agree number one, that he is to maintain records related to his script writing. We agree to that. We agree that in these cases he wrote scripts for his wife, his stepdaughter, his wife's coworker. We agree on that. We agree that the drugs or the prescripts were written for Schedule IV drugs. I agree on all of that. But here's the problem, life intervenes. And when it came time to produce those records Dr. Webb found himself in the middle of a divorce. He was no longer in the family home. He had limited to no access to his belongings in that home. And when asked to produce those records, quite frankly he was just unable to do that. That's the case folks. Now, you may hear -- I anticipate that you will hear, as the solicitor has indicated, from a number of witnesses about how things should have been done, the way things usually are done. But in this courtroom, in this case, the only thing that my client is charged with is being unable to produce the records upon request. That is the sum total of the allegations against my client. There has

been talk of a limited license. I can tell you we do not agree about that. That he was somehow restricted in some way as to what kind of prescriptions he could write. But that really is a red herring, it's something that really should not draw your attention because these are the charges. Within these charges are contained the elements that the government has to prove beyond a reasonable doubt. So, let's keep in mind what we're talking about here. Dr. Webb who had finished his first year of residency at Grand Strand Regional Medical Center prescribed Schedule IV meds for his wife, his stepdaughter and a coworker and then sometime significantly later was not able to produce those records. That's what we're talking about. So, when you hear the testimony keep in mind at the end of the day this is what we're talking about. Thanks.

THE COURT: Alright, you may call your first witness.

MR. MARTIN: Your Honor, the State calls Sheridon Spoon.

SHERIDON SPOON, HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: State your name and then spell your name for the Court.

MR. SPOON: My name is Sheridon Spoon? First name is S-H-E-R-I-D-O-N, last name is Spoon like you eat with, S-P-O-O-N.

MR. MARTIN: May it please the Court?

THE COURT: Certainly.

DIRECT EXAMINATION OF MR. SPOON BY MR. MARTIN:

Q: Good morning, Mr. Spoon. How are you?

A: Good morning.

Q: Where do you work?

A: I'm employed by the South Carolina Department of Labor Licensing and Regulation.

Q: And what does the Department of Labor Licensing and Regulation do?

A: It is, among other things, an umbrella agency for about 39 and some odd professional licensing boards in the state, under which, in those cases the statute or the general assembly has created the requirement for that license.

Q: Is the department commonly referred to as LLR?

A: That's correct.

Q: And is the South Carolina Board of Medical Examiners, is that part of LLR?

A: Yes, it is.

Q: And what does the Board of Examiners, what does it do?

A: The primary purpose of the medical Board is to protect the public. Functionally the board is charged with about three separate things. The first one is licensing and determining the eligibility and qualifications for the various categories of licenses that are created by law. The second major function of the board is the handling upon investigation of

complaints that are filed against licensees of the board. And the third is the board is given authority to, at its discretion to issue advisory opinions as guidance to licensees. Often when questions arise on a regular basis the board is able to issue advisory opinions, so those three things.

Q: And what is your position exactly with the board?

A: I am the board administrator for the Board of Medical Examiners and also for the Board of Podiatry Examiners, which is a separate board. So, I am the administrator for both of those boards.

Q: And what are your duties in those roles. What are your duties as administrator?

A: Primary duty of myself and our staff, in addition to coordination of the logistics of board meetings and general boring administrative things like that, we handle the licensing, processing, receipt, review and approval in some cases of medical license and other license applications.

Q: And through all of this does the board maintain records of applications for medical license?

A: Yes, we do.

Q: And are these records maintained through the normal course of business?

A: They are.

Q: What types of -- just a little feedback for the jury --

what types of licenses can a medical practitioner obtain?
A: Under the medical board there's actually about five or six different licenses and license categories. The board, for instance, licenses physician assistants, there is a license for acupuncture, there is a license for respiratory care practitioners, those are different categories of licenses that fall under the board. And, of course, you have within the medical physician license itself either an M.D. or a D.O. you have several different categories of licenses that have been created by law.
Q: Could you explain the difference between a full license and a limited license?
A: Yes, sir. There's several difference categories, some people because of the numbers may not be aware of these. There's, for instance, there's something known as an academic license, which is a professor -- an assistant professor or higher in a medical school. You can use that to teach medical school. There's a volunteer license, which allows a practitioner who may be retired and may have once been the holder of a permanent license to transition because you can only hold one license at the time. But to transition to a volunteer license it allows that person to continue working on a volunteer basis without compensation. And then the two major categories of medical licenses, although they're very different, the one that based on the number approximately

20,000 permanent -- what we refer to as the permanent or the regular or the full medical license, that the full medical license. And then the second category unto itself is the limited license. That's a license category. That is a license that is basically a training license to allow the person who is the holder of that license to complete and undergo a residency and that residency is, of course, required in order for that person to move on and obtain a permanent license at some point if they so choose.

Q: Did the defendant ever apply for a full or limited license?

A: He applied for a limited license.

Q: And what does a limited license permit a medical professional to do?

A: It either going to be a residency or a fellowship. I'll just speak a little bit about the residency. A residency program, which is conducted through an employer such as MUSC or The USC Medical School or a hospital, any place in South Carolina that is operating residency program. It allows the person to undergo that one-year residency. It's generally 12 months, whereas the permanent license has a two-year duration.

Q: Did the defendant initially apply on May 12th, 2015?

A: That's correct.

Q: Did he ever, at any point, file an application for renewal?

A: I believe so.
Q: Would that have been April 27th, 2016?
A: That's correct.
Q: What paperwork or documentation is necessary for the license application?
A: What we try to do with that is we, of course, this would come out of the licensing requirements themselves that are in statute and we conform those requirements to the information that the applicant would see on the application. I'd say the major components for the limited license would be, of course, their basic demographic information, the fee, and a copy of the contract, which the person has entered into a contract with the residency program. So, we would have a copy of that contract, which without that the application is not complete; several letters of reference.
Q: And you referenced a contract, under that contract is a medical professional required by the Board of Examiners to keep records?
A: Yes, and that would be true for any of the licenses.
Q: Full or limited?
A: Record keeping is paramount.
Q: Are you familiar with the term moonlighting?
A: I am.
Q: What is that?
A: Moonlighting would be -- and this is sometimes a question

that we get, and I always say to people, you know, we worry less about the people who call than the ones who don't. Any kind of question about something whether they could or could not do under their license and they haven't done it yet. But moonlighting would refer to, for instance, if someone were the holder of an academic license or medical license -- excuse me, or a limited license, either one of those two. The scope of that is limited to the four corners of that contract and the walls of that employer. That limited license holder would not be, for example, legally able to go and work elsewhere offline at Doctor's Care or some other employer like that unless that were explicitly made a part of the residency curriculum.

Q: So, if someone were practicing under the residency curriculum, would they be able to prescribe outside of that residency program?

A: To be fair, limited licensees do have the legal authority to issue and prescribe valid prescriptions but the scope of that is going to be, again, just like all aspects of their practice, would be limited to the curriculum and the contractual agreement that they've entered into with the employer.

Q: And just from a practical standpoint, why are all of these restrictions in place?

A: Well, I would say overall as a general statement, they're there to protect the public. The record keeping, of course is

for the benefit and the welfare of the patient, to have continuity of care if their doctor -- or they saw different doctors over time, there are medical records there to show their medical history and their medical conditions. So, it's for continuity of care for the patient.

MR. MARTIN: Court's indulgence one moment, Your Honor.

THE COURT: Certainly.

BY MR. MARTIN:

Q: Mr. Spoon, no further questions right now. Answer any questions Mr. Humphries may have for you.

A: Thank you.

CROSS EXAMINATION OF MR. SPOON BY MR. HUMPHRIES:

Q: Good morning.

A: Good morning.

Q: So, limited license, that limit primarily, at least it appears pursuant to statute, is a time limit versus a permanent license. Is that fair to say?

A: It's time and duration also limited. It's very seasonal. For instance, right now Ms. Candice in our office, she is the main person she handles nothing but limited license and we receive, as you might imagine, just at the Medical University alone there is a number of different -- Because a residency is not generic, it's specialty based. There might be one in dermatology, one in family practice, one in surgery, all of those different residency programs have a group of residence.

So, there's a limitation as to the scope and also the duration of the license. Yes, sir.

Q: But duration is certainly one that's referred to in statute.

A: It's a one-year.

Q: Okay. Alright.

A: And it can also be a six-month.

Q: Sure.

A: The permanent medical license is two-year.

Q: Two-years.

A: Yes, sir.

Q: Okay. And what impact does being a DEA registrant have on prescribing authority of say a resident?

A: I'm not sure I'm following your question. I would -- why don't you ---

Q: Alright, I'll be glad to. When we're talking about moonlighting specifically.

A: Yes, sir.

Q: Moonlighting specifically is not prohibited if, number one, you have a full medical license.

A: If you have a full medical license, the only requirement for a holder of a full medical license is --- and this is a legal requirement as well -- is that the licensee is required by law to -- if their practice cite changes, even if their phone number changes, if their home address changes, they're

required within 15 days to provide that new information to the board.

Q: Okay. I'm not sure if that's entirely responsive. My questions is ---

A: I think you asked me about practice cites.

Q: Well, moonlighting.

A: For the holder of a permanent license ---

Q: Not permanent. I'm not talking about a permanent license. I'm talking about in the language of the application that you've talked about.

A: Yes, sir.

Q: The moonlighting, isn't it true that you have a full medical license, you're a DEA registrant, and the terms of the contract of your residency are consistent, you can moonlight. Isn't that fair to say?

A: You would have to show me the contract. Contracts vary between programs, so I'd be happy to take a look at the language that you're referring to.

Q: Alright. Alright. This is your contract thought, right?

A: It is a contract that is provided by the applicant that's required to complete the application. Without the contract the application is still pending.

Q: Okay. You know that Dr. Webb at the time was a DEA registrant. Do you know?

A: I'll take your word for it. It would certainly be, as I

understand it, it would certainly be required for anyone who is prescribing controlled substances, that would be required in addition to the license itself.

Q: Sure. Thank you.

THE COURT: Reexamination.

MR. MARTIN: Thank you, Your Honor.

REDIRECT EXAMINATION OF MR. SPOON BY MR. MARTIN:

Q: Mr. Humphries mentioned the contract itself with the residency program; is that correct?

A: Yes, sir.

MR. MARTIN: And I'm going to approach the witness, Your Honor.

THE COURT: Certainly.

BY MR. MARTIN:

Q: Can I direct your attention to section O of that document. Do you recognize it?

A: Yes.

Q: And generally, what does that document appear to be? And you can flip to the beginning if you need to.

A: This document is the various application papers including the contract I believe for the defendant.

Q: For the residency program.

A: Uh-huh. (Affirmative response).

Q: What does part O specifically address

A: The heading under part O is moonlighting.

Q: And does that contract allow the defendant to practice medicine, to prescribe prescriptions outside of his residency program?

A: Well, I'm looking in the language in the second sentence, it begins, no moonlighting will be approved unless resident hold a full South Carolina license to practice medicine, a Federal DEA registration, and has provided proof of professional liability insurance to cover activities outside the training program. Resident may not represent himself/herself as an employee of hospital or any of its affiliates during any moonlighting hours.

Q: So, just to back up, during April of 2016 to October 2016 did the defendant have a limited or full license?

A: I would have to say limited because to my understanding, I'm happy to research this further if needed, I don't think the defendant has ever been the holder of a permanent license.

Q: So, it would be safe -- your testimony is in fact that he was a resident at that time under that contract?

A: He was a limited licensee and what it appears he was undergoing this particular residency program. That's correct.

Q: Thank you. No further questions at this time, Mr. Spoon.

A: Thank you.

THE COURT: You may step down.

MR. SPOON: Thank you.

THE COURT: May the witness be excused?

MR. HUMPHRIES: No objection from the defense.

MR. MARTIN: Your Honor, we would ask that he remain under subpoena.

THE COURT: Very well. I'm just asking.

You may call your next witness.

MR. MARTIN: Thank you, Your Honor. The State calls Victor Collier.

DOCTOR VICTOR COLLIER, HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: State your name and then spell your last name.

DOCTOR COLLIER: Victor Collier. C-O-L-L-I-E-R.

DIRECT EXAMINATION OF DR. COLLIER BY MR. MARTIN:

Q: Good morning, Dr. Collier.

A: Good morning.

Q: Where do you currently work?

A: I currently work at Grand Strand Medical Center.

Q: What's your position there?

A: I am the Internal Medicine Program Director.

Q: What are your duties as the program director?

A: I oversee the education of the residents assigned to our facility.

Q: And this goes without saying but are you a medical doctor or a physician?

A: Yes, sir.

Q: Through your work as a physician and your position as the

director are you familiar with the process by which physicians apply for the medical licenses?

A: Yes.

Q: And here you have in fact completed that process yourself; right? That is correct?

A: Yes.

Q: For the licensing of medical residence are you familiar with a form called the Graduate Medical Education Training Agreement?

A: Yes, sir.

Q: Can you describe what that agreement is?

A: It's an agreement between the hospital and the resident that goes over the policies and procedures of the residency program.

Q: What parties would sign that agreement?

A: Typically, the resident and the CEO of the hospital.

Q: Are you familiar within that form with the requirements of record keeping?

A: I think there is a clause in that form that says we're to maintain medical records on all of our patients, the specific wording I couldn't tell you but there is a clause there.

Q: And that would include those with limited and full license?

A: Correct.

Q: Are you familiar with the term moonlighting?

A: Yes, sir.
Q: Is that prohibited in your program?
A: Moonlighting is prohibited for all first-year residents. It's allowed for second- or third-year residents who have a full medical license but not with a limited medical license.
Q: So, you cannot moonlight with a limited medical license?
A: Correct.
MR. MARTIN: Court's indulgence for a moment, Your Honor.
THE COURT: Certainly.
BY MR. MARTIN:
Q: In the residency program itself and in the contract, is there an agreement that a resident has with the program to not prescribe to family members?
A: I believe there is a policy that may or may not be in the contract that refers to not prescribing to family members.
Q: But that is part of the residency program at Grand Strand?
A: Uh-huh. (Affirmative response). Yes, sir.
Q: And specifically, could you give an example to the jury, going back to moonlighting. What would be an example of moonlighting?
A: So, moonlighting would be basically practicing medicine outside of the residency program. For example, if you were to moonlight at a rehab center or another hospital, again only with a full medical license.
Q: And did his residency program entail, or involve, where he

would have been allowed to practice at Grand Strand Regional Medical Center and the Grand Strand Regional Clinic?

A: Correct.

Q: So, outside of that would be moonlighting?

A: There may be some other practices within the community like a cardiologist's office, or a pulmonologist's office where he may practice medicine.

Q: Doctor Collier, no more questions at the moment. Please answer any that Mr. Humphries may have.

CROSS EXAMINATION OF MR. COLLIER BY MR. HUMPHRIES:

Q: Good morning, Doctor Collier.

A: Good morning, sir.

Q: Alright, so when we're talking about moonlighting essentially what we're talking about is working at another, some other area of employment?

A: Correct.

Q: Okay. Alright. Do you know my client, Doctor Webb?

A: Yes, sir.

Q: Okay. Were you the program director when he began his residency?

A: No, sir.

Q: You were the program director when he left your program.

A: Yes, sir.

Q: Okay. Are you familiar at all with his performance within the residency program?

A: So, John completed his intern year in good standing at our program.

Q: Okay. And he was at that time in his second year.

A: Correct.

Q: Thanks, Doctor.

THE COURT: Reexamination.

MR. MARTIN: Court's indulgence, Your Honor.

THE COURT: Certainly.

MR. MARTIN: No further questions.

DOCTOR COLLIER: Thank you.

THE COURT: You may step down.

May this witness be excused?

MR. MARTIN: Yes, Your Honor.

MR. HUMPHRIES: Please.

THE COURT: Thank you, Doctor.

DOCTOR COLLIER: Thank you.

THE COURT: You may call your next witness.

MR. MARTIN: The State calls Billy Davis, Your Honor.

BILLY DAVIS, HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: Step around, say your name and then spell your last name.

MR. DAVIS: Billy Davis. D-A-V-I-S.

DIRECT EXAMINATION OF MR. DAVIS BY MR. MARTIN:

Q: Mr. Davis, where do you work?

A: Aventura Primary Care and Preventative Medicine in Aventura, Florida.
Q: Is that a part of the Hospital Corporation of America?
A: It is.
Q: And is that commonly referred to as HCA?
A: It is.
Q: And what does HCA do?
A: HCA is a health care company and we basically pilot operations in hospitals, outpatient care centers, urgent care centers, and graduate medical education programs nationwide and one operation overseas.
Q: Is Grand Strand Regional Medical Center, is it affiliated with HCA?
A: It is.
Q: Did you use to work at Grand Strand through HCA?
A: I did.
Q: What dates, if you recall, did you work there?
A: January 2016 through October 2018.
Q: Was there a particular practice within Grand Strand that you were affiliated with?
A: Grand Strand Primary Care and Grand Strand Senior Care, the first six months of my career with them I worked with Senior Care and then I transitioned to the graduate medical education resident clinic, which is Grand Strand Primary Care.
Q: When you worked at Grand Strand Primary Care what was your

position there?
A: I was the practice manager and ethics and compliance officer.
Q: As a practice manager what are your duties?
A: So, basically, I handle all of the practice operations. I supervise the staff. I provide them training. I give electronic support to the residents that rotate in and out of the clinic so they have the tools they need to do their work while they're in the clinic and make sure they have, you know, any supplies, medications, things like that on hand.
Q: Were you responsible for the maintenance of electronic medical records?
A: Yes, I was the electronic health records custodian.
Q: And essentially are electronic medical records a patient's chart?
A: Yes. So, from the days of old we have a paper chart and with the affordable health care act, they moved us over to electronic medical recording. So, basically, that tells a story just like an old paper chart did, just in electronic form.
Q: So, what is required to be included in this medical record or chart?
A: So, the electronic health record basically tells a story. It tells a story about the individual patient. It talks about your social history, your family history, your medical

history, any immunizations or diagnosis that you've ever had, or any medications that you take would be in that chart.

Q: And as you previously testified that you were in fact the practice manager, are you familiar with any restrictions placed on medical resident as it relates to writing prescriptions?

A: They are only allowed to write prescriptions to patients that are seen in our clinic unless they are in the hospital under supervision. And even when they're in our clinic they are under a supervising attending provider, just like Doctor Collier functions as a supervising attending provider.

Q: Did and does the Primary Care Clinic maintain of all patients seen at that practice?

A: We do.

Q: So, if a medical resident wrote a prescription there should be a medical record attached to that?

A: That is correct. There should be an encounter in the patient's chart.

Q: Were you asked to search patient records for this case?

A: I was.

Q: Were you given specific patient names and dates of the prescriptions?

A: Yes. I was given a subpoena for those.

Q: Were you able to locate any medical records that corresponded with the names and dates you were given?

A: No.

Q: None at all?

A: None at all.

MR. MARTIN: No further questions at this time, Your Honor.

CROSS EXAMINATION OF MR. DAVIS BY MR. HUMPHRIES:

Q: Good morning.

A: Good morning.

Q: So, let's talk about patient charts.

A: Okay.

Q: Okay. Again, typically what's contained in a patient chart?

A: So, anything about the patient's medical history. Anything about their habits, their diagnosis, immunizations, anything that has to do with them medically is in that chart.

Q: The formulation or the compilation of that chart, that's typically done in the context of a relationship; isn't that fair to say?

A: Yeah. Yes.

Q: Okay. And through that relationship this information is generated. Is that fair to say?

A: Yes.

Q: Thanks.

A: You're welcome.

MR. MARTIN: Briefly on redirect, Your Honor.

THE COURT: Certainly.

REDIRECT EXAMINATION OF MR. DAVIS BY MR. MARTIN:

Q: We talked about patient names and dates. If you need to look at ---

MR. HUMPHRIES: Objection, Your Honor, as to this is beyond the scope of cross.

THE COURT: Afraid so.

MR. MARTIN: Understandable, Judge. We have no further questions.

THE COURT: Very good. Thank you.

You may step down.

You may call your next witness.

MR. MARTIN: Judge, may counsel approach briefly?

THE COURT: Certainly.

(BENCH CONFERENCE)

Madam forelady, ladies and gentlemen of the jury, we're going to do a recording of a interview made during the course of this preparation. And it's a stipulated agreement that both sides, the State and the defendant agree that it is an accurate statement. We will read the stipulation into the record.

Have you got it?

Alright, madam court reporter, do you have it? I thought you were going to mark it.

Alright, if the solicitor would read it. That's prepared

by the solicitor. Now, a stipulation is an agreement by the parties to whatever the stipulation projects or provides and that is, therefore there's no exception to it. In other words, both sides agree that it's an accurate statement. So, I'm going to ask the Solicitor to read it and then, of course, the defendant has agreed to it as well. If you would please read the stipulation into the record.

MR. MARTIN: By this document the parties, through assistant solicitors George Henry Martin and Seth Oskin for the State, and Francis A. Humphries, Junior for the defendant do stipulate to the following. The statement of John Alexander Webb provided on February 14th, 2017 to Inspector Derek Strickland and in the direct presence of his counsel Francis A. Humphries, Junior was given freely and voluntarily without threat or coercion or hope of reward. Further, the statement of John Alexander Webb to Inspector Derek Strickland was fully in compliance with the defendant's rights pursuant to Miranda. The statement therefore should be considered voluntary beyond a reasonable doubt.

THE COURT: Very good. Thank you. Now, let's see. They're just listening to the audio, right?

MR. MARTIN: Yes, Your Honor.

THE COURT: It has been redacted somewhat and this is the redacted version that was agreed to by both parties and so it's not continuous audio. It has been -- it has been

redacted at some point by agreement.

MR. MARTIN: And, Judge, may we approach again?

THE COURT: Certainly.

(WHEREBY AUDIO RECORDING IS PLAYED FOR JURY.)

(STATE'S EXHIBIT NUMBER ONE IS ADMITTED INTO EVIDENCE.)

MR. MARTIN: At this time, that's the conclusion of the interview.

THE COURT: And, madam forelady, ladies and gentlemen, this was stipulated to as being accurate and given freely and voluntarily.

Alright, with that we are right at 12 noon. How much time do you need for lunch?

Alright, we'll do it the same way we did it yesterday afternoon, consensus? An hour at least.

FORELADY: An hour.

THE COURT: One hour. Alright, very well. Again, ladies and gentlemen of the jury, the instruction is going to be the same as yesterday and throughout the trial of this case, that you are not to undertake the discussion of the case among yourselves in any way or permit anyone to talk to you about it. If they should then you are to report them, and I will take the appropriate action. As I said yesterday, you're the ones that must make the decision in this case and it must be made on things that are introduced in this courtroom, either

evidence or testimony. And no one else can help you, they can only interfere with a proper resolution of the case. So, with that I'll excuse you until 1:00. I might note that we can't start until you get back anyway. I hope we will all be able to be on the same schedule.

Alright, everyone else remain seated while the retires from the courtroom.

(JURY RETIRES TO JURY ROOM AT 11:59AM)

THE COURT: What's the report on your witnesses in route?

MR. MARTIN: We've been informed that they'll be here at 1:00.

THE COURT: 1:00, okay that's the only thing I was really checking on.

Alright, we stand in recess until 1:00.

MR. MARTIN: Thank you.

MR. HUMPHRIES: Thank you.

(RECESS)

MR. OSKIN: Madam Court Reporter, State's on record with regards to stipulations of evidence, specifically State's Exhibit Number One, State's Exhibit Number Two, State's Exhibit Number Three, those are prescriptions. They will be testified to later but defense counsel, Mr. Humphries has stipulated to allowing them into evidence without objection.

MR. HUMPHRIES: That's correct.

THE COURT: Let the record so reflect.

COURT REPORTER: It should be exhibit two, three and four.

MR. OSKIN: I'll fix this real quick on the record, Your Honor.

THE COURT: Okay, that'll be good.

MR. OSKIN: Madam Court Reporter, just to make a correction for the record, as properly recognized, we are introducing these prescriptions into evidence with stipulation by the defense. The correct number will be State's Exhibit Number Two, State's Exhibit Number Three and State's Exhibit Number Four. Those are prescriptions that will be later testified to by the pharmacist that filled them.

THE COURT: Thank you, gentlemen.

MR. OSKIN: Thank you, sir.

With that, Your Honor, at your leisure the State's ready to proceed.

THE COURT: That's good. I appreciate that.

We have a jury I trust.

CLERK: Yes, sir.

THE COURT: Anything from the State before we bring the jury back?

MR. MARTIN: Judge, we addressed everything.

THE COURT: Alright, do you need anything to put on the record? Are you satisfied that you're State's one, two and three have been admitted?

MR. MARTIN: Judge, the only thing that the State will put on the record, and we were going to request to do that in the jury's presence, was Court Exhibit Three, which was our second stipulation of the trial. That the recording of the interview previously published to the jury was entered into evidence as State's Exhibit One by stipulation of the parties.

THE COURT: Okay, you don't need that for the jury then?

MR. MARTIN: I will need to read it before the jury.

THE COURT: Well, the we should have waited until they got here.

MR. MARTIN: Okay.

THE COURT: Please ask them to join us.

(JURY ENTERS COURTROOM AT 1:18PM)

THE COURT: Alright, let the record reflect the jury and alternate are in the jury box. Madam forelady, ladies and gentlemen of the jury, I apologize at the wait but I was involved in something I had to finish first and so I appreciate your patients. We will continue with the State's case.

MR. MARTIN: And, Your Honor, as previously discussed with Your Honor outside of the jury's presence, the State's going to put on the record the stipulation regarding State's Exhibit One which is the recording that the jury did just listen to. The recording of the interview previously published to the jury was entered into evidence as State's

Exhibit One by stipulation of both parties, the defense and prosecution.

MR. HUMPHRIES: That's correct.

THE COURT: Alright, very good. And that will be Is it Court's Exhibit?

COURT REPORTER: Court's three.

THE COURT: Court's Exhibit Three. Very good. Admitted into evidence.

(COURT'S EXHIBIT NUMBER THREE IS ADMITTED INTO EVIDENCE.)

THE COURT: Alright, you may now proceed with the case.

MR. OSKIN: At this time, Your Honor, the State would now call Ms. Connie Williams.

CONNIE WILLIAMS, HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: State your name and then spell your last name.

MS. WILLIAMS: Connie Williams. W-I-L-L-I-A-M-S.

DIRECT EXAMINATION OF MS. WILLIAMS BY MR. OSKIN:

Q: Good afternoon, Director Williams. How are you, ma'am?

A: Doing fine. Thank you. How are you?

Q: I'm well. I appreciate you joining us. Director Williams, where do you work?

A: Grand Strand Hospital.

Q: Okay, where is that located, ma'am?

