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**Jun 03 2024**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Horry County  
Court of General Sessions

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Honorable Alexander S. Macauley, Circuit Court Judge

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Appellate Case No. 2023-001578

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The State,

Respondent,

vs.

John Alexander Webb,

Appellant.

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**REPLY BRIEF OF APPELLANT JOHN ALEXANDER WEBB**

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## TABLE OF AUTHORITIES

### Statutes

S.C. Code Section 44-53-390.....	1,2,3,4,5
SC Code § 44-53-110.....	1

## REPLY ARGUMENT

- I. **For the first time, on appeal, the State has identified the regulations that it alleges Appellant (Dr. Webb) violated.**

Dr. Webb was accused of "omit[ting]... 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" under S.C. Code § 44-53-390 (2016).

The State's theory was that Dr. Webb, as a person "registered to manufacture, distribute, or dispense controlled substances," SC Code § 44-53-110(11) (2016), failed to "keep records and maintain inventories in conformance with the record-keeping inventory requirements of Federal law and with any additional rules the Department issues." Id.

This means that the jurors must have found that Dr. Webb failed to meet the requirements of:

1. Article Three of the S.C. Code,
2. Federal law, or
3. SC regulations.

At trial, however, the State failed to directly reference any statute contained within Article Three, any rule issued by the Department of Health and Environmental Control, or any federal law setting forth record keeping requirements.

In fact, this is the very heart of Dr. Webb's first and second issues on appeal:

I. Whether the trial court erred in denying Appellant Webb's motion for directed verdict where Appellant Webb was charged with failing to keep or produce records pursuant to S.C. Code Section 44-53-390(a)(4), but the State failed to directly reference any statute contained within Article 3, any rule issued by the Department of Health and Environmental Control, or any federal law setting forth record keeping requirements[, and]

II. Whether the trial court erred in denying Appellant Webb's Motion for New Trial where Appellant Webb was charged with failing to keep or produce records pursuant to S.C. Code Section 44-53-390(a)(4), but the State failed to directly reference any statute contained within Article 3, any rule issued by the Department of Health and Environmental Control, or any federal law setting forth record keeping requirements.

See, Initial Brief of Appellant Webb, 1.

"DHEC has promulgated extensive regulations concerning narcotics and controlled substances in South Carolina," as the State points out. Initial Brief of Respondent, 20. None of these regulations, however, were referenced at trial, despite the Trial Court's suggestion that the State simply publish to the jurors any DHEC regulation that the State alleges Dr. Webb had violated. Trial Transcript, 64/14-15 ("If it's a DHEC regulation just publish the regulation").

The State's detailed description in the Initial Brief of Respondent, 20-23 of the relevant record-keeping requirements contained in DHEC regulations is the first time that the State has offered these DHEC regulations as part of their prosecution. The

regulations cited by the State in the Initial Brief of Respondent, which include definitions of the relevant terminology, were not presented to the jurors at trial or argued to the Trial Court.

**II. The State is now arguing to the Court of Appeals the same inadmissible evidence that is the subject of this appeal.**

Although the State did not identify any of the relevant regulations, federal laws, or specific record keeping requirements under Article Three, the State was permitted to elicit testimony and argue to the jurors that Dr. Webb should be convicted under S.C. Code § 44-53-390 for failing to keep records because he violated the terms of his employment contract with the hospital.

In support of its argument that “there is abundant evidence that [Dr. Webb’s] omission was indeed ‘from records he was required to keep’ pursuant to Article 3, as a person registered to prescribe controlled substances in South Carolina,” Initial Brief of Respondent, 23, the State recaps the extensive testimony admitted at trial regarding Dr. Webb’s contract with the residency program, Id., the specific record keeping requirements of the agreement, Id. at 23-24, the agreement’s prohibition on prescribing to family members, Id. at 24, and the agreement’s prohibition on writing prescriptions to anyone who is not a hospital patient, Id.

A violation of Dr. Webb’s agreement with the hospital, however, is not a violation of any specific record keeping requirements contained in Article Three, South Carolina regulations, or federal law.

The State goes on to state that "DHEC Investigator Strickland then offered *detailed testimony about DHEC rules and regulations concerning medical practitioners who prescribe controlled substances to patients, particularly record-keeping regulations.*" Id. at 25 (State's emphasis).

Investigator Strickland did not, however, identify any DHEC rule or regulation in his testimony. Nor did he identify any specific record keeping requirements from Article Three or federal law. See, Trial Transcript, 162-183.

The State continues to cite testimony about the record keeping requirements of the medical board and, again, the record keeping requirements contained within Dr. Webb's residency agreement, Initial Brief of Respondent, 26-27. At no point during the trial, however, did any witness, the prosecutor, or the Trial Court identify any DHEC rule or regulation or any specific record keeping requirements from Article Three or federal law.

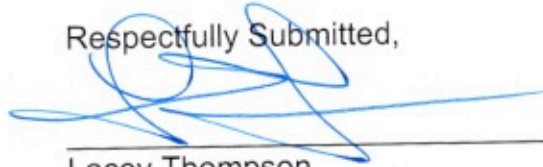
## **CONCLUSION**

This Court should reverse Dr. Webb's conviction and remand this case with instructions to direct a verdict of acquittal because Dr. Webb was charged with failing to keep or produce records pursuant to S.C. Code Section 44-53-390(a)(4), but, as the Trial Court stated in its Findings of Fact in its Order Granting Motion in Arrest of Verdicts, the State failed to directly reference any statute contained within Article 3, any rule issued by the Department of Health and Environmental Control, or any federal law setting forth record keeping requirements.

In the alternative, this Court should find that it was an abuse of discretion to deny Dr. Webb's Motion for New Trial in light of the original trial judge's Findings of Fact in the Order Granting Judgment in Arrest of Verdicts that no evidence of federal law, state law, or DHEC rule was offered by the State or received by the Court, no request to charge was made by the State, no jury instruction was given by the Court to the jury regarding the record-keeping requirements, and that there was uncontradicted evidence in Dr. Webb's statement that he had kept the records as required, lost them through no fault of his own, and did not knowingly or intentionally fail to maintain the required records. See Order, 7.

Finally, Dr. Webb asks this Court to reverse his conviction based on plain error because 1) the Trial Court failed to charge the jurors on the relevant laws and regulations that contain the requirements for record-keeping pursuant to S.C. Code Section 44-53-390(a)(4), 2) the Trial Court chose to grant a motion in arrest of judgment – a remedy that doesn't exist in South Carolina criminal court - instead of ordering a new trial or directed verdict, 3) the State's assertion that Dr. Webb was not permitted to recreate the records in question when they were lost or destroyed due to circumstances beyond his control, making it impossible for him to comply with the statute in question, violated his right to Due Process under the Fifth and Fourteenth Amendments, and 4) the State's repeated references to uncharged conduct or prior bad acts violated Rules 403 and 404(b), SC Rules of Evidence, the Court's pretrial rulings, and the State's pretrial agreement.

Respectfully Submitted,



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**PROOF OF SERVICE**

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I certify that I have served the Reply Brief of Appellant John Alexander Webb electronically by email to the following:

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