A: Myrtle Beach.

Q: Do you know what county that's in?
A: Horry.
Q: Okay. What's your position there?
A: I'm the Director pf Pharmacy.
Q: Okay. What are some of your duties and responsibilities being the Director of Pharmacy?
A: I'm basically responsible for all of the medication use within the facility, developing policies, procedures. Making sure that I have competent staff, overseeing the nurses with their medication delivery and that type of thing.
Q: Okay. Do you have any responsibilities regarding outpatient prescriptions?
A: We do not have an outpatient pharmacy, so no we do not dispense outpatient prescriptions.
Q: Please tell this jury about the procedure for prescriptions for inpatients. By inpatients, I guess I'm meaning, correct me if I'm wrong, patients being treated in the hospital whether it be clinically or seeing a physician.
A: Okay, sure. Well, first of all they come to the hospital and they're admitted as an inpatient and then they're seen by the attending physician and the doctor enters orders into the computer and then those orders do come to the pharmacy for verification. We're kind of like a second check, so we're checking for allegories, drug interactions, appropriate dosing, duplications, that type of thing. Once the pharmacist

has signed off on it then we put it into what we call the Pyxis machine which is kind of like a candy machine for drugs for the nurses to dispense the mediation. And the nurses dispense the medication patient specific. Is that clear?

Q: How about this? If somebody was not a registered patient at Grand Strand could they order a prescription through your pharmacy?

A: No, they cannot.

Q: Okay. Alright. So, I think you testified that you would check for drug interactions in the pharmacy?

A: Yes.

Q: That's part of your daily duties as a pharmacist?

A: Absolutely.

Q: As well as being the director of the program itself.

A: Sure.

Q: Is it possible -- so you keep records basically of prescriptions ordered, filled and distributed within Grand Strand Hospital?

A: Correct. It's all in the electronic medical record.

Q: Okay, thank you. And is there any way to alter those records?

A: Not to the best of my knowledge, everything there's a paper trial like if I would go in an change a dosage or something like that I'm able to do that but there's a paper trail that says I did it at such a date, such a time. So,

there's a paper trial for everything.
Q: Okay. Is it possible to delete records?
A: Not to the best of my knowledge.
Q: Can you retrieve a canceled an order?
A: Can I retrieve a canceled order? Yes, I can if it's for a medication.
Q: Okay, why would you do that?
A: I might be looking for maybe an order got canceled in error and I might need to retrieve it to find out what happened.
Q: And the system that you have access to, you have to know how to run that system as part of your duties.
A: I know how to use it. We have an IT Department that supports the use of the medication system.
Q: Okay. And that system records all encounters with patients within Grand Strand?
A: Absolutely.
Q: Those records are kept in the ordinary course of business at Grand Strand Hospital?
A: Yes.
Q: Alright, as part of your duties within your position, did you conduct a search of the computer data base for names provided to you by Investigator Strickland in regards to this matter?
A: Yes, I did.

Q: Specifically, did you research the data base for records relating to a Kristie Shaw?
A: I need to pull my notes.
Q: Okay, what are those notes from?
A: It's a copy of the e-mail that I sent with the information on it.
Q: Okay.
A: Kristy Shaw, yes, I did. There were no encounters at Grand Strand.
Q: So, you found no indication that she'd been a patient at Grand Strand?
A: That is correct. Inspector Strickland asked for the time period of 2010 through January of 2017 and so that's the time period which I did research and I found no encounters, and that would include even coming in to have a lab or an x-ray or anything.
Q: Okay, thank you for that clarification. How about with regards to records relating to an Alexandrea Chavis? Did you search the data base for that name?
A: Yes, I did. There was no encounters at Grand Strand.
Q: That's -- to keep you from being repetitive, that's the same thing that you just said.
A: Yes, it is. I'm sorry. I'm reading on what I wrote.
Q: No, you're fine. Did you also search the data base for records relating to Renee Jordan?

A: Renee Jordan, yes.

Q: Did you find any encounters there?

A: I did. Renee Jordan was a patient in our emergency department twice in 2013 and once in 2014. I have the specific dates if that's of interest.

MR. HUMPHRIES: I'm going to object as to relevance. I think that would just speed us up. I think that's clearly outside ---

BY MR. OSKIN:

Q: It's unnecessary for those dates but I appreciate your transparency.

A: Okay.

Q: So, it's your testimony to this jury in your data base search of the names given to you that they were not patients of Grand Strand prior to 2016. I'm not trying to speak for you. I apologize. I'm trying to stay within the objection.

A: Okay. Renee Jordan was a patient at Grand Strand.

Q: Right.

A: The other two were not.

Q: Okay. Was she a patient in 2016 or no?

A: In 2016, no.

Q: Okay, thank you. No further questions from the State. Please answer any questions from defense.

MR. HUMPHRIES: I don't have any questions. Thank you, ma'am.

THE COURT: You may step down.

MR. OSKIN: The State asks that she be released from her subpoena, Your Honor.

MR. HUMPHRIES: No objection.

THE COURT: Alright, without objection. You may go. Thank you.

MR. OSKIN: The State would next call Mr. Leonard Cummings, please.

LEONARD CUMMINGS, HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: State your name and then spell your last name.

MR. CUMMINGS: Leonard Cummings. C-U-M-M-I-N-G-S.

DIRECT EXAMINATION OF MR. CUMMINGS BY MR. OSKIN:

Q: Mr. Cummings, what do you do for living, sir?

A: I'm a pharmacist for Walgreens.

Q: What is your educational background to become a pharmacist?

A: I graduated from MUSC in Charleston in 2006.

Q: Were you working as a pharmacist back in October of 2016?

A: I was.

Q: Alright, which pharmacy were you working at, sir?

A: Walgreens in Conway.

Q: Is that the one on Church Street?

A: On Church Street.

Q: Okay. What are your daily duties at the pharmacy?

A: Taking prescriptions that people bring in, taking phone calls, consult patients.
Q: Those were the same duties you were doing back in October of ’16?
A: Right. Yes, sir.
Q: Alright. Do you at times take prescription orders?
A: I do.
Q: Excuse me. Do you take prescription orders?
A: Over the phone?
Q: In general?
A: Yes.
Q: Okay. What’s your procedure for taking in orders, sir, whether it be by phone or?
A: Well, if it’s a walk in they will have a paper prescription. I just take it in, look at it, then I fill it. If it’s a call in I get the patient’s name, date of birth, drug, directions, quantity, refills, all that kind of stuff.
Q: Okay. And what information is required from a doctor in order to validate and therefore let you process that prescription.
A: I would need a patient’s name, date of birth, whatever drug he’s prescribing, directions for that drug, quantity, any refills, of course the doctor’s name, sometimes a phone number, DEA number.
Q: Okay.

MR. OSKIN: If I may approach the witness, Your Honor.

THE COURT: Certainly.

BY MR. OSKIN:

Q: Mr. Cummings, I'm showing you what's been stipulated into evidence as State's Exhibit Number Two. I'll ask if you recognize that.

A: Yes.

Q: What is that a copy of, sir?

A: It's a prescription for Triazolam. I filled it back in, it looks like 2016.

Q: Is Triazolam a controlled substance?

A: It is.

Q: Do you know its schedule?

A: I'm not positive. It's probably a three or four. I'm not sure.

Q: Is that why you take a DEA number?

A: Right.

Q: And do you see your initials anywhere on that form?

A: I do. Yes, sir.

Q: And on this form does it appear that all required information was given?

A: Yes.

Q: Alright. What's the doctor's name or the alleged doctor's name on that copy?

A: John Webb.

Q: And are you able to tell if that prescription was filled?
A: Yes.
MR. OSKIN: Your Honor, understanding this evidence has been stipulated and admitted, therefore, admitted into evidence.
THE COURT: Alright, what's the exhibit?
MR. OSKIN: State's Exhibit Number Two.
THE COURT: Alright. Very good. State's Exhibit Number Two is admitted without objection.
(STATE'S EXHIBIT NUMBER TWO IS ADMITTED INTO EVIDENCE.)
MR. OSKIN: Thank you, Your Honor.
May I approach one more time? This will be the last question. I'm sorry.
BY MR. OSKIN:
Q: Mr. Cummings, I'll just have you reference the date that that prescription was filled, please, sir.
A: Looks like it was called in on 10-27-2016. It looks like the fill date is 10-28-2016. Taken during the night shift so that could have been the overlap.
Q: Okay. Thank you for that clarification. That answers all the questions for me, Mr. Cummings. Please answer any questions Mr. Humphries may have.
THE COURT: Cross Examination.
MR. HUMPHRIES: Very briefly.

CROSS EXAMINATION OF MR. CUMMINGS BY MR. HUMPHRIES:

Q: Good afternoon, Mr. Cummings, my pharmacist. Alright, on this State's Two there is a DEA number; is that correct?

A: Right here at the bottom.

Q: Yep. And that is for Doctor Webb.

A: Yes, sir.

Q: Appears to be legitimate.

A: Yes, sir.

Q: And the information that you received -- and this was a call in or was this a paper?

A: That is a call in.

Q: Okay. And again, what kind of information would you receive from the doctor? It's not always a doctor that calls it in; is that correct?

A: Not always.

Q: But in this case, a doctor.

A: Where it says M.D. there. That's who called it in.

Q: Yep. So, my client actually called it in.

A: Right.

Q: Based on this document.

A: Yes, sir.

Q: Right. And tell me again, what information do you take in? Because on the phone it's a bit different than if you take a paper prescription in; is that correct?

A: Correct.

Q: Okay. So, what information do you receive from the doctor calling in the prescription?
A: Like I said before, the patient's name, most often date of birth or phone number, some way we can search the data base for the correct patient. The drug, directions, quantity, sometimes they leave a phone number or DEA number but that's not always done, and of course whoever the doctor is.
Q: Right. But in this case it was done.
A: Correct.
Q: Okay. And tell the jury what that drug actually is. Is there another name for that drug besides ---
A: Triazolam, the brand name would be Halcion.
Q: And what does it do?
A: A lot of times it used for anxiety or for sleep.
Q: Okay. So, a sleep med.
A: Right.
Q: It's definitely not a Schedule I or Schedule II narcotic.
A: It is not.
Q: Okay. And would it surprise you if I told you it was a Schedule IV?
A: It wouldn't surprise me. I was guessing III or IV, I wasn't positive.
Q: Okay.
MR. HUMPHRIES: That's all I have.
THE COURT: Reexamine.

MR. OSKIN: Court's indulgence, Your Honor.

THE COURT: Okay.

MR. OSKIN: Nothing from the State from this witness, Your Honor. The State asks that he be released from his subpoena.

MR. HUMPHRIES: No objection.

THE COURT: Without objection. You may be excused. Thank you, sir.

MR. OSKIN: Your Honor, at the appropriate time the State would next call Ms. Kate Birringer.

KATE BIRRINGER, HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: State your name and spell your last name.

MS. BIRRINGER: First name is Kate. Last name is Birringer. B-I-R-R-I-N-G-E-R.

DIRECT EXAMINATION OF MS. BIRRINGER BY MR. OSKIN:

Q: Good afternoon, Ms. Birringer. What do you do for a living, ma'am?

A: I'm a Pharmacy Manager at the CVS is downtown Conway.

Q: Okay. What's your educational background to be able to do that type of work?

A: I have a Pharm D. from the University of Pittsburg.

Q: Okay. And how long have you been a Pharm. D?

A: Since 2010.

Q: Alright, so is it safe to say you were working as a

pharmacist in July of 2016?
A: Yes.
Q: Alright, and do you recall what pharmacy you were working at?
A: The CVS in downtown Conway.
Q: Is that the one you still work at?
A: Yeah.
Q: What are your daily duties as a pharmacist, ma'am?
A: Fill prescriptions, checking for interactions, immunizations, consultations, any kind of advice, over the counter medications, everything.
Q: And it may be repetitive but do you at times take in phone in prescriptions?
A: All the time.
Q: Alright, what's the procedure for that, ma'am?
A: If they're actually on the phone versus voice mail it's a little different because you can't get all the information from a voicemail. You get the patient's name, date of birth, document the date and time you receive the call in or voicemail because it's left on our voicemail the exact date and time, medication, the strength, quantity, instructions, number of refills, doctor's name, who it is whether it's a doctor or an advocate for the doctor, and patient -- I'm sorry, doctor's information whether they give their phone number, their MPI, their DEA or their state license.

Q: I think you covered the bulk of it there, which I appreciate. What's some other information that's required from a doctor in order for you to be able to validate that prescription and then fill it?

A: Typically we do check for a DEA number if it's a controlled substance or we would ask for an MPI. That's usually all. And then with the office phone number, we have caller ID, so we can tell if it's being called from the actual office.

Q: Alright, you look up patient names, all of those preliminary things. Is there any extra care in regards to a controlled substance in your line of work?

A: We do check the South Carolina PMP, the prescription monitoring program, for almost every controlled substance that we fill, especially for narcotics so we can see if the medication is a duplication or if the patient is going to more than one pharmacy, which is unfortunately very common.

Q: Do controlled substances have a greater tendency for abuse?

A: Of course.

Q: Okay.

MR. OSKIN: If I may approach the witness, Your Honor.

THE COURT: Certainly.

BY MR. OSKIN:

Q: I'm showing you what's been stipulated to by defense and

therefore entered into evidence as State's Exhibit Number Three. Do you recognize that?

A: Yes.

Q: What is that?

A: It's a called in prescription from July 7th, 2016.

(STATE'S EXHIBIT NUMBER THREE IS ADMITTED INTO EVIDENCE.)

Q: That was called in by whom?

A: We have M.D. on there, so it would be Doctor Webb.

Q: Okay, and you filled that?

A: I did not fill it. It was filled by a different pharmacist. This is her signature, so it was called in at 8:24PM and we close at 9 so it was probably left for the next day. This was 7-7 and she signed here 7-8 with her license number and her signature.

Q: Did the caller leave all required information on that?

A: I think he left an MPI and we had to add the DEA. It's required by the State of South Carolina on any controlled substance.

Q: Alright. Again, that prescription was filled on what date?

A: Filled on 7-8-2016.

Q: And specifically with regards to that prescription, what was that drug?

A: That's phentermine. The brand name is Adipex. It's used

for weight loss.

Q: Okay, when defense counsel or the State references the diet pill, that's what that is?

A: Yes.

Q: Still a controlled substance, though.

A: It is. I think it might be a IV, maybe a III, but probably a IV.

Q: And with regards to CVS keeping that record, that's part of your duties as a pharmacist?

A: Yes.

Q: And is it part of your duties as a practitioner to have to keep that record and be able to produce it?

A: Yes.

Q: That only applies to you, the pharmacist, correct?

A: To keep the records?

Q: For that prescription, that specific record itself?

A: Yes. I have to keep them for 10 years.

Q: Okay. But what I'm asking is, does the pharmacist keep it and does the doctor also keep it?

A: I would hope the doctor also keeps it.

Q: They're supposed to as a practitioner.

A: Yeah. I mean, I would hope they do. We have to.

Q: Nothing further from me. Please answer any questions from Mr. Humphries.

THE COURT: Cross examination.

CROSS EXAMINATION OF MS. BIRRINGER BY MR. HUMPHRIES:

Q: I'm sure CVS is awesome too, by the way.

A: I heard you like Walgreens better.

Q: Alright, so let me ask you this as it relates to ---

A: That one's mine.

Q: This one's yours. Okay. As it relates to this document, which is -- I knew I should have got my glasses. Is that three?

A: This is three. Yes, sir.

Q: Awesome. Had this prescription been abusive in anyway, that is if it had been prescribed within another treatment period of another -- let me put it another way. If they were pill shopping, you wouldn't have filled that prescription; would you?

A: Well, that medication is not available on the PMP still.

Q: Okay.

A: So, I would not be able to tell if they were prescription shopping.

Q: Okay.

A: Also, that medication is never covered by most insurances so they pay out of pocket so it's even harder to check for prescription shopping because it doesn't ding up against an insurance claim saying they got it at Walgreens yesterday and they are getting it today at CVS. So, it's actually a very easy medication to pharmacy shop with.

Q: Let me ask you, is there anything indicated by this script that would indicate that such a thing was happening?
A: There's no way to tell that with a call in, no.
Q: Right. Okay. So, there's nothing irregular about this prescription?
A: The time it was called in is pretty irregular.
Q: Tell me what the time is.
A: 8:24PM.
Q: Okay. Might that indicate -- well, let me ask you this. Do you get calls at times from doctors outside regular office hours?
A: All the time.
Q: Yeah. Okay. And that's essentially what this is, outside office hours.
A: Yes.
Q: Okay. Thanks.

MR. OSKIN: Very briefly, Your Honor.

THE COURT: Certainly.

REDIRECT EXAMINATION OF MS. BIRRINGER BY MR. OSKIN:

Q: This is just a follow up to this last little bit there. Do doctors typically call in prescriptions for diet pills at 9:00, or roughly thereabouts?
A: No.
Q: It would be more -- I don't want to speculate. The answer was no; is that correct?

A: Right. The answer is no.

Q: Thank you, ma'am.

MR. OSKIN: Nothing further from the State. We'd ask that she be released from her subpoena.

MR. HUMPHRIES: No objection.

THE COURT: Alright, without objection. You may be excused. Thank you very much.

MR. OSKIN: Your Honor, at this time the State would next call Ms. Karissa Proctor.

KARISSA PROCTOR, HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: State your name and then spell your last name.

MS. PROCTOR: Sure. Karissa Proctor. P-R-O-C-T-O-R.

DIRECT EXAMINATION OF MS. PROCTOR BY MR. OSKIN:

Q: Ms. Proctor, good afternoon. I appreciate you joining us. What do you do for a living, ma'am?

A: I'm a pharmacist.

Q: Okay. You're currently working as a pharmacist?

A: I am. I work at Publix in Murrell's Inlet.

Q: Okay, were you working as a pharmacist back in June of 2016?

A: Yes, I was.

Q: And which pharmacy, ma'am?

A: I was at K-Mart in Conway.

Q: And Conway is in Horry County?

A: Yep.
Q: Okay. I assume it applies to your daily duties no matter what, but were your daily duties as a pharmacist at the location at K-Mart?
A: Sure. We take prescription orders, we check for drug interactions, dosing, consult patients, that's about it.
Q: What's the procedure for that, ma'am?
A: As far as the prescription orders?
Q: Yes, ma'am, as it applies to how they come in contact with you and ---
A: Sure, we can take written prescriptions, which the patient brings in. There's electronic prescriptions, which are sent through the providers office. And we also take telephone prescriptions.
Q: Much like we've heard earlier, same requirements with regards to the patient's name?
A: Yes. Name, date of birth, drug, dosing, quantity, provider's name, phone number and a DEA number.
Q: Alright.
MR. OSKIN: If I may approach the witness, Your Honor.
THE COURT: Certainly.
BY MR. OSKIN:
Q: Ms. Proctor, I'm showing you what's been stipulated to by defense counsel and entered into evidence as State's Exhibit Number Four. Do you recognize that?

(STATE'S EXHIBIT NUMBER FOUR IS ADMITTED INTO EVIDENCE.)

BY MR. OSKIN:

A: Yes.

Q: What is that ma'am?

A: That is a telephone prescription from Doctor John Webb for Kristy Shaw.

Q: Alright, was that called in to your pharmacy at that time?

A: It was. It looks like June 5th of 2016 at 8:47PM.

Q: Alright and that's a fair and accurate copy?

A: It is.

Q: Does that prescription order indicate how the prescription was placed?

A: Yes. It was a telephone prescription.

Q: Does it appear that all of the required information was give?

A: Yes.

Q: Okay. What's the doctor's name appear to be on that prescription?

A: Doctor John Webb.

Q: And I believe you testified to it, but are you able to tell whether it was filled or not?

A: Yes, it is filled, or was filled.

Q: And it was called in at what time?

A: 8:47PM.

Q: Let's elaborate on what we heard a little bit further. Is that uncommon to be called in that late?
A: It is uncommon for this particular medication.
Q: Okay. Do you recognize that number to be from any medical facility in your experience working as a pharmacist?
A: Not from my experience, no.
Q: And the drug that prescription was filled for, what is that?
A: It is phentermine, which is what we discussed before, a diet pill.
Q: And that is a controlled substance?
A: It is a controlled substance.
Q: Greater level of care handling controlled substances?
A: Yes.
Q: As a pharmacist?
A: Yes.
Q: Ms. Proctor, please answer any questions from Mr. Humphries.
A: Okay.
CROSS EXAMINATION OF MS. PROCTOR BY MR. HUMPHRIES:
Q: No doubt that Doctor Webb identified himself ---
A: Yes.
Q: --- by virtue of his name and the DEA number?
A: Yes, sir.
Q: Okay. Thank you.

A: You're welcome.

THE COURT: Reexamine.

MR. OSKIN: Nothing from the State, Your Honor. We ask that she be released from her subpoena.

THE COURT: Very good.

MR. HUMPHRIES: No objection.

THE COURT: Alright. Without objection you are released. Thank you, ma'am.

MR. OSKIN: Your Honor, if we may approach briefly.

THE COURT: Certainly.

(BENCH CONFERENCE)

THE COURT: Alright. Madam forelady, ladies and gentlemen of the jury, the next witness will take a few minutes so I'm going to suggest you take a break at this time and then we'll finish up with the testimony. Very good. Again, do not undertake the discussion of the case among yourselves in any way.

(JURY RETIRES TO JURY ROOM AT 1:45PM)

THE COURT: Alright, we will take a break. I have prepared a proposed verdict for I need you to look at. So, we'll see what we've got. Alright, we'll stand at ease for a few minutes.

MR. HUMPHRIES: Thank you, Judge.

MR. OSKIN: Thank you, Your Honor.

(RECESS)

(JURY ENTERS COURTROOM AT 2:08PM)

THE COURT: Let the record reflect that the jury and alternate are in the jury box.

Alright, you may proceed.

MR. MARTIN: Thank you, Your Honor. The State's next witness we will call is Investigator Derek Strickland.

INVESTIGATOR DEREK STRICKALND, HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: State your name and then spell your last name.

INVESTIGATOR STRICKLAND: My name is Derek Strickland. S-T-R-I-C-K-L-A-N-D.

MR. MARTIN: May it please the Court, Your Honor?

THE COURT: You may proceed.

DIRECT EXAMINATION OF INVESTIGATOR STRICKLAND BY MR. MARTIN:

Q: Investigator Strickland, where do you work?

A: I work with South Carolina Department of Health and Environmental Control, the Bureau of Drug Control. And the Bureau of Drug Control is a law enforcement group within DHEC that employees pharmacists to enforce and regulate the controlled substance laws within the State.

Q: So, you are in fact a pharmacist in addition to being an investigator?

A: Correct.

Q: How long have you been with DHEC?

A: Four and a half years.

Q: What are your -- specifically what are your current duties with DHEC?
A: Currently we investigate criminal activity in regards to controlled substances as well as perform inspections on registrants being anybody who can prescribe or possess a controlled substance in the State of South Carolina, likewise to a State level DEA position.
Q: And as an investigator with DHEC were you involved in the investigation and later arrest of the defendant John Webb from January 2017 to March 2017?
A: I was.
Q: How were you brought into the case?
A: I was notified by an investigator with the South Carolina Board of Medical Examiners the LLR and they had an open investigation on Mr. Webb and noticed some questionable controlled substance prescribing for immediate family members and was notified that the Bureau of Drug Control may want to look into it.
Q: And let’s back up for a second just for the jury. What is a controlled substance?
A: A controlled substance is classified by DEA and DHEC as having a high potential for abuse or dependency whether it be physical or psychological.
Q: What must incur in order for a medical practitioner to prescribe a controlled substance to a patient?

A: Specifically speaking of a medical practitioner you must have a valid South Carolina Medical License, you must have a Federal DEA number and you also must have a Bureau of Drug Control permit.

Q: Must one have a valid patient/practitioner relationship?

A: Correct. In order to prescribe a controlled substance a valid patient/practitioner relationship is required. And controlled substance can only be issued for a legitimate purpose.

Q: And how would someone obtain this valid patient/practitioner relationship?

A: Essentially as you may have heard in the recording, there's documentation that needs to take place. An examination needs to be done with the so-called patient. And it must be documented. The physician must be available for follow up care and documentation is essentially the key.

Q: How would a medical practitioner document?

A: We at the Board of -- at DHEC don't have any specific guidelines as far as documentation, just has to be documented. It can be in a memorandum of such as long as the document is readily available and upon request provided to inspector, no requirements going forward.

Q: And you say readily available, does that also mean the documentation must be kept and maintained by the physician?

A: Correct. By regulation with DHEC the records must be

readily available, maintained by the registrant. It is the responsibility of the registrant being the registration holder to maintain those records.

Q: Investigator Strickland, you are a pharmacist.

A: Uh-huh. (Affirmative response).

Q: We heard testimony today from other pharmacists about them keeping records. Who all has to keep a record?

A: Anybody who is, I guess you could think of it in two separate ways in two tiers. As you heard one of the pharmacists testify to, pharmacies are required to keep records. One of our job duties is to go in and inspect pharmacies. Any pharmacy that you see holds a DHEC Drug Control permit. Those pharmacies are required to keep records on their end as to what is filled and ultimately dispense to the end user is what it's called, the patient being the end user. On the beginning end of that the physician is required to keep records as well of what they have documented as far as a patient/practitioner relationship in where they see the patient, how they see the patient, what the history is with the patient and going forward what the prescribing of that patient should be. So, ultimately there's two levels of documentation. The requirement -- both requirements are upon the registrant, the physician being a registrant, the pharmacy being a registrant. They have their own independent documents that they have to retain.

Q: So, just to wrap our heads around this, just because a pharmacist keeps a record does that exempt the physician himself or herself from keeping a record?
A: It does not.
Q: How long should a practitioner keep these prescription documentation?
A: Bureau of Drug Control requires two years on documentations, other may -- the Medical Board may require more but as far as the Bureau of Drug Control we require two years.
Q: If a person who is issuing a prescription, that person omits the information from his documentation or even fails to document it at all what happens?
A: It's against the law.
Q: What happens if the person fails to keep or lose or maintain this information?
A: It's, again, against the law.
Q: And from a practical standpoint, why is it required to keep records?
A: The main reason would be patient safety. If a patient has been given some sort of a prescription or written a prescription that's not documented in a patient chart whatsoever whether it be what type of controlled substance, many controlled substances can affect your body. Most of time when people think of controlled substances, they think of pain

medicine but in this situation what we're talking about is phentermine. Phentermine is a diet pill. But more than it just being a diet pill it can increase heart rate. Phentermine is highly regulated with high blood pressure. It can increase blood pressure. It can cause heart palpitations and if it's not documented and not documented properly in a chart for a patient, patient safety definitely becomes a concern when they go further into another physician let's say. So, definitely patient safety is primary concern.

Q: I apologize for interrupting. We've also heard testimony about Triazolam. Why is it pertinent?

A: Same as I testified before, controlled substances itself are highly -- have a high potential for abuse and dependency. Triazolam is typically used, in most of my experience as a pharmacist and in this job, for dental sedation. You know, as it is a sedative agent but usually for dental procedures. Not often, I have seen it a few times, but not often is it used on a daily basis.

Q: You previously testified to being involved in the investigation and the arrest of the defendant.

A: Uh-huh. (Affirmative response).

Q: Did you find any prescriptions that were filled where he failed to document this valid patient/practitioner relationship?

A: I did. Throughout my investigation I ultimately found

that 19 prescriptions were authorized by the defendant for patients that I was unable to determine a valid patient/practitioner relationship.

Q: In this case at hand how many patients did he fail to properly document?

A: In total, if I may look at my records.

Q: Yes, and I'm referring to the three indictments that we have today.

A: Okay.

Q: Specifically, regarding those three, how many patients were you ---

A: That would be three patients.

Q: Okay. Did all of this that we're talking about occur in Horry County?

A: Of the three patients, yes it did.

Q: And let's talk about them for a second.

A: Uh-huh. (Affirmative response).

Q: What was the first one that you found?

A: First I have is Kristie Shaw. It was the prescription for Phentermine.

Q: And who is Kristie Shaw?

A: Kristie Shaw is, my understanding, Mr. Webb's wife or ex-wife now, wife at the time.

Q: You mentioned Phentermine.

A: Uh-huh. (Affirmative response).

Q: Is that a controlled substance?
A: Phentermine is a Schedule IV controlled substance.
Q: Were there any refills listed on the prescription?
A: The prescription in question from K-Mart was -- yes, there was. It was Phentermine with two refills.
Q: Is that significant?
A: Yeah, absolutely.
Q: Why is that?
A: Well, it shows a continuation of care so to speak. It wasn't just a one-time occurrence. It was a prescription to be filled ultimately three times.
Q: What was the date of that prescription?
A: That prescription was dated July 5th, 2016.
Q: And was it filled and if so, where?
A: It was filled. It was filled at K-Mart Pharmacy.
Q: Were you able to determine who prescribed the controlled substance?
A: The document shows that John Webb prescribed it.
Q: After discovering these prescriptions, or this prescription, did -- let me back up, I'm getting ahead of myself here. Who was the second person that you ---
A: The second person I have is Ms. Renee Jordan.
Q: And what was her relationship to the defendant?
A: My understanding that Renee Jordan is a co-worker of Ms. Kristie Shaw.

Q: What was the controlled substance?
A: Again, that controlled substance was Phentermine.
Q: And the schedule?
A: Schedule IV controlled substance.
Q: What was the date?
A: That one was dated July 7th, 2016.
Q: And where was it filled?
A: That was filled at CVS Pharmacy here in Conway, which also had a refill on it.
Q: One refill?
A: One refill, yes, sir.
Q: And you were able -- I know I may sound repetitive, but you were able to determine who called in that prescription?
A: I was. It was noted that John Webb called in the prescription. And also, I guess that I should note that one both of those prescriptions his cell phone number was documented as the phone number calling it in.
Q: And since we're talking about both of those, do you know the time that it was called in?
A: It looks like the K-Mart prescription shows 8:47PM. CVS prescription show 8:24PM.
Q: Investigator Strickland, you're a pharmacist, is that unusual?
A: Typically, it is not like a prescriber to phone it in them self that late at night for these drugs. Correct.

Q: Why is that?
A: It's not an emergent drug. It's a diet pill. It's used for weight loss. It's not a -- someone's not having a migraine. Someone's not in -- having desperate pain. Someone's not having a horrible cough. It's a diet pill and people typically wait until the next day during business hours.
Q: And lastly, who was the third individual that you were able to find prescriptions?
A: The third prescription I have is for Alexandrea Chavis. It's my understanding that is Mr. Webb's stepdaughter, Kristie Shaw's daughter.
Q: His stepdaughter at the time?
A: Correct, yes.
Q: And once again, what was the controlled substance?
A: That was Triazolam.
Q: And what's the schedule?
A: Schedule IV controlled substance.
Q: And refills for that?
A: There were no refills noted on this one.
Q: Where did you say this was filled?
A: This was filled at Walgreens in Conway, Horry County.
Q: And the date?
A: October 27th, 2016.
Q: And what is that drug typically used for?

A: Typically, a sedative agent. I would say a highly sedative agent that this typically used for dental procedures.
Q: Anything unusual about that script considering the controlled substance?
A: Someone of her age, I wouldn't typically see that prescribed for someone born in '95. Other than that, it's just not something that's used outside of procedures.
Q: After discovering these prescriptions that we've just talked about; did you attempt to find documentation of a valid patient/practitioner relationship?
A: I did.
Q: What did you do?
A: I contacted Ms. Connie Williams as you've heard earlier. We reviewed records from the inpatient area of Grand Strand. No records were found for these patients. Then I contacted Mr. Billy Williams (sic) would also -- you also heard. He and I reviewed records from Grand Strand Primary Care. None of those records were found as well.
Q: And just for clarification, I believe his name is Billy Davis.
A: Oh, I'm sorry. Correct, Billy Davis.
Q: Do you remember, just to recap, Grand Strand Medical Center and Grand Strand Primary Care.
A: Correct.
Q: Did you find any of the required patient records or

documentation whatsoever?
A: No, I did not.
Q: During your investigation you did speak with the defendant, correct?
A: I did, yes.
Q: And you were present in the courtroom when we played the recording that both parties have previously stipulated that was voluntarily given and placed into evidence, State's Exhibit One?
A: Correct, I was.
Q: During this conversation did he appear to be under the influence of anything?
A: He did not.
Q: He appeared to understand everything you were saying?
A: He did.
Q: Would you have talked with him if that was an issue?
A: If he was impaired, not at all, no.
Q: As far as the recording itself, I didn't alter or edit it in anyway.
A: It is not.
Q: It appeared to be a fair and accurate representation of what happened on February 14th?
A: Correct, it was.
Q: After the interview there was some reference made to the home in Hartsville.

A: Yes.
Q: Did you go there?
A: I did. After we left the interview with Mr. Webb and his attorney, Humphries, I drove to Hartsville from Myrtle Beach, approximately about two hours or so and followed him to his home there.
Q: After going there was he able to provide you with any valid documentation?
A: No, he did not. No patient records were found while we were there.
Q: Did you find anything relevant whatsoever?
A: Not relevant to patient records. We did find some documentation that he showed that, again, proved that he knew he had to keep records. I think one of them was a document from school. I think another was an e-mail from Grand Strand explaining the procedure of keeping records. But no patient records were found, no.
Q: So, you listened to the statement that we just talked about. Do you remember him mentioning that the documents may have been lost or destroyed by his wife?
A: I do, yeah.
Q: What county is the Hartsville home located?
A: Darlington County.
Q: Did you ever check Darlington County to see if the defendant ever filed a police report there for missing or

stolen medical documents?
A: I did. I checked with Darlington County Sherriff's Office as well as Hartsville Police Department and no reports were filed under John Webb.
Q: So, the defendant never filed a police report in Darlington County for medical documents that were missing?
A: No, not to my knowledge.
Q: Was there another family home?
A: There was in Conway.
Q: And that's in Horry County?
A: That's correct.
Q: Did you ever check the Horry County data base or with law enforcement agencies to see if the defendant ever filed a police report there for any missing valid medical documents?
A: I did. I checked with Conway Police Department and Horry County Police Department and there were no documents, or excuse me, there was no record of a police report being filed for missing documents or anything pertaining to John Webb.
Q: You previously testified to Kristie Shaw being the defendant's ex-wife at this time.
A: Uh-huh. (Affirmative response).
Q: During the course of your investigation did you review for example the final divorce order of Horry County Family Court to see if the defendant ever alleged missing documents?
A: I did. There were no references in the final order to

show the documents were missing.

Q: So, the defendant never alleged that his wife had some documents that he needed?

A: No, sir.

Q: How long after the February 14th meeting when you first met him and his attorney and went to his house, how long after that was it until you arrested the defendant?

A: I met with he and his attorney on February 14th. I contacted his attorney on -- let me look. I contacted his attorney on March 7th to inform him that I'd obtained warrants for Mr. Webb's arrest. And then it wasn't until we arranged a meeting and he and his attorney met with me at the detention center on March 10th. So, until his arrest -- February 14th through March 10th so approximately a month.

Q: Almost one month.

A: Almost one month, yes, sir.

Q: Is there a reason you waited so long?

A: Out of courtesy. He did say that he had documentation. Things do happen, I completely understand that. However, I provided him ample time to, as I think you heard in the recording, alternate documentation as Mr. Humphries referred to is as. I gave him ample time to provide alternate documentation and not only was I not provided any documentation; I was not contacted at all. So, on March 7th I went forward with obtaining warrants.

Q: Since March 10th, 2017 have you ever received or found any record of this documentation as required by law?

A: I have not.

MR. MARTIN: Court's indulgence, Your Honor.

BY MR. MARTIN:

Q: Investigator Strickland, I don't have any more questions right now. Answer whatever Mr. Humphries may have, please.

A: Okay. Thank you.

CROSS EXAMINATION OF INVESTIGATOR STRICKLAND BY MR. HUMPHRIES:

Q: Good afternoon, Inspector.

MR. HUMPHRIES: With the Court's permission.

THE COURT: You may proceed.

MR. HUMPHRIES: Thank you.

BY MR. HUMPHRIES:

Q: Let's -- are you familiar with the types of hours that residents work generally?

A: Generally, yeah. It depends on, I'm sure, which group of -- what area they're in, but generally, yeah. It can vary.

Q: It's fair to say that residents typically work very long hours.

A: Correct.

Q: And so, if Doctor Webb was prescribing outside the practice, and we've talked about that, but if he was prescribing outside the practice it would not be unusual for those prescriptions to be called in after usual business

hours?
A: Correct, if he was actually prescribing outside, yeah.
Q: Okay. Let's go to, just very briefly, Alexandrea Chavis. What's the dosage of that medication?
A: 0.25 milligrams.
Q: Okay, and are you -- in terms of strength of dosage, how would you qualify that?
A: So, that prescription, albeit 0.25 milligrams, it only comes in two strengths which is 0.25 and .5. So, it is strong. Yeah, even though it's a low dosage it's a highly potent drug.
Q: How many tabs?
A: 14 tablets.
Q: Okay. And how often would you -- if it were prescribed for sleep, how many times would you dose per day?
A: One at bedtime.
Q: Okay. We've all heard the statement so we're not going to rehash that to any great extent. But let's talk just a bit about this. Let's assume for the sake of our discussion that the records were made, they were in the possession of the wife in the family home from which he had been expelled, and he did not have access for whatever reason. The attorney wouldn't him have them, wife wouldn't let him have them. What would have then been his recourse to produce the records or to produce a record if those records were unavailable to him?

What would a practitioner have to do in order to comply with this particular statute?

A: He would have to have produced some sort of record. Some sort of record that could have been verified.

Q: Okay. And so just to be clear, if as in this case for our point of discussion -- I understand they may take some issue with the way I've set it up but, at that point if they are unavailable by virtue of some family court order or whatever. If he can't show you something, then he's in violation of this statute?

A: By law, yes.

Q: House burns down, be in violation of this law.

A: Technically speaking.

Q: House gets flooded, he's in violation of the law.

A: However, I think we discussed alternate methods.

Q: And that's exactly what I wanted to get to. Would he have been permitted at that time, upon being notified or being requested to produce these records, would he have been permitted to recreate the records under HIPPA guidelines in order to comply with the statute?

A: He is not allowed to recreate records.

Q: Okay. Would it be good practice, separate and apart from requirements of the Bureau of Drug Control, to recreate the record and notify the patient that the records were lost, missing, or otherwise and give them the opportunity to review

those recreated records to make any amendments?
A: Sorry.
Q: Okay. Alright, let's do it this way. You know sometimes I do -- alright, records are missing, so there is a void in a patient record. Would it be most appropriate under HIPPA guidelines to first notify the patient that there exists that gap due to missing records.
A: I'm no expert on HIPPA.
Q: Okay, so if you don't know ---
A: Okay, sorry I don't know.
Q: Right. So, but just to be clear, in order to comply with this statute if Doctor Webb sent a letter to each of the patients indicating that the records were lost or destroyed, and then sent a recreated record with their opportunity to review it for any amendments; that in and of itself per the Bureau of Drug Control would not rectify the situation?
A: If I would have been provided that as I'm a reasonable investigator, I would have taken that into consideration.
Q: Okay. And what would have been the timeframe for that?
A: A reasonable timeframe.
Q: Okay. And just to be clear, at the point of which -- and we were all there, it was in my office.
A: Right.
Q: We've had those meetings before. At that time when you were talking with Doctor Webb about going to Hartsville.

A: Uh-huh. (Affirmative response).
Q: At that time you cautioned him about creating the record.
A: Correct.
Q: Okay. And told him that you would not give him an opportunity to do that.
A: Correct.
Q: Okay. Alright. And if he has now sent such a letter and such a recreated record to the three individuals contained in these indictments, it is your position that that does not -- even if he has done that, that does not cure his situation here?

MR. MARTIN: Objection, Your Honor. I think we're asking something that's not in evidence or even been spoken about.

THE COURT: Restate your question.

MR. HUMPHRIES: I will because I have to lay a foundation.

BY MR. HUMPHRIES:
Q: If Doctor Webb ha, since your meeting with him, sent letters pursuant to HIPPA indicating that the records are lost and they've been recreated along with a recreated record inviting them to view it, amend it. If he has done that is it still the position of your Drug Control that he is not in compliance with this statute?
A: I can't speculate to that. However, the records do have to be readily retrievable, which is defined as usually one

hour or less. So, I would say that does not meet.

Q: Alright. Okay.

MR. HUMPHRIES: I beg the Court's indulgence just one moment.

THE COURT: Certainly.

BY MR. HUMPHRIES:

Q: Thank you, Inspector.

A: Yes, sir.

THE COURT: Reexamine.

MR. MARTIN: Thank you, Your Honor.

REDIRECT EXAMINATION OF INVESTIGATOR STRICKLAND BY MR. MARTIN:

Q: A couple things.

A: Yes, sir.

Q: Per your investigation did you ever find a report or evidence of the house in Darlington burning down?

A: No.

Q: Was there ever any evidence of the home in Conway catching fire?

A: No.

Q: How about a flood in Darlington?

A: No, not to my knowledge.

Q: What about the flood we recently had here in Conway? Did that affect that home?

A: That would have been before the time frame -- or after the time frame, excuse me.

Q: We heard a question about letters. From the time that the defendant, you met with him on February 14th until today, did you receive any letter of any kind to anyone?

A: I have received no documentation of such.

Q: You mentioned the term readily available; correct?

A: Readily retrievable.

Q: Retrievable. Thank you. Is it true that you said one hour or less?

A: Correct.

Q: But you gave him a month?

A: Correct.

Q: And during that period of time did he provide you with anything?

A: Nothing.

Q: Did you find anything?

A: Found nothing.

Q: So, from 2016 when the scripts were written until today's date?

A: Nothing.

MR. MARTIN: Court's indulgence.

No further questions.

THE COURT: Recross.

MR. HUMPHRIES: No, sir. Thank you.

THE COURT: You may step down.

INVESTIGATOR STRICKLAND: Yes, sir.

THE COURT: You may call your next witness.

MR. MARTIN: At this time, Your Honor, the State rests with regards to its case in chief.

THE COURT: Ladies and gentlemen of the jury, I need to take up some matters with the attorneys so I'm going to ask you to retire to the jury room for a few minutes. Again, do not undertake discussion of the case among yourselves. Thank you very much.

(JURY RETIRES TO JURY ROOM AT 2:42PM)

THE COURT: Alright, anything further from the State?

MR. MARTIN: Nothing at this time.

THE COURT: Anything from the defense?

MR. HUMPHRIES: At this time the defendant would move for a directed verdict referring back to the statute as written. He is charged with this statute, that it is unlawful for a person to knowingly or intentionally furnish false or fraudulent material or information in or omit any material information from any application, report or other document required to be kept or filed with this article or any record required to be kept by this article. It craves references to 44-53-340 of the same article, which requires persons registered to manufacture, distribute or dispense controlled substances under this article shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of Federal law and with any additional

rules the department issues. The testimony in this case thus far references no statute under this article which identifies any particular record or any particular record keeping maintenance. The testimony is void of that as it relates to a statute, it's required under 44-53-390. The record is also void of any reference, direct reference to any DHEC regulation that discusses what records are to be maintained or what record keeping mechanism must be used in relation to the prescribing of medications. There is no testimony in this record that specifically relates to a statute under article 3. There is no testimony in this record specifically relating to a DHEC regulation. I will tell the Court there is a DHEC regulation, it's 602. It exists. But there's been no testimony as to regulation 6002, none. What we have heard is testimony about what maybe required in a residence program. We have heard testimony about what maybe required in terms of licensing by LLR and the Board of Medical Examiners. We've heard testimony from the Inspector about what the Bureau of Drug Control requires. But we have zero testimony that directly points to any statute that identifies the records or the record keeping mechanism that's within the article, article 3. Nor has there been any testimony regarding any DHEC regulation regarding what records are to be kept and what record keeping mechanism must be used. There is no testimony in this record related to that. And the charge for which he

was indicted, 44-53-390 and 44-53-340 requires as a part of the proof a material term of this statute and of this crime is to identify that a record was to be kept and what record keeping mechanism must be used. And this record is void, void of any direct reference to any other applicable statute related to that for any DHEC regulation directly applicable to that issue. For that reason, I move for a directed verdict of not guilty.

THE COURT: Alright. What does the State say?

MR. OSKIN: Thank you, Your Honor. With regards to that specific objection by Mr. Humphries, although that regulation might not have been specifically quoted to his liking, it was testified to by Investigator Strickland with regards to what registered practitioners are supposed to do, what they're required to do with keeping the records. That goes directly to the matter of the statute itself, Your Honor, where the State is of the position that this defendant failed to produce and then omitted any material information from those records, that goes hand in hand with Investigator Strickland's testimony of what was required. Additionally to that, Your Honor will recall my questions to Pharmacist Kate Birringer where she also elaborated that she also had to keep a record as a practitioner and that she would hope that a doctor would as well, insinuating that that's what a practitioner is supposed to do. That is directly from regulation 602(b) with

DHEC, Your Honor. So, although not directly quoted in testimony it was referenced from the witness stand. In addition to that, Your Honor, the testimony from the witnesses in this case all go to prove and provide to the trier of fact that this defendant failed to keep records. In fact, it's pretty much admitted to by defense counsel and the defendant throughout. It's just what happened to it afterwards. And that's the issue for the jury. But as far as meeting the burden statutorily and citing 602 regulation, Your Honor, it's the State's position that that was covered by Investigator Strickland and Kate Birringer.

THE COURT: Is that your response?

MR. OSKIN: Yes, Your Honor.

THE COURT: Any reply?

MR. HUMPHRIES: The statute's clear.

THE COURT: Well, when you say it's clear, now as I understand it the issue is under Section 44-53-390(4); is that right? Subsection 4?

MR. HUMPHRIES: (A)(4), Your Honor.

THE COURT: Yeah, (a)(4), excuse me. But it is that particular provision that provides it is unlawful for a person knowingly or intentionally to furnish false or fraudulent material, information and or omit any material information from any application, report or other document required to be filed under this article or any record required to be kept by

this article. And your position is that, of course, no regulation, particular regulation or statute has been referred to; is that right?

MR. HUMPHRIES: Yes, sir. And just for completeness of the record, there's also a reference in 340 to record keeping and inventory requirements of Federal law. There is zero testimony that even closely bares on any Federal law requirements.

THE COURT: Is that correct as well as the State's concerned? Mr. Oskin?

MR. OSKIN: Court's indulgence, Your Honor.

THE COURT: Certainly.

I mean, just for that one point. I mean, has any Federal statute or regulation been referred too?

MR. OSKIN: Your Honor, with regards to that objection by defense, we would submit Investigator Strickland's testimony that his role in DHEC is equivalent to the DEA, that's based off State regulations, based off Federal law. And that does bring it under that purview. And let's not get too far ---

THE COURT: I did not ask you what the purview is. I'm just asking has any Federal statute been referred too. It's your witness, I mean ---

MR. OSKIN: I understand and if I could answer it.

THE COURT: Well, I'm ask you. I'm not asking him. He's already testified twice.

MR. OSKIN: Citing his testimony then ---

THE COURT: And what was it?

MR. OSKIN: --- the State would submit that when Investigator Strickland referred to his job capacity as a DHEC agent, this his job is based off Federal law in the capacity of what he does investigating, and the likeness of a DEA agent which is based off Federal rules, regulations and statutes. All of the witness testimony, Your Honor, goes to 44-53-390, Section (a) to further prove that this defendant knowingly and intentionally omitted keeping the records. The reason we're here, the reason the case should survive past directed verdict and be submitted to a jury in its entirety.

THE COURT: Alright. Mr. Humphries, anything in rebuttal?

MR. HUMPHRIES: No, sir.

THE COURT: I think it's Rule 19 on a directed verdict motion, the Court's not concerned with the weight of the evidence but the failure to put any competent evidence tending to prove the charge in the indictment, of course I understand interpretation is required in testimony that they are operating under regulations under this article. I find that there is sufficient evidence to go forward tending to prove the allegations of the indictment. So, the directed verdict is denied.

MR. HUMPHRIES: Thank you, Your Honor.

MR. OSKIN: Thank you.

THE COURT: Of course, it can be reviewed at the closing of all the evidence. Now, talking about all of the evidence, where are we?

MR. HUMPHRIES: Yes, sir, if you'll give me five minutes with my client we'll come back with that answer.

THE COURT: Alright. Okay.

MR. HUMPHRIES: Thank you.

THE COURT: Alright. We'll stand at ease.

(RECESS)

THE COURT: Alright, are we ready to proceed from the State?

MR. HUMPHRIES: Yes, sir. Oh, I'm sorry, Judge.

MR. OSKIN: State's ready, Your Honor.

THE COURT: Defense?

MR. HUMPHRIES: Yes, sir.

THE COURT: Alright. Anything further from the State?

MR. MARTIN: Nothing at this time, Your Honor.

THE COURT: Anything further from the defense?

MR. HUMPHRIES: No, sir. We'll rest on the record, but my client does not wish to testify.

THE COURT: Did you discuss his right to testify?

MR. HUMPHRIES: I have, Your Honor. Would you like to --

THE COURT: I'll instruct him then as well.

Alright, if you would, please, sir. As I understand you are John Alexander Webb?

DEFENDANT: Yes, sir, Your Honor.

THE COURT: If you would, please raise your right hand.

JOHN ALEXANDER WEBB, HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: At this time, I am going to explain to you certain of your rights. If you do not understand anything I say, please let me know. If you want me to explain anything in more detail, please let me know. Do you understand this?

DEFENDANT: Yes, sir.

THE COURT: We have now reached that stage of trial where you may present your defense. You have the right to claim the protections given to you by the Fifth Amendment to the Constitution of the United States. This amendment states in part, no person shall be compelled in any criminal case to be a witness against himself. This means that you cannot be required to testify in this case, but you have the right to testify on your own behalf. However, no one can make you testify. This is a personal right, and no one can waive this right except you. If you decide to testify you will be subject to certain rules and the same rules that govern other witnesses and you may examined and cross examined on any relevant issue in this case. In addition, if you have any convictions involving dishonesty or false statement or for

crimes punishable by imprisonment for more than one year and this Court determines that the probative value of that evidence outweighs its prejudicial effect to you, the Solicitor will be able to introduce your record to attack your credibility. Now, if you decide to testify this decision on your part must be freely, voluntarily and intelligently made with the knowledge or the protections given to you five the Fifth Amendment and the consequences of your decision to testify. If you decide not to testify I will instruct the jurors that they cannot give the fact that you did not testify any consideration whatsoever and that there is to be absolutely no prejudice to you because you did not testify. You may talk with your attorney, your family and friends, or anyone else but the final decision will be left entirely up to you. Now, do you understand what I have explained to you?

DEFENDANT: Yes, sir.

THE COURT: Do you have any questions about what I have explained to you?

DEFENDANT: No, sir.

THE COURT: Have you discussed with your lawyer whether you should testify or not?

DEFENDANT: Yes, sir.

THE COURT: Do you wish to talk to your lawyer anymore at this time?

DEFENDANT: No, sir.

THE COURT: Do you wish to testify in this case?

DEFENDANT: No, sir.

THE COURT: Very well. You may be seated. Thank you, sir.

Alright. It's 3:00 what do y'all want to do?

MR. MARTIN: Your Honor, if Your Honor wishes to do closings this afternoon, we would ask for a brief recess to prepare.

THE COURT: How long?

MR. MARTIN: 30 minutes at the most, Judge. 15 -30.

THE COURT: 15 minutes maybe.

Alright, see that the jury has refreshments and we'll be about 15 minutes. Let's look at maybe a quarter after, that's 10 minutes. If you need more time, fine.

Now, I've gotten I think one charge from the State and I think -- let's see where is it here. Have you seen that?

MR. HUMPHRIES: I have, and I don't object to it. I don't mind using that one as opposed to the one I submitted.

THE COURT: Alright, where is yours?

MR. HUMPHRIES: It's probably back in chambers, Judge, where I gave it to you, but I have another copy of it.

THE COURT: Alright, if you have another. I think y'all know by now I do not have any staff and I'm not well organized to begin with.

MR. HUMPHRIES: The State has a copy of this. That

essentially covers the same subject matter.

THE COURT: Alright, for the purposes of the two charges. I will probably -- well, I will, I'll say this -- I'll charge the first given by the State which is the violation of the drug distribution law and then I will also charge the request for the defendant as an explanation.

MR. MARTIN: Judge, I think that's probably the fairest way to do it. This might be the only thing we've agreed on.

THE COURT: Oh gracious, y'all have done well. Y'all have been the most cooperative people. I think y'all must be living in the same neighborhood or something. I don't know.

Alright, are there any other charges? Well, let me just go through the charges for your time and might give them a little bit more time now. Alright, I'm going to testify (sic) about the right of the defendant not to testify cannot be considered. Then I will charge them -- we don't have any expert witnesses. I don't think anybody was qualified. Presumption of innocence, reasonable doubt. Now I give the reasonable doubt here we've been using, or at least I've been using, and it's still available, they have not overruled it yet, which is the simplest thing. You heard it in my opening statement. A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. Now, I will say if the jury comes back for an explanation then I will use State vs. Neves, which is Victor vs. Nebraska. Then direct

and circumstantial evidence, intent, and then the two statutes. Alright, that's what I propose doing. Take a few minutes to see if you have any suggestions or decide who -- how do you want to do the arguments? I mean, are you going to have two arguers or – I have also another thing that I find that we're getting close to it. That is going back to the State versus Adaberry rule under the old rules before the rules were changed and then reinstated. That is that the State will open fully, law and facts. And the one reply and then you will obviously have closing.

MR. OSKIN: Yes, sir.

THE COURT: Alright, very good. And I'll take exception to that if you'd like because I want somebody -- Mr. Chief Justice Pliecones came pretty close to it I think in saying that should be the law again, but anyway they haven't stated it yet. I do find the State versus Adaberry is a better rule in criminal cases as in civil cases the party having the burden of proof should open fully and then the defendant makes his argument and then the closing would be limited to anything that he might have brought out in the argument of the defendant.

MR. HUMPHRIES: Yes, sir. Thank you.

THE COURT: Any exception will be welcome. Alright, y'all take just a minute or as long as you have because I've involved you.

(RECESS)

THE COURT: Alright, is the State ready to proceed?

MR. MARTIN: Yes, Your Honor.

THE COURT: Defense?

MR. HUMPHRIES: Yes, sir.

THE COURT: Alright, ask the jury to join us, please.

(JURY ENTERS COURTROOM AT 3:29PM)

THE COURT: Alright, let the record reflect that the jury and the alternate are in the jury box. Madam forelady, ladies and gentlemen of the jury, I'll now recognize the defense.

MR. HUMPHRIES: Your Honor, at this time the defense rests. And we would renew our motion for directed verdict, we understand the Court's ruling.

THE COURT: Very good.

Madam forelady, ladies and gentlemen of the jury, the law does not compel a defendant in a criminal trial to take the witness stand and testify. And no presumption of guilty may be raised or no inference of any kind may be drawn from the defendant's decision not to testify. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence or testifying. Therefore, the decision of the defendant not to take the stand and call a witness to testify on his behalf cannot be taken, held, discussed or even considered against the defendant in any manner.

Madam forelady, ladies and gentlemen of the jury, you have been selected as fair and impartial jurors, sworn to impartially try and determine the facts of this case. And when you comply with your oath to do so then no one will have a right to criticize your verdict and you will have fully discharged your duty as jurors. We will now have the closing arguments by the State and then the defense and then the State will have final reply. Very well.

I recognize the State for their closing argument.

MR. MARTIN: And may it please the Court, Your Honor?

If you can't produce them, it doesn't exist. If you can't produce them, it doesn't exist. That's not my words. That's not Mr. Oskin's words. That was the defense's words in the statement, the recording you heard. You heard the defendant acknowledge that, he said I've got that. You heard it. Let's don't complicate this more than what it is. Mr. Oskin said, rules are rules. We all have to follow them everyday of our lives. We've reached the point now as the Judge has instructed you that we're in closing arguments. The Judge is the one that's going to instruct you on the law. He'll do that once we conclude. But it's kind of a pickled situation because I can't talk with you about the case without also addressing the law, so I'm going to do that. But understand, ultimately what the Judge says is the law, that's the law. But let's look at what Mr. Humphries addressed with

you guys in openings on the indictment itself. You as jurors have to believe beyond a reasonable doubt that the defendant is guilty. What's a reasonable doubt, right? Reasonable doubt is being firmly convinced. It's not proof beyond any possible doubt that exists. Very few things in life are certain. The sun's going to come up tomorrow, it's hopefully going to set. Those things are pretty certain, but very few things in life other than that are certain. But you must be firmly convinced that the evidence that you've seen shows the defendant is guilty. But what makes him guilty? According to Investigator Strickland's testimony and the other evidence you've heard, any practitioner any person with the authority to prescribe, whether it be a limited or full license bust knowingly and intentionally keep records. Don't get bogged down by the fraudulent part of it, the furnishing false or fraudulent information. As Mr. Humphries said, we're not focused on that. We're focused on the part where it is omitting any material information from any application, report or other document required to be kept or filed under this article or any record required to be kept. If you can't produce it, it doesn't exist. Let's take a step back and let's think about what we've heard from that witness stand because that's the evidence and the Judge is going to tell you that's the only evidence you can consider, what you heard from that stand. So, who did we hear from first? Sheridon Spoon.

He talked with you about what's the importance of a limited license versus a full license and what does that mean. The defendant here had a limited license. He talked with you about having a limited license under the residency program and with a limited license there are certain guidelines in place and restrictions. And Doctor Collier, Victor Collier, backed him up on that. The residency program at Grand Strand Medical Center and the Patient Clinic require you to keep a record, full license and limited license. It also you requires you not to moonlight. Now, moonlighting and we've addressed this, that is not criminal in and of itself, no. But it once again shows another rule that this defendant broke. Had he have practiced within the scope of his residency program, you heard from Connie Williams, you heard from Billy Davis, they would have a record of it. And if he'd have been doing what he was supposed to do in the first place, there'd be a record. But there's not. If you don't have it, it didn't exist. Now, we heard from, in addition to Ms. Williams, we heard from three other pharmacists and they verified, and Mr. Humphries already said they're not disputing this, but they verified that the defendant did himself issue these prescriptions, and whom they issued them to, and the dates that they were filled. But did you catch the part about where they were talking about, I believe it was Ms. Birringer and even Ms. Proctor to a certain extent, how unusual this whole thing was. And then

Investigator Strickland who is also a pharmacist mind you -- let me back up. We know the times, right? Two of the prescriptions were for Phentermine, in essence a diet pill. But it's still a controlled substance. The times that they were called in, highly unusual. You heard testimony that, yes, we keep referring to it as a diet pill. And I'm not trying to fool you or make it sound like this is heroine or some other opioid, but it's still a heavily abused drug. You heard testimony the pharmacist about that, including Investigator Strickland. And the other Schedule IV drug, that can often be used to help one sleep. It's still highly abused and it's a controlled substance. The law requires that we keep a record of these controlled substances. And I think more importantly we segue -- pardon me a second, my mouth's a little dry -- to Investigator Strickland's testimony because he's important. He ties all of this together. Not only is he a pharmacist, but he's an investigator with DHEC, so you know, these things do overlay. And he talks with you about the importance. Why does it matter, right? Why should you care? There's a reason, whether we agree with it or not, there's always a reason laws are put in place. And the reason here is to protect the patient. His words, not mine. To protect the patient. What happens when the next doctor, or physician, or practitioner or whatever treats a patient and there's no record of what's been reported before them. You heard Mr.

Spoon allude to that and Investigator Strickland. It not only helps the current doctor cover his behind, but it helps future practitioners better treat that patient. And you've heard from Ms. Birringer, it protects the pharmacist too so that they can avoid pharmacy shopping and all of these other things. So, let's don't get away from the bigger picture here. You've got to have documentation. Now, did he knowingly or intentionally omit this information? That is an issue you've got to figure out. Well, you heard testimony from Doctor Collier and Mr. Spoon that in the residency program training does exist to notify them of what they're supposed to do. You heard in the statement you're required to know the law. You heard from Investigator Strickland that when they went to the defendant's house in Hartsville, house number one mind you, he had documentation from his training. He knew. And think for a second, why would someone practicing outside of the scope of their residency program want to keep records in the first place, documentation of something to get them in trouble. I submit to you that the record never existed in the first place. Not only did he fail to keep it and make it readily retrievable, but I submit to you that it never even existed. We've heard some talk about the divorce, I believe the term ex-wife was used, and questions asked about what could possibly happen with that. Investigator Strickland did his homework. He checked house number one in Darlington

County, no police report ever filed for any missing medical documentation. For a doctor whose license is on the line and is facing criminal punishment if something was stolen it should be reported. He checked house number two in Horry County. Once again, no police report ever filed. Well, maybe the wife, the ex-wife, is responsible. Well, surely you would allege that somewhere in the final divorce order; but you heard testimony, he didn't. What about a flood? No evidence of a flood to the house. No evidence of a fire. And you heard Investigator Strickland's own words, typically in a practice you need it in about a couple hours, you've got to keep the records to two years. Y'all, he gave him almost a month to turn this over and if you count the date of arrest on March 10th, 2017, we're two years later. Still nothing. You heard him question about letters. Have you seen letters? If we don't have it, it doesn't exist.

Court's indulgence one moment.

Now, let's talk a little bit about the drug's themselves. They are controlled substances and all controlled substances are required to be documented. And you've heard Investigator Strickland's statements on each drug's potential for abuse. Once again, we're not trying to sell you that this is, like I said heroine, an opioid, crack, meth; but it is a drug that is deemed very, very likely for potential abuse. And it is abused, you heard testimony that it's quite often abused.

This whole thing is kind of funny how when you go through these proceedings, you go back to when you were much younger and, you know, it kind of reminds me -- I'm from here, I grew up in the area. And when I was in school, we had this one kid, great friend of mine, ended up being one of the first ones to get married and have a family, completely unexpected. He would not have been the one that you would have expected to do that. Every morning for biology class you could count on him to not have his homework. I'm telling you, every morning. It was a joke. And one day in class, I'm not kidding when I say this, one day in class the teacher asked him, well Mr. Dunn where's your homework? My dog ate it. He didn't have it, therefore it didn't exist and he got a zero. This is essentially the essentially my dog ate my homework defense. You are a professional who is held to a much higher standard in your area. You have great responsibilities, tremendous responsibilities that come with that license that you hold, whether it's limited or full, whether you are a resident or you're full time. You're held to a high standard and if you practice the way you're supposed to be practicing, safeguards are in place to protect yourself. I guess the dog ate his homework and he doesn't have it. Ladies and gentlemen, you're going to go back here shortly once you hear from Mr. Humphries and you're going to deliberate and you're going to reach a decision. And ultimately it boils down to this and I've

already admitted to it, do you care? Investigator Strickland, our witnesses have laid out why you should care. Do you care and if you do then you'll find the defendant guilty.

THE COURT: Mr. Humphries.

MR. HUMPHRIES: May it please the Court?

So, let me tell you a story. Here's this doctor, he was going through a bad divorce. It was contentious. He got kicked out of the house, he got some of his things. He got some of his things delivered to him. He got one paper bag full of papers out of an entire office, handed to him by his wife's lawyer. Sometime shortly thereafter he was contacted by his lawyer, said hey a Bureau of Drug Control agent wants to talk with you. Sure, I'll be glad too, anything I can do to help. Anything I can do to cooperate, and he does. And he's asked, well where would these patient records be for your wife, your stepdaughter, and your wife's paralegal, where would they be? Listen, I got kicked out of the house. I'm living in another house now, they maybe at my house in Hartsville. They're probably in my house at Conway but I can't get them. But I did them, I did them. And by the way, if you ask my wife, my stepdaughter, her co-worker, did I take your blood pressure, did I listen to your complaints, did I take your history, did I document that before I prescribed; go ask them, they'll tell you. I'm telling you if you go ask them, they'll tell you I did it. And the agent says, well I

tell you what brother, have you got them or not, and if you don't have them, you're technically in violation of this statute. Now, if I told you that story what would you think? What would you think? Let's keep in mind who we're talking about too. For all intents and purposes Doctor Webb was still a student. Yeah, he graduated from med school, but he was in a residency program, essentially a paid student. He worked horrific hours because that's what happens if you're a resident. It's just part of your right of passage. But from the very first moment he was asked, really not knowing how important it was at the time. When you think about that, not knowing how important it was, he still said from the first to the last, I'm telling you man to man I did those records. They told me to do that in the residence program. They told me to document it and I did. I'm going through a divorce; I can't even go to the house. I've sent a list of things; they won't give them to me. If you can't produce them, you're technically in violation of this statute. A technicality. So, do you think that anybody from the State ever asked the wife, the stepdaughter, the coworker, when John prescribed you these meds did he create a practitioner/patient relationship with you? Did he document it? Did he check you out? Do you think they even asked? Understand this, the defendant has absolutely no burden in this case. None whatsoever. He's got a lot to lose. He's got a lot to lose. A fellow who's gone

through three years of med school and one year of residency, he's got a lot to lose. But he doesn't have the burden in the case. I submit to you this, they never asked. They never asked. They never asked the wife, the stepdaughter, the co-worker. They never asked because if they had and the answer was no he never created a history, he never asked, he never documented, he just called it in. I submit to you if that were the case you'd have heard from them. They never asked. In his testimony, Inspector Strickland never said he would ask, but if you remember in the statement he suggested that that might the next step but he was giving my client first chance. It's a technicality. You're technically guilty when you can't produce those records. Now, keep in mind the doctor who was the supervising doctor or director of the program said that John was in good standing. He had successfully completed his first year, but he was a student. So, let's talk a bit about relationships, alright. So, there's a lot of talk about forming this bonafide relationship between practitioner or physician and patient, alright. Do you know that in our world today that you can go on the internet and fill out a couple of surveys and have medicine delivered to your door and you never speak to a living sole? Did you know that? Watch the commercials. And to suggest, to suggest that that is somehow better than a relationship which is clearly formed with a wife, a stepdaughter and a wife's co-worker is somehow

inferior to that. These things that John should have known about his patient in order to properly prescribe meds for them, he knew intrinsically because he did have a relationship, a real face to face, time spent, quality relationship with these people. Is that just inferior or is that just a technicality? There's been some talk about moonlighting, how that's not admitted in the residency program. So, I asked the doctor, the director, what's moonlighting? Is that employment somewhere else, in another facility? Yep. That's what it is. Well, folks that ain't what we got. He's not employed in some other facility where he saw his wife and his stepdaughter and his wife's co-worker. That ain't moonlighting. You heard in statements that this is exactly what the residency director at the time told him he could do. He's a student and so all of this talk about limited license versus full license versus -- let's say for arguments sake he made a mistake. That he prescribed outside of his license. He ain't charged with that folks. They're ain't an indictment about that here today. So, you know, there's talk about the meds and how they can be abused. We're talking about his wife, his stepdaughter, and her co-worker. Was there anything about these particular prescriptions that appeared to be abusive? No. No. There's talk about, well this med is used for procedures most often, but it also is a sleep aide, which they testified to. And folks, the other one

is a diet pill. So, you know, the suggestion that this is a dangerous practice ignores the relationship. It ignores the relationship, and nobody asked. Nobody asked. Alright so here's what we've got, we've got a guy three years of med school, going into his second year of residency, prescribes his wife, his stepdaughter, and a co-worker Schedule IV -- now I asked it's not a Schedule I, it's not a Schedule II, it's not a Schedule III. You know how these things work? One is the worst. One is the most abusive. Four is the least abused out of the schedule. These are all four. So, any suggestion that there's something sinister or abusive about this prescribing practice, that's not the truth. You can take anything and make it sound bad, but the truth of the matter is a couple of them wanted to lose weight, a couple of them needed help -- one of them needed help getting sleep. That's it. A technicality. So, you know, I asked you -- I asked you what would you think if you heard that story. Well, you heard it. You heard it. I don't know what a guys supposed to do, really. You know, one of the cardinal rules in closing arguments is you are not to personalize to the jury. You're not to ask the jurors specific questions that relates only to them. But, who doesn't in our community as a whole, know someone who's been through a contentious divorce? Who doesn't know how difficult that could be? How the simplest of things are fought over. Primarily because it's so emotional. So,

something as simple as calling up and saying, hey I really gotta get this stuff from my office, becomes you're not getting anything from me. Folks, that's life. Life intervenes, okay. We're not talking about murder. We're not talking about grand larceny. And by the way, filing a police report because you can't get your records back from your wife from whom you're separated with, who ain't happy with you; does that appeal to your common sense that you would run down to the police station and say she's got my medical records and she won't give them to me. Is that what you're thinking about when you're going through a divorce? It's a technicality. If they burnt up in a fire? Technically yeah, guilty. Washed away in a flood? Yeah, technically guilty. So, let's talk about technicalities because that's what we've been talking about. This entire case, quite frankly, is about technicalities. This statute, which by the way nobody asked the defendant, he how do you want to be charged. Have you got any particular preference on statutes? Is there something you'd like better than others? Nobody asked him that. An indictment is sought solely at the discretion of the State. That's their constitutional authority, it's their constitutional duty. I know that because I was one for 24 years. What they charged him with is a violation of the drug distribution law. That's sounds horrific in fairness. It sounds like he's slinging rock on the corner. What they said

is that -- and they've already admitted this isn't really applicable. He hasn't furnished false or fraudulent material or information, that's not it. When you call in a prescription it's got your name on it. And if that wasn't enough, it's got your phone number on it. And if that wasn't enough, it's got your DEA prescribing number on it. He's got DEA authority to prescribe drugs. All of that's there. So, when we talk about there's no record, there's no record, there's a record. That's a record of every pharmacy that these things were filled at. You've heard that testimony from the pharmacists, everyone, which they maintain by the way for 10 years which is 8 years longer than they require according to the Bureau of Drug Control my client to maintain his. So, when we talk about absence of records -- what they've charged him with is omitting any material information related to these patients, wife, stepdaughter co-worker, from any application, report or other document required to be kept or filed under this article. So, just a quick word about articles. An article is sort of a subsetting within the statutes. So, you've got titles, that's the big one. You've got chapter's, that's the next category. Then you've got articles, okay. This statute happens to be in Article 3 of Title 44, Chapter 53. Any application, report, or other document required to be kept or filed under this article, Article 3, or any record required to be kept by this article, Article 3. And then it

refers by reference, and this is a statute within Article 3. It's 44-53-340. And it says that persons registered to manufacture, distribute, or dispense controlled substances under this article shall keep records and maintain inventories in conformance with the record keeping and inventory requirement of Federal law or with any additional rules the department, DHEC, issues commonly called Department or DHEC regulations. So, let's talk technicalities, since that's what we're talking about. Did you hear any reference in any testimony from any witness regarding any Federal law related to the maintenance and keeping of records or a record keeping mechanism? Any reference whatsoever? No. Did you hear reference to any other statute within Article 3 or Title 44, Chapter 53 regarding record keeping requirements or a record keeping mechanism? Any testimony whatsoever? No. Did you hear reference to any DHEC regulation, they have numbers by the way, DHEC reg 60 -- did you ever hear any DHEC regulation come from this witness stand talking about requirements regarding record keeping or a record keeping mechanism? No. Now, what you hear was a lot of testimony about well you should do this, well you should do that, well if you're in the residency program we want you to do this. Technicality. This statute doesn't ask what the residency program says you should do. This statute doesn't ask what the Bureau of Drug Control things you should do. This statute says what our legislatures

say in Article 3, Title 44, Chapter 53 you should do, or what do DHEC regulations say you should do. And there is no reference, there is no direct reference in this testimony to any specific statute or any specific DHEC regulation. Technicality. So, let's circle back around. Did a relationship exist? Of course, it did. It's his wife, his stepdaughter and her co-worker. So, we really ain't talking about that, folks. We're not talking about that. Do the records -- did the records exist at one time? He said, go talk to them they will tell you. You recall that from the statement. That would have been pretty easy. Been pretty easy. You know, help a brother out, I can't get the records we're going through a divorce. I got kicked out of the house, go ask her though, she'll still tell you. She might be mad at me, but she'll still tell you. So, did the relationship exist? Absolutely, a relationship existed. What he is charged with is not being able to readily produce, upon request, these records. In a life that is as messy as this one is -- and if he failed to do that, he was technically in violation of the very statute he stands charged with and tried for today. And so I say, if we're talking about technicalities, good. If we want to rely on technicalities, fire burns up the records. Technicality. Flood washes them away. Technicality. Let's talk about technicalities under this charge, the one they choose, they selected, and they have

put my client on trial for. As a technicality did they refer to any statute within Article 3 or any DHEC regulation that tells him what he's responsible to do under this statute? Folks, this is serious beyond serious. You can only imagine the personal, the professional impact these charges have on a fellow that went through three years of med school and one year of residency. Think back to what you thought when I told you that story. What would you say? Thank you.

MR. MARTIN: Nothing, Your Honor.

THE COURT: Very well.

Ladies and gentlemen, now it comes to my duty to charge you, which will take maybe 20 minutes. Would you like to take a break at this time and come back or would you like to just continue on?

FORELADY: Your Honor, we'd like to continue.

THE COURT: Very well.

As jurors in this case you have certain functions and responsibilities which are entirely separate and distinct from those of mine as the trial Judge. I am prohibited by the Constitution of our State from charging you on the facts of this case and I'm also prohibited from discussing the facts of the case with you or in any way animating what my feelings, if any, are about the facts of this case; it is your duty and responsibility and yours alone to ask when all issues of fact are presented in the case. I will therefore charge you that

if during the course of the trial or during my charge you have been given or are left with an impression or feeling that I do have a personal feeling about the facts of this case I would specifically instruct you to disregard that feeling or impression for you are the sole judges of what the testimony was and not the argument of counsel. It is also your duty and yours alone to weigh the testimony and evidence in the case and to pass upon the credibility and believability of the witnesses. In this connection, you have the right to believe all that a witness tells you or disbelieve all that a witness tells you. You have the right to believe a part of what a witness tells you and to disbelieve a part of what a witness tells you. You have the right to take into consideration any bias, or prejudice, or interest you feel the witness might have in the case. I say this merely to emphasize that the weight you see fit to give to the evidence and the credibility of the witnesses as well as all issues of fact are for your sole determination. As judges of the facts you are the sole judges of the credibility, that is the believability of the witnesses who have testified in the case. In passing upon their credibility you may take into consideration many things such as the appearance and manor of the witness on the stand, sometimes referred to as the demeanor of the witness. Was the witness forthright or hesitant? Was the witness's testimony consistent or did it contain discrepancies? What was the

ability of the witness to know the fact of which he or she testified? Does the witness have a cause or a reason to be biased or prejudice in favor of the testimony he or she gave? Was the testimony of the witness corroborated or made stronger by other testimony in evidence or was it made weak or impeached by such other testimony in evidence? As jurors you have the right to believe a small portion of a witness's testimony and discard the larger or vise versa. You may believe all of a witness testimony or not. You may believe the testimony of a single witness against that of many witnesses or the other way around. Most certainly you do not determine the fact of the credibility or believability by counting up the number of witnesses who may have testified. Now, I instruct you and emphasize the fact that the defendant did not testify is not a factor to be considered by you in any way in your deliberation and your consideration of the question of the guilt or innocence of the defendant. It must not be considered by you in any manner whatsoever. The defendant has a constitutional right to remain silent and the assertion of this right must not be considered by you in your deliberations. I repeat, under your oath you are to draw no conclusion whatsoever from the fact that the defendant in this case did not testify. The fact that this defendant did not testify should not even be discussed in the jury room. The burden of proof as I stated to you is on the State. The

defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt. Now, by the same constitution in law which makes you the finders of fact and the evidence as I have discussed with you, I am as a Judge the sole and only instructor on the law. You must accept it's correct the law in which I charge it and apply to it the evidence as you find it and reach a verdict. If I should make an error in the law as I instruct it to you, there's another time and place that that error can be considered and if necessary corrected. But for the purpose of this case today, you must accept the law as I charge it to you to be the correct law. And finally, I charge you in this regard that you nor, for that matter, I should be concerned with what the law ought to be but rather what I charge the law to be. Now, the defendant is charged with violating the drug distribution law. The State must prove beyond a reasonable doubt that the defendant knowingly or intelligently obtained a prescription for himself or for another by furnishing false or fraudulent material in or omitting any material information from any application, report, or other document required to be kept or filed under this article or any record required to be kept by this article. Now, I have to instruct you that Triazolam and Phentermine are controlled substances under the laws of our State. Knowingly means with knowledge that is consciously

done. Intentionally means willfully intending the result which actually occurs, not accidentally or involuntarily. Now, the defendant -- excuse me, the statute itself speaks to this and it is unlawful for a person to knowingly or intelligently -- excuse me, knowingly or intentionally to furnish false or fraudulent material, information in, or omit any material information from any applicant, report, or other document required to be kept or filed under this article or any record required to be kept by this article. Persons registered to manufacture, distribute or dispense controlled substances under this article shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of Federal law and with any additional regulations by Department of Health and Environmental Control. Now, the defendant has plead not guilty to this indictment and that plea puts the burden on the State to prove the defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you that it is an important rule of the law that the defendant in a criminal case, no matter what the seriousness of the charge may be, will always be considered innocent of the crime for which the indictment was issued unless guilty has been proven by evidence satisfying you of that guilt beyond a reasonable doubt. His presumption of innocence does not end when you begin your deliberation but it accompanies

the defendant throughout the trial until you reach your verdict of guilt based upon the evidence satisfying you of that guilty beyond a reasonable doubt. The presumption of innocence is like a robe of righteousness placed upon the shoulders of the defendant which remains with the defendant until it has been stripped from the defendant by evidence satisfying you of the defendant's guilt beyond a reasonable doubt. Now, the presumption of innocence is not immediately (sic) a legal theory, it is not just a legal phrase. It is a substantial right to which every defendant is entitled unless you the jury are satisfied from the evidence that the defendant is guilty beyond a reasonable doubt. What is a reasonable doubt? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. Now, there are two types of evidence which are generally presented during a trial, direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is the evidence that immediately establishes the main fact to be proved and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation.

Crimes may be proven by circumstantial evidence. The law makes no distinction between circumstantial and the weight to be given circumstantial evidence. However, to the extent that the State relies on circumstantial evidence all of the circumstances must be consistent with each other and when taken together point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior is suspicious the proof is failed. The State has the burden of proving the defendant beyond a reasonable doubt. The burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence or a combination of the two. You should weigh all the evidence in the case. After weighing all the evidence if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty. Now, in order to establish criminal liability, criminal intent is required. Criminal intent must be proven 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 intent to a mathematical certainty. There is no way medical science can dissect a person's brain to determine what the person had on his mind, so the law says that criminal intent may be inferred from the circumstances shown to those existed. This is how you make a determination of whether or

not the element requiring intent was present. It is not necessary to establish intent by direct and positive evidence. Intent may be established by the inference in the same way as you -- as in the same way as any other fact by taking into consideration the acts of the parties and all the facts and circumstances of the case. Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the defendant intended to do based on the circumstances shown in existence. Criminal intent can arise from the action or failure to act. Criminal intent is a state of mind that operates jointly with an act or omission in the commission of a crime. Criminal content is a mental state. Criminal liability is normally based on the concurrence of two factors, an evil meaning hand -- excuse me, an evil meaning mind and an evil doing hand. Suspicion however is strong -- however strong is not enough to sustain a conviction. The evidence presented by the State must be substantial evidence that tends to prove the guilt of the defendant beyond a reasonable doubt. Now, I remind you that the charge -- the fact that the defendant was arrested, charged, and indicted in this case is not evidence in this case and cannot be considered by you as evidence of the guilt of this case, nor does it create any inference or presumption of guilt. This document and indictment simply -- is simply the formal written instrument which contains the charges made against the defendant. It is

the formal document by which this case is brought into court. Now, the indictments in this case charge the defendant John Alexander Webb with three separate violations of the drug distribution law as defined by Section 37-23-20 of the Code of Laws of South Carolina. Indictment number 2017-GS-26-3144 relates to Renee J. on or about July 7th, 2016. Indictment number 2017-GS-26-3145 relates to Kristie S. on or about April 8th. And indictment number 2017 -- relates to Alexandrea C. on or about -- excuse me, indictment related to Kristie S. relates to a period between April the 8th, 2016 and October 12th -- 15th, 2016. And indictment number 2017-GS-26-3146 relates to Alexandrea C. on or about October the 27th, 2016. Each indictment charges a separate and distinct offense. You must decide each indictment on the elements and the law applicable to it uninfluenced as to your decision as to any ot the other indictments. The defendant may be convicted or acquitted on any or all of the offenses charged. You will be asked to write a separate verdict of guilty or not guilty for each indictment. I remind you that the fact the defendant was arrested, charged, and indicted in this case is not evidence in his case and cannot be considered by you as evidence of guilt in this case nor does it create any presumption of innocence or therefore inference of guilt. The indictments are simply the formal written instruments which contain the charges made against the defendant. They are the formal

instruments which brought the cases to Court. Now, as I said earlier, you are the sole judges of the facts of this case. You are to determine only if the defendant is guilty or not guilty based upon the testimony and evidence presented in the trial and after applying the law as I've given it to you. If from the evidence, you have a reasonable doubt as to whether or not the defendant is guilty it is your duty to acquit him and write the two words not guilty. Under the oath you took you swore to try this case based only and solely on the testimony, evidence, and law presented and heard in this courtroom. It is your duty to lay aside all bias, or prejudice, or sympathy you may have in reaching your verdict. You have no enemies to reward -- excuse me, no friends to reward or enemies to punish in this case. Now, madam forelady, ladies and gentlemen of the jury, I've prepared a verdict form for you to use in your deliberations and the bailiff will hand it to you there. As I said, there are three separate indictments in this case, and you will be given the indictments identified by number. The verdict form provides, we the jury unanimously find the defendant John Alexander Webb on indictment number 2017-GS-26-03144 guilty of the violation relating to Renee G. -- J., excuse me, on July the 7th, 2016; or not guilty. Indictment number 2017-GS-26-03145 you would find either guilty to the violation relating to Kristie S. between April the 8th, 2016 and October the 15th, 2016 or not

guilty. And on the third indictment number 2017-GS-26-3146 you would find that the defendant is either guilty of the violation relating to Alexandrea C. on October the 27th, 2016 or not guilty. Whatever verdict you reach it must be unanimous as to each indictment. Although it is a unanimous verdict, madam foreperson, it would be up to you to check the appropriate block as to which is the verdict of the jury on that particular indictment, either guilty or not guilty. You would then sign it and date it accordingly. I will ask you to return to the jury room. Do not begin your deliberations until I send back the verdict form together with the exhibits that have been introduced in the case. If you would please, ma'am, hand it to the bailiff the verdict form. As soon as -- I need to take up some matters with the attorneys but as soon as we've completed that, that should just take a few minutes, I'll send back the verdict form together with the exhibits. Once you receive those from the bailiff then if you would start your deliberations and once you have reached a verdict as to each of the three indictments knock on the door and we'll return and come and receive your verdict. Alright, with that I will ask you to retire to the jury room except for the alternate. You remain with us, please.

(JURY RETIRES TO JURY ROOM AT 4:28PM)

THE COURT: Alright, are there any exceptions to the charge or any additional requests for charge from the State?

MR. HUMPHRIES: Can you give me just a minute to speak with counsel for the State?

THE COURT: Alright.

Any issues?

MR. MARTIN: Not at this time.

MR. OSKIN: Nothing from the State.

MR. HUMPHRIES: Not from the defense.

THE COURT: Alright, thank you.

Alright, if you would please check and see that the exhibits that need to go back do go back and the ones that were not admitted aren't included.

MR. MARTIN: Your Honor, for clarification, the CD stays out here because if they want to listen to it ---

THE COURT: That's right.

MR. MARTIN: --- but the three prescriptions may go back?

THE COURT: Sure. Yes, sir.

MR. MARTIN: Okay.

THE COURT: Alright. Madam alternate, I think you understand why you were selected. This case went two days at least and if something would have happened to one of the jury panel, of course, you would have then sat in the place. I'm sure that you probably think that I do everything but pay attention up here, but I do. I've developed over a few years at this a knack of keeping up with what goes on in the courtroom. And I noticed that during the trial that you paid

very careful and close attention not only to what was being said but also what was occurring in the courtroom. I want to thank you for that attention as well as service that you've given us. As I mentioned to the panel that was dismissed the other day, the balance of the panel, that this service as a juror is perhaps the finest thing that we do as citizens. Of course, it makes our system of law and justice what it is, which is citizen participation. I thank you for that. Now, I wish I could do something for you but I'm sure that when the Judge qualified you on Monday, he asked you the question of whether anybody had served in the last three years. Well I can't do anything for you except to say that you won't have to serve for another three years or be called to serve. But I do want to thank you for your service. Now, Mr. Clerk, is there anything that the juror needs to do? Of course, she needs to get anything she has in the jury room.

CLERK: If you have anything in the jury room let us know, and if you go downstairs to the Clerk's Office they will finish helping you.

ALTERNATE: Okay, thank you.

THE COURT: Alright, and again, thank you so much. We do appreciate it.

Alright, gentlemen I want to thank you as I use the word very meaningfully, your patience with the Court but also, I want to thank you for your professional way that you

represented your clients and the parties. It's a pleasure for somebody as old and kind of warn out as I am to see that people still have appreciation and interest in performing in a professional fashion. You exempted that excellence and I want to thank you for it.

MR. HUMPHRIES: Thank you, Your Honor.

THE COURT: Thank you very much. It's in the jury's hands and we'll see what happens.

Alright, we will stand at ease.

(RECESS)

(JURY BEGINS DELIBERATIONS AT 4:44PM)

THE COURT: Alright, I understand the jury has reached a verdict. Anything from the State before we bring them back?

MR. MARTIN: No, Your Honor.

THE COURT: Defense?

MR. HUMPHRIES: No, sir.

THE COURT: Very good.

Ask the jury to join us.

(JURY ENTERS COURTROOM AT 5:11PM)

THE COURT: Madam forelady, I understand that you have reached a verdict.

FORELADY: We have, Your Honor.

THE COURT: If you would please pass it up to the bailiff.

Mr. Clerk, if you would please publish the verdict.

CLERK: Yes, sir.

State of South Carolina, County of Horry versus John Alexander Wedd, we the jury unanimously find the defendant John Alexander Webb indictment number 2017-GS-26-3144 guilty of the violation relating to Renee J. on July 7th, 2016. Indictment number 2017-GS-26-3145 guilty of the violation relating to Kristie S. between April 8th, 2016 and October 15th, 2016. Indictment number 2017-GS-26-3146 guilty in violation relating to Alexandrea C. on October 27th, 2016. Signed by the foreman Windy Buffkin, dated 4-23-19.

Ladies and gentlemen of the jury, if this is your verdict so signify by raising your right hand.

THE COURT: Let the record reflect that all jurors acknowledged the verdict. And is this still your verdict? If so, also raise your right hand. Very good. Thank you very much.

Are there any questions from the State?

MR. OSKIN: Nothing from the State, Your Honor.

THE COURT: Anything from the defense?

MR. HUMPHRIES: Not as to the jury, Your Honor.

THE COURT: Alright. Madam forelady, ladies and gentlemen of the jury obviously you didn't ask to be here, and you have done a very valuable service to the system of justice here in South Carolina and I do appreciate it. As I told the alternate when I excused her that I know that it looks like

I'm not paying attention to anything but I've developed I guess a certain ability or knack to keep up with what's going on in a courtroom. I notice that all of you paid very careful and close attention to what was happening and so by doing your duty as jurors, because that's what the whole system of justice is about is for citizen participation, and I thank you. Court is never interested in a verdict, only how that verdict is reached, and you were a fine example of our system and how it should work and does work. I thank you very much. This is the last case to be tried this week, so you are going to be excused. Although I would like to do something for you in appreciation of your service this week, obviously I can't. The only thing I can do is remind you, as I did the alternate, that I understand that when you were qualified on Monday that you were asked how many had served in the last three years. The only thing I can do for you is tell you that you will not have to serve another three years, but I do thank you for your service today. Again, if you have anything --- you will show them how to get out? Alright, very good and again I want to thank you for your service as well as the fact that you paid very careful and close attention and I cannot say more than thank you. Alright, everyone remain seated while the jury retires from the courtroom.

(JURY EXCUSED AT 5:16PM)

THE COURT: Are you ready to proceed?

MR. OSKIN: Yes, sir, Your Honor.

THE COURT: Alright.

Defense ready?

MR. HUMPHRIES: Ready, Your Honor.

THE COURT: Alright.

MR. HUMPHRIES: I need to renew my motions ---

THE COURT: Certainly.

MR. HUMPHRIES: --- Your Honor.

THE COURT: Let's do this, alright. The motion is noted for the record and I'll give you 10 days to prepare your motion.

MR. HUMPHRIES: Very good. Thank you, Your Honor.

THE COURT: Any objection?

MR. MARTIN: Your Honor, so long as it's on the record I think it's sufficient.

THE COURT: Okay. Very good.

MR. OSKIN: Court's indulgence as the sentencing sheets are prepared, Your Honor.

THE COURT: Alright.

MR. OSKIN: We'll have that momentarily.

THE COURT: Alright. Very good. Thank you. We'll stand at ease.

(RECESS)

MR. MARTIN: Your Honor, may I approach with the sentencing sheet?

THE COURT: Certainly.

MR. MARTIN: The State is ready whenever Your Honor is ready.

THE COURT: Very well.

Alright, approach please.

(BENCH CONFERENCE)

MR. HUMPHRIES: We're ready to proceed.

THE COURT: Alright, approach please.

(BENCH CONFERENCE)

THE COURT: Alright, what does the State have to say?

MR. MARTIN: Thank you, Your Honor. This certainly is not a common situation that we are confronted with. But I do think it's important to provide a little background information. I will be very brief and then give Your Honor our recommendation. Judge, this was not a witch hunt or some sort of -- anything like that by the department. In an unrelated case, and it is relevant for sentencing, in an unrelated case that was ultimately dismissed the defendant was accused of allegedly sexually assaulting a patient who he was improperly prescribing medication for. That case was dismissed because that victim overdosed, passed away due to a drug overdose. So, this crime, these three crimes that he's been convicted of go a little deeper that what might appear on the surface. Looking at his prior record, he does only have one prior conviction, that's a 2002 contributing to the

delinquency of a minor. During our plea negotiations and talks with Mr. Humphries, which have also included Solicitor Mary Ellen Walter's talks with him, we offered him as low as a misdemeanor. He rejected that and elected to go to trial. And, Judge, now is the time when he has to face the consequences of that decision. I don't know what is appropriate for someone who lacks a lengthy prior record, but we would ask for some jail time, but we'll leave it in the Court's discretion as to the length. He is facing up to five years on each felony conviction.

THE COURT: Well, it's also a fine, is it now?

MR. MARTIN: There is, Your Honor, and that is included on the sentencing sheet as well. Thank you. The amount is up there by the charge.

THE COURT: Oh I see.

MR. MARTIN: It's $10,000.

THE COURT: Ten thousand. And it is a felony?

MR. HUMPHRIES: Yes, sir, it is.

MR. MARTIN: Yes.

THE COURT: And what was the conviction and when was it?

MR. MARTIN: In 2002, contributing to the delinquency of a minor, South Carolina.

THE COURT: Alright.

What do you have to say on behalf of the defendant?

MR. HUMPHRIES: Alright, let's start here, first of all

as to the State's reference regarding a charge which was dismissed without having the opportunity to litigate, I take exception to that being used in the charging decision. You know, the very fact that he was charged, no fault of his own that the case could not have been litigated. There was an offer to plea in that case, which was rejected. We intended to go to trial and felt firmly convinced that we would have prevailed at that time. So, the suggestion that a charge for which there is no conviction can be used ---

THE COURT: Oh, of course, I'm not going to consider that. I took it as background as to how it developed this particular case.

MR. HUMPHRIES: So, circling back to these charges, the Court's heard the facts and circumstances surrounding these charges. They were low level controlled substances prescribed not in an abusive fashion to his wife, his stepdaughter, and a co-worker. This was a case that, quite frankly, we agreed on most of the facts, we just disagreed on whether or not he was criminally culpable given his circumstances. That's why we tried the case. We didn't try the case in a frivolous manner, asserting his right to trial callously or carelessly. There was a legitimate issue to be decided and that has been decided by the jury. That prior conviction is 17 years ago. Since that time, he was a practicing chiropractor. He paid for his own medical school, working while he did that. Ultimately was

able to gain admission to the residency program at Grand Strand Regional Medical Center. The charge, in and of itself, in fairness absolutely curtails any other actions he would be able to take on his part to ever practice medicine anywhere. So, that investment of time both in medical school and the residency is forever lost to him, quite frankly, because of his inability to produce records related to these three individuals who were close to him. So, if we're talking about punishment, punishment has been exacted. If we're talking about life changing consequences for this violation, that has been accomplished. He's 43 years old. He's a Compliance Officer in a medical practice in Boston, which is quite frankly where he had to go to get a job. So, he's moved very far away from family and friends in order to do that. But he is gainfully employed. Any sentence that would involve any jail time whatsoever is certainly going to substantially impact his ability to provide for his 12-year-old son whom he supports and loves. This quite frankly, Your Honor, is a case whereas the State has proposed it, a technical violation, it has tremendous consequences just by virtue of the condition on the rest of his life, in terms of what he does for the rest of his life. So, if we're talking about punishment, he's had it. I believe it is entirely appropriate in this case to provide a sentence suspended upon the payment of a fine. Give him the opportunity on probation to pay that fine and termination of

probation upon payment of the fine. The punishment's been exacted. He's not a danger to the community as a result of this charge. This -- and quite frankly if the State or the Court for that matter is concerned about the ability for this case to be -- or the conduct within this case to be repeated, that just can't happen because he's not ever going to be a medical doctor based on these conditions. I believe that is fair under the facts of this case and that's what I would ask the Court if you would consider.

THE COURT: Alright.

Mr. Webb, how old are you? I have 42 and 43.

DEFENDANT: I'll be 43 on Monday, sir.

THE COURT: Oh, so you'll soon be 43. Alright, how far have you gone in school?

DEFENDANT: I have a Doctor in Chiropractic. I have an MBA in Health Care Administration. I have a Medical Degree. I'm completing a Master's in Bioengineering at Harvard right now.

THE COURT: And you are a Compliant ---

DEFENDANT: I work as a Chief Operations Officer at Harvard Medical Center for one of their divisions. I'm over their compliance the division there.

THE COURT: How long have you been there?

DEFENDANT: For two years, sir, this month.

THE COURT: And any dependent children?

DEFENDANT: I have a 12-year-old son.

THE COURT: Is that your only child?

DEFENDANT: Yes, sir.

THE COURT: And where is he?

DEFENDANT: He's in Chicago with his mom.

THE COURT: Do you contribute towards his support?

DEFENDANT: Absolutely. Yes, sir.

THE COURT: Do you do it through court order?

DEFENDANT: It's through court order. Yes, sir.

THE COURT: And it's exercised through what Court?

DEFENDANT: It's through Darlington County.

THE COURT: Okay. Have you ever been treated for drug or alcohol abuse or mental illness?

DEFENDANT: Never.

THE COURT: Are you under any medication, drugs, or alcohol at this time?

DEFENDANT: No, sir.

THE COURT: Are you aware of any physical, emotional, or mental condition that may affect your ability to appreciate what you are faced with today?

DEFENDANT: No, sir.

THE COURT: And your home is in Boston?

DEFENDANT: My home is in Hartsville still. My mom just passed away. I have her home there, which is where I met Agent Strickland earlier. But I've been renting an apartment

in Boston because it's the only place ---

THE COURT: But you do have a residence here in South Carolina?

DEFENDANT: Well, my mom's home is there. I haven't moved into it. I need to clean it up. I haven't lived there in 20 years.

THE COURT: Alright, anything further from the State?

MR. MARTIN: No, Your Honor, we still stand by our recommendation and the case we presented.

THE COURT: Was there any injury resulting from any of the reports that was maintained -- I mean, were there any ramification, physical?

MR. MARTIN: I think I understand what you're asking, regarding the three people that he prescribed ---

THE COURT: Or anybody.

MR. MARTIN: Well, there were I think 19 total. Your Honor, it does not appear that we are aware of any of the people involved in those 19 scripts that suffered any sort of medical condition as a result of that.

THE COURT: That's the thing that concerns me.

Did he spend any time in jail?

MR. HUMPHRIES: No, sir.

THE COURT: Okay.

Alright, Mr. Webb, is there anything you'd like to say?

DEFENDANT: Your Honor, all I've wanted to do my entire

life if just help people. I've continued my education in order to do that and I've racked up over $700,000 in student loans. I've taken two degrees at one time and worked my butt off and helping my wife through law school and just everything I did to try to better myself and to try to help people. And I honestly felt that being a physician was the one thing God put me on this planet to do. Not being able to do that is pretty crushing. I didn't go anything with any ill intent or trying to hurt anyone. I was trying to help my people out that I loved, you know, doing what I'd been trained and taught to do. I'm just sorry I have to be here today. I apologize. I just ask that you show me as much mercy as you can.

THE COURT: Alright, anything else from the State?

MR. MARTIN: No, Judge.

THE COURT: Anything else on behalf of the defendant?

MR. HUMPHRIES: No, sir.

THE COURT: The State of South Carolina, County of Horry, indictment number 2017-GS-26-3144, the sentence of the Court will be the defendant John Alexander Webb be committed to the county detention center for a term of 90 days, provided upon payment of costs and assessments as applicable, the balance is suspended with probation for one year to the appropriate South Carolina Probation, Parole and Pardon Services. Special conditions is that probation to termination upon performance of 240 hours of public service employment. Ninety days might

be served on the weekends beginning at an agreed to time. Undergo substance abuse counseling and alcohol testing and treatment as directed. Indictment number 2017-GS-26-3145, the sentence of the Court is the defendant be committed to the county detention center for 90 days provided upon payment of costs and assessments as applicable, the balance is suspended with probation for one year. Probation is to termination upon performance of public service employment, 240 hours. Substance abuse counseling and alcohol testing and treatment. Indictment number 2017-GS-26-3146 the sentence of the Court that the defendant be committed to the county detention center for a period of 90 days, provided upon payment of costs and assessments as applicable, the balance is suspended with probation for one year. Special conditions is defendant is to perform 240 hours of public service employment. He may serve his time on weekends. Probation to termination upon payment of fines, fees, costs and assessment, and public service employment. I think I got that right. My intent is to keep you in the county rather than in the State correctional institute, also on probation you will be able to serve it in hopefully your county -- and it’s on the weekends. And you can transfer your probation when you’re not incarcerated on the weekends, you can move it to, I guess, Boston. But that’s the intent. To be very candid with you, it is a unique sentence for a unique type of case.

Alright, anything else from the State?

MR. MARTIN: Just clarification so that we understand the sentence correctly, Your Honor. Is he serving 90 days and then after the 90 days ---

THE COURT: He serves the 90 days on the weekends.

MR. MARTIN: And in addition to that 90 days he's doing one year of probation.

THE COURT: And 240 hours of public service. The one year probation terminates upon the completion of the 240 hours of public service.

MR. HUMPHRIES: And as for the appearance date for the weekend time, Your Honor?

THE COURT: I was leaving it up to y'all. When do you want to do it?

MR. MARTIN: Will the 90 days be running consecutively or concurrently?

THE COURT: All are concurrent.

MR. MARTIN: I may have missed that. I'm sorry.

THE COURT: In other words, one 90 day sentence to serve on the weekends. When do you want to start?

MR. MARTIN: With weekend time, Your Honor, we typically request Friday at 5:30 to Sunday at 5:30.

THE COURT: Okay.

Do you understand?

DEFENDANT: Yes, sir.

THE COURT: It's going to be on probation ---

DEFENDANT: We notify the defendant, obviously, that if he fails to turn himself in that he can be brought back before the Court.

THE COURT: Exactly, but also I would -- well, let's see -- you do understand that?

DEFENDANT: Yes, sir.

THE COURT: You report -- when do you want it to start?

DEFENDANT: Can I get back -- if I can do this in Boston I guess I need to get back there and make the arrangements and figure out ---

THE COURT: Well, you're going to have to make the arrangement through probation.

MR. MARTIN: Probation would be once he's completed his 90 days local time here at J. Rueben Long then he could apply for his probation to be transferred to Boston.

THE COURT: Alright.

MR. MARTIN: He will need to report to probation tomorrow.

THE COURT: Right.

MR. MARTIN: Then he'll need to turn himself in at J. Rueben Long Friday, this coming Friday at 5:30.

THE COURT: Again, this is a unique thing. To be honest with you, I don't see ---

MR. HUMPHRIES: Court's indulgence.

Judge, if we can have the appearance date not this Friday but next Friday it would give him an opportunity to go back to Boston, see if he can make arrangements with his employer to hold his position or to make some arrangements about the travel, otherwise he will lose his job. So, we're really only asking for one additional week. He may elect, depending on the circumstances, to do a straight versus the weekends if he can work that out with his employer. But he would need -- I mean, we're already at Tuesday, he would need until next Friday to appear. So, he would appear Friday either to do weekend time or he would appear Friday to do his 90 days.

THE COURT: Any problem?

MR. MARTIN: We'll leave that in the Court's discretion. We would obviously ask that it start this weekend.

THE COURT: Why?

MR. MARTIN: Just for the fear ---

THE COURT: I mean, he's not a threat. I mean, you haven't got -- I mean, this is a process crime really if you want to know the truth.

MR. HUMPHRIES: We're talking about May 3rd.

MR. MARTIN: And one more point of clarification that was brought to my attention from the clerk of court. Your Honor, we need to have an underlying sentence ordered. So, we need something suspended to probation. So, is Your Honor saying one year suspended to 90 days and probation for one year?

THE COURT: Yeah.

MR. MARTIN: Okay.

THE COURT: 90 days suspended upon probation -- or probation suspended -- no, 90 days suspended upon payment of costs and assessments, so he pays them up front.

MR. MARTIN: Well, additionally we need an amount of time suspended to probation.

THE COURT: One year.

MR. MARTIN: Thank you.

THE COURT: The balance is suspended to probation for one year.

MR. HUMPHRIES: Alright, so -- and just so we don't have to all gather back here again.

THE COURT: Thank you.

MR. HUMPHRIES: What the State is saying is that if we have a 90 day active sentence and we don't have a period of incarceration suspended upon 90 days active sentence then there is no ability then to impose a probationary sentence.

THE COURT: Well, actually ---

MR. HUMPHRIES: But if you're intention is to sentence to 90 days suspended upon one year probation then the 90 day sentence would be the only sentence.

THE COURT: No, the 90 days is to be served on the weekends.

MR. HUMPHRIES: Right.

THE COURT: So, I've given him the opportunity to do something productive between the weekdays.

MR. HUMPHRIES: And I absolutely appreciate that. The issue is if he has an active sentence of 90 days and he performs and he satisfies that 90 day active sentence and there is no sentence that suspended to allow the probation.

THE COURT: No, probation.

MR. HUMPHRIES: So, that's your intention?

THE COURT: Well, that's what it reads.

MR. HUMPHRIES: Okay, so if he does the 90 days he's not on probation?

THE COURT: Oh.

MR. HUMPHRIES: Do you see what I'm saying?

MR. OSKIN: Your Honor, if I may interject.

THE COURT: Certainly.

MR. OSKIN: And certainly Mr. Humphries can correct me if I'm wrong.

THE COURT: Wait a minute. No, there's something else in there because I also provided performance of 240 hours.

MR. OSKIN: Yes, sir. I think I have the verbiage that will straighten it out.

THE COURT: Alright, let's do that.

MR. OSKIN: Please correct me if I'm wrong Mr. Humphries. If I wanted to execute that sentence that you just carried out at sentencing; if that were a guilty plea, I would recommend

one year suspended to 90 days, the balance of that year to be served with community service. The balance could be completed after 240 hours -- for the clerk of court it keeps it linear. One year suspended to 90 days service available to do on the weekend time, which is what Your Honor ---

THE COURT: Well, that's what I intended.

MR. OSKIN: Okay, and the balance of that year, i.e 9 months ---

THE COURT: Well, the thing is I've also provided for PTUP upon the completion of 240 hours.

MR. OSKIN: Yes, sir. I understand that completely. And the balance is PTUP'ed based off that community service. He would first serve that 90 days whether it be a straight 90 day sentence or the weekend, whatever he elects to do. That's just the language that we use here for the clerk of court. I just wanted to make sure that I accomplished your intentions there.

THE COURT: That was my intention. Admittedly, I don't think I've ever done it before. I'm trying to fit what I consider to be an appropriate sentence ---

MR. OSKIN: That's completely clear and understood. I just wanted to make sure the clerk understood the actual sentence itself.

THE COURT: Alright.

MR. OSKIN: Thank you, sir.

THE COURT: Very well. Good luck.

MR. HUMPHRIES: And the appearance date is May 3rd at 5:30.

THE COURT: That's right. So, it begins -- that will be the date then.

MR. HUMPHRIES: That's correct.

THE COURT: The beginning of the weekend service.

MR. HUMPHRIES: Yes, sir.

THE COURT: And it will either go the weekends or the 90 days.

MR. HUMPHRIES: Yes, sir. And he will have to report to probation. Will he come to the courthouse?

CLERK: I talked to Russell. He said call him when you get done. But he said probably have you report tomorrow at 9:00AM at the probation office. But call him when you get done here he said.

MR. HUMPHRIES: Okay.

THE COURT: 5-3-19.

MR. MARTIN: Yes.

THE COURT: Okay. That works.

MR. MARTIN: That works for us, Judge.

MR. HUMPHRIES: Your Honor, if we could review the sentence sheets just to make sure we're all on the same page.

(ADJOURNED)

STATE OF SOUTH CAROLINA TRANSCRIPT OF RECORD

COUNTY OF HORRY CASE NO: 2017-GS-26-03145
2017-GS-26-03146
2017-GS-26-03147

B E F O R E: The Honorable Alexander Macauley
June 18, 2019

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

JOHN ALEXANDER WEBB,

Defendant.

APPEARANCES:

George Henry Martin, Esq.
Mary-Ellen Walter, Esq.
Attorneys for the Plaintiff/State.

Fran Humphries, Esq.
Attorneys for Defendant.

Natalie Dahl, RPR
Court Reporter:

P-R-O-C-E-E-D-I-N-G-S

THE COURT: Thank you. You may take your seats.

MR. HUMPHRIES: Good morning.

THE COURT: Good morning, to you all. Let's find out who is here today. We're here on the case of State versus John Alexander Webb, motion for a new trial on a conviction of three indictments, 2017-GS-26-3144, 3145 and 3146.

Let's see, Mr. Martin.

MR. MARTIN: Good morning.

THE COURT: Is anyone assisting you?

MR. MARTIN: Seth Oskin was here last time at the trial, and Mary Ellen Walter is senior solicitor in the office. This is her case actually, Mr. Oskin and I just stepped in and tried it.

THE COURT: So you will be appearing here?

MR. MARTIN: I'll do most of the talking, but they may at the appropriate time address the Court.

THE COURT: Of course. As a fact witness, I think -- is it Ms. Richardson?

MR. MARTIN: Walter.

MS. WALTER: Walter, Your Honor.

THE COURT: W-A-L-T-E-R?

MS. WALTER: Yes, Your Honor.

THE COURT: All right. I'll put you down as an

attorney so you can make arguments.

MS. WALTER: Yes, sir, thank you.

THE COURT: Thank you.

Mr. Humphries.

MR. HUMPHRIES: Yes, sir.

THE COURT: You have someone with you?

MR. HUMPHRIES: I have the defendant, Mr. Webb.

THE COURT: That is what I need to know.

Mr. Humphries, it is your motion.

MR. HUMPHRIES: Thank you, Your Honor. This is a motion for a new trial and/or a judgment of an arrested verdict. We filed this in a timely fashion. The Court --

THE COURT: By the way, let that be noted, that the Court gave -- this is an Horry County case and was tried in Conway, and at the close of the case, the sentence, I gave the defendant ten days or the appropriate time to file a motion, a new trial, and by agreement of the parties, inasmuch as I was going to be here in Georgetown at this term of court, and it is in the same circuit, by agreement of the parties, the hearing on the motion for a new trial is being heard here in Georgetown. I think the record is complete.

MR. HUMPHRIES: Thank you, Judge. As the Court remembers, these indictments essentially alleged that

my client prescribed medications in contravention to a statute which relegates -- purports to relegate prescribing practices and records that were to be kept. This is -- again, we are revisiting what was our directed verdict motion, the renewal of the directed verdict motion. At the close of the defendant's case, we put up no testimony, and then at the end of the trial, at verdict. And, essentially, the argument remains the same, Judge.

Our position was at that time that the State had an absolute failure to offer any evidence or direct reference to any statute within Article 3 of Title 44 of the Code of Laws of South Carolina, or any rule issued by the Department of Health and Environment Control, which was specifically required by 44-53-390, Subsection A(4), and 44-53-340, the Code of Laws of South Carolina. Those were the statutes under which the indictments were brought.

Our position was that these statutes directly referenced rules and regulations that proscribed the practice of prescribed meds without maintenance records. In the testimony of the case -- or the evidence and testimony presented by the State, at no time was there any testimony creating direct reference to any statute or any DHEC reg. or regulation

concerning the requirement to maintain records in the prescribing of meds. None. Not one.

Our position is, absent that, that the jury could not find -- because the primary statutes noted that if this is against the law, then it must be in contravention of a DHEC reg. or regulation, or a code or statute within that particular chapter, and at no time was there any reference to any particular regulation or any statute within that chapter in any of the testimony or evidence provided by the State in the case in chief, and because of that, the jury could not have found my client guilty because there was an absolute void of evidence on that particular issue.

THE COURT: So you are talking about evidence, not what is statutory construction?

MR. HUMPHRIES: I'm talking about evidence. There was no testimony from any witness from the State that said DHEC regulation 106 -- just for argument's sake -- says that a physician must maintain certain records containing certain information. There was no testimony as to a specific regulation or a specific statute.

Now, I will concede that there was testimony from at least one witness, and perhaps two, that said physicians must do this, physicians must do that. But

there was no testimony regarding the authority of that requirement offered by the State through any witness.

THE COURT: Was there any testimony that records were not kept?

MR. HUMPHRIES: There was testimony that records were not produced when requested; no question about that.

THE COURT: But was there any testimony that was given to the issue that there are regulations out there that would require such records, was there any testimony that those records were not kept, direct testimony or evidence?

MR. HUMPHRIES: The only evidence from the State was that when asked by the investigator from the Bureau of Drug Control to produce those records, my client, for a variety of reasons, which were a part of the case by virtue of his statement, was not able at the time of the request from the Bureau of Drug Control's investigator to produce those records. There was evidence through my client's statement, which was played in the State's case, that he had maintained those records, but because of divorce, because of flooding, he was unable to produce those records.

Again, our position is that in that testimony,

that statute requires -- in our opinion -- requires a specific reference to a specific regulation, DHEC regulation, or specific statute which burdens my client with the obligation of maintaining and being able to produce those records. There was no testimony --

THE COURT: There is a statute.

MR. HUMPHRIES: And there was no reference to any particular statute --

THE COURT: There is a statute that references, and I think --

MR. HUMPHRIES: No, I don't --

THE COURT: And I think the charge was requested by the defendant, and that is that other documents required to be kept fall under this article, so that statute is there.

MR. HUMPHRIES: No question that it is entirely --

THE COURT: I just want to say that that was the charge.

MR. HUMPHRIES: No question. That is my point. That is the basis of my argument. Under this --

THE COURT: Now, be careful. I'm not sure -- you are telling me that there was testimony or direct evidence that he did not keep records?

MR. HUMPHRIES: No, sir. No, sir. Here is what I'm saying --

THE COURT: Well, are you saying there is testimony, or there is not testimony that he kept records?

MR. HUMPHRIES: Yes, there is testimony.

THE COURT: Is there any record that he did not -- I mean any evidence that he did not?

MR. HUMPHRIES: Only that he could not produce it at the time it was requested.

THE COURT: That is what I'm asking. I'm trying to find out what the basis is.

MR. HUMPHRIES: Yes, sir. Yes, sir. My point is this: There was a statement that was -- of my client -- which was placed into evidence by the State, which indicated he had kept the records, that he was unable to produce them at the time requested based on divorce --

THE COURT: Was that the audio?

MR. HUMPHRIES: Yes, sir.

THE COURT: By the way, I keep copious notes because my memory is somewhat waning; in fact, if you ask me where my car is parked right now, I probably couldn't tell you. But I do take rather copious notes, and I went over them right before I came in

this morning, that there was an audio stipulation and I didn't know what -- but it looked like there was a conversation between Inspector Strickland --

MR. HUMPHRIES: Correct.

THE COURT: -- and the defendant.

MR. HUMPHRIES: Yes, sir.

THE COURT: And it was by stipulation that it would be admitted into evidence?

MR. HUMPHRIES: Yes, sir. No question. And it was played for the jury.

So there was that evidence; it existed. Our position is that the statute under which he was charged craves direct reference to a statute or regulation within this chapter. Our point is this: While there was testimony from the inspector about this is what he is required to do as a doctor, and primarily he has to produce them upon request, there was never any reference, no legal authority, cited by the State referencing any specific DHEC regulation or statute within that chapter that established that legal requirement.

The statute under which he was charged just said you must maintain records in accordance with this statute or any code section promulgated by DHEC, and they were not -- there was no direct testimony

regarding what those statutes were.

Our position is that the jury having not heard legal authority to require that, they could not or should not have found my client guilty for any of the -- any of the three indictments, because there was no legal authority established by the evidence of the State upon which the jury could rely in order to find him guilty.

THE COURT: Was there any evidence from the State to establish that he had not provided -- did not document the three -- treatment of the three named --

MR. HUMPHRIES: No, sir. And notably -- and of course the State puts up the case the way they wish to, but none of the three patients --

THE COURT: In a criminal charge -- and this was a felony; was it not?

MR. HUMPHRIES: It absolutely is.

THE COURT: And we usually refer to them in General Sessions as "victims." So the victims would have been the, quote, patients?

MR. HUMPHRIES: But there was no testimony --

THE COURT: Kristy S. and Alexandria C. --

MR. HUMPHRIES: There was no testimony from the State, from any of those people, to indicate that they received a prescription and records were not kept.

THE COURT: There was testimony by the pharmacist that did fulfill prescriptions for those.

MR. HUMPHRIES: No question. No question that prescriptions were given and they were transferred to the pharmacy, and those prescriptions were given. No question about that. But there was no testimony from either of the patients that in prescribing that medication, that my client didn't conduct an evaluation of them, an assessment, ask them the relevant questions. There was no testimony about that. The only thing that the State was able to produce, as far as evidence regarding records, is that at the time the inspector made a demand of my client to produce these records, he was at that time unable to produce them. There is no evidence that they did not exist. There can be an assumption, but it is purely an assumption. It doesn't rise to the level of evidence.

THE COURT: Isn't an assumption the same as an inference?

MR. HUMPHRIES: Assumption/inference, doesn't matter because at this point that is not evidence.

THE COURT: I'm just asking. Is that what you are talking about?

MR. HUMPHRIES: Yes, sir. It is one inference,

but there is just as likely an inference that my client -- his statement is absolutely accurate in that, yep, I did them, but I've since gone through a bitter divorce. I've not been able to collect much of my records. They have not been produced, although I asked for them, and we went through a flood at the same time. I don't know what is destroyed, but all I know is I can't produce them right now.

Having said all of that, I don't believe there was evidence sufficient on those two issues for this jury -- or the jury that heard the case to return verdicts of guilty because they had no reference to any authority that required my client to do it, and there is no evidence that he didn't do it, just that he wasn't able to produce them.

THE COURT: Very good.

Mr. Martin.

MR. MARTIN: Thank you, Your Honor. These types of motions, Judge, as you know, Your Honor can grant a new trial for the defendant when there is an utter absence of any evidence, whatsoever, to support the verdict. Mr. Humphries' own words were, well, the evidence wasn't sufficient. Well, that is not the standard. It is if there is no evidence, whatsoever, which kind of brings us to the whole Article 3

argument.

There was testimony on the stand by Investigator Strickland, by the three pharmacists who filled the prescriptions, by Dr. Collier (phonetic), who was at Grand Strand Medical Center, by the pharmacist who was at Grand Strand and by Sheridan Spoon, all which said there is regulations in place which require a practitioner, a doctor, someone who prescribes medicine, there are regulations in place that require them to produce, keep and maintain those records. He failed to do that. We heard that in an audio that was presented to the jury where the investigator tells the defendant point-blank, You have to have these records and you have to produce them to me, and of course he said the same thing on the stand.

I have a case, Your Honor, that I do think is relevant, and if I may approach, I'll bring your attention to Page 5, last paragraph. Mr. Humphries mentions that some of the things that may have been testified to or presented at trial does not fall within the scope of Article 3 specifically. Well, there is case law on point, Judge, which -- and we addressed all of this at trial, but it directs us and the Court to understand that we don't look at just one statute in mere isolation. We don't look at just one

article in mere isolation. We don't look at just one chapter by itself. We look at the statute and the policy and the intent of why the legislators did what they did. We look at that as a whole to understand.

When you look at Article 3-44-54-340, it says: Persons registered to manufacture, distribute or dispense controlled substances under this article shall keep records. They shall maintain those records, and do so in conformance with the recordkeeping and inventory requirements of federal law and with any additional rules the department issues; that would be DHEC.

So by the language of Article 3 alone, it allows us to go outside of the scope of Article 3 and find the DHEC regulations, which specifically state that a practitioner must maintain records, keep the records and produce the records. But even if we didn't have that section of Article 3, State v. Prince tell us we can still go to the DHEC regulation, which is the Medical Practice Act, which Investigator Strickland did refer to on the witness stand. The Medical Practice Act, that is where it says the practitioner must issue these drugs for a legitimate medical purpose and must be able to maintain and produce those records.

Your Honor, it's no different than, let's say, there is a DUI case involving death. A witness on the stand wouldn't necessarily cite a specific statute, but there are a lot of different code sections that come into play that may not fall specifically within the article that is indicted, but they mention a murder case. You don't get an investigator -- an investigator on the stand and specifically cite the statute that says you shouldn't kill someone, but they still talk about it.

So just because an investigator or pharmacist may have failed to specifically mention 44-53-390, it is listed in the indictment and there is testimony to support what is required. Just because Investigator Strickland may not have specifically mentioned each DHEC code that the defendant failed to abide by, he still said it is required, and he didn't do it.

So there is more than sufficient evidence for the jury to come back that the defendant was guilty, but certainly, at the very least, there is a smidge of evidence, which is all that is required, in order to -- for the jury to come back with that verdict.

Judge, I know I'm getting a little redundant because this is everything we kind of laid out at trial, but it seems pretty clear from the testimony,

from the witness stand, from the law that was debated in the presence of the jury -- outside of the presence of the jury, but in presence of Your Honor, that that standard was met, and we would ask that Your Honor uphold the guilty verdict.

Your Honor, I do believe that Ms. Walter would like to address the Court, if that's okay.

THE COURT: Sure.

MS. WALTER: Thank you. Your Honor, I did just want to address one thing that Mr. Humphries was saying, that there was no evidence that he had failed to maintain the records, but if we look at it piece by piece, and I wasn't there for the whole trial, but I prepared most of it, so Sheridan Spoon testified as to what the constraints Mr. Webb was under as the holder of a limited license. Dr. Collier testified as to what constraints he was under as both the holder of the limited license, but also as a member of the residency program, and I believe that Billy Davis also testified to that. He was the clinic manager. Essentially, what everyone testified to was that with -- as a resident, with the holder of a limited license, Mr. Webb was only allowed to prescribe medicine in two contexts: One, as part of the residency program, which would have been for

inpatients at Grand Strand Regional Medical Center, or in the clinical center at Grand Strand Primary Care. Those are the only two places that he was authorized to issue prescriptions.

THE COURT: Well, now, he wasn't charged with unauthorized prescribing medicine. He was -- and I read the charge, that even the defendant gave to me without objection, that he was charged with failure to produce.

MS. WALTER: Right. I'm getting there. But because those were the only two places that he was allowed to prescribe, if he had kept those records, and I think both Mr. Davis and Ms. Williams testified that had prescriptions been issued either to an inpatient or in the clinical setting, that Grand Strand would have a computerized record of it. That was the purpose for calling them as witnesses. Because, essentially, they are custodians of records and they are testifying that the absence of the record means that there was no record. So there is, in fact, evidence that the defendant did not keep the records, because had he kept the records as required, by both the rules of his residency program and the regulations of DHEC, they would have resided either at the Grand Strand pharmacy or the Grand Strand Primary Care

pharmacy. Thank you.

THE COURT: All right. Anything else, Mr. Martin? I'm doing sides.

MR. MARTIN: Nothing at this time to what Mr. Humphries has said.

THE COURT: So, in other words, that is your reply?

MR. MARTIN: Yes, Your Honor.

THE COURT: All right. Now, rebuttal.

MR. HUMPHRIES: Thank you, Judge. Yes, sir. All right. So let's start with the basic rule of statutory construction, and that is that the language of the statute that is strictly construed against the State. The statute that we're talking about, Section 44-53-390(a)(4), it requires persons -- well, it requires this: It is unlawful for a person to knowingly and intentionally to furnish false or fraudulent material information in or omit any material information from any application, report or other document required to be kept or filed under this article -- that is their language, "this article" -- or any record required to be kept by this article.

So when we're -- in reference to the State's authority, State versus Prince, when they are talking about looking at the statutes in broad scope, the law,

as it is drafted, specifically confines this offense to rules and regulations and statutes within this article. That is -- they have -- and you have to assume that they meant to confine this law or these requirements, to requirements within this article. That is a firm rule of statutory construction. They didn't have to limit it there, but they did. So that is strictly construed against the State.

So we have to find a requirement within this article that makes what my client did, allegedly, unlawful. The only section referred to from 390 is to refer back to 44-53-340, which is the same article. You know, just because it is in the book doesn't mean it is in the article. This is the only one that is relevant. Persons registered to manufacture, distribute or dispense controlled substances under this article shall keep records and maintain inventory of conformance with the recordkeeping and inventory requirements of, one, federal law -- about which there is no testimony -- and with any additional rules the department issues.

So here is what we've got. It either has to be contained in this article, it has to be a federal law, or it has to be a department rule. Our position is while there was testimony about, you know, if he

prescribed something for folks outside of the hospital, he shouldn't have done that. That was beyond his limited license and the medical board -- violated a medical board, that is beyond his license. He is not charged with that. There is another venue to deal with that; trust me, he knows.

In this case, they have to be able to establish that there is some authority requiring him to maintain and produce these records related to the prescribing practices. And, again, and just to be clear, I didn't say an inference, I'm saying there is an absolute void of testimony pointing to any specific DHEC regulation which requires my client to produce those records in the evidence presented by the State. There was no reference to any particular statute, which the statute for which -- under which the indictment was drafted referenced. So there is an absolute void of testimony and evidence regarding any legal authority that requires my client to maintain and produce records.

THE COURT: Let's see if -- because what I'm looking at is the directed verdict motions and then the new trial motions based on the lack of any evidence that would sustain a conviction. Of course the Court is not concerned with the creditability or the weight of the evidence, but whether or not there

was any evidence.

MR. HUMPHRIES: Yes, sir.

THE COURT: And, first of all, it seems we were all there at one time or another, and there is no question -- and I use the term "victims" since it was an alleged crime, but the reason we have these laws and regulations is to protect patients from abuse -- either voluntary abuse or whether it is an overreaching abuse. Anyway, they are victims under the criminal law, but none of the victims testified; is that correct?

MR. MARTIN: That's correct, but they are not required to.

THE COURT: Well, I'm just saying. You say they are not required, and I understand, but they were the ones who were the victims of the crime. I mean, each indictment alleged violation of the pertinent statutes as they related to -- I don't even.....

MR. MARTIN: In the State's opinion, the State is actually the victim; they are merely witnesses. The prescriptions were written for them, and the law is written to protect them; there is no doubt about that. But in the specific charge, it is the State's belief that the State is the victim.

THE COURT: Well, was the State there at the time

that the prescriptions were prescribed?

MR. MARTIN: Your Honor, my understanding is that the State, in theory, is always there.

THE COURT: But the victims were, wouldn't they be the ones -- is there any reason why they would not -- I noticed that they were not even on the witness list.

MR. MARTIN: That is correct, Your Honor. That was -- honestly, sort of --

THE COURT: Why don't you consult with your co-counsel.

MS. WALTER: No, Your Honor --

THE COURT: No. Excuse me. Once I recognize an attorney, you either wait until he is finished, or -- we don't double team the other side. You can consult with her, but let's hear what -- just from one.

MR. MARTIN: Judge -- and what she was going to say is exactly what I was going to say. It was a strategic decision. It was to -- we wanted to leave out some bias that may have existed. There were some things that even Mr. Humphries made in pretrial that we were not allowed to get into. It was a strategic decision, and it was one that we made, Your Honor. That is pretty much what it is.

THE COURT: So you eliminated the three witnesses

on each indictment that would have had personal knowledge, whether or not those records were actually produced?

MR. MARTIN: One of them -- we would argue that, number one --

THE COURT: You can answer the question and then give me the reasoning for it.

Is that not correct? They were the three witnesses that would have been able to testify what, if any, records were produced at the time they requested prescriptions?

MR. MARTIN: Not necessarily. We were able to attack that.

THE COURT: Who else was there at the time?

MR. MARTIN: The doctor was there, Judge.

THE COURT: And he testified each time that he produced -- I mean he maintained records.

MR. MARTIN: He did not testify, Your Honor. He did not testify.

THE COURT: I think he did.

MR. MARTIN: Your Honor, I don't believe he took the stand. The defense --

THE COURT: Oh, no, I think -- and that is why I was curious about the audio that was introduced by agreement, the stipulation of Investigator Strickland,

interview of the defendant in Hartsville as admissible, that was by agreement. I think it was the State's proffer; was it not?

MR. MARTIN: State's evidence.

THE COURT: Yeah, that's what I mean. So you would have to stand by what was in that.

MR. MARTIN: It would be admissible, not necessarily credible.

THE COURT: You mean the State would produce an incredible witness?

MR. MARTIN: Judge, I'm going to --

THE COURT: If you are going to sit down, fine, but now don't get back up.

MR. MARTIN: I'm done, Judge.

THE COURT: Yes, ma'am.

MS. WALTER: Your Honor, the stipulation was that the statement by the defendant was legally admissible; in other words, that had we had a Jackson v. Denno hearing, the State had met all of the requirements to show that the defendant's statement was given knowingly, intelligently and voluntary, absent any force or coercion by Inspector Strickland. When the State admits a defendant's statement, it by no means is saying that the State agrees that the defendant is telling the truth in everything he says. In fact, I

would say that more often than not we are saying, well, here is what the defendant is saying, and here is why you shouldn't believe it.

Going to Your Honor's question about who was there, I picture -- when I go to a doctor, I might talk to the doctor in the exam room. I don't sit there and see her making notes. I don't see her making an entry into the --

THE COURT: But you might talk to the doctor, and the doctor asks certain questions that these requirements are meant to answer.

MS. WALTER: The requirements are that he maintain and produce records.

THE COURT: You talk to the doctor about what the doctor needs to put in those notes?

MS. WALTER: But the regulations require that the doctor --

THE COURT: I didn't ask you that. I'm just asking you to answer my question, and then you can explain your answer.

MS. WALTER: Yes, there are times that I talk to the doctor about many things. Yes, some of those would go to what would be --

THE COURT: Well, does the doctor ask you impertinent questions?

MS. WALTER: Sometimes.

THE COURT: And do you think that is required by the law to be maintained?

MS. WALTER: No, but I have no knowledge --

THE COURT: Well, then, does he or she ask you pertinent questions?

MS. WALTER: Yes, the doctors ask pertinent questions.

THE COURT: And do you know when he does that?

MS. WALTER: Yes.

THE COURT: All right. So then do you have knowledge that at least the questions were asked?

MS. WALTER: I do have knowledge that --

THE COURT: All right. Well, that was my only question. These victims would have had knowledge as to what questions were asked, if any.

MS. WALTER: That is correct.

THE COURT: They could say, no, they didn't ask any; in fact, he came to me and said would you like something. I mean, that would have been a very pertinent sort of question as to whether or not he received information to go into those questions -- I mean go into those records, but you all see fit to produce them.

MS. WALTER: Well, Your Honor, one of the issues

was that --

THE COURT: Let me ask you: Then you did not see fit to produce them?

MS. WALTER: That is correct. It was a --

THE COURT: All right. Then why, which is a question I never asked as an attorney, but as a judge I'm trying to get a full picture.

MS. WALTER: Absolutely. Your Honor, the three individuals named in the indictments were the defendant's, I believe, now ex-wife, his step-daughter and a friend of the ex-wife. Clearly, had the State called those witnesses, there would have been plenty of fodder to attack them for bias. In fact, I believe in a family court case, and I won't get into the specifics, but there were some allegations by the step-daughter towards the defendant.

The State believed that there would be a much cleaner trial because, quite frankly, I understand that a patient will often give the doctor information that would be pertinent for the records, but the regulation does not speak to that. The regulation speaks to the doctor's requirement of maintaining those records and being able to produce them. A doctor could talk to me all day long. I could give them all of the information pertinent to my situation,

but if they don't maintain the record, they have violated the statute. It doesn't matter what they asked me. Conversely, they might never ask me a question. Maybe they come in and see a gash on my forehead and they don't talk to me at all. I've had doctors say I make it a practice never to speak to my patients. They come in, see a gash on my forehead, stitch it up, bandage it up and I get a prescription.

THE COURT: Even though you were in there for a broken toe?

MS. WALTER: That could happen. It is not about the asking of the questions; it is about the maintenance of the records. And while, yes, these rules and regulations are meant to protect the individuals named in the indictment, they are actually in place to protect society as a whole.

THE COURT: All right. So you would do it to protect everybody? I can understand that's the reason. You did not put the one fact witnesses that knew what occurred when the records were supposed to be produced.

MS. WALTER: No, and I think we're just talking about a little more of a temporal argument, because they might have had knowledge of what questions the defendant did or did not ask them, but that does not

mean that they had knowledge about whether the defendant did or did not maintain records.

THE COURT: That's just it, but you wouldn't have any records to maintain if he didn't ask the questions.

Anything else?

MS. WALTER: No, Your Honor.

THE COURT: Let be sure, because as I say, I had to use my notes to find out what -- the evidence that the jury heard from the witnesses, and then of course by the stipulated audio entity.

Now, one, do you have any question about the creditability of the inspector who is in that audio? I mean, no one needed to give him Jackson v. Denno advice before he participated in the recording. I think he had the recording; did he not?

MS. WALTER: That is correct.

THE COURT: So it would not question his creditability?

MS. WALTER: That is correct.

THE COURT: All right. The reason I have been very careful about that, because as far as testimony, be it credible or not, it is replete in the audio, and so far I think you do agree that he did maintain records; he just didn't produce the records.

MS. WALTER: If I may, the State agrees that that is what he said.

THE COURT: Exactly. That is exactly what I mean. That is the only evidence they had that he maintained records, is his statement?

MS. WALTER: This is correct. We are just not agreeing --

THE COURT: But you have no evidence that he didn't?

MS. WALTER: Yes, we do.

THE COURT: Except he did not produce them.

MS. WALTER: The evidence, again, Your Honor, is the absence of records in the two places where it would have resided: Either at Grand Strand within the inpatient pharmacy, or at the primary care clinic in their computer records.

THE COURT: All right. And, of course, this could be established, or at least in review of the transcript, because I think the audio is part of the transcript; is it not?

MR. HUMPHRIES: It is.

THE COURT: I find this statement in my notes, and I'll stand by the transcript, the defendant in response to a question about the records -- allegedly in Hartsville -- the inspector says -- the defendant

says: Ask any people that I saw that I documented -- meaning the treatment, I guess.

And the inspector says: Well, I'll give you the first shot.

I think that is right after the statement about the divorce.

Yes, let's get them in Hartsville.

Defendant: They do exist; I can't get them. Going through the divorce, wife bagged --

If not in Hartsville, where would they be?

Ask any people that I saw, that I documented it.

And then the inspector says: I'll give you the first shot.

Then the inspector says: The burden is on you to produce those records. If not in Hartsville, I'll assist you as much as I can.

And then later he says: This is the deal, if she, Christy, threw them away, it is on you.

One statement that concerns me is: The burden is on you to produce those records. Is that the State's position?

MS. WALTER: Your Honor, from the DHEC point of view, yes, it is the doctor's point of view. If I may make one other point?

THE COURT: Certainly.

MS. WALTER: Your Honor, the statute reads that the defendant shall keep records, and we talk about maintaining records, and maintain doesn't -- it doesn't mean I make a record and then throw it out or don't keep track of it. Maintain means to keep in an existing state so that it is capable of production upon request. I think certainly there is an abundance of evidence in the record that the defendant did not maintain the records, because had he maintained them, he would have been able to produce them.

So, no, he did not have a burden in the criminal trial to produce them. He had a burden for DHEC and licensing purposes to produce them for them.

THE COURT: Where did this statement come in? Was it a criminal trial, or was it a proceeding before the Board of Medical Examiners?

MS. WALTER: It was an interview before charges were filed and before --

THE COURT: It was introduced in a criminal trial by the State?

MS. WALTER: Yes. As Your Honor noted, by consent of both parties, yes.

THE COURT: Well, you certainly wouldn't want to do something that was unconstitutional, would you?

MS. WALTER: No, Your Honor.

THE COURT: I think we are aware of the line of cases that says that you do not put the burden of proof on the defendant to even establish the absence of something; is that correct?

MS. WALTER: Yes, Your Honor; that is correct.

THE COURT: And since you are kind enough to provide me with State versus Prince, I would have to advise you that there is a habeas corpus proceeding in the United States versus Bruce Gray in the district court of South Carolina -- actually -- yeah, it was in the district court of South Carolina. There, a city official was charged with -- under a statute with embezzlement. The statute at the time read something to the effect of in trials under this section, upon production of evidence tending to prove that any such office or other person has received public funds and failed to account, therefore, as required by law, there shall arise a presumption that the funds received and unaccounted for have been fraudulently appropriated by such officer or person, and the burden of such state of the case shall rest upon such officer or person to show otherwise.

That statute actually went up in the 1930s to the United States Supreme Court and then affirmed. This trial took place in the '80s, and we had a city clerk

treasurer charged under the statute, and the trial judge did his best to avoid the presumption language and said to the effect the jury may conclude from that proof that the unaccounted funds had been fraudulently appropriated. This conclusion -- the instruction continued -- was permissible, quote, because under the law, a public officer has a duty to account for public funds coming into his possession; however, any inferences which can be drawn from a circumstance that can be rebutted by other evidence in the case, which shows that the conclusion or inference shouldn't be drawn from those circumstances.

In other words, the inference can be rebutted. There was a conviction in the trial court, and it went up -- not the United States Supreme Court, but the South Carolina Supreme Court, and they dismissed it under old Rule 23. You are all probably too young to remember Rule 23, but that is what I called the "rug rule." It said on appeal, if the case had no precedential value or error of law of fact, then there would be no written opinion, can be dismissed perfunctory.

MR. HUMPHRIES: Unfortunately, I remember.

THE COURT: Unfortunately, that case happened to be my case, and they actually granted me permission to

argue against the prior decision, being the United States Supreme Court case in the '30s, but after that, it was issued an order that said motion to argue against prior decision was unprovisionally granted, and dismissed it. But then I found out they had something called habeas corpus, and I brought it in the United States District Court and it went to Judge Wilkins, and there he found that it is reasonable, if not compelling, interpretation of the language, that the burden was on the defendant to produce evidence to rebut any adverse inference, which had arisen on the issue of fraudulent appropriation, which means failure to produce evidence that he could account for. Consequently, unless the defendant offered the jury evidence reducing a convincing non-criminal explanation for the missing funds, the crux of the offense, fraudulent appropriation of failure to do what the statute required, would be established by the inference in the absence of rebutting evidence. This shifted the burden of evidence and the burden of proof.

That case is W. Bruce Gray, Petitioner, versus William Lee, South Carolina Department of Corrections, 854 F.2d 650, 1984. I do think that that is still the law. I think that -- of course, this is going a

little far afield, but there used to be a series on PBS, Rumple of the Bailey, and Rumple said the golden thread that goes through -- and of course his English common law is a presumption of innocence, and the charge many times is that the presumption of innocence of such strength that without any evidence, direct evidence, that the intent of the statute was not produced, then it would require an acquittal.

Here, the only evidence on the State -- on the defense part was introduced by the State with acquiescence by the defendant, and each time he said I took documented evidence, and no contrary evidence was produced that he didn't. So the whole case of the State relies on the absence of evidence, which meant that he had to produce, and that is the shifting of the burden of proof to the defendant.

MS. WALTER: May I address that point?

THE COURT: Certainly.

MS. WALTER: Your Honor, in fact, again, the State believes that when it produced evidence of lack of the records, that was the State carrying its burden.

THE COURT: That is what the state statute said, that if he cannot account for the absence -- account for the missing money, then he would be presumed to be

guilty of a crime.

MR. WATSON: And, if I may, I would also note that I consulted with Mr. Oskin, and he assureds me that he spoke in his opening about the State carries the burden. The burden always --

THE COURT: I just read what the jury had.

MS. WALTER: Sorry?

THE COURT: I read what the jury had, at least my notes. I stand by the transcript of the testimony, which would include verbatim what the stipulation was, the audio.

MS. WALTER: Right. But Your Honor also gave, I'm sure, an instruction at the end that the burden is on the State, and probably at the beginning, that the defendant doesn't have to produce any evidence, whatsoever, that the burden remains on the State. I think to focus on one statement --

THE COURT: Only thing is -- I listened very carefully, and you all seemed to agree that the only evidence that the defendant gave was that he created the documents.

MS. WALTER: No.

THE COURT: Did he ever deny doing it? Did he ever deny producing the necessary required documents?

MS. WALTER: The defendant didn't produce any

evidence --

THE COURT: Did he ever deny it?

MS. WALTER: No.

THE COURT: In fact, he said on more than one occasion -- again, I'll go to my notes, and I apologize.

The question was: You don't have documents of the interviews or information, I guess?

And the defendant's response was that every prescription I have written down. My i-phone went out. I didn't have them with me. I have never had a physician that had documents of all the patients.

Were there any written on -- outside Grand Strand?

Yes, but I made sure I documented every time. I wrote them down with my wife, with her, her family and with patients of mine. I have written for the hospital employees. After talking to them, called Alice -- called in -- called on from other physician statements, not a problem. Ask any people that I saw if I documented it.

In other words, that is what he invited, and of course the State didn't do that.

MS. WALTER: Well, if I can point out one part?

THE COURT: You can point out anything. Listen,

I'm struggling with the case. I really didn't realize what it was about until I read my notes.

MS. WALTER: Well, if I can highlight one portion of what Your Honor just read. In the statement, I do believe that at one point the defendant said something to the effect of I had records on my phone, but I lost my phone or my phone was destroyed, which that is --

THE COURT: That's an explanation why he was not able to produce it.

MS. WALTER: No, it is a violation, because the regulation --

THE COURT: That his phone was destroyed; that is a violation?

MS. WALTER: Technically, yes.

THE COURT: Whoa.

MS. WALTER: The regulation and the statute --

THE COURT: We don't have Act of God in the state government?

MS. WALTER: The State statute requires that the records be kept and maintained, that is why had the defendant done what he was required to do by law and by rules of his residency, the records would have been maintained at Grand Strand and it wouldn't matter if Godzilla came and took his phone, because they would exist in the computer programs. The fact of the

matter is --

THE COURT: And he had that burden to prove it?

MS. WALTER: No, Your Honor.

THE COURT: Oh, he didn't?

MS. WALTER: DHEC purposes, just for licensing purposes, yes, because that is not a criminal proceeding. The defendant had the burden to produce records.

THE COURT: This was not a regulatory proceeding. It was not an administrative law proceeding.

MS. WALTER: No, I'm talking about two different things.

THE COURT: We're talking about criminal law where the State always has the burden to prove it of all elements of a crime.

MS. WALTER: Absolutely. And the State proved the lack of records, because the records did not exist where they by law, by regulation, by rule of the residency program had to exist. In essence, in order for the State to carry its burden, we were required to prove a negative: The absence of the records. That is the only way the State can do it; the absence of records. Because, again, it is not making a note; it is keeping that note. It is maintaining that record. So the only way that the State can prove its case is

by showing an absence of the records as they should be kept, and the State did that in multiple ways, by having Billy Davis testify about the computer records at the clinical practice, by having Ms. Williams testify as to the records at Grand Strand Regional Medical Center. So that is the State carrying the burden of showing there are no records, and it was up to the jury to determine, which they did, that that proof of an absence of records meant that the defendant did not keep and maintain those records as he must. So it is not that --

THE COURT: I just read the statement of the investigating officer, and it said that the burden of proof is on the defendant.

MS. WALTER: But, Your Honor --

THE COURT: Again, the jury heard that.

MS. WALTER: Your Honor, I think that that is a leap to say that in a trial that stemmed three days, the jury is going to have that one phrase and say, oh, the burden shifted to the defendant. I would also note that I don't think that Mr. Humphries objected. Certainly, he was asked what redactions did he want to the statement --

THE COURT: I certainly wouldn't object if I was defending, if it is an improper statement of the law.

I certainly would want to be sure that -- that's what the State's case was based on.

MS. WALTER: You have to object in order to preserve an issue.

THE COURT: If he was successful, I probably would have granted his motion.

MS. WALTER: First of all, he didn't object when we asked him what redactions were to be made.

THE COURT: You proffered it.

MS. WALTER: Before we do that, we always consult with the defense attorney --

THE COURT: Again, forgive me, you can talk about what you did at lunch if you want to, but what I'm talking about is what is in the record, and what the jury had to reach their decision on. The only testimony from the State about whose burden it was to prove that they -- documents didn't exist, was on the defendant.

MS. WALTER: Well, the State would disagree.

THE COURT: I'm sorry. Again, it is the interpretation. I'm just asking. I'm just talking about -- not the legitimacy of the statement, because I don't think it is. Of course he is not a trained attorney. He should know -- he wouldn't know about shifting the burdens and all.

MS. WALTER: But, Your Honor, the fact remains that in order to have an issue on appeal, the defendant has to object at the time, because had Mr. Humphries objected at the time, Your Honor could -- and Your Honor was concerned about that statement, Your Honor could have issued a curative instruction. The fact that the defendant did not object means that that issue is not maintained for appeal or for a new trial or for any review. The State also maintains that one tiny statement in a three-day trial where Your Honor instructed the jury multiple times that the burden remains on the State, to say that the jury focused on that one statement to the exclusion of the law that Your Honor gave them, especially when they are instructed that they must follow your law as you give it, is simply unfair to the State, and there is no evidence in the record to support that the jury took that one little sentence in the middle of, I think it was, a 45-minute statement versus the law that Your Honor instructed them on.

MR. HUMPHRIES: Could I be recognized, Judge?

THE COURT: Only if they are done. She sat down, but I don't know if Mr. Martin is sitting down.

MR. MARTIN: We're good, Your Honor.

MR. HUMPHRIES: Two things, Judge, and I'll go

last first. Just to be clear about the shifting of the burden, clearly that statement was made by the inspector in the statement provided by my client, which was admitted into evidence by the State. That is not the last reference before the jury in the testimony in this case regarding whose burden it was.

In cross-examination, both direct and cross-examination of the inspector, he reiterated that it was on him. If he couldn't produce it, he was in violation of the statute. If he couldn't produce it, he was in violation of the statute; that was asked and answered many times, both in direct and cross.

Further, in closing from the State, they made reference to it again. So we're not talking about an isolated statement in the statement of the defendant at the very beginning of the case. These things were referred to throughout the trial. And, quite frankly, if you talked to Inspector Strickland today, he would tell you the same thing. He is still of that same opinion, that is the way it is.

Now, as to the argument that the State did produce evidence regarding the lack of records, those are -- she referred to the computer system at the hospital or at the practice. My client in his statement indicated that these prescriptions were done

outside of the hospital, outside of the practice and, therefore, they would not be included -- necessarily would not be included there. So if we're going to fuss about him doing it outside of his practice, that is fine. Let labor licensing and review deal with that; that is not a criminal matter, okay. That is something in reference to his license and his limited practice. But that is not evidence in this case of prescribing practices outside the hospital or the clinic. The fact that they don't exist at the hospital or clinic bears no relevance to whether or not he created records at the time he prescribed outside of his practice, because necessarily they would not be included at the hospital or the practice. So that is evidence of nothing as it relates to whether or not he created records outside of the practice.

THE COURT: All right. Anything in reply?

MS. WALTER: I think both side's arguments are clear, Your Honor.

THE COURT: Very good. If that concludes the discussion -- I am still concerned about this case. I accept responsibility for perhaps not recognizing things as I should have, at least in having addressed it at that time. So I'm going to do something rather

unusual. Rather than rule at this time, I'm going to ask for brief proposed orders. I think you'll understand where my real concern is, and since the defendant is the moving party on the motion for a new trial, I'm going to ask you to prepare a proposed order. How much time do you need?

MR. HUMPHRIES: So here is the thing, my son graduated from high school in June. In celebration of that, we're leaving tomorrow to go to Ireland, and we'll get back the 28th.

THE COURT: Then you'll be able to ruminate on all of the issues (laughing).

MR. HUMPHRIES: If you can do that over a pint of Guinness or two.

THE COURT: Would 30 days be enough?

MR. HUMPHRIES: Clearly sufficient, if that is all right.

MS. WALTER: My only concern is that because you are basing it on what was presented to the jury, the State would like a copy of the transcript. The State does not have one. I don't know if Mr. Humphries has one. I don't know if one is requested.

MR. HUMPHRIES: It has been requested by the defendant; has not been produced.

THE COURT: Will you share it?

MS. WALTER: We can't do that for the court reporter. They have to get paid by both sides.

THE COURT: I see that. It has been 25 years since I practiced law, and I really was sensitive to court reporters.

MS. WALTER: I've learned to never anger a court reporter.

THE COURT: Good advice. Good advice. In fact, they were the only friends I had because I was with the State, and when you go to little counties or anything representing the highway patrolman, the only friend I had was the court reporter, even the bailiffs were not receptive (laughing).

MS. WALTER: We'll communicate with Mr. Humphries.

THE COURT: Let's do that.

MS. WALTER: When he gets the transcript, we'll make arrangements to pay our share.

THE COURT: That's just it. Let's do that, and I'll leave that up to you. In fact, I look forward to a scheduling order that you all complete.

MR. HUMPHRIES: Certainly. If that is -- if that concludes that, we have one other matter that I would like to bring to the Court's attention. I assume the Horry County file is not here, and so I will tell the

Court I have filed a motion to amend the sentence. We've served it on the State. I'll hand up a copy to Your Honor, if it is appropriate.

THE COURT: That is for information. You'll file --

MR. HUMPHRIES: It has already been filed.

THE COURT: It is a stamped copy?

MR. HUMPHRIES: Yes, sir, it is. It is fairly straightforward.

THE COURT: What does the State say?

MR. HUMPHRIES: Well, I haven't.....

THE COURT: Okay. That will be in the order today, is that this hearing will continue upon presentation of proposed orders, and that will be dependent upon the transcript becoming available to both parties and the court reporter being compensated?

MR. HUMPHRIES: Very good, yes, sir.

THE COURT: And then depending on the outcome of the -- you want this?

MR. HUMPHRIES: Honestly, Judge, at this stage, just very briefly, just sort of set the stage, this really will not come into play until mid-August anyway. There is merely a request to eliminate the community service requirement of the sentence just

based, quite frankly, on logistics and him being able to maintain his job. He can't even start community service until he finishes his weekend time the middle to end of August. So we can hold this motion as long as we don't, you know, go too much further past August. What I'm saying is it is not time sensitive today.

THE COURT: In other words, it has been filed, so it is part of the record and hadn't been responded to?

MS. WALTER: We just received it last week, yes.

THE COURT: That's what I'm saying. You haven't had a chance to, so I'll keep that as part of the record in this case.

MS. WALTER: The State will file a written response.

THE COURT: Right. Yeah. At your --

MR. HUMPHRIES: We mailed one to your chambers.

THE COURT: Well, anyway, you will respond as you would.

MS. WALTER: Yes, Your Honor.

THE COURT: As I say, I'm more concerned about getting the underlying issues determined, and that is from the transcript. You should be back --

MR. HUMPHRIES: I'll be back by the 28th.

THE COURT: You should be back by then, and the

30 days would be from the time that you get the transcript.

MS. WALTER: I'll check on it in Mr. Humphries' absence. I'll speak with him, and I'll follow up with it while he's gone so it is ready and waiting for him when he returns.

THE COURT: Welcome home.

MS. WALTER: At your preference, typically in Horry we're required to file a Form 4 even if it is continued; do you want me to?

THE COURT: I would love for you to do that. Mr. Barry is my law clerk. He has five retired judges he's the law clerk for.

MR. HUMPHRIES: I was wondering who would get that job.

THE COURT: So his service ends as soon as I'm clear, so send it to me. It is in the book.

MS. WALTER: I'll do that, Your Honor. The State will prepare a proposed Form 4 continuing the motion.

MR. HUMPHRIES: If that is what it is, you don't have to run it by me, if it is just to continue it.

THE COURT: Very good. If you don't mind, would you put the other milestones or whatever, transcript, 30 days, all of that?

MS. WALTER: Yes.

THE COURT: In other words, make it a modified scheduling order.

MS. WALTER: It will be a complete Form 4.

THE COURT: Take your time, in other words.

MR. HUMPHRIES: And include the motion to amend sentence as being continued at the same time.

MS. WALTER: Yes.

THE COURT: Very good. Ladies and gentlemen, thank you for your patience.

(Whereupon, the proceedings concluded.)

CERTIFICATE OF REPORTER

State of South Carolina)
County of Horry)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate Transcript of Record of the proceedings of the trial and the evidence introduced in the hearing of the above-captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 18th day of June, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 9, 2020

_____

Natalie Dahl, RPR
Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	2017A2610200648
COUNTY OF HORRY	)	INDICTMENT NOS. 2017-GS-26-3144, 2017-GS-26-3145, 2017-GS-26-3146
	)	2017A2610200649 2017A2610200646
STATE,	)	
	)	
Versus	)	**ORDER GRANTING MOTION IN ARREST OF VERDICTS**
	)	
JOHN ALEXANDER WEBB,	)	
	)	
Defendant.	)	

FILED
2019 OCT 25 AM 11:56
RENEE M. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

This matter came before the Court on the motion of the Defendant, John Alexander Webb, for New Trial and/or Judgment in Arrest of Verdict, through his counsel, Francis A. Humphries, Jr., Esquire. At the hearing held June 18, 2019, the State was represented by Assistant Solicitors George Henry Martin and Seth Oskin, and Senior Assistant Solicitor Mary Ellen Walter. The Court heard the argument of the Defendant in support of his motion summarized as follows: Defendant moved for a New Trial and/or Judgment in Arrest of Verdict requesting the Court act as Thirteenth Juror and set aside the verdicts of the jury in this matter and enter verdicts of Not Guilty or Grant a New Trial on all the indictments as the terms of the statute under which the Defendant was indicted and tried are strictly construed against the State and in favor of the Defendant.

By way of background, on April 23, 2019, Defendant was found guilty by a jury of all charges in the above-captioned indictments. As a result, Defendant was sentenced to one (1) year suspended upon the service of ninety (90) days, which may be served on weekends, and one (1) year probation, the conditions of which are that the Defendant perform 240 hours of Public Service, probation to terminate upon completion of public service, and the Defendant participate in substance abuse counseling as directed by Probation. Defendant was sentenced consistently on each indictment and those sentences were to run concurrently.

The Defendant was charged with violating the drug distribution law, § 44-53-390(a)(4), SC Code Ann. (1976), and the jury was instructed, that:

> "The state must prove beyond a reasonable doubt that the defendant knowingly or intentionally furnished false or fraudulent material information in, or omitted any material information from, any application, report, or other document to be kept by this article.
>
> Triazolam and Phentermine are controlled substances under the laws of our State.
>
> Knowingly means with knowledge; that is, consciously done.
>
> Intentionally means willfully; intending the result which actually occurs; not accidentally or involuntary.
>
> Fraud means the intentional and successful employment of any cunning or deception used to cheat another person; it is something said or done or not said or done by a person in order to cheat or deceive another person.
>
> Pursuant to section 44-53-340 of the South Carolina Code of Law, persons registered to manufacture, distribute, or dispense controlled substances under this article shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the Department issues."

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2019 OCT 25 AM 11:56
RENEE C. ELVIS
CLERK OF COURT
HORRY COUNTY, S.C.

The State did offer witness testimony outlining the referenced guidelines and requirements imposed by DHEC, which are additional rules and statutes found outside of Title 44, Chapter 53, Article 3, Narcotics and Controlled Substances, S.C. Code Ann. (1976), amended, the statutes under which the defendant was charged, but the Defendant asserts that the State failed to directly reference, in testimony or other evidence, any statute contained within the mandated article or any rule issued by the Department of Health and Environmental Control setting out record keeping requirements. Having failed to do so, the Defendant asserted the State failed in its burden to establish the existence of any evidence meeting these material elements of the offense, even in the light most favorable to the State. The Defendant moved that he was entitled to a directed verdict of not guilty on all indictments upon which he was tried or, in the alternative, a new trial.

While acknowledging there was no direct reference in testimony or other evidence to any statute contained within the mandated article or any rule issued by the Department of Health and

Environmental Control setting out record keeping requirements, the State argued that the testimony and evidence submitted by the State was sufficient to establish a violation of law was committed by the Defendant, notwithstanding, the Defendant's statement, included in the audio recording made by the defendant's counsel, introduced into evidence as State's Exhibit 1, that he had documented his findings that met the record keeping requirements of the practice in each incidence alleged in the separate indictments, to wit:

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INDICTMENT NO. 2017-GS-26-03144 relating to "Renee J." on July 7, 2016;

INDICTMENT NO. 2017-GS-26-03145 relating to "Kristy S." between April 8, 2016 and October 15, 2016; and

INDICTMENT NO. 2017-GS-26-3146 relating to "Alexandria C." on October 27, 2016.

It was the statement of the Defendant, as recorded in the interview of him by the DHEC Inspector, Derek Strickland, and introduced into evidence as the aforesaid State's Exhibit 1, that he had made and kept documentation each time the medications were prescribed to his wife, "Kristy S.", her daughter, "Alexandria C.", and the wife's co-worker and friend, "Renee J.", — all of whom would have been the "victims" of the alleged offenses, but who were later estranged from the Defendant, when he and his wife were going through a divorce.

Nevertheless, thereafter, the Defendant stated that documentation and "records" were among the papers that were lost in the divorce process when he was removed from the marital home. Although the State was able to locate and present as witnesses each of the three pharmacists who filled the three subject prescriptions, the State did not call any of the "victims" who had received the allegedly unlawfully prescribed control substances.

At the end of the State's case, Defendant moved for Directed Verdict based on the State's failure to offer any evidence of, or direct reference to, any statute within Title 44, Chapter 53, Article 3, of the S.C. Code of Laws Ann. (1976), as amended, or any rule issued by the Department

of Health and Environmental Control (DHEC) as specifically required by Section 44-53-390 (a)(4) and Section 44-53-340 of the S.C. Code of Laws Ann. (1976), the statutes under which the Defendant was charged. The Court, at that time, denied that motion stating the Court understood "interpretation is required in testimony that they are operating under regulations under this article". (p. 189, ll. 19-21 of Trial Transcript).

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HORRY COUNTY, S.C.

After the Defendant rested his case, without offering any evidence, the Defendant renewed his motion for Directed Verdict on the grounds stated above which was also denied. After the verdicts were returned, but before the sentences were given by the Court, Defendant renewed his motion for Directed Verdict. The Court did not rule on Defendant's motion at that time, but granted Defendant the opportunity to file this motion and any other post-trial motions in writing within ten (10) days of the verdicts and sentences. Rule 29 (a), SCRCrimP.

Inasmuch as the State, through testimony of its witnesses and in closing argument, had suggested that the burden of proof was on the Defendant, the Court was concerned that the State in its presentation and summation intimated that: if the Defendant was unable to produce the records related to his prescribing practices with the individuals alleged in the indictments, immediately upon request by law enforcement, the Defendant was in violation of the law upon which he was indicted (regardless of the reason or reasons he was unable to produce the records). Moreover, the State elicited testimony in their case from Agent Derek Strickland of the Bureau of Drug Control, that the Defendant was not permitted to provide "alternate" or "recreated" records upon his inability to produce the original records. The Defendant, through Counsel, consistently commented on the burden shifting nature of the testimony and evidence presented by the State, both through cross examination and in closing argument. The State's conduct, if burden shifting, would be inimical to Due Process under the Fifth and Fourteenth Amendments to the

United States Constitution, Article 1, Section 3 of the South Carolina Constitution and the core principles of the American system of justice.

The South Carolina Supreme Court noted in State v. Attardo, 263 S.C. 546, 552, 211 S.E.2d 868, 870 (1975) that: "A shifting of the burden of proof would impose a significantly greater onus on the defendant and, even more significantly, it would obliterate the presumption of innocence." In that case, the Supreme Court ruled that requiring the defendant to prove he lacked knowledge of his possession of drugs shifted the burden of proof to the defendant. In the instant case, the issue is whether or not the requirement of the Defendant to produce patient records of his prescribing practices, upon their loss or destruction, with no alternative provided him , is burden shifting and, therefore, constitutionally prohibited. If burden shifting, such facts could fatally infect the trial of the Defendant preventing a fair trial.

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Moreover, there is another equally compelling principal, when the case rests entirely on circumstantial evidence, such as the absence of evidence or "when the evidence fails to positively prove the guilt of the accused to the exclusion of any other reasonable hypothesis," State v. Dobson, 281 S.C. 36, 38, 314 S.E.2d 310, 311 (1984), such evidence is too speculative to support a finding that "a person knowingly or intentionally" did "fraudulent[ly] omit any material information from, any application, report, or other document to be kept . . . under this article, or any record required to be kept by this article . . . ." SECTION 44-53-390 (a) (4), S.C. Code of Laws Ann. (1976).

After careful review of the evidence in the trial of the case and the able arguments of counsel, the Court makes the following:

FINDINGS OF FACTS

1. The statutes under which the Defendant was indicted, Title 44, Chapter 53, Article 3, S.C. Code Ann. (1976), provide, in pertinent part:

> Section 44-53-390(a)(4) "(a) It is unlawful for a person to knowingly and intentionally to: . . . (4) furnish false or fraudulent material information in , or omit any material information from, any application, report, or other document required to be kept or filed under **this article**, or any record required to be kept by **this article**; [and]
>
> Section 44-53-340 "(p)ersons registered to . . ., distribute, or dispense controlled substances under this article shall keep records and maintain inventories in conformance with record-keeping and inventory requirements of Federal law and **with any additional rules the Department issues.**" (Emphasis supplied)

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2. No evidence of Federal law regarding keeping records was offered by the State or received by the Court;

3. No direct reference to any specific law contained within Title 44, Chapter 53, Article 3, regarding record keeping was offered by the State or received by the Court;

4. No direct reference to any specific DHEC rule, commonly known as Regulations, regarding record keeping was offered by the State or received by the Court;

5. No request to charge on the law by the State, other than Sections 44-53-390(a)(4) and 44-53-340, was offered to the Court and no other statutory or regulatory law was charged to the jury;

6. Both statutes, Sections 44-53-390(a)(4) and 44-53-340, crave reference to other statutes and/or DHEC Regulations to set out lawful requirements to be met by the Defendant, and those similarly situated, relative to the generation and maintenance of records, but do not, within the statutes themselves, provide these legal requirements;

7. The jury in this case would necessarily have had to find the Defendant guilty, without the benefit of the law regarding what records must be generated and maintained under the Federal law and any additional rules the Department issues, pursuant to Title 44, Chapter 53, Article 3, Section

Article 3, Section 44-53-340, and 44-53-390 (a)(4), S. C. Code Ann. (1976), with which the Defendant was charged with violating in each of the Indictments.

8. Moreover, when the State's arbiter in the investigation, Inspector Derek Strickland, is recorded in State's Exhibit 1, telling the Defendant that "the burden is on you to produce those records," but "I'll assist you as much as I can", the inference might be drawn by the jury "that the burden was on the defendant to produce evidence to rebut any adverse inference which had arisen on the issue of fraudulent", Gray v. Leeke, 584 F.Supp. 650, 652 (1984), omission of the "material information . . . required to be kept," Section 44-53-390 (a)(4), SC Code Ann. (1976).

9. There was no direct testimony or other evidence that the Defendant did not maintain any record required to be produced and maintained, but, to the contrary, there was his statement to the effect that he had, and, moreover, his explanation as to why he could not produce, when demanded by the State Investigator, the records that he had produced and maintained, as related in State's Exhibit 1, was a reasonable hypothesis to the exclusion of the State's hypothesis that the Defendant did unlawfully, "knowingly or intentionally . . . furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this article, or any record required to be kept by this article". Id.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, it is the conclusion of the Court, that:

1. On motion of the defendant of the defendant or on its own motion, the court shall direct in the defendant's favor on any offense charged in the indictment after the evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the indictment. In ruling on the motion, the trial judge shall consider the existence or non-existence of the evidence and not its weight. Rule 19, SCRCrimP.

2. "It is fundamental that an accused can be convicted only upon proof beyond a reasonable doubt of every essential element necessary to constitute the crime charged." Gray v. Leeke, *supra.*

3. "Here, the jury was permitted to 'infer' or 'conclude' that the missing [report or other document required to be kept — though none were particularly defined or designated by the State] were fraudulently [omitted] unless he physically produced evidence to the contrary." *Id.*

4. "[W]hen the case rests entirely on circumstantial evidence, a directed verdict is proper when the evidence fails to positively prove the guilt of the accused to the exclusion of any other reasonable hypothesis." Dobson, *supra.*

JUDGMENT

Accordingly, the Defendant's Motion in Arrest of Judgement is **GRANTED.**

IT IS, THEREFORE, ORDERED that the verdicts of Guilty for violations of Section 44-53-390(a)(4), S.C. Code Ann. (1976), are SET ASIDE and VACATED, and verdicts of NOT GUILTY entered as to the Defendant, John Alexander Webb.

AND, IT IS SO ORDERED.

ALEXANDER S. MACAULAY, Presiding Judge

October 18, 2019
Walhalla, South Carolina

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CLERK OF COURT
HORRY COUNTY, SC

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF GENERAL SESSIONS OF THE FIFTEENTH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	
	)	**MOTION FOR RE-CONSDIERATION**
V.	)	
JOHN WEBB,	)	**INDICTMENT NOS.: 2017GS2603144, 45, 46**
DEFENDANT.	)	

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CLERK OF COURT
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The defendant, through undersigned counsel, moves for re-consideration on his motion for a new trial. This motion was heard on August 10, 2023 in front of the Honorable Benjamin Culbertson. The reasoning behind the motion for re-consideration are as follows: (1) Unlike in typical post-trial motions, Judge Culbertson's first and only impression of this case was presented in the roughly thirty-minute post-trial motion. Transcripts of all prior proceedings were not provided to Judge Culbertson until after completion of argument and ruling on the matter. Furthermore, due to the obscurity of this criminal charge, even as the trial judge implied in the transcripts, is hard to understand. 2) During post-trial arguments Assistant Solicitor Mary-Ellen Walter mentioned that throughout the entire proceedings, pre-trial, trial, post-trial, appeal, and now post-appeal, the defendant never produced the missing medical records, making the recreation argument moot. Defendant actually provided the disputed recreated medical records to his trial counsel before trial. Trial counsel never produced them to the solicitor's office. Undersigned counsel is currently in possession of these records and had planned to provide them to the State prior to a new trial. Since the Assistant Solicitor believes that their continued non-existence was meritorious to her argument, the defendant would like to produce them under seal to the Court prior to a motion to reconsider hearing or at the hearing under seal. Records are not included in this filed motion to reconsider as that could result in violations of privacy laws for the medical patients treated by

COPY

Dr. Webb.

PROCEDURAL HISTORY

The defendant was found guilty on April 23, 2019 by a jury of all the charges in the above-captioned indictments. As a result, the defendant was sentenced to one (1) year suspended upon the service of ninety (90) days, which may be served on weekends, and one (1) year probation, the conditions of which are that the defendant perform 240 hours of Public Service, probation to terminate upon completion of public service, and the defendant participate in substance abuse counseling as directed by Probation. The defendant was sentenced consistently on each indictment and those sentences were to run concurrently.

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Judge McCaulay heard post-trial motions on June 18, 2019. There, the defense renewed their directed verdict motion, moved for a new trial, and made a motion in arrest of verdicts, which would vacate the convictions. On October 18, 2019, Judge McCaulay granted the defense's Motion to Set Aside and Vacate the Verdicts of John Webb and entered verdicts of Not Guilty. The State timely appealed. On February 15, 2022, the Court of Appeals Reversed Judge McCaulay's order and Remanded the case back to the Circuit Court to consider the defendant's Motion for a New Trial.

As previously stated, before the motion for a new trial was heard, Judge McCaulay retired, and therefore, this motion was heard in front of Judge Culbertson. Judge Culbertson denied the motion for a new trial at the hearing on August 10, 2023.

FACTS

From April 2016 to October 2016, the defendant, John Webb, was a resident at Grand Strand Regional Medical Center. During that time, the defendant wrote prescriptions for his current wife, his current step-daughter, and a co-worker of his wife at the time. On February 14, 2017, Investigator Strickland with South Carolina Department of Health and Environmental Control, the Bureau of Drug

Control interviewed Webb about the above-referenced prescriptions. According to Investigator Strickland, he had been notified by the South Carolina Board of Medical Examiners LLR due to concerns with prescribing to immediate family members.

During that interview, Webb was asked to produce the records for the above-listed patients. Webb was going through a divorce at this time, and he did not have access to his family home. The investigator followed Webb and his attorney at the time to a home in Hartsville, which was not his family home he shared with his soon-to-be ex-wife, but he did state he kept some records there. There, Webb showed the investigator several patient records he was keeping, but he could not find the three records the investigator was requesting.

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In audio played to the jury, Webb told the investigator that the records existed but that due to the divorce, he didn't have access to all of his belongings. The investigator stated that the burden was on him (Webb) to produce the records, and that he would assist Webb in any way he can. The investigator later says that if Webb's wife at the time threw them away, it would still be on Webb. Furthermore, at trial, while the investigator stated that Webb never gave alternate documentation and had plenty of time to do so, he also states, "He is not allowed to recreate records." Trl. Transcript, pg. 179, line 15.

After not producing the records in what Investigator Strickland states as "readily retrievable," meaning one hour or less, Webb was charged with three counts of violating the drug distribution law, §44-53-390(a)(4), SC Code Ann. (1976), which states:

> (a) It is unlawful for a person knowingly or intentionally to… (4) furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed *under this article*, or any record required to be kept *by this article*… (emphasis added).

ARGUMENT

The defendant is entitled to a new trial based on the following: (1) the defendant's constitutional rights were violated when the State shifted the burden of proof; and (2) the trial court erred in not granting the defendant's directed verdict motion as the State did not meet the elements of the crime.

1. The defendant's constitutional rights were violated.

The defendant's rights were violated when the State shifted the burden of proof to the defendant. In Judge Macaulay's attempt to grant the defense's directed verdict motion, he addressed this issue. There, he says the state "through testimony of its witnesses and in closing argument, had suggested that the burden of proof was on the Defendant." Order. The defendant, through counsel, commented on the burden shifting nature of the testimony and evidence presented by the State during cross-examination and closing arguments.

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In State v. Attardo, the court says, "A shifting of the burden of proof would impose a significantly greater onus on the defendant and, even more significantly, it would obliterate the presumption of innocence." State v. Attardo, 263 SC 546, 552 (1975). There, the defendant was found guilty of possession with intent to distribute marijuana. Id. at 549. The judge shifted the burden to the defendant to prove he did not have knowledge of what he possessed when instructing the jury. Id. The court reversed the conviction stating the defendant "was entitled to have his guilt or innocence determined without the onus of the burden of proof being placed upon him." Id.at 554

In addressing this issue at the motion hearing for a new trial, the judge posed two questions to undersigned counsel: (1) How is this any different from being charged with driving without a license and (2) How is this any different from being charged with not providing insurance? After further research into these questions after the hearing, it is extremely clear why these cases are different, and that is because both statutes provide a clause requiring dismissal upon providing those documents,

which erases the burden-shifting.

Driving without a license is codified in § 56-1-440. There, it states that "a charge of driving a motor vehicle without a driver's license must be dismissed if the person provides proof of being a licensed driver at the time of the violation to the court on or before the date this matter is set to be disposed of by the court." So while the charge itself may seem like the burden is on the defendant, it clearly provides a clause when the defendant lacks the knowingly and intentionally part of the crime. If the defendant has a valid license and does not intend to drive without it, the statute creates grounds where the charge must be dismissed when the license is presented to the court.

Driving without proof of insurance provides the same remedy as driving without a license. There, in § 56-10-225, it states "a charge of failing to maintain proof that a motor vehicle is insured must be dismissed if the person provides proof to the court that the motor vehicle was insured on the date of the violation." Again, this goes to knowingly and intentionally. The criminal court only aims to punish intentional behavior, and both of the offenses the judge posed during the motion hearings carve out a remedy of dismissal.

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Here, it is completely different from these statutes. The entire State's case rests on the defendant producing three patient records. The difference here is that even if the records were produced and maintained but not accessible by the defendant, there was never a remedy for the defendant, which is burden shifting.

Q: And that's exactly what I wanted to get to. Would he have been permitted at that time, upon being notified or being requested to produce these records, would he have been permitted to recreate the records under HIPPA guidelines in order to comply with the statute?

A: He is not allowed to recreate records.

State v. Webb Trial Transcript, p. 179, lines 16-21.

Q: If Doctor Webb had, since your meeting with him, sent letters pursuant to HIPPA indicating that the records are lost and they've been recreated along with a recreated record inviting them to view it, amend it. If he has done that is it still the position of your Drug Control that he is not in compliance with this statute?

A: I can't speculate to that. However, the records do have to be readily retrievable, which is defined as usually one hour or less. So, I would say that does not meet.

State v. Webb Trial Transcript, p. 182/18-183/1.

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Court: The defendant in response to a question about the records – allegedly in Hartsville – the inspector says – the defendant says: Ask any people that I saw that I documented – meaning the treatment, I guess. And the inspector says: "Well, I'll give you the first shot." I think that is right after the statement about the divorce. Yes, lets get them in Hartsville.

Defendant: They do exist; I can't get them. Going through the divorce, wife bagged— if not in Hartsville, where would they be? Ask any people if I saw, that I documented it.

Court: And then the inspector says "I'll give you the first shot. "Then the inspector says: the burden is on you to produce those records. If not in Hartsville, I'll assist you as much as I can." Then Later he says: this is the deal, if she, Christy, threw them away, it is on you.

State v. Webb, Post Trial Motion Transcript, p. 30/22-31/18.

Court: …The charge many times is that the presumption of innocence of such strength that without any evidence, direct evidence, that the intent of the statute was not produced, then it would require an acquittal.

Here, the only evidence on the State – on the defense part was introduced by the State with acquiescence by the defendant, and each time he said I took documented evidence, and no contrary evidence was produced that he didn't. So the whole case of the State relies on the absence of evidence, which meant that he had to produce, and that is the shifting of the burden of proof to the defendant.

State v. Webb, Post Trial Motion Transcript, P. 36/4-16.

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As stated in Judge Macauley's order, shifting the burden on the defendant violated his right to "Due Process under the Fifth and Fourteenth Amendments to the United States Constitution, Article 1, Section 3 of the South Carolina Constitution and the core principles of the American system of justice." He continues saying, "the issue is whether or not the requirement of the Defendant to produce patient records of his prescribing practices, upon their loss or destruction, with no alternative provided him, is burden shifting and, therefore, constitutionally prohibited." As mentioned above, both criminal charges the judge posed to undersigned counsel provides an alternate, and it is not burden shifting. Here, where the state introduced no regulations or rules, state or federal, on the requirements of Webb in record-keeping (which is addressed below) or alternatives provided to him upon loss or destruction, they shifted the burden and violated his right to a fair trial.

2. The trial court erred in not granting the defendant's directed verdict motion.

The Trial Court erred in denying Webb's motion for directed verdict. Webb was indicted for three violations of the drug distribution laws contained in S.C. Code Section 44-53-390(a)(4), which states:

> (a) It is unlawful for a person knowingly or intentionally to… (4) furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed *under this article*, or any record required to be kept *by this article*… (emphasis added).

The Trial Court stated the law correctly in the jury instructions, which limits the record-keeping requirements to those provided in Article 3 of Title 44, federal law, or additional regulations promulgated by DHEC:

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> …to furnish false or fraudulent material, information in, or omit any information from any applicant [sic], report, or other document required to be kept or filed under this article or any record required to be kept by this article. Persons registered to manufacture, distribute or dispense controlled substances under this article shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of Federal law and with any additional regulations by Department of Health and Environmental Control.
>
> Transcript, p. 217/5-14.

The State, however, failed to reference, in testimony or other evidence, any record keeping requirements contained within Article 3 of Title 44, any rule issued by DHEC setting forth record keeping requirements, or any federal law setting forth record keeping requirements. It would have been impossible for the jurors to determine that Webb violated the record-keeping requirements of S.C. Code Sections 44-53-390(a)(4) and 44-53-340 when the State at no point instructed the jurors as to what the record keeping requirements would be.

During pretrial arguments, trial counsel argued at length that the Court should exclude any testimony regarding "standard of care" or orientation materials from Webb's medical residency because the statute expressly states that violations are limited to the requirements contained within Article 3 of Title 44, any rule issued by DHEC setting forth record keeping requirements, or any federal law setting forth record keeping requirements Id. at pp. 61/13 through 77/12, pp. 87-98.

The Trial Court agreed, suggesting that the State simply publish to the jurors any DHEC regulation that the State alleges Webb had violated. The Trial Court stated, "If it's a DHEC regulation just publish the regulation." Id. at 64/14-15. At no point during the trial did the state publish a DHEC regulation or even reference a DHEC regulation to inform the jurors as to what the record keeping requirements would be.

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The Trial Court also correctly stated that "it's not violative of the language unless it's required to be kept or filed *under this article* or a record required to be kept *by this article*." Id. at 68/7-9 (emphasis added).

Investigator Strickland's Testimony

Investigator Strickland incorrectly testified that there are no specific guidelines as to documentation, without referencing any specific requirements from Article 3 of Title 44, a DHEC regulation, or federal law:

Q: How would a medical practitioner document?

A: We at the Board of – at DHEC don't have any specific guidelines as far as documentation, just has to be documented. It can be a memorandum of such as long as the document is readily available and upon request provided to inspector, no requirements going forward.

Q: And you say readily available, does that also mean the documentation must be kept and maintained by the physician?

A: Correct. By regulation with DHEC the records must be readily available, maintained by the registrant. It is the responsibility of the registrant being the registration holder to maintain those records.

Transcript, p. 164/17 through 165/3.

Investigator Strickland goes on to state that the Bureau of Drug Control requires physicians to maintain records for two years, and states that it is "against the law" for a physician to fail to document or to lose their documentation:

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Q: How long should a practitioner keep these prescription documentation?

A: Bureau of Drug Control requires two years on documentations, other may – the Medical Board may require more but as far as the Bureau of Drug Control we require two years.

Q: If a person who is issuing a prescription, if that person omits the information from his documentation or even fails to document it at all what happens?

A: It's against the law.

Q: What happens if the person fails to keep or lose or maintain this information?

A: It's, again, against the law.

Transcript, 166/5-17.

Although Investigator Strickland testified as to what is required for licensing by LLR and the Board of Medical Examiners, the requirements of the Bureau of Drug Control, and some of the record keeping requirements specific to pharmacists, neither Investigator Strickland nor any other witnesses provided testimony as to what the specific record keeping requirements are for physicians under Article

3 of Title 44, a DHEC regulation setting forth record keeping requirements, or any federal law setting forth record keeping requirements.

The jurors were not informed as to what specific records must be kept and what record keeping mechanism must be used, if any, and, therefore, could not have determined that Webb violated the specific requirements of Article 3 of Title 44.

During counsel's argument for directed verdict at the close of the State's case, the Trial Court inquired of the State as to whether "any Federal statute or regulation has been referred to," and the State responded:

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> Mr. Oskin: Your honor, with regards to that objection by defense, we would submit Investigator Strickland's testimony that his role in DHEC is equivalent to the DEA, that's based off State regulations, based off Federal law. And that does bring it under that purview…
>
> Mr. Oskin: the State would submit that when Investigator Strickland referred to his job capacity as a DHEC agent, that his job is based off Federal law in the capacity of what he does investigating, and the likeness of a DEA agent which is based off Federal rules, regulations, and statutes. All of the testimony, Your Honor, goes to 44-53-390, Section (a) to further prove that this defendant knowingly and intentionally omitted keeping the records.
>
> Transcript, pp. 188/15 through 18/10.

Viewing the evidence in the light most favorable to the State, there was no substantial evidence introduced by the State in this trial "which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced:"

> However, when ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and must submit the case to the jury if there is "any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may

be fairly and logically deduced." Id. at 329, 89 S.E.2D at 926. Therefore, although the jury must consider alternative hypotheses, the court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt. This objective test is founded upon reasonableness. Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt. State v. Bennett, 415 S.C. 232, 236-237, 781 S.E.2d 352 (S.C. 2016).

There was *no* testimony during the trial that referenced what specific records must be kept under Article 3 of Title 44, a DHEC regulation setting forth record keeping requirements, or any federal law setting forth record keeping requirements, how those records must be kept, or how Webb violated the specific record keeping requirements of Article 3 of Title 44, any DHEC regulation setting forth record keeping requirements, or any federal law setting forth record keeping requirements.

Even when taking the evidence in the light most favorable to the State, there was no evidence presented that was "sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt," and the Trial Court should have granted a directed verdict in Webb's favor.

The Trial Court Attempted to Direct a Verdict Post-Trial

It is apparent from the Trial Court's language and reasoning in its post-trial Order Granting Motion in Arrest of Verdicts that the Trial Court recognized that it was in error for not granting the directed verdict motion. The State is correct that the Trial Court discussed the standard for directed verdict, as opposed to a judgment in arrest of verdict, in its Order, finding that:

> ...there is another equally compelling principle, when the case rests entirely on circumstantial evidence, such as the absence of evidence or "when the evidence fails to positively prove the guilt of the accused to the exclusion of any other reasonable hypothesis," State v. Dobson, 281

S.C. 36, 38, 314 S.E.2d 310, 311 (1984), such evidence is too speculative to support a finding that "a person knowingly or intentionally" did "fraudulent[ly] omit any material information from, any application, report, or other document to be kept... under this article, or any record required to be kept by this article..." Section 44-53-390(a)(4), S.C. Code of Laws Ann. (1976). Order, p. 5.

Under the section titled "Findings of Facts," the Trial Court stated:

- "No evidence of Federal law regarding keeping records was offered by the State or received by the Court;"
- "No direct reference to any specific law contained within Title 44, Chapter 53, Article 3, regarding record keeping was offered by the State or received by the Court;"
- "No direct reference to any specific DHEC rule, commonly known as regulations, regarding record keeping was offered by the State or received by the Court;" and
- "No request to charge on the law by the State, other than Sections 44-53-390(a)(4) and 44-53-340, was offered to the Court and no other statutory or regulatory law was charged to the jury."

Order, p. 6.

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2023 AUG 18 A 10:09
RENEE ELLY
CLERK OF COURT
HORRY COUNTY, SC

The Trial Court went on to find that:

[t]he jury in this case would necessarily have had to find the Defendant guilty, without the benefit of the law regarding what records must be generated and maintained under Federal law and any additional rules the Department issues, pursuant to Title 44, Chapter 53, Article 3... Section 44-53-340, and 44-53-390(a)(4), S.C. Code Ann. (1976), with which the Defendant was charged with violating in each of the indictments.

Order, pp. 6-7.

The Trial Court also addressed the effect of Webb's statement in its Order, finding that:

There was no direct testimony or other evidence that the Defendant did not maintain any record required to be produced and maintained, but, to the contrary, there was his statement to the effect that he had, and, moreover, his explanation as to why he could not produce, when demanded by the State's investigator, the records that he had produce and maintained, as related in State's Exhibit 1, was a reasonable hypothesis to the exclusion of the State's hypothesis that the Defendant did unlawfully, "knowingly or intentionally… furnish false or fraudulent material information in, or omit any information from, any application, report, or other document required to be kept or filed under this article, or any record required to be kept by this article." Id. Order, p. 7.

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HORRY COUNTY, SC

In the "Conclusions of Law" section of the Trial Court's Order, the Trial Court cites the correct standard for granting a directed verdict, stating:

1. On motion of the defendant… or on its own motion, the court shall direct in the defendant's favor on any offense charged in the indictment after the evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the indictment. In ruling on the motion, the trial judge shall consider the existence or non-existence of the evidence and not its weight. Rule 19, SCRCrimP.

2. "It is fundamental that an accused can be convicted only upon proof beyond a reasonable doubt of every essential element necessary to constitute the crime charged." Gray v. Leeke, *supra.*

3. "Here, the jury was permitted to 'infer' or 'conclude' that the missing [report or other document required to be kept – though none were particularly defined or designated by the State] were fraudulently [omitted] unless he physically produced evidence to the contrary." Id. Order, pp. 7-8.

Although the Trial Court initially denied Webb's motions for directed verdict, the Trial Court appears to have recognized its error and the Trial Court attempted to grant Webb's motion for directed verdict post-trial, citing the standard for granting a directed verdict and discussing at length the State's "failure of competent evidence tending to prove the charge in the indictment."

For the reasons stated above, as supported by the Trial Court's reasoning, Findings of Fact, and Conclusions of Law contained in the Trial Court's post-trial Order Granting Motion in Arrest of Verdicts, the defendant is entitled to a new trial.

3. The Assistant Solicitor specifically brought up in the post-trial argument the defendant had still not provided the records to her office. While undersigned counsel has been in possession of recreated records since the beginning of their representation, she had not believed production to be relevant to the appeal or to post trial proceeding. Since the continued failure to produce was specifically argued in the hearing, Defendant would like the opportunity to produce these records In Camera, at a hearing, or under seal.

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CLERK OF COURT
HORRY COUNTY, S.C.

CONCLUSION

Defendant requests that the Court reconsider their ruling and grant the Defense's Motion for a New Trial.

COPY

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August 18, 2023

State of South Carolina
The Circuit Court of the Fifteenth Judicial Circuit

Benjamin H. Culbertson
Resident Circuit Judge

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401 Cleland St. (zip code 29440)
Georgetown, South Carolina
Telephone: (843) 545-3030
Facsimile: (843) 545-3282
Email: bculbertsonj@sccourts.org

March 28, 2023

Tammie Butler, General Sessions Coordinator
Horry County Clerk of Court
P.O. Box 677
Conway, SC 29528-0677

RE: *State v. Webb*
Indictments: 2017GS2603144
2017GS2603145
2017GS2603146

Dear Ms. Butler:

Please find enclosed for filing with the Clerk of Court the Form 4 order denying the defendant's Motion for Reconsideration in the above referenced case. By copy of this letter and enclosure emailed to the attorneys in this case, I am notifying them of the signing and filing of this order.

I thank you in advance for your service in this matter and with kindest regards, I remain

Very truly yours,

Benjamin H. Culbertson

BHC/bhc
Enclosure (a/s)
pc: Mary-Ellen Walter, Assistant Solicitor
Lacey Thompson, Esquire
Laura Hiller, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF GENERAL SESSIONS

ORDER IN A CRIMINAL CASE
WARRANT(S) 2017A2610200646, 648, 649

INDICTMENT(S): 2017GS2603144, 45, 46

State of South Carolina

JOHN WEBB

This form order submitted by:	Attorney for : ☐ State ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE

☐ **DECISION BY THE COURT AFTER HEARING.** This action came to a hearing before the court. The issues have been heard and a decision rendered. ☐ See below for additional information.

☐ **DECISION BY THE COURT AFTER STATUS CONFERENCE.** This case came for a status conference before the court. The status of this case and pending issues in this case were discussed and a decision rendered. ☐ See below for additional information.

☑ MOTION: **MOTION FOR RECONSIDERATION**

☐ GRANTED ☑ DENIED ☐ CONTINUED ☐ WITHDRAWN

☐ WITHDRAWN BY MOVING PARTY: _____
Signature of Moving Party

☐ OTHER:

IT IS ORDERED AND ADJUDGED: ☐ See Order of the Court below ☐ See attached order
☐ Formal Order to follow; to be prepared by: ☐ State ☐ Defendant ☐ Other: _____

ORDER INFORMATION

This order ☑ ends ☐ does not end the case.

Additional Information for the Clerk : _____

Defendant's Motion for Reconsideration filed 8/18/2023 is denied.

Marianne Clebrooke
Circuit Court Judge

2148
Judge Code

Sept. 27, 2023
Date

For Clerk of Court Office Use Only

This judgment was entered on the 21st day of **September, 2023** and a copy mailed first class or placed in the appropriate attorney's box on this 21st day of **September, 2023** to attorneys of record or to parties (when appearing pro se) as follows:

MARY-ELLEN WALTER

ATTORNEY(S) FOR THE STATE

LACEY THOMPSON/LAURA HILLER

ATTORNEY(S) FOR THE DEFENDANT(S)

Renee N. Elvis

CLERK OF COURT

Court Reporter:

RECEIVED
Feb 02 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
Court of General Sessions
Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2023-001578

John Alexander Webb,.....Appellant,

vs.

The State,.....Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant John Alexander Webb and Designation of Matter to be Included in the Record on Appeal on the following electronically by email:

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Paralegal
Thompson and Hiller Defense Firm

February 2, 2